

VET Student Loans Rules 2016

I, Simon Birmingham, Minister for Education and Training, make the following rules.

Dated 21 December 2016

Simon Birmingham

Minister for Education and Training

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Part 1—Preliminary

1 Name

 This instrument is the *VET Student Loans Rules 2016*.

2 Commencement

 (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | 1 January 2017. | 1 January 2017 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

 (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

 This instrument is made under the *VET Student Loans Act 2016*.

4 Definitions

 In this instrument:

***accounting standard*** has the same meaning as in the *Corporations Act 2001*.

***Act*** means the *VET Student Loans Act 2016*.

***ADI*** means an authorised deposit‑taking institution within the meaning of the *Banking Act 1959*.

***affected part***, of an original course, means a part of the course that a student was enrolled in when the course ceased to be provided.

***assurance exempt provider*** means an approved course provider that the Secretary has exempted from the requirement in paragraph 25(2)(g) of the Act to be a party to an approved tuition assurance arrangement.

***Australian Quality Training Framework*** has the same meaning as in the *Higher Education Support Act 2003*.

***consolidated entity*** has the same meaning as in the *Corporations Act 2001*.

***covered student***, in relation to a tuition assurance arrangement:

 (a) means a student to whom the tuition assurance scheme operator has obligations under the arrangement; but

 (b) does not include a student to whom the tuition assurance scheme operator may have obligations under the arrangement in the future.

***financially viable*** has a meaning affected by subsection 23(4).

***HELP debt*** has the same meaning as in the *Higher Education Support Act 2003*.

***higher education provider*** has the same meaning as in the *Higher Education Support Act 2003*.

***key personnel***:

 (a) of a course provider—see section 16; and

 (b) of a tuition assurance scheme operator—see section 44.

***listed course provider*** has the same meaning as in section 27 of the Act.

***NVR registered training organisation*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

***original course*** means a course that a course provider ceased to provide after the course started but before it was completed.

***provider***: see section 13.

***qualified accountant*** has the same meaning as in the *Corporations Act 2001*.

***qualified auditor*** means:

 (a) the Auditor‑General of a State or Territory; or

 (b) a registered company auditor (within the meaning of section 9 of the *Corporations Act 2001*); or

 (c) a person approved by the Secretary in writing.

***Quality Standards*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

***quarter*** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

***registered higher education provider*** has the same meaning as in the *Tertiary Education Quality and Standards Agency Act 2011*.

***registration code*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***replacement component*** means a part of a replacement course that replaces an affected part of an original course.

***replacement course*** means a course provided under a tuition assurance arrangement to enable a student to finish:

 (a) an original course; or

 (b) a course that is equivalent to an original course.

***replacement provider*** means a course provider who provides a replacement course under a tuition assurance arrangement.

***replacement tuition offer*** means an offer of enrolment in a replacement course.

***Standards for NVR Registered Training Organisations*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

***State or Territory subsidised course***: see subsection 7(2).

***VET Provider*** has the same meaning as in the *Higher Education Support Act 2003*.

***VET student loans cap***: see subsection 39(2).

5 Meaning of *genuine student*

 (1) This section is made for the purposes of the definition of ***genuine student*** in section 6 of the Act.

 (2) The following may be taken into account for the purposes of determining whether a student is a ***genuine student*** in relation to a course:

 (a) the student is reasonably engaged in the course;

 (b) the student has knowledge of the course requirements for the course, and the cost and duration of the course;

 (c) the student has satisfied course requirements for the course or participated in assessment activities for the course;

 (d) if the course is an online course—the number of occasions on which the student has logged in to the course is not insignificant;

 (e) the student has provided up‑to‑date contact details that enable the Department to contact the student to verify the student’s enrolment in the course;

 (f) if the student is enrolled in another course—the number of the enrolments and associated course loads would not make successful completion of a course by the student impossible or highly improbable;

 (g) when required to do so, the student has communicated his or her agreement for the Secretary to continue to use the VET student loan to pay tuition fees for the course;

 (h) for the purposes of paragraph 43(4)(d) of Schedule 1A to the *Higher Education Support Act 2003*—if required to do so, the student has communicated his or her agreement for the Secretary to continue to use VET FEE‑HELP assistance to pay tuition fees for a VET unit of study.

Part 2—Loans to students

Division 1—Courses

6 Purpose of this Division

 This Division is made for the purposes of paragraph 14(2)(b) of the Act.

7 Kinds of courses

 (1) If the course provider receives funding from a State or Territory for enrolments in the course, the course must lead to a qualification of diploma or advanced diploma in the Australian Qualifications Framework.

 (2) If the course meets the requirements set out in subsection (1), the course is a ***State or Territory subsidised course***.

8 Course content and activities must be necessary

 The course must not include content or activities that do not contribute to achieving the qualification concerned.

Division 2—Applications for loans

9 Purpose of this Division

 This Division is made for the purposes of paragraphs 17(2)(b) and (c) of the Act.

10 Applications for loans

 (1) The application must not be made before the end of the period of 2 business days after the student enrols in the course.

 (2) The application must be made on or before the census day for the course, or the part of the course.

 (3) The application must be signed by the student.

Note 1: Most applications made by students under 18 years of age will also have to be signed by a responsible parent: see subsection 17(3) of the Act.

Note 2: An application made by electronic communication will be treated as having been signed by the student if certain requirements are met: see section 152 of this instrument.

Part 3—Paying and repaying loan amounts

11 Purpose of this Part

 This Part is made for the purposes of paragraph 137‑19(2)(b) of the *Higher Education Support Act 2003*.

12 Amount of VET student loan debt

 If the course to which the VET student loan debt relates is a State or Territory subsidised course, the percentage for the person is 100% of the loan amount.

Part 4—Course provider requirements

Division 1—Meaning of provider

13 Meaning of *provider*

 In this Part:

 (a) for the purposes of deciding whether to approve a body as an approved course provider under section 25 of the Act, ***provider*** means the body; and

 (b) for the purposes of deciding whether an approved course provider continues to meet the course provider requirements as required by subsection 47(2) of the Act, ***provider*** means the approved course provider.

Division 2—Fit and proper person requirements

14 Purpose of this Division

 For the purposes of paragraph 25(2)(f) of the Act, this Division sets out matters that the Secretary may have regard to in deciding whether a provider is a fit and proper person.

15 Compliance with the law

 (1) The Secretary may have regard to whether the provider 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.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

 (2) If the provider or any of its key personnel has been so convicted or ordered, the Secretary may have regard to the seriousness of the offence or contravention concerned.

 (3) The Secretary may have regard to whether the provider or any of its key personnel is currently involved in proceedings before a court or tribunal.

16 Meaning of *key personnel*

 Each of the following is one of a provider’s ***key personnel***:

 (a) a director, officer or member of the provider’s governing body;

 (b) 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;

 (c) a person who exercises control or influence over the allocation of the resources of the provider.

17 Financial record

 The Secretary may have regard to whether the provider or any of its key personnel:

 (a) has been insolvent or bankrupt; or

 (b) has taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

 (c) has compounded with one or more creditors; or

 (d) has assigned remuneration for the benefit of one or more creditors; or

 (e) has been under external administration (within the meaning of subsection 600H(2) of the *Corporations Act 2001*); or

 (f) has outstanding debts to the Commonwealth.

18 Management record

 (1) The Secretary may have regard to whether one or more of the following has been cancelled, revoked or suspended:

 (a) the provider’s registration as a registered training organisation or registered higher education provider;

 (b) the provider’s approval as an approved course provider, VET provider or higher education provider;

 (c) subsidy funding arrangements with a State or Territory for the provision of education by the provider.

 (2) The Secretary may have regard to whether the provider has:

 (a) had a condition imposed on a registration, approval or arrangement mentioned in subsection (1); or

 (b) breached such a condition.

 (3) 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*.

19 Provision of information

 The Secretary may have regard to whether the provider or any of its key personnel has provided false or misleading information to any of the following in circumstances where it is reasonable to assume that the provider or key personnel knew that the information was false or misleading:

 (a) a body of a State or Territory that registers educational providers;

 (b) the National VET Regulator;

 (c) the Minister, the Department or the Secretary;

 (d) an authority of a State or Territory that deals with subsidy funding arrangements for education.

20 Previous conduct and involvements

 (1) The Secretary may have regard to whether the provider or any of its key personnel has previously been found not to be a fit and proper person for the purposes of one or more of the following:

 (a) the Act;

 (b) the *Australian Education Act 2013*;

 (c) the *Education Services for Overseas Students Act 2000*;

 (d) the *Higher Education Support Act 2003*;

 (e) the *National Vocational Education and Training Regulator Act 2011*;

 (f) the *Tertiary Education Quality and Standards Agency Act 2011*;

 (g) subsidy funding arrangements with a State or Territory for the provision of education.

 (2) The Secretary may have regard to whether one or more of the following has engaged in conduct that reasonably suggests a deliberate pattern of unethical behaviour, or of acting inconsistently with laws of the Commonwealth, a State or a Territory, in relation to the provision of education or training:

 (a) the provider;

 (b) any of the provider’s key personnel;

 (c) any person engaged to act for, or on behalf of, the provider.

 (3) The Secretary may have regard to:

 (a) whether the provider or any of its key personnel has previously been involved in a business that provided education; and

 (b) 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.

 (4) The Secretary may 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

21 Purpose of this Division

 For the purposes of subsection 26(1) of the Act, this Division sets out provider suitability requirements for the purposes of ensuring that loan amounts are paid to suitable course providers.

Note 1: To approve a body as an approved course provider, the Secretary must be satisfied that the body meets the course provider requirements. Provider suitability requirements form part of the course provider requirements: see paragraph 25(2)(e) of the Act

Note 2: An approved course provider must also continue to meet the course provider requirements: see subsection 47(2).

Subdivision B—General requirements

22 General requirements

 The provider must:

 (a) be committed to:

 (i) the delivery of high quality vocational education and training; and

 (ii) achieving the best outcomes for students; and

 (b) act efficiently, honestly and fairly in all dealings with students, stakeholders and the Commonwealth (including the National VET Regulator); and

 (c) have a record of satisfactory conduct in relation to any previous vocational education and training:

 (i) provided by the provider; and

 (ii) for which the Commonwealth, a State or a Territory provided funding (including by way of loans to students).

Subdivision C—Financial performance

23 Financial performance

 (1) The provider must be able to pay its debts as and when they are due and payable.

 (2) The provider must be financially viable.

 (3) Each of the following is an indicator that a provider is ***financially viable***:

 (a) the provider generates sufficient income to meet operating payments, debt commitments and, where applicable, to allow growth while delivering quality training, assessment services and outcomes;

 (b) the provider’s total assets exceed the provider’s total liabilities (the provider has a positive equity position), and there is no evidence to suggest that this might change;

 (c) if the provider is not a charitable or not‑for‑profit organisation registered with the Australian Charities and Not‑for‑profits Commission, and has been operating for 3 years or more—the provider has operated at a profit for at least 2 of the 3 most recent financial years for the provider;

 (d) if the provider has at least 100 enrolments in courses leading to awards of qualifications in the Australian Qualifications Framework—at least 20% of the provider’s revenue for the previous financial year came from sources other than payments that gave rise to HELP debts;

 (e) the provider has a net positive cash position from operating activities (determined in accordance with the accounting standards);

 (f) the provider is not providing guarantees or loans that could have a material effect on the provider’s finances;

 (g) the provider is not providing its assets as security other than under a commercial loan arrangement with an ADI.

