



Higher Education Support Amendment (VET FEE-HELP and Other Measures) Act 2012

No. 6, 2012

**An Act to amend the law relating to higher
education, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the law relating to higher education, and for related purposes

[Assented to 6 March 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Support
Amendment (VET FEE-HELP and Other Measures) Act 2012*.

2 Commencement

- (1) Each provision of this Act 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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 March 2012
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	7 March 2012
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 1, Parts 3, 4 and 5	The day after this Act receives the Royal Assent.	7 March 2012
5. Schedule 2	The day after this Act receives the Royal Assent.	7 March 2012

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General amendments

Part 1—Time limit for decision on approval of provider

Higher Education Support Act 2003

1 After subsection 16-50(3)

Insert:

- (3A) However, contravention of subsection (3) does not affect the Minister's power to decide the application or the Minister's obligation to comply with subsection (1).

2 After subclause 11(3) of Schedule 1A

Insert:

- (3A) However, contravention of subclause (3) does not affect the Minister's power to decide the application or the Minister's obligation to comply with subclause (1).

3 Application

The amendments made by this Part apply to decisions on applications made on or after the commencement of this Part.

Part 2—VET compliance requirements

Higher Education Support Act 2003

4 Subclause 25(2) of Schedule 1A

Repeal the subclause, substitute:

- (2) A *VET provider must, by writing, inform the Minister of any event that may significantly affect whether:
 - (a) any of the conditions in subclause 6(1) are or could be met in relation to the provider after the event; or
 - (b) there is or may be a ground for revoking under Subdivision 5-B the approval of the VET provider.
- (3) A notice under subclause (1) or (2) must be given to the Minister as soon as practicable after the *VET provider becomes aware of the event mentioned in the subclause.

5 Application

The amendment made by this Part applies to VET providers approved before, on or after the commencement of this Part.

Part 3—Use and disclosure of information

Higher Education Support Act 2003

6 Subsection 5-1(2) (table item 9, column headed “Provision”)

Omit “Protection of personal”, substitute “Management of”.

7 Section 159-1

Omit “protection of personal information gained in the administration of Chapters 3 and 4”, substitute “management of information”.

8 Part 5-4 (heading)

Repeal the heading, substitute:

Part 5-4—Management of information

9 Section 179-1 (heading)

Repeal the heading, substitute:

179-1 What this Division is about

10 Subsection 179-30(1)

Omit “Part”, substitute “Division”.

11 At the end of Part 5-4

Add:

Division 180—Other rules about information

180-1 Authorisation of certain uses and disclosures of information

Information this section applies to

(1) This section applies to information that:

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

Use of information

- (2) A *Commonwealth officer may use the information in the course of his or her *official employment.

Disclosure to TEQSA and National VET Regulator

- (3) The *Secretary may:
 - (a) disclose the information to *TEQSA for the performance of duties or functions, or the exercise of powers, under, or for the purposes of, the *TEQSA Act; and
 - (b) disclose the information to the *National VET Regulator for the performance of duties or functions, or the exercise of powers, under, or for the purposes of, the *National Vocational Education and Training Regulator Act 2011*.

This section does not limit use or disclosure

- (4) This section does not limit the use or disclosure of the information.

12 Clause 57 of Schedule 1A

Omit “protection of VET personal information gained in the administration of Part 2 of this Schedule (see Division 14) and Chapter 4”, substitute “management of information (see Division 14)”.

13 Division 14 of Schedule 1A (heading)

Repeal the heading, substitute:

Division 14—Management of information

Subdivision 14-A—Protection of VET personal information

14 Clause 71 of Schedule 1A (heading)

Repeal the heading, substitute:

71 What this Subdivision is about

15 Subclause 77(1) of Schedule 1A

Omit “Division”, substitute “Subdivision”.

16 At the end of Division 14 of Schedule 1A

Add:

Subdivision 14-B—Other rules about information

78A Authorisation of certain uses and disclosures of information

Information this clause applies to

- (1) This clause applies to information that:
 - (a) is *VET personal information obtained in connection with an application under clause 9 (which is about applications for approval of bodies as *VET providers); or
 - (b) is information that:
 - (i) is obtained by a *Commonwealth officer for the purposes of this Schedule; and
 - (ii) is not VET personal information.

Use of information

- (2) A *Commonwealth officer may use the information in the course of his or her *official employment within the meaning of section 179-15.