24 Dividends and related party transactions

 (1) The provider’s total dividend distributions during a financial year must not exceed the provider’s after tax profit for the previous financial year.

 (2) The provider’s payments to key personnel and related parties for the provision of goods or services must be made:

 (a) only for goods and services that are reasonably necessary for the operations of the provider; and

 (b) on terms that comply with the accounting standards, including in relation to arm’s length transactions.

25 Insurance

 The provider must have:

 (a) workers’ compensation insurance as required by law; and

 (b) adequate public liability insurance.

Subdivision D—Management and governance

26 Management and governance

 (1) The provider must have:

 (a) robust and appropriate management and governance structures; and

 (b) clearly defined decision‑making processes that will ensure accountability for decisions and actions; and

 (c) the resources necessary to support its employees and students.

 (2) The provider must:

 (a) maintain the integrity of student records and data; and

 (b) report data consistently, accurately and on time to the Commonwealth in accordance with the Act and any instruments made under the Act.

27 Key personnel and advisers

 (1) The provider’s key personnel and advisers must have the experience and expertise necessary to perform their duties and responsibilities.

 (2) The combined experience and expertise of the provider’s key personnel and advisers must include experience and expertise in the following:

 (a) the delivery of education;

 (b) management, including financial management and the management of human resources;

 (c) administration.

 (3) Subsection (2) does not limit subsection (1).

28 Paying commissions to staff

 The provider must not pay its staff commissions, benefits or bonuses (however described) that have any connection (whether direct or indirect) with the number of students who are enrolled by the provider and whose tuition fees are paid (whether wholly or partly) using VET student loans.

29 Compliance with laws

 (1) The provider must comply with the following:

 (a) the *Australian Education Act 2013*;

 (b) the *Education Services for Overseas Students Act 2000*;

 (c) the *Higher Education Support Act 2003*;

 (d) the *National Vocational Education and Training Regulator Act 2011*;

 (e) the *Tertiary Education Quality and Standards Agency Act 2011*;

 (f) the *Corporations Act 2001*;

 (g) the *Crimes Act 1914*;

 (h) the *Criminal Code Act 1995*;

 (i) the *Privacy Act 1988*;

 (j) any other law of the Commonwealth that relates to:

 (i) the regulation or funding of education; or

 (ii) trade practices or consumer protection;

 (k) any law of a State or Territory that:

 (i) applies to the provider; and

 (ii) relates to a matter covered by a law mentioned in paragraphs (a) to (j).

 (2) The provider must have the organisational capacity and administrative resources to:

 (a) ensure that it is able to meet its responsibilities under the laws covered by subsection (1); and

 (b) review on a regular basis its compliance with, and effectiveness of its operations in relation to, those laws.

30 Provider must meet certain standards

 (1) If the provider is an NVR registered training organisation, or is registered with the Western Australia Training Accreditation Council, the provider must comply with:

 (a) the Standards for NVR Registered Training Organisations; and

 (b) the Quality Standards (unless the provider is registered with the Western Australia Training Accreditation Council); and

 (c) the Australian Qualifications Framework.

 (2) If the provider is registered with the Victorian Registration and Qualifications Authority, the provider must comply with:

 (a) the Australian Quality Training Framework; and

 (b) the Victorian Registration and Qualifications Authority Guidelines for VET Providers; and

 (c) the Australian Qualifications Framework.

 (3) A reference in subsection (1) or (2) to standards, a framework or guidelines is a reference to the standards, framework or guidelines as in force from time to time.

Subdivision E—Experience and course offerings

31 Experience in providing vocational education and training

 (1) The provider must have experience in providing vocational education and training as a registered training organisation.

 (2) For the purposes of deciding whether a provider has such experience, the Secretary may have regard to the following:

 (a) whether the provider has been registered as a registered training organisation for 3 or more years;

 (b) the history of the provider and its key personnel in delivering vocational education and training to genuine students;

 (c) the history of the provider and its key personnel in delivering education through subsidy funding arrangements with a State or Territory;

 (d) the scope of courses the provider and its key personnel have experience in providing and the levels of qualification provided by those courses.

32 Minimum course offerings

 (1) For the purposes of deciding whether to approve the provider as an approved course provider, the provider must be providing at least one course set out in the courses and loan caps determination.

 (2) For the purposes of deciding whether an approved course provider continues to meet the course provider requirements, the provider must be providing an approved course.

Subdivision F—Student outcomes

33 Completion rates

 (1) The Secretary must be satisfied that the provider has (or will have) adequate 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.

 (2) For the purposes of deciding whether an approved course provider continues 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:

 (a) determined by the Secretary; and

 (b) published on the Department’s website.

34 Student support

 (1) The Secretary must be satisfied that the provider has genuine students with satisfactory levels of student engagement and student satisfaction.

 (2) The provider must assess student satisfaction in relation to each of its courses at least annually.

Subdivision G—Workplace relevance

35 Workplace relevance

 (1) The provider must have established and maintained material, relevant and appropriate links with industry and other bodies to ensure that its approved courses:

 (a) meet workplace needs; and

 (b) improve employment outcomes.

 (2) The other bodies include the following, as appropriate:

 (a) employers;

 (b) employer or employee bodies;

 (c) professional associations;

 (d) industry regulators;

 (e) registered higher education providers.

 (3) Subsection (2) does not limit subsection (1).

Division 4—Listed course providers taken to meet certain requirements

36 Purpose of this Division

 This Division is made for the purposes of subsection 27(1) of the Act.

37 Listed course providers taken to meet certain requirements

 A listed course provider is taken to meet the following course provider requirements:

 (a) the requirement in paragraph 25(2)(a) of the Act to be a body corporate that is not a trustee;

 (b) the provider suitability requirements set out in sections 23, 24 and 31 of this instrument.

Part 5—Approving course providers

38 Purpose of this Part

 This Part is made for the purposes of paragraph 32(1)(b) of the Act.

39 Applications that will be considered

 (1) The Secretary is not required to consider or decide an application for approval as an approved course provider if:

 (a) the application is made outside the period notified on the Department’s website as the period in which such applications can be made; or

 (b) 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.

 (2) The ***VET student loans cap*** for each of the calendar years 2017, 2018 and 2019 is the amount specified in section 155.

Part 6—Tuition assurance arrangements

Division 1—Approved tuition assurance arrangements

Subdivision A—Purpose of this Division

40 Purpose of this Division

 For the purposes of paragraph 40(2)(a) of the Act, this Division sets out requirements that must be met for a tuition assurance arrangement to be an approved tuition assurance arrangement.

Subdivision B—Operator must be approved

41 Operator must be approved

 (1) The tuition assurance scheme operator must be approved by the Secretary.

 (2) A person may apply to the Secretary to be approved as the operator of a tuition assurance arrangement.

 (3) The application must be in the form approved by the Secretary.

 (4) The Secretary may approve the person if the Secretary is satisfied that the person:

 (a) has the capacity (including the administrative and financial resources) to meet:

 (i) the obligations of an operator under an approved tuition assurance arrangement; and

 (ii) any requirements placed on the operator by, or under, the Act; and

 (b) 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; and

 (c) is a fit and proper person.

 (5) The Secretary may, at any time, revoke the approval of a person as the operator of a tuition assurance arrangement if the Secretary is no longer satisfied of the matters in subsection (4).

Subdivision C—Fit and proper person requirements

42 Purpose of this Subdivision

 For the purposes of deciding whether a tuition assurance scheme operator is a fit and proper person, the Secretary may have regard to the matters set out in this Subdivision.

43 Compliance with the law

 (1) The Secretary may 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.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

 (2) If the operator or any of its key personnel has been so convicted or ordered, the Secretary may have regard to the seriousness of the offence or contravention concerned.

 (3) The Secretary may have regard to whether the operator or any of its key personnel is currently involved in proceedings before a court or tribunal.

44 Meaning of *key personnel*

 Each of the following is one of an operator’s ***key personnel***:

 (a) a director, officer or member of the operator’s governing body;

 (b) a person or body that is concerned with, or takes part in, the executive or senior management of the operator, or that exercises control or influence over the management or direction of the operator;

 (c) a person who exercises control or influence over the allocation of the resources of the operator.

45 Financial record

 The Secretary may have regard to whether the operator or any of its key personnel:

 (a) has been insolvent or bankrupt; or

 (b) has taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

 (c) has compounded with one or more creditors; or

 (d) has assigned remuneration for the benefit of one or more creditors; or

 (e) has been under external administration (within the meaning of subsection 600H(2) of the *Corporations Act 2001*); or

 (f) has outstanding debts to the Commonwealth.

46 Management record

 (1) The Secretary may have regard to:

 (a) whether the operator, or a person with whom the operator has been associated has:

 (i) been refused a licence, registration or approval under a law of the Commonwealth, a State or a Territory; or

 (ii) had a licence, registration or approval revoked under a law of the Commonwealth, a State or a Territory; and

 (b) if so, the reasons for the refusal or revocation.

 (2) The Secretary may have regard to whether the operator has:

 (a) had a condition imposed on a licence, registration or approval under a law of the Commonwealth, a State or a Territory; or

 (b) breached such a condition.

 (3) The Secretary may have regard to whether any of the operator’s key personnel has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*.

47 Previous conduct and involvements

 (1) The Secretary may 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 one or more of the following:

 (a) the Act;

 (b) the *Australian Education Act 2013*;

 (c) the *Education Services for Overseas Students Act 2000*;

 (d) the *Higher Education Support Act 2003*;

 (e) the *National Vocational Education and Training Regulator Act 2011*;

 (f) the *Tertiary Education Quality and Standards Agency Act 2011*;

 (g) subsidy funding arrangements with a State or Territory for the provision of education.

 (2) The Secretary may have regard to:

 (a) whether the operator or any of its key personnel has previously been involved in a business that provided education; and

 (b) whether, at the time of that involvement, the business would have been a fit and proper person for the purposes of this Subdivision.

48 Previous provision of tuition assurance

 (1) If the operator has previously acted in one or more of the following capacities, the Secretary may have regard to the operator’s conduct in those capacities:

 (a) a tuition assurance scheme operator under an arrangement with an approved course provider;

 (b) a VET tuition assurance administrator under the *Higher Education Support (VET) Guideline 2015*;

 (c) a tuition assurance administrator under the *Higher Education Provider Guidelines 2012*;

 (d) a provider of learner fee protection under the *Standards for Registered Training Organisations (RTOs) 2015*.

 (2) For the purposes of subsection (1), the Secretary may have regard, in particular, to:

 (a) the commitment of the operator in ensuring that tuition assurance was successfully implemented for affected students; and

 (b) the extent to which the operator fulfilled its responsibilities in relation to tuition assurance.

49 Other relevant matters

 The Secretary may have regard to any other matter relevant to the honesty, knowledge or ability of the operator and its key personnel.

Subdivision D—Other requirements

50 Corporate separation requirements

 (1) The following requirements must be met:

 (a) the course provider must not be an associated entity of the tuition assurance scheme operator within the meaning of section 50AAA of the *Corporations Act 2001*;

 (b) the tuition assurance scheme operator must not be an associated entity of the course provider within the meaning of that section;

 (c) at least half of the officers (within the meaning of section 9 of the *Corporations Act 2001*) of the course provider must not be officers of the tuition assurance scheme operator;

 (d) at least half of the officers (within the meaning of section 9 of the *Corporations Act 2001*) of the tuition assurance scheme operator must not be officers of the course provider.

 (2) Despite the requirements in subsection (1) not being met in relation to the arrangement, the requirements are taken to be met if the Secretary determines in writing that the requirements are taken to be met.

 (3) An approved course provider may apply in writing to the Secretary for a determination under subsection (2).

 (4) The application must:

 (a) describe the circumstances that result in the requirements of subsection (1) not being met; and

 (b) explain the reasons for those circumstances.

 (5) In the application, the course provider may propose other arrangements in substitution for the requirements set out in subsection (1).

 (6) The other arrangements may include one or more of the following:

 (a) a separate unconditional financial guarantee from a third person;

 (b) a trust arrangement with an independent trustee;

 (c) a trust account held with an ADI.

 (7) The Secretary may make a determination under subsection (2) subject to other arrangements being in place.

51 Student enrolment information

 (1) The arrangement must require the course provider to give the tuition assurance scheme operator information about covered students in a form determined by the tuition assurance scheme operator.

 (2) The arrangement must require the provider to give the information at least once every quarter*.*

52 Information about events that affect provider

 (1) The arrangement must require the course provider to give the tuition assurance scheme operator written notice of any of the following events within 2 business days of the event occurring:

 (a) notice is served on the provider, or proceedings are taken, to:

 (i) cancel the provider’s incorporation or registration under the *Corporations Act 2001* or similar legislation; or

 (ii) dissolve the provider as a legal entity;

 (b) the provider comes under a form of external administration (within the meaning of subsection 600H(2) of the *Corporations Act 2001*) or an equivalent arrangement;

 (c) the provider fails to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;

 (d) the provider is unable to pay all of its debts when they become due;

 (e) proceedings are initiated for an order for the provider’s winding up;

 (f) at a meeting of the provider, a resolution is made to wind up the provider.

 (2) The arrangement must require that if the approved course provider intends to cease providing a course after it starts but before it is completed, the provider must give the tuition assurance scheme operator written notice of the intention as soon as practicable.

53 Notice and information when course ceases

 (1) The arrangement must require the course provider to notify the tuition assurance scheme operator in writing within 24 hours if the course provider ceases to provide a course to which the arrangement applies.

 (2) The arrangement must also require the provider to give the operator the following for each covered student concerned within 3 business days after the provider ceases to provide the course:

 (a) the student’s full name and contact details;

 (b) the part or parts of the course that the student is enrolled in;

 (c) the amount of the tuition fees for each part of the course in which the student is enrolled;

 (d) details about the payment of those tuition fees, including the amounts that are covered fees;

 (e) a copy of a statement of attainment for the parts of the course the student has completed, issued by the course provider or an authorised issuing organisation in accordance with the Australian Qualifications Framework.

54 Replacement courses

 (1) The arrangement must require the following:

 (a) for replacement courses to be provided by approved course providers;

 (b) for students enrolled in replacement courses to receive course credits for parts of the original course successfully completed by the student, as evidenced by a statement of attainment issued in accordance with the Australian Qualifications Framework;

 (c) that students enrolled in replacement courses are not charged tuition fees for replacement components of replacement courses.

 (2) The arrangement must require replacement courses to meet the following requirements:

 (a) a replacement course must lead to the same or a comparable qualification as the original course;

 (b) the mode of delivery of a replacement course must be the same as the mode of delivery of the original course;

 (c) the location where the replacement course for a student is primarily delivered must be reasonable, having regard to the costs of, and the time required for, the student’s travel;

 (d) a student who enrols in a replacement course:

 (i) will not incur additional fees that are unreasonable; and

 (ii) will be able to attend the replacement course without unreasonable impacts on the student’s prior commitments.

 (3) The arrangement must require the tuition assurance scheme operator to:

 (a) give a student a 6 month period in which to accept a replacement tuition offer; and

 (b) extend that period in circumstances that justify an extension.

 (4) The arrangement must require the tuition assurance scheme 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 for the replacement component.

55 Obligations to covered students must continue

 (1) The arrangement must provide for obligations in relation to covered students to continue even if the arrangement is terminated.

 (2) The arrangement must provide for obligations in relation to covered students to continue despite any of the following:

 (a) a default under the arrangement by the course provider;

 (b) non‑compliance with the Act by the course provider;

 (c) whether the course provider is solvent or insolvent.

56 Secretary’s consent to variation

 The arrangement must provide that it cannot be varied without the written consent of the Secretary.

57 Notice of termination

 The arrangement must provide for written notice of termination of the arrangement as follows:

 (a) for termination by the course provider, the provider must give the tuition assurance scheme operator and the Secretary at least 60 days’ notice;

 (b) for termination by the tuition assurance scheme operator, the operator must give the provider and the Secretary at least 90 days’ notice.

58 Transitional period for tuition assurance arrangements

 (1) This section applies in relation to an arrangement:

 (a) of a kind covered by subsection 9(2) of the *Higher Education Support (VET) Guideline 2015*; and

 (b) that was operating for the purposes of Schedule 1A to the *Higher Education Support Act 2003* immediately before this section commenced.

 (2) The arrangement is taken to meet the requirements of this Division unless the Minister, by legislative instrument, determines that this section does not apply in relation to the arrangement.

 (3) This section ceases to have effect 6 months after it commences.

Division 2—Secretary requiring tuition assurance scheme operator to act

59 Purpose of this Division

 This Division is made for the purposes of paragraph 41(1)(b) of the Act.

60 Deciding whether a course has ceased

 (1) In deciding whether a provider has ceased to provide a course, the Secretary may have regard to whether any of the following has occurred:

 (a) the provider ceases to be a registered training organisation;

 (b) the provider’s approval as an approved course provider is revoked;

 (c) the provider makes changes to the training being delivered to the extent that the course is no longer the same in substance as the course in which students originally enrolled;

 (d) the enrolment of students has been cancelled in a way that does not comply with the provider’s procedures for withdrawal and cancellation;

 (e) an event mentioned in section 52 affects the ability of the provider to deliver the content of the course to a standard sufficient to meet learning outcomes for the course under the Australian Qualifications Framework.

 (2) Subsection (1) does not limit the matters to which the Secretary may have regard.

Division 3—Requirements for tuition assurance scheme operators

Subdivision A—Purpose of this Division

61 Purpose of this Division

 This Division is made for the purposes of section 42 of the Act.

Subdivision B—General operation of tuition assurance arrangement

62 Information or documents to be given by operator to Secretary

 (1) The operator of a tuition assurance arrangement with an approved course provider must give to the Secretary the information or documents specified in column 1 of an item of the following table at the times specified in column 2 of the item.

| Information and documents to be given by tuition assurance scheme operator to Secretary |
| --- |
| Item | Column 1 | Column 2 |
| 1 | Insurance policy documents relating to the arrangement | Annually, and at the reasonable request of the Secretary |
| 2 | Actuarial reports relating to the arrangement | Annually, and at the reasonable request of the Secretary |
| 3 | The operator’s financial statements for the previous financial year | Within 30 days after the end of the financial year |
| 4 | An audit report on the operator’s financial statements for the previous financial year prepared by a registered company auditor (within the meaning of section 9 of the *Corporations Act 2001*) | Within 30 days after the end of the financial year |
| 5 | A copy of the operator’s by‑laws or rules for the arrangement | Within 30 days after amendments are made to the by‑laws or rules |
| 6 | A statement for each quarter about the tuition assurance the operator provides | Within 30 days after the end of the quarter |

 (2) For item 6 of the table in subsection (1), the statement must set out the following for each approved course provider with whom the operator has or had a tuition assurance arrangement during the quarter:

 (a) the number of covered students under the arrangement as at the end of the quarter;

 (b) the course provider’s projected revenue from tuition fees paid using VET student loans, as notified to the operator by the course provider, for the calendar year in which the quarter occurs;

 (c) the course provider’s registration code.

63 Secretary may require tuition assurance scheme operator to be audited

 (1) The Secretary may require the operator of a tuition assurance arrangement with an approved course provider to be audited.

 (2) The audit must be for the purposes of determining either or both of the following:

 (a) whether the operator is able to meet the operator’s obligations under the arrangement;

 (b) whether the operator is complying with the Act or any instrument made under the Act (including this instrument).

 (3) The audit must be conducted:

 (a) by:

 (i) the National VET Regulator; or

 (ii) an auditor approved in writing by the Secretary; and

 (b) at such time or times, and in such manner, as the Secretary requires.

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

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

 The operator of a tuition assurance arrangement with an approved course provider must notify the Secretary of the following circumstances within 3 business days after becoming aware of the circumstances:

 (a) the provider is in breach of the arrangement;

 (b) the provider wants to vary the arrangement;

 (c) the provider intends to terminate the arrangement.

65 Variation of tuition assurance arrangement

 (1) The operator of a tuition assurance arrangement with an approved course provider must, before the arrangement is varied, request in writing the consent of the Secretary to the proposed variation.

 (2) The request must be given to the Secretary at least 90 days before the variation is proposed to take effect, unless the Secretary agrees in writing to a shorter period.

66 Termination of tuition assurance arrangement by tuition assurance scheme operator

 (1) The operator of a tuition assurance arrangement with an approved course provider must give the Secretary written notice if the operator proposes to terminate the arrangement.

 (2) The notice must be given to the Secretary at least 90 days before the arrangement is to be terminated, unless the Secretary agrees in writing to a shorter period.

Subdivision C—Operation of tuition assurance arrangement when course ceases

67 Application of this Subdivision

 This Subdivision applies if:

 (a) an approved course provider ceases to provide an approved course; and

 (b) under a tuition assurance arrangement, a tuition assurance scheme operator has obligations to covered students.

Note: An approved tuition assurance arrangement must provide for obligations in relation to covered students to continue even if the arrangement is terminated: see section 55.

68 Contact with students when course ceases

 The tuition assurance scheme operator must do the following:

 (a) attend the meeting held by the course provider referred to in paragraph 91(b);

 (b) organise a telephone service to deal with enquiries from covered students about the tuition assurance arrangement;

 (c) provide on the operator’s website accurate information about the tuition assurance arrangement;

 (d) within 7 business days after being notified by the course provider that the course is no longer being provided, provide to each covered student written information about the tuition assurance arrangement, the operator’s role in facilitating tuition assurance and the telephone service mentioned in paragraph (b);

 (e) within 14 business days after being notified by the course provider that the course is no longer being provided, contact each covered student by telephone to discuss and assess options for a replacement course;

 (f) within 20 business days after being notified by the course provider that the course is no longer being provided, send to each covered student:

 (i) a replacement tuition offer, in writing, that complies with section 69; or

 (ii) if the operator decides there is no replacement course for the student that complies with the approved tuition assurance arrangement—a notice that complies with section 71.