Disclosure to TEQSA and National VET Regulator

- (3) The *Secretary may:
 - (a) disclose the information to *TEQSA for the performance of duties or functions, or the exercise of powers, under, or for the purposes of, the *TEQSA Act; and
 - (b) disclose the information to the *National VET Regulator for the performance of duties or functions, or the exercise of

powers, under, or for the purposes of, the *National Vocational Education and Training Regulator Act 2011*.

This clause does not limit use or disclosure

- (4) This clause does not limit the use or disclosure of the information.

17 Application

The amendments made by this Part apply in relation to information whether it was obtained or created before, on or after the commencement of this Part.

Part 4—Variation and revocation of determinations for advances

Higher Education Support Act 2003

18 After subclause 61(1) of Schedule 1A

Insert:

- (1A) The *Secretary may vary or revoke a determination that an advance is to be made to a *VET provider if:
- (a) the Secretary is satisfied that the provider has not complied with this Schedule and the regulations (if any) relating to this Schedule, and the Guidelines made under clause 99 that apply to the provider; or
 - (b) the Secretary is aware of information that suggests that the provider may not comply with this Schedule and the regulations (if any) relating to this Schedule, and the Guidelines made under clause 99 that apply to the provider; or
 - (c) the Secretary is aware of information that suggests that the provider may not remain financially viable.
- (1B) In deciding whether to take action under subclause (1A), the *Secretary may consider any or all of the following matters:
- (a) in the case of non-compliance or possible non-compliance by the *VET provider:
 - (i) whether the non-compliance or possible non-compliance is of a minor or major nature; and
 - (ii) the period for which the provider has been approved as a VET provider; and
 - (iii) the provider's history of compliance with this Schedule and the regulations (if any) relating to this Schedule, and the Guidelines made under clause 99 that apply to the provider;
 - (b) in any case, the impact of the VET provider's non-compliance, possible non-compliance or possible lack of financial viability, and of the proposed variation or revocation of the determination, on:
-

- (i) the VET provider's students; and
- (ii) vocational education and training provided by the VET provider; and
- (iii) the provision of vocational education and training generally;
- (c) in any case, the public interest;
- (d) in any case, any other matters specified in the *VET Administration Guidelines.

19 At the end of clause 61 of Schedule 1A

Add:

- (5) This clause does not affect determinations of advances under section 164-10.

20 Application

Subclauses 61(1A) and (1B) of Schedule 1A to the *Higher Education Support Act 2003* apply to the variation or revocation of determinations made before, on or after the commencement of those subclauses.

Part 5—Form of statements of information

Higher Education Support Act 2003

21 Paragraph 19-70(2)(a)

Omit “approved by the Minister”, substitute “(if any) approved by the Minister for the information”.

22 Paragraph 24(2)(a) of Schedule 1A

Omit “approved by the Minister”, substitute “(if any) approved by the Minister for the information”.

23 Application

The amendments made by this Part apply in relation to information required after the commencement of this Part to be given.

Schedule 2—Debt-related amendments

Part 1—General administration

Higher Education Support Act 2003

1 After section 238-7

Insert:

238-8 Extent of Commissioner’s general administration of this Act

The *Commissioner has the general administration of this Act to the following extent:

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

Note: One effect of this is that this Act is to that extent a taxation law for the purposes of the *Taxation Administration Act 1953*.

Part 2—Approved forms

Higher Education Support Act 2003

2 Subsections 154-45(1) and 154-50(1)

Omit “writing”, substitute “the *approved form”.

3 Section 157-1

After “*Commissioner”, insert “in the *approved form”.

4 Section 157-5

Repeal the section.

5 Section 157-10

Omit “in the manner, and within the time,”, substitute “within the time”.

6 Subsections 187-1(5) and (6)

Omit “a form approved by the *Commissioner”, substitute “the *approved form”.

7 Subclause 80(5) of Schedule 1A

Omit “a form approved by the *Commissioner”, substitute “the *approved form”.

8 Subclause 1(1) of Schedule 1

Insert:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Part 3—Time of application to amend assessment

Higher Education Support Act 2003

9 Paragraph 154-50(2)(a)

Omit “no later than 2 years after the end of the *income year to which the assessment relates”, substitute “within 2 years after the day on which the *Commissioner gives notice of the assessment to the person”.

*[Minister’s second reading speech made in—
Senate on 24 November 2011
House of Representatives on 27 February 2012]*

(249/11)