Note: For requirements of an approved tuition assurance arrangement in relation to replacement courses, see section 54.

69 Requirements of replacement tuition offer

 (1) A replacement tuition offer from the tuition assurance scheme operator to a covered student must include the following:

 (a) the name and contact details of the operator;

 (b) a description of the replacement course being offered to the student, including the qualification that the course leads to;

 (c) the course credits the student would receive for the parts of the original course successfully completed by the student;

 (d) an explanation that tuition fees would not be payable for a replacement component of the replacement course;

 (e) details of the tuition fees and any other fees that would be payable for the replacement course (other than for the replacement component);

 (f) the date by which the student must accept the offer;

 (g) information on how the student can accept the offer;

 (h) an explanation that if the student chooses to enrol in a course other than the replacement course, there is no obligation on the provider of the other course to:

 (i) offer course credits for the parts of the original course successfully completed by the student; or

 (ii) offer a replacement component without charge to the student;

 (i) an explanation of the requirements that a course must meet under the tuition assurance arrangement to be offered as a replacement course;

 (j) an explanation of the student’s right to request a review of whether the course offered to the student meets those requirements;

 (k) an explanation that if, upon review, it is determined that there is no replacement course for the student that complies with the approved tuition assurance arrangement:

 (i) the student’s tuition fees for the affected parts of the original course that were covered by a VET student loan will be repaid to the Commonwealth; and

 (ii) the student’s FEE‑HELP balance will be re‑credited.

 (2) The tuition assurance scheme operator must ensure the replacement provider provides for students who accept replacement tuition offers to be enrolled in replacement courses as soon as possible.

 (3) The tuition assurance scheme operator must keep records of replacement tuition offers made by the operator. The records must be kept for at least 7 years.

70 Requirements if no response from student to replacement tuition offer

 (1) If the tuition assurance scheme operator does not receive, within 28 days after sending the student a replacement tuition offer, either an acknowledgement of receipt of the replacement tuition offer or an acceptance of the offer, the operator must attempt to contact the student by telephone to remind the student of the offer.

 (2) The operator must make at least 3 reasonable attempts to contact the student by telephone. If those attempts are not successful, the operator must write to the student reminding the student of the replacement tuition offer.

 (3) If, within 3 months after sending a student a replacement tuition offer, the operator has not received either an acknowledgement of receipt of the replacement tuition offer or an acceptance of the offer, the operator must send another copy of the offer to the student.

71 Requirements of notice that there is no replacement course

 A notice from the tuition assurance scheme operator to a covered student advising that the operator has decided there is no replacement course for the student must include the following:

 (a) an explanation of the student’s right to seek review of the decision;

 (b) an explanation of the requirements that a course must meet under the tuition assurance arrangement to be offered as a replacement course;

 (c) a statement that the student has 28 days to seek review of the decision before the fees for the affected part of the original course that were paid using a VET student loan are re‑credited to the student’s FEE‑HELP balance;

 (d) a statement that, to facilitate early repayment and re‑crediting, the student may, at any time during the 28 days, give the operator notice in writing that the student will not seek review of the decision.

72 Operator must provide review procedures

 (1) The tuition assurance scheme operator must provide a review procedure that provides for a covered student to seek review of decisions as follows:

 (a) in relation to a decision to offer a student a replacement course—that the replacement course does not meet one or more of the requirements set out in subsection 54(2);

 (b) in relation to a decision not to offer a student a replacement course—that there is a replacement course that could be offered to the student;

 (c) in relation to a decision not to extend a 6 month period in which a replacement tuition offer must be accepted—that the period should be extended.

 (2) The review procedure must:

 (a) clearly set out the stages of the procedure; and

 (b) encourage the timely resolution of reviews, including by specifying reasonable periods for dealing with each stage of the procedure; and

 (c) contain the internal and external stages referred to in subsections (3) and (4); and

 (d) clearly provide that there is no charge for either the internal stage or the external stage; and

 (e) provide for implementation of decisions made in following the review procedure; and

 (f) provide for due consideration of recommendations arising from the external stage of the review procedure; and

 (g) require the operator to retain for at least 7 years appropriate records of each use of the procedure; and

 (h) require the operator to allow the parties to a use of the procedure to access the records of that use, but otherwise keep the records confidential.

 (3) The internal stage of the review procedure must include:

 (a) a process for the lodging and hearing of an application for review; and

 (b) a requirement for the complainant to be given written notice of a decision on the review, including:

 (i) the reasons for the decision; and

 (ii) advice about how to appeal the decision; and

 (c) a process for appealing the decision to an independent senior officer of the tuition assurance scheme operator, or to an internal committee or unit with appropriate expertise; and

 (d) a requirement for the student to be given written notice of the decision on appeal, including:

 (i) the reasons for the decision; and

 (ii) advice about how to have the decision reviewed; and

 (e) provision for each party to this stage of the procedure to be accompanied or assisted by another person, at that party’s cost.

 (4) The external stage of the review procedure must include:

 (a) a process for having a decision on appeal reviewed by an external and independent person or body with appropriate expertise; and

 (b) provision for each party to the review to be accompanied or assisted by another person at the review, at that party’s cost; and

 (c) a requirement for each party to be given written notice of the decision on review, including the reasons for the decision.

 (5) The tuition assurance scheme operator must retain records of reviews under this section relating to decisions of the operator. The records must be retained for 7 years.

73 Repayment and re‑crediting

 (1) This section applies if the tuition assurance scheme operator sends a covered student a notice in accordance with section 71, and:

 (a) the student does not, within 28 days, seek review of the decision that there is no replacement course for the student; or

 (b) within the 28 days, the student gives the operator notice in writing that the student will not seek review of the decision; or

 (c) after review, the decision is affirmed.

 (2) The tuition assurance scheme operator must notify the provider of the original course, in writing, that the student’s FEE‑HELP balance must be re‑credited under section 69 of the Act.

 (3) If the tuition assurance scheme operator receives an invoice from the Commonwealth for the repayment of the student’s tuition fees, the operator must pay the debt within 30 calendar days.

Note: The course provider and operator are jointly and severally liable: see section 23 of the Act.

74 Information to be provided to Secretary

 The tuition assurance scheme operator must give the following information to the Secretary once a week after the provider ceases to provide the course, until the Secretary advises the operator that sending the information is no longer required:

 (a) the steps that have been taken to contact covered students;

 (b) the covered students that the operator has not been able to contact;

 (c) the covered students that have been made a replacement tuition offer but have not yet responded;

 (d) the covered students that have sought review of the replacement tuition offer;

 (e) the covered students for which the operator has decided there is no replacement course that complies with the approved tuition assurance arrangement.

Part 7—Other requirements for approved course providers

Division 1—Processes and procedures

Subdivision A—Preliminary

75 Purpose of this Division

 This Division is made for the purposes of section 48 of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Division: see subsection 48(5) of the Act.

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

 An approved course provider must have in place processes and procedures that accord with the other Subdivisions of this Division.

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

 An approved course provider must act in accordance with the processes and procedures it has in place.

78 Approved course provider must train officers on processes and procedures

 An approved course provider must train each officer of the approved course provider on the processes and procedures that the provider has in place and that are relevant to the officer’s duties and responsibilities.

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

 (1) An approved course provider must publish prominently on its website the processes and procedures it has in place.

 (2) The published processes and procedures must be easily accessible without provision of login information.

Subdivision B—Student entry

80 Academic suitability

 (1) An approved course provider’s student entry procedure must specify that a student is academically suited to undertake a particular approved course if:

 (a) one of the requirements in subsection (2) is met in relation to the student; and

 (b) the student meets any other specified entry requirements for the course; and

 (c) the provider believes on reasonable grounds that the student is academically suited to undertake the course.

Note: The other specified entry requirements could include any prior education qualifications the provider considers are needed for a student to be academically suited to undertake the course.

 (2) For the purposes of paragraph (1)(a), the requirements are that:

 (a) the provider obtains a copy of a Senior Secondary Certificate of Education that has been awarded to the student by an agency or authority of a State or Territory for the student’s completion of year 12; or

 (b) both:

 (i) the student is assessed as displaying competence at or above Exit Level 3 in the Australian Core Skills Framework in both reading and numeracy using an assessment tool approved under section 82; and

 (ii) the provider reasonably believes that the student displays that competence; or

 (c) both:

 (i) the provider obtains a copy of a certificate (however described) that a qualification at level 4 or above in the Australian Qualifications Framework has been awarded to the student; and

 (ii) the course for the qualification was delivered in English.

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

 An approved course provider’s student entry procedure must specify that the results of assessing a student’s competence in reading and numeracy under the procedure must be reported:

 (a) to the student as soon as practicable after the assessment; and

 (b) to the Secretary in the form, manner and by the time requested by the Secretary.

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

 (1) An approved course provider’s student entry procedure must:

 (a) describe the process (including the tools) for validly and reliably assessing a student’s competence in reading and numeracy against the Australian Core Skills Framework; and

 (b) specify as a tool to be used as part of that process a tool that is approved by the Secretary under this section and published on the Department’s website; and

 (c) require that process to be conducted with honesty and integrity.

 (2) The Secretary may, on application by an approved course provider or a Commonwealth, State or Territory government agency, approve a tool for assessing a student’s competence in reading and numeracy if the Secretary is satisfied that:

 (a) the tool is a valid, reliable, fair and well‑constructed way of assessing whether that competence is at or above Exit Level 3 in the Australian Core Skills Framework; and

 (b) the tool has been appropriately verified and evaluated using evidence‑based assessment.

 (3) In approving a tool under subsection (2), the Secretary must have regard to a document that is published on the Department’s website and sets out:

 (a) criteria for approval of tools for testing competence in reading and numeracy against the Australian Core Skills Framework; and

 (b) measures for quality assurance of such tools.

Note: A person or body verifying and evaluating a tool as described in paragraph (2)(b) will also need to have regard to this document.

 (4) The Secretary must, as soon as practicable after making a decision under subsection 82(2), give the applicant written notice of the decision.

 (5) The following are taken to have been approved under subsection (2) of this section:

 (a) *Core Skills Profile for Adults* as mentioned in subparagraph 38(1)(b)(i) of the *Higher Education Support (VET) Guideline 2015*;

 (b) a tool for assessing a student’s competence in reading and numeracy that is approved under subsection 38(2) of the *Higher Education Support (VET) Guideline 2015*.

83 Review of Secretary’s decision

 (1) If the Secretary decides not to approve a tool for assessing a student’s competence in reading and numeracy, the notice to the applicant must set out:

 (a) the reasons for the decision; and

 (b) a statement that the applicant may apply to have the decision reviewed:

 (i) if the reviewable decision was made by a delegate of the Secretary—by the Secretary; or

 (ii) if the reviewable decision was made by the Secretary personally—by the Administrative Appeals Tribunal.

 (2) If the decision (the ***original decision)*** was made by a delegate of the Secretary, the application to the Secretary must be made:

 (a) in a form approved by the Secretary; and

 (b) within 30 days after the day on which the written notice of the original decision was given to the applicant, or within such further period as the Secretary allows.

 (3) The Secretary must:

 (a) review the original decision; and

 (b) affirm, vary or revoke the original decision; and

 (c) if the Secretary revokes the original decision—make such other decision as the Secretary thinks appropriate.

 (4) The review must be done by:

 (a) a delegate of the Secretary who holds a position that is higher than the position held by the delegate who made the original decision; or

 (b) the Secretary personally.

 (5) The decision on review of the original decision has effect as if it were made under subsection 82(2).

 (6) The Secretary must, within 30 days after the decision on review is made, give a written notice to the applicant that includes:

 (a) details of the decision on review; and

 (b) the reasons for the decision on review; and

 (c) a statement that the applicant may apply to have the decision on review reviewed by the Administrative Appeals Tribunal.

 (7) Applications may be made to the Administrative Appeals Tribunal for review of:

 (a) decisions on review made under subsection (3); or

 (b) original decisions made by the Secretary personally.

Subdivision C—Course enrolment

84 Equal and fair treatment of students seeking to enrol

 (1) 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.

 (2) An approved course provider must have open, fair and transparent procedures that the provider reasonably believes are based on merit for making decisions about:

 (a) the selection of students seeking to enrol in approved courses; and

 (b) the treatment of such students.

This does not limit subsection (1).

 (3) Subsection (2) does not prevent the procedures from allowing the approved course provider to take into account that a student may be enrolled in an approved course in accordance with an arrangement that:

 (a) was entered into between the provider and an employer or industry body; and

 (b) limits or restricts enrolments in some or all of the places in the course.

Subdivision D—Information relating to applications for VET student loans

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

 (1) An approved course provider must 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.

 (2) The processes and procedures must require the collection and verification of the following information and documents relating to a student applying for a VET student loan:

 (a) information about the student’s identity and date of birth;

 (b) if the student is under 18, information that:

 (i) one of the signatories to the application is a responsible parent of the student; or

 (ii) the student has received youth allowance (within the meaning of the *Social Security Act 1991*) on the basis that the student is independent (within the meaning of Part 2.11 of that Act);

 (c) information and documents to establish that the student meets the requirements of section 11 of the Act;

 (d) if the student has applied for, but not been issued with, a tax file number—a certificate from the Commissioner that the student has applied for a tax file number.

Subdivision E—Withdrawal from courses and cancellation of enrolment

86 Processes and procedures for student to withdraw from approved course

 (1) An approved course provider’s processes and procedures must include:

 (a) procedures for a student to withdraw from an approved course, or a part of an approved course; and

 (b) a procedure for a student to enrol in a part of an approved course with the provider in circumstances where the student had earlier withdrawn from a part of the course undertaken with the provider.

 (2) The procedures for a student to withdraw from an approved course, or a part of an approved course, before a census day for the course, or the part of the course, must not involve financial, administrative or other barriers to the withdrawal.

 (3) If a student withdraws from an approved course, or a part of an approved course, the course provider must not, after the withdrawal, enrol the student in an approved course or a part of an approved course without the written permission of the student (which must be given after the withdrawal).

87 Processes and procedures for cancellation of enrolment

 (1) An approved course provider’s processes and procedures must include processes and procedures for the provider to cancel a student’s enrolment in an approved course, or a part of an approved course, after the census day for the course.

 (2) The processes and procedures for cancelling a student’s enrolment must:

 (a) require the provider to inform the student concerned of a proposed cancellation; and

 (b) provide the student with at least 28 days to initiate grievance procedures before the cancellation takes final effect; and

 (c) provide for the cancellation to take final effect only after any grievance procedures initiated by the student have been completed; and

 (d) set out the circumstances in which fees for the course, or the part of the course, concerned will, or will not be, refunded.

Subdivision F—Dealing with complaints

88 Grievance procedure

 (1) An approved course provider must have a grievance procedure to deal with complaints from its students about:

 (a) academic matters (including matters relating to student progress, assessment, curriculum and awards for an approved course); and

 (b) non‑academic matters (including matters relating to enrolment in a course and personal information held by the provider).

 (2) The grievance procedure must:

 (a) clearly set out the stages of the procedure; and

 (b) encourage the timely resolution of complaints, including by specifying reasonable periods for dealing with each stage of the procedure; and

 (c) contain the internal and external stages referred to in subsections (3) and (4); and

 (d) clearly provide that there is no charge for either the internal stage or the external stage; and

 (e) provide for implementation of decisions made in following the grievance procedure; and

 (f) provide for due consideration of recommendations arising from the external stage of the grievance procedure; and

 (g) require the provider to allow parties who have used the procedure to access the records of that use, but otherwise keep the records confidential.

 (3) The internal stage of the grievance procedure must include:

 (a) a process for the lodging and hearing of a formal complaint; and

 (b) a requirement for the complainant to be given written notice of a decision on the formal complaint, including:

 (i) the reasons for the decision; and

 (ii) advice about how to appeal the decision; and

 (c) a process for appealing the decision to an independent senior officer of the approved course provider, or to an internal committee or unit with appropriate expertise; and

 (d) a requirement for the appellant to be given written notice of the decision on appeal, including:

 (i) the reasons for the decision; and

 (ii) advice about how to have the decision reviewed; and

 (e) provision for each party to this stage of the procedure to be accompanied or assisted by another person, at that party’s cost.

 (4) The external stage of the grievance procedure must include:

 (a) a process for having a decision on appeal reviewed by an external and independent person or body with appropriate expertise; and

 (b) provision for each party to the review to be accompanied or assisted by another person at the review, at that party’s cost; and

 (c) a requirement for each party to be given written notice of the decision on review, include the reasons for the decision.

Subdivision G—Re‑crediting FEE‑HELP balances

89 Explaining re‑crediting

 (1) 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.

 (2) The processes and procedures must explain the following:

 (a) that a student’s FEE‑HELP balance can be re‑credited under Part 6 of the Act;

 (b) that a student may apply to the provider for the student’s FEE‑HELP balance to be re‑credited under section 68 of the Act because of special circumstances;

 (c) that a student may apply to the Secretary for the student’s FEE‑HELP balance to be re‑credited under section 71 of the Act because:

 (i) the provider, or a person acting on the provider’s behalf, engaged in unacceptable conduct in relation to the student’s application for the VET student loan; or

 (ii) the provider has failed to comply with the Act or an instrument under the Act and the failure has adversely affected the student;

 (d) that special circumstances are circumstances that:

 (i) are beyond the student’s control; and

 (ii) do not make their full impact on the student until on or after the census day for a course, or the part of a course; and

 (iii) make it impracticable for the student to complete the requirements for the course, or the part of the course, during the student’s enrolment in the course, or the part of the course;

 (e) that applications for re‑crediting under section 68 of the Act must be made within 12 months after the census day for the course, or the part of the course, concerned, or within that period as extended by the provider;

 (f) that applications for re‑crediting under section 71 of the Act must be made within 5 years after the census day for the course, or the part of the course, concerned, or within that period as extended by the Secretary;

 (g) the processes available to students in relation to reconsideration and review of decisions whether or not to re‑credit FEE‑HELP balances;

 (h) that there is no charge for reconsideration or review of decisions, other than review by the Administrative Appeals Tribunal;

 (i) that the Secretary may re‑credit a student’s FEE‑HELP balance in relation to special circumstances if a course provider:

 (i) is unable to act or is being wound up or has been dissolved; or

 (ii) has failed to act and the Secretary is satisfied that the failure is unreasonable.

Subdivision H—Treatment of students seeking review etc.

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

 An approved course provider’s processes and procedures must ensure that a student is not victimised or discriminated against for:

 (a) seeking review or reconsideration of a decision; or

 (b) using the provider’s processes or procedures about dealing with grievances; or

 (c) making an application for re‑crediting of the student’s FEE‑HELP balance under Part 6 of the Act.

Subdivision J—Tuition assurance

91 Action when provider ceases to provide course

 An approved course provider must have a procedure to ensure that the provider performs the following actions after the provider ceases to provide an approved course after it starts but before it is completed:

 (a) within 2 days, notify students enrolled in the course, in writing, that the course is no longer being provided;

 (b) within 7 business days after notifying the students, hold a meeting with the students and the tuition assurance scheme operator for the course at the location where the course was primarily delivered;

 (c) as soon as practicable, update the provider’s website to reflect that the course is no longer being provided and to give tuition assurance information;

 (d) give the operator notice of events as required under sections 52 (information about events that affect provider) and 53 (notice and information when course ceases);

 (e) as soon as practicable after receiving notice from the operator required under subsection 73(2) (notice that a student’s FEE‑HELP balance must be re‑credited) re‑credit the student’s FEE‑HELP balance.

92 Procedures as replacement provider

 An approved course provider must have a procedure to ensure that a student enrolled in a replacement course with the provider:

 (a) is granted course credits for parts of the original course successfully completed by the student, as evidenced by a statement of attainment issued in accordance with the Australian Qualification Framework; and

 (b) is not charged tuition fees for a replacement component of the replacement course.

Subdivision K—Fees

93 Fees other than tuition fees

 (1) An approved course provider must not charge fees other than tuition fees unless the provider has processes and procedures for ensuring that students understand the following:

 (a) that the fees are not for tuition;

 (b) the purpose of the fees;

 (c) the student’s total liability for the fees;

 (d) when and how the fees are to be paid.

 (2) An approved course provider’s processes and procedures in relation to fees other than tuition fees must not require fees to be paid for the following:

 (a) assessments to determine whether a student is academically suited to undertake a course;

 (b) applying for enrolment, or enrolling in, an approved course.

Subdivision L—Handling information

94 Handling information

 (1) An approved course provider must have processes and procedures for handling information.

 (2) The processes and procedures must:

 (a) provide for the management of students’ personal information in accordance with the Australian Privacy Principles; and

 (b) provide for students to access their personal information; and

 (c) provide for students to have incorrect personal information corrected; and

 (d) provide accurate information about the use and disclosure of personal information collected by the provider, including that the information may be disclosed to the Commonwealth and tuition assurance scheme operators.

Division 2—Specified broker arrangements

95 Purpose of this Division

 This Division is made for the purposes of paragraph 49(2)(b) of the Act.

96 Specified broker arrangements

 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

97 Purpose of this Division

 This Division is made for the purposes of subsection 50(1) of the Act.

Note 1: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Division: see subsection 50(2) of the Act.

Note 2: An approved course provider commits an offence of strict liability if the provider fails to comply with a requirement under this Division: see subsection 50(3) of the Act.

Subdivision B—General information

98 Providing information before enrolment

 (1) The purpose of this section is to ensure that students seeking to enrol in an approved course:

 (a) are fully informed of the tuition fees and any other fees that apply to the course; and

 (b) are clear about their responsibilities, obligations and rights if they enrol in the course; and

 (c) are clear about their responsibilities, obligations and rights if they apply for a VET student loan.

 (2) Before enrolling a student in an approved course, an approved course provider must give the student the following information:

 (a) all information required to be provided under the Standards for NVR Registered Training Organisations that relates to ensuring that each student is properly informed and protected;

 (b) the tuition fees for the approved course;

 (c) any fees other than tuition fees that are payable for the course;

 (d) the student’s options for paying tuition fees, including:

 (i) payment by the student as fees become due; and

 (ii) a VET student loan;

 (e) information about VET student loans, including that:

 (i) it is a loan from the Commonwealth; and

 (ii) the loan will remain a personal debt until it is repaid to the Commonwealth; and

 (iii) the loan may, until the debt is repaid, reduce a student’s take‑home (after‑tax) wage or salary and may reduce the student’s borrowing capacity; and

 (iv) a student may wish to seek independent financial advice before applying for a loan;

 (f) the criteria for being an eligible student for a VET student loan;

 (g) the application process for a VET student loan;

 (h) an explanation that the student may be required during the course to communicate his or her agreement that the Secretary continue to use the VET student loan to pay tuition fees for the course;

 (i) the maximum amount of a VET student loan that may be available for the course under section 8 of the Act (not taking into account the effect of paragraph (b) of that section), and an explanation that the amount of the loan cannot be greater than the student’s remaining FEE‑HELP balance;

 (j) the amount of HELP debt the student would accrue if the student received the maximum amount of VET student loan for the course (the debt could be up to 120% of the loan);

 (k) an explanation that the tuition fees will be reasonably apportioned across a specified number of sequential fee periods and that each fee period will contain at least one census day;

 (l) information about census days, including:

 (i) the meaning of a census day (in accordance with the definition of ***census day*** in the Act); and

 (ii) that a student may cancel the student’s enrolment in the course or part of the course using the provider’s procedure for withdrawal; and

 (iii) if a student withdraws before the census day for a course or part of a course, the student will not incur a VET student loan debt for the course or part of the course and will receive a refund for any tuition fees already paid for the course or part of the course;

 (m) how to access the following on the approved course provider’s website:

 (i) the tuition fees for the course;

 (ii) the census days for the course;

 (iii) the provider’s procedures for withdrawal from the course and cancellation of enrolment;

 (iv) other procedures the provider is required to have by this instrument.

 (n) advice that it is important for an enrolled student to notify the provider of any change of contact details.

99 VET student loan fee notice

 (1) An approved course provider must give a student enrolled in an approved course a notice that complies with this section in relation to each fee period.

 (2) The notice is a ***VET student loan fee notice***.

 (3) The notice must include the title “VET Student Loan Fee Notice”.

 (4) The notice must include the following information:

 (a) the student’s name, residential address, phone number and email address;

 (b) the provider’s name;

 (c) any other business name that the provider uses;

 (d) the provider’s registration code;

 (e) the date of the notice;

 (f) the student’s student identification number as issued by the provider;

 (g) the student’s Commonwealth Higher Education Student Support Number, if available;

 (h) the student’s student identifier;

 (i) the name of the course;

 (j) the names of the parts of the course included in the fee period;

 (k) an identifying code for each part of the course included in the fee period;

 (l) the census day for each part of the course included in the fee period;

 (m) for each part of the course included in the fee period:

 (i) the amount of the tuition fees that are to be covered by a VET student loan; and

 (ii) the amount of HELP debt the student will accrue (which could be up to 120% of the loan amount concerned); and

 (iii) the amount of the tuition fees that is to be paid by the student, and when the amount must be paid;

 (n) a statement that:

 (i) withdrawal of the student’s enrolment in a part of the course before the census day for the part of the course must be in accordance with the provider’s procedure; and

 (ii) if the student withdraws from a part of the course before the census day for the part of the course, the student will not incur a VET student loan debt for the part of the course and will receive a refund for any up‑front payment of tuition fees;

 (o) information about how to withdraw, including where to find a copy of the provider’s procedure for withdrawal;

 (p) information on the student’s right to request the correction of information contained in the notice in accordance with the provider’s information handling procedure;

 (q) advice that the student may be required to communicate the student’s agreement for the Secretary to continue to use a VET student loan to pay tuition fees for the course;

 (r) advice that a VET student loan will not be used to pay the covered fees for a part of the course if the student advises the provider before the census day for the part of the course that the student does not want the tuition fees to be paid using a loan;

 (s) advice that any VET student loan debt will remain a personal debt until it is repaid to the Commonwealth.

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

 (6) The provider must give the notice to the student at least 14 days before the first census day in the fee period.

 (7) If the provider is not a Table A provider, the provider must not give the notice to the student more than 42 days before the beginning of the fee period.

 (8) The provider must send the notice:

 (a) to the student’s personal email address as advised by the student; or

 (b) to the student’s postal address as advised by the student; or

 (c) to the student by another method agreed to by the student.

100 Commonwealth assistance notice

 (1) An approved course provider must give a notice that complies with this section to each student that:

 (a) is enrolled in a part of a course on the census day for the part of the course; and

 (b) has a VET student loan for the course.

 (2) The notice is a ***Commonwealth assistance notice***.

 (3) The notice must include the title “Commonwealth Assistance Notice”.

 (4) The notice must include the following information:

 (a) the student’s name, residential address, phone number and email address;

 (b) the provider’s name;

 (c) any other business name that the provider uses;

 (d) the date of the notice;

 (e) the student’s student identification number as issued by the provider;

 (f) the student’s Commonwealth Higher Education Student Support Number;

 (g) the student’s student identifier;

 (h) the name of the course;

 (i) the name of the part of the course;

 (j) an identifying code for the part of the course;

 (k) the census day for the part of the course;

 (l) the student’s tuition fees for the part of the course;

 (m) the amount of the student’s tuition fees that are covered by a VET student loan;

 (n) the amount of HELP debt the student will accrue (which could be up to 120% of the loan amount);

 (o) the amounts of any payments of the tuition fees made by the student;

 (p) information on the student’s right to request the correction of information contained in the notice in accordance with the provider’s information handling procedure.

 (5) The provider must give the notice to the student within the period:

 (a) starting on the census day for the part of the course; and

 (b) ending 28 days after the census day.

 (6) A notice may relate to more than one part of the course so long as subsection (5) is complied with for each part included in the notice.

 (7) The provider must send the notice:

 (a) to the student’s personal email address as advised by the student; or

 (b) to the student’s postal address as advised by the student; or

 (c) to the student by another method agreed to by the student.

Subdivision C—Information about tuition assurance

101 Provider must publish statement of tuition assurance

 (1) An approved course provider must publish a statement on its website that complies with:

 (a) if the provider is not an assurance exempt provider—section 102; and

 (b) if the provider is an assurance exempt provider—section 103.

 (2) The statement must be up‑to‑date and accurate.

102 Content of statement—provider other than assurance exempt provider

 (1) For the purposes of paragraph 101(1)(a), the statement published by the provider must explain the approved tuition assurance arrangements the provider has in place for students enrolled in approved courses.

 (2) The statement must include the name and contact details of the tuition assurance scheme operator or operators with whom the provider has approved tuition assurance arrangements.

 (3) The statement must explain the following:

 (a) if the provider ceases to provide an approved course before it is completed, a tuition assurance scheme operator will offer affected students a replacement course;

 (b) the requirements that a course must meet under the relevant tuition assurance arrangement to be offered as a replacement course;

 (c) a student may seek review of a decision about whether or not a course is a replacement course that meets those requirements;

 (d) a student who accepts the offer of a replacement course:

 (i) will not be required to pay the replacement provider for the replacement components of the replacement course; and

 (ii) will receive course credits for parts of the original course successfully completed by the student;

 (e) the tuition fees for remainder of the replacement course may be different from the fees payable for the original course;

 (f) the student will have a period of 6 months in which to accept the offer;

 (g) the tuition assurance scheme operator concerned may extend that period of 6 months in circumstances that justify an extension;

 (h) if there is no suitable replacement course for a student, the student’s FEE‑HELP balance will be re‑credited for the affected parts of the original course;

 (i) if a student enrols in a course that is not a replacement course, the student:

 (i) may be required to pay additional tuition fees; and

 (ii) might not receive the course credits the student would have received if the student had enrolled in a replacement course.

103 Content of statement—assurance exempt provider

 For the purposes of paragraph 101(1)(b), the statement published by the provider must set out:

 (a) any arrangements the provider has in place for providing replacement courses; and

 (b) 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

104 Purpose of this Division

 This Division is made for the purposes of section 51 of the Act.

Note 1: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Division: see subsection 51(3) of the Act.

Note 2: An approved course provider commits an offence of strict liability if the provider fails to comply with a requirement under this Division: see subsection 51(4) of the Act.

105 Information and documents to be retained for 5 years

 The following information and documents must be retained by an approved course provider for a period of 5 years:

 (a) the information provided to a student under section 98 before the student enrolled in an approved course;

 (b) documents obtained or assessments undertaken for the purposes of determining a student’s academic suitability;

 (c) records of the student’s enrolment, including the day and time the student enrols in the course or a part of the course;

 (d) information and documents collected for the purposes of, or in relation to, an application by a student for a VET student loan;

 (e) if applicable, the day and time the student gives the provider an application for a VET student loan;

 (f) all correspondence between the provider and the student (or the student’s parent or guardian) in relation to the course, including notices issued to the student;

 (g) records of each use of the provider’s grievance procedure;

 (h) the census days and tuition fees for approved courses;

 (i) a copy of each version of a process or procedure required under this instrument, and the dates when the version was current;

 (j) marketing and promotional material relating to approved courses.

Division 5—Ongoing information requirements

Subdivision A—Purpose of this Division

106 Purpose of this Division

 This Division is made for the purposes of section 52 of the Act.

Note 1: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Division: see subsection 52(4) of the Act.

Note 2: An approved course provider commits an offence of strict liability if the provider fails to comply with a requirement under this Division: see subsection 52(5) of the Act.

Subdivision B—Notice of events

107 Student does not want fees to be paid using loan

 If a student advises an approved course provider, before the census day for a part of a course, that the student does not want the student’s VET student loan to be used to pay tuition fees for the part of the course, the provider must inform the Secretary as soon as practicable.

108 Termination of tuition assurance arrangement by approved course provider

 (1) An approved course provider must give the Secretary written notice if the provider proposes to terminate a tuition assurance arrangement.

 (2) The notice must be given to the Secretary at least 60 days before the arrangement is to be terminated, unless the Secretary agrees in writing to a shorter period.

109 Event affecting capacity to comply with Act

 An approved course provider must, as soon as practicable, notify the Secretary in writing of any event affecting the provider, any of its key personnel or a related body corporate of the provider that is likely to affect the provider’s capacity to comply with the Act or any instrument made under the Act.

110 Changes to provider

 An approved course provider must, as soon as practicable, notify the Secretary in writing of any of the following:

 (a) a change to the provider’s legal name, or to the business name the provider uses for delivering vocational education and training;

 (b) a change to the provider’s key personnel and the reason for the change;

 (c) planned changes to the ownership of the provider or the corporate structure of the provider;

 (d) any major projects undertaken by the provider;

 (e) any major purchases of assets by the provider.

111 Other events

 (1) An approved course provider must give written notice to the Secretary of any of the following events within 24 hours of the event occurring:

 (a) the provider ceases to provide an approved course;

 (b) notice is served on the provider, or proceedings are taken, to:

 (i) cancel the provider’s incorporation or registration under the *Corporations Act 2001* or similar legislation; or

 (ii) dissolve the provider as a legal entity;

 (c) the provider comes under a form of external administration referred to in subsection 600H(2) of the *Corporations Act 2001* or an equivalent arrangement;

 (d) the provider fails to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*;

 (e) the provider is unable to pay all of its debts when they become due;

 (f) proceedings are initiated for an order for the provider’s winding up;

 (g) at a meeting of the provider, a resolution is made to wind up the provider.

 (2) If an approved course provider intends to cease providing a course after it starts but before it is completed, the provider must give the Secretary written notice of the intention as soon as practicable.

Subdivision C—Other information

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

 If an approved course provider ceases to provide an approved course, the provider must give the Secretary the following information, in writing, within 3 business days:

 (a) the name of the course;

 (b) the full name and contact details of each covered student enrolled in the course;

 (c) the part or parts of the course that each covered student is enrolled in;

 (d) the amount of the tuition fees for each part of the course in which each covered student is enrolled;

 (e) details about the payment of those tuition fees, including the amounts that are covered fees.

113 Annual financial statements

 (1) An approved provider (other than a listed course provider) must give the Secretary general purpose financial statements for each financial year of the provider (within the meaning of section 323D of the *Corporations Act 2001*), within 3 months after the end of the financial year.

 (2) The financial statements must be:

 (a) prepared by a qualified accountant (within the meaning of the *Corporations Act 2001*) in accordance with applicable accounting standards; and

 (b) audited by a qualified auditor who is independent of the provider.

 (3) The financial statements must be accompanied by the following:

 (a) a report by the auditor;

 (b) a copy of the auditor’s independence declaration required under section 307C of the *Corporations Act 2001*;

 (c) a declaration by a qualified accountant or auditor that the provider has, as at the date of the declaration, complied with all statutory obligations relating to the payment of the following:

 (i) company tax;

 (ii) goods and services tax;

 (iii) withholding tax, including withholding tax for employees;

 (iv) payroll tax;

 (v) superannuation guarantee for employees.

 (4) If the provider is part of a consolidated entity, the financial statements must be accompanied by:

 (a) a copy of the most recent consolidated financial statements for the entity prepared in accordance with applicable accounting standards; and

 (b) such additional information related to the consolidated entity as determined by the Secretary.

 (5) The financial statements and accompanying documents and information must be given to the Secretary in a manner and form approved by the Secretary.

114 Copies of notices given to other regulators

 (1) An approved course provider must give the Secretary a copy of a notice given to the National VET Regulator under section 25 of the *National Vocational Education and Training Regulator Act 2011*, at the same time as the notice is given to the Regulator.

 (2) An approved course provider must give the Secretary a copy of a notice 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*, at the same time as the notice is given to the Commissioner.

115 Fees for approved courses

 (1) An approved course provider must give to the Secretary, in relation to each approved course offered by the provider, a list of the fees charged for the course including the tuition fees for each part of the course.

 (2) The provider must update the list whenever there is a change to the fees charged for the course.

 (3) The list must be given to the Secretary in a manner and form approved by the Secretary.

116 Annual forecasts

 (1) An approved course provider must give the following information to the Secretary by 31 March each year:

 (a) a list of the approved courses offered by the provider;

 (b) the mode of delivery for each approved course;

 (c) the duration of each approved course;

 (d) a list of any approved courses offered by the provider within which a lower level qualification in the Australian Qualifications Framework can be completed;

 (e) a list of any courses offered by the provider that lead to multiple qualifications at the same level (for example, 2 diplomas);

 (f) the provider’s academic calendar, including the dates on which courses are expected to be provided and proposed census days;

 (g) the expected number of students for each approved course to be offered by the provider in the next financial year;

 (h) the expected amounts of VET student loans to be used for each approved course to be offered by the provider in the next financial year, based on the expected number of students and the courses and loan caps determination;

 (i) the tuition fees for each approved course to be offered by the provider in the next financial year, along with a comparison of:

 (i) if the provider offered the same course in the current financial year—the fees for the course in the current financial year; and

 (ii) if the course replaces a course offered by the provider in the current financial year—the fees for the replaced course;

 (j) information about the links the provider has with industry and other bodies as required under section 35;

 (k) the most recent results of the provider’s assessment of the matters mentioned in subsection 34(2);

 (l) any other information determined by the Secretary.

 (2) For the purposes of paragraph (1)(l), the Secretary may determine different information that must be given by different approved course providers.

Division 6—Tuition fees

Subdivision A—Determining tuition fees

117 Purpose of this Subdivision

 This Subdivision is made for the purposes of paragraph 55(2)(a) of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Subdivision: see subsection 55(3) of the Act.

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

 (1) In determining tuition fees for an approved course, an approved course provider must not have regard to any of the following:

 (a) a matter related to the manner or timing of:

 (i) payment of tuition fees by students; or

 (ii) payment of loan amounts by the Secretary to the provider;

 (b) fees payable for anything other than:

 (i) assessing whether a student is academically suited to undertake the course; and

 (ii) enrolment in the course; and

 (iii) tuition for the course; and

 (iv) examination for the course; and

 (v) award of a qualification for completion of the course;

 (c) fees payable for a particular form of access to a good or service that is essential for all or part of the course and access to which in an another form is provided by the approved course provider without additional charge;

 (d) fees paid by a student enrolled in the course directly to the approved course provider for the supply of a good or service that is either:

 (i) equipment or physical items that become the student’s property and are not consumed during the course; or

 (ii) food, transport or accommodation associated with the provision of field trips that form part of the course;

 and that the student could have acquired, but chose not to acquire, from another supplier;

 (e) a fine or penalty imposed by the provider as a disincentive for something other than withdrawing from all or part of the course, and not to raise revenue or cover administrative costs;

 (f) the provision to a student enrolled in the course of a good or service that is not essential for all or part of the course.

 (2) The paragraphs of subsection (1) do not limit one another.

Subdivision B—Charging of tuition fees by Table A providers

119 Purpose of this Subdivision

 This Subdivision is made for the purposes of paragraph 55(2)(c) of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Subdivision: see subsection 55(3) of the Act.

120 Charging of tuition fees by Table A providers

 An approved course provider that is a Table A provider may charge the tuition fees for a student for an approved course provided by the provider only in a way that is consistent with:

 (a) the delivery of the course; and

 (b) the student’s participation in the course.

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

121 Purpose and application of this Subdivision

 This Subdivision:

 (a) is made for the purposes of paragraph 55(2)(c) of the Act; and

 (b) applies to an approved course provider, other than a Table A provider.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Subdivision: see subsection 55(3) of the Act.

122 Proportionately spreading tuition fees over periods of the course

 (1) An approved course provider must only charge tuition fees for an approved course as follows:

 (a) the fees to be covered by VET student loans, and any other tuition fees, are to be reasonably apportioned over:

 (i) the fee periods for the course; and

 (ii) the parts of the course included in the fee periods;

 (b) none of the tuition fees for the course are to be payable outside a fee period for the course.

Note: Section 124 may exempt the provider from complying with this subsection to allow the provider to comply with a State or Territory subsidy funding arrangement.

 (2) For the purposes of subsection (1), the provider may act on the basis of an estimate of tuition fees for the course if, when the course begins, the provider does not know:

 (a) the total of the tuition fees for the course; or

 (b) the duration of the course; or

 (c) whether a student will need to pay all of the tuition fees usually payable for the course.

 (3) The estimate must not exceed the maximum tuition fees for the course mentioned in marketing of the course.

Note: Paragraph 140(c) requires all marketing of a course to mention the maximum tuition fees for the course.

 (4) If the actual total of the tuition fees for the course exceeds the estimate, the provider may charge the excess only during the final fee period for the course.

123 Fee periods

 (1) The approved course provider:

 (a) must choose 3 or more fee periods for an approved course; and

 (b) may choose different fee periods for different students.

Example: The fee periods may be longer for a student undertaking the course part‑time.

 (2) The fee periods for the course must:

 (a) be sequential and together equal the duration of the course; and

 (b) be of equal, or approximately equal, length based on the estimated duration of the course; and

 (c) each contain at least one census day for the course.

Note: The precise length of the fee periods need not be known when they are chosen.

Example: When the student begins the course, the provider is still deciding whether the student should get some recognition for prior learning (which would reduce the duration of the course). The provider could choose for the course to have 3 fee periods of equal length based on the estimated duration of the course.

 (3) However, the length of any fee periods that are yet to start at a particular time may be changed 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.

Example: If the student changes from studying full‑time to part‑time during the course, the duration of the course may increase. The length of the remaining fee periods could be similarly increased.

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

 The approved course provider need not comply with this Subdivision, to the extent that compliance would be inconsistent with an arrangement the provider made with an authority of a State or Territory, if:

 (a) the provider is fully complying with the arrangement; and

 (b) the provider has given a written notice to the Secretary describing:

 (i) the arrangement; and

 (ii) the provider’s full compliance with the arrangement; and

 (iii) how the arrangement prevents the provider from fully complying with this Subdivision; and

 (iv) the extent of the provider’s non‑compliance with this Subdivision.

Note: Compliance with this Subdivision is still required to the extent that this is consistent with the arrangement.

Subdivision D—Varying tuition fees

125 Purpose of this Subdivision

 This Subdivision is made for the purposes of paragraph 55(2)(d) of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Subdivision: see subsection 55(3) of the Act.

126 Varying tuition fees

 (1) An approved course provider may vary the tuition fees for an approved course, or a part of an approved course, only if:

 (a) the Secretary has given the provider written approval of the proposed variation; or

 (b) the variation:

 (i) occurs before the published census day for the course, or the part of the course; and

 (ii) does not disadvantage a student enrolled in, or seeking to enrol in the course, or the part of the course; and

 (iii) is necessary to correct an administrative error or to deal with a change in circumstances.

 (2) A student enrolled in, or seeking to enrol in a course, or a part of a course, is taken for the purposes of subparagraph (1)(b)(ii) to be disadvantaged by a variation that increases the tuition fees for the course, or the part of the course. This does not limit that subparagraph.

 (3) Subsection (1) does not apply to a course offered under an arrangement that:

 (a) was entered into between the provider and an employer or industry body; and

 (b) limits or restricts enrolments in some or all of the places in the course.

127 Publishing variation of tuition fees

 (1) If an approved course provider varies the tuition fees for an approved course, or a part of an approved course, the provider must publish as soon as practicable the tuition fees as varied.

Note: Section 50 of the Act provides for rules in relation to giving information to students.

 (2) The approved course provider must publish prominently on its website the tuition fees as varied, so that the fees are easily accessible without provision of login information.

Subdivision E—Statement about covered fees

128 Purpose of this Subdivision

 This Subdivision is made for the purposes of section 56 of the Act.

129 Requirements for statement about covered fees

 (1) The statement required by section 56 of the Act:

 (a) must include the title “VET Student Loan Statement of Covered Fees”; and

 (b) in addition to the information required by section 56 of the Act, must also include the information mentioned in paragraphs 99(4)(a) to (i) of this instrument.

 (2) The statement must be given to the student after the student enrols in the course and before the first census day for the course.

 (3) The statement may be given to the student along with the VET student loan fee notice for the first fee period of the course.

Division 7—Census days

Subdivision A—Purpose of this division

130 Purpose of this Division

 This Division is made for the purposes of section 58 of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Division: see subsections 58(6) and (7) of the Act.

Subdivision B—Determining census days

131 Determining census days

 An approved course provider offering an approved course for a particular period must determine census days for the course so that:

 (a) there are at least 3 census days for the course; and

 (b) each census day for a part of the course is at least 20% of the way through the period:

 (i) starting when that part of the course starts to be provided; and

 (ii) ending on the day a student would reasonably be expected to complete that part of the course.

132 Publishing determination of census days

 (1) An approved course provider must publish the census days determined for a course, or a part of a course, before the earliest day for enrolment in the course or part.

 (2) An approved course provider must publish prominently on its website the census days the provider determines, so that the census days are easily accessible without provision of login information.

Subdivision C—Varying census days

133 Varying census days

 (1) An approved course provider may vary a census day determined for a course, or a part of a course, if:

 (a) the Secretary has given the provider written approval of the proposed variation; or

 (b) the variation:

 (i) occurs before the census day; and

 (ii) does not disadvantage a student enrolled in, or seeking to enrol in the course, or the part of the course; and

 (iii) is necessary to correct an administrative error or to deal with a change in circumstances.

 (2) A student enrolled in, or seeking to enrol in a course, or a part of a course, is taken for the purposes of subparagraph (1)(b)(ii) to be disadvantaged by a variation that makes a census day for the course, or the part of the course, earlier. This does not limit that subparagraph.

 (3) Subsection (1) does not apply in relation to a course offered under an arrangement that:

 (a) was entered into between the provider and an employer or industry body; and

 (b) limits or restricts enrolments in some or all of the places in the course.

134 Publishing variation of census days

 (1) If an approved course provider varies a census day for an approved course, or a part of an approved course, the provider must as soon as practicable publish the census day as varied.

 (2) The approved course provider must publish prominently on its website the census day as varied, so that the day is easily accessible without provision of login information.

Division 8—Marketing

Subdivision A—Offering certain inducements

135 Purpose of this Subdivision

 This Subdivision is made for the purposes of subsection 61(2) of the Act.

136 Benefits that may be offered

 The following benefits are specified:

 (a) the content and quality of the course;

 (b) the amount of the tuition fees for the course;

 (c) the availability of a VET student loan for the course;

 (d) marketing merchandise up to the total value of $30 per person.

Subdivision B—Use of third party contact lists

137 Purpose of this Subdivision

 This Subdivision is made for the purposes of subsection 63(2) of the Act.

138 Use of third party contact lists

 (1) Subsection 63(1) of the Act does not apply if the student has given express consent to being contacted by the provider.

 (2) The student is taken to have provided express consent if:

 (a) information in the request was presented clearly, and set out the specific purpose for which the student’s personal information would be used if consent were given; and

 (b) the request was prominent; and

 (c) the student was able to give consent in a separate optional tick box from other consents; and

 (d) the request was not a required field to be answered in order for a person to submit other information; and

 (e) the request did not include a default tick for consent; and

 (f) the request named the provider; and

 (g) the request detailed any referral fee or other fee that would be paid to the person who made the request and any other benefit that would be provided to the person who made the request.

 (3) The student is taken to have provided express consent if the student initiates contact with a third party for the purpose of:

 (a) giving information relating to education and training to the provider; or

 (b) getting information relating to education and training from the provider.

Subdivision C—Other marketing requirements

139 Purpose of this Subdivision

 This Subdivision is made for the purposes of subsection 64(1) of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Subdivision: see subsection 64(2) of the Act.

140 Information that must be provided

 An approved course provider must ensure that any marketing of its approved courses prominently mentions:

 (a) the provider’s name and any registered business name or other business name that the provider uses; and

 (b) the provider’s registration code; and

 (c) the maximum tuition fees for the course.

141 Information about fees

 An approved course must not be marketed unless the tuition fees for the course:

 (a) have been published on the provider’s website in a way that is readily accessible by the public; and

 (b) have been given to the Secretary in accordance with section 115.

142 Marketing that mentions VET student loans

 An approved course provider must ensure that any marketing in which the provider mentions the possible availability of a VET student loan (however described) for students undertaking a course:

 (a) prominently mentions:

 (i) the provider’s name and any registered business name or other business name that the provider uses; and

 (ii) the provider’s registration code; and

 (iii) that VET student loans will not be approved for students who do not meet eligibility requirements; and

 (iv) that a VET student loan gives rise to a HELP debt that continues to be a debt due to the Commonwealth until it is repaid; and

 (b) presents the information covered by paragraph (a) in a font size that is approximately the same as any other marketing information that accompanies it; and

 (c) if the marketing is online—presents the information covered by paragraph (a) on the same webpage as the other marketing of the course; and

 (d) if the marketing uses the VET student loans logo—presents the logo in accordance with the style guide for the use of the logo published on the Department’s website.

143 Marketing through social media

 An approved course provider must ensure that any marketing of the provider or its courses through social media does not mention the possible availability of a VET student loan (however described) for students undertaking a course.

Part 8—Re‑crediting FEE‑HELP balances

Division 1—Re‑crediting by course provider

144 Purpose of this Division

 This Division is made for the purposes of section 68 of the Act.

145 Circumstances to which the provider must have regard

 In determining whether circumstances are special circumstances because they make it impracticable for the student to complete the requirements for the course, or the part of the course, during the student’s enrolment in the course, or the part of the course, the provider must have regard to the following:

 (a) whether the student could do enough of the following to meet course requirements:

 (i) private study;

 (ii) attending training sessions and other activities;

 (iii) engaging online;

 (b) whether the student could complete any assessments, or demonstrate any competencies, required;

 (c) whether the student could complete any other requirements arising because of the student’s inability to do things described in paragraphs (a) and (b).

146 Circumstances to which the provider may have regard

 (1) In determining whether circumstances are special circumstances because they make it impracticable for the student to complete the requirements for the course, or the part of the course, during the student’s enrolment in the course, or the part of the course, the provider may have regard to one or more of the following:

 (a) medical circumstances of the student;

 (b) circumstances that relate to the student personally or to the student’s family;

 (c) circumstances relating to the student’s employment.

 (2) Subsection (1) does not limit the circumstances to which the provider may have regard.

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

 If a student applies under section 68 of the Act for a re‑credit of the student’s FEE‑HELP balance in relation to a replacement component of a replacement course, the tuition fees paid for the affected part of the original course are taken to have been paid for the replacement component.

Division 2—Re‑crediting by Secretary

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

 (1) For the purposes of subsection 71(2) of the Act, the following is ***unacceptable conduct*** in relation to an application for a VET student loan for an approved course provided, or to be provided, by an approved course provider:

 (a) unconscionable conduct (whether or not a particular individual is identified as having been disadvantaged by the conduct);

 (b) misleading or deceptive conduct;

 (c) 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;

 (d) 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;

 (e) use of physical force, or harassment or coercion, in connection with the application or enrolment in the course.

 (2) Paragraphs (1)(a), (b), (c), (d) and (e) do not limit one another.

 (3) In deciding for the purposes of paragraph (1)(a) whether conduct is unconscionable, the Secretary may have regard to the following:

 (a) the relative strengths of the bargaining positions of the persons concerned;

 (b) whether the student was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of another person;

 (c) whether the student was able to understand any documents related to the application for the VET student loan;

 (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the student or a person acting on behalf of the student;

 (e) whether the provider, or person acting on the provider’s behalf, failed to disclose anything to the student;

 (f) the extent to which the provider, or person acting on the provider’s behalf, acted in good faith.

149 Requirements for application to Secretary to re‑credit student’s FEE‑HELP balance

 (1) For the purposes of subsection 72(2) of the Act, this section sets out requirements for an application for the Secretary to re‑credit a student’s FEE‑HELP balance to be re‑credited under section 71 of the Act.

 (2) The application must be made within 5 years after the census day for the course, or the part of the course, concerned.

 (3) The Secretary may extend the period of 5 years mentioned in subsection (2).

 (4) The application must set out the grounds on which the applicant’s FEE‑HELP balance is to be re‑credited under section 71 of the Act.

 (5) The application must include the following to the extent that they are known to the applicant:

 (a) details of the course to which the application relates;

 (b) details of the provider of that course;

 (c) the loan amount that is to be re‑credited;

 (d) the applicant’s student identifier (if any);

 (e) any documents supporting the application.

Part 9—General provisions

Division 1—Electronic communication

150 Purpose of this Division

 This Division is made for the purposes of subsection 102(1) of the Act.

Note: An approved course provider may be liable for a civil penalty if the provider fails to comply with this Division: see subsection 102(2) of the Act.

151 Electronic communication—identification requirements

 (1) If a student is required or permitted to sign an electronic communication to an approved course provider, the provider must have in place a method the student can use to identify himself or herself in the communication and to indicate his or her approval of the information communicated.

 (2) If an approved course provider has such a method in place, a student who uses the method in a communication to the provider is taken to have signed the communication, and indicated his or her approval of the information communicated.

 (3) Without limiting subsection (1), the method may involve the student using a student identification number issued by the provider.

 (4) If the provider puts in place a method that uses student identification numbers, the provider must:

 (a) verify the identity of each student to whom a student identification number is to be issued; and

 (b) take all reasonable precautions to ensure that there is no unauthorised access to, or use of, a student identification number issued by the provider; and

 (c) ensure that each student to whom a student identification number is issued is advised that the student is personally responsible for protecting the student identification number.

152 Electronic communication between students and the Commonwealth

 The Secretary must treat an application by a student for a VET student loan made by electronic communication as having been signed by the student if the communication contains:

 (a) the student’s student identifier; and

 (b) the student’s tax file number (or certificate from the Commissioner stating that the student has applied for a tax file number); and

 (c) an acknowledgement by the student that he or she has read and understood the application; and

 (d) a confirmation by the student of the accuracy of the information in the application.

153 Electronic communication between students and approved course providers

 (1) If a student is required or permitted to give information or a document to an approved course provider by way of fax, email, web‑based communication or any other form of electronic communication specified by the provider, the provider must ensure that the information technology system to be used for giving the information or document is:

 (a) accessible, in the sense that the provider has:

 (i) informed the student that the information or document is to be given using the system; and

 (ii) authorised the student to use the system; and

 (b) secure, so that the student’s information or document can be accessed only by persons authorised by the student; and

 (c) able to store the information or document so that it is readily accessible by the student; and

 (d) accessible in respect of applications for VET student loans; and

 (e) for a student who makes such an application electronically:

 (i) accessible by the student using a student identifier; and

 (ii) able to automatically generate a date field on the request; and

 (f) able to generate printable receipts for the student.

 (2) If an 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 communication specified by the provider, the provider must ensure that:

 (a) the student is directly informed that the information or document will be communicated by electronic means; and

 (b) the student is authorised to use an information system for receiving, storing or otherwise processing the information or document; and

 (c) the information system stores the information or document sent to the student so that it is readily accessible by the student.

154 Communication systems requirements

 Electronic communication between approved course providers and students, or between approved course providers and the Commonwealth, must be conducted by means of systems that:

 (a) are secure; and

 (b) provide for disaster recovery; and

 (c) are sufficiently up to date.

Division 2—Cap on amount of VET student loans

155 Cap on amount of VET student loans

 For the purposes of subsection 116(7) of the Act, the cap on the total amount of VET student loans that can be approved for each of the calendar years 2017, 2018 and 2019 is $2,070,000,000.