



Higher Education Support Amendment (Further Streamlining and Other Measures) Act 2013

No. 23, 2013

**An Act to amend the *Higher Education Support Act*
2003, and for related purposes**

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Higher Education Support Amendment (Further Streamlining and Other Measures) Act 2013

No. 23, 2013

An Act to amend the *Higher Education Support Act 2003*, and for related purposes

[Assented to 28 March 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Support Amendment (Further Streamlining and Other Measures) Act 2013*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Automatic revocation of approval

Part 1—Amendments

Higher Education Support Act 2003

1 Paragraph 22-1(1)(a)

After “Subdivision”, insert “22-AA,”.

2 After Subdivision 22-A

Insert:

Subdivision 22-AA—Revocation of approval if registration ceases or winding up order made

22-2 Automatic revocation of approval if registration ceases

- (1) The Minister must revoke a body’s approval as a higher education provider if:
 - (a) the body is no longer a *registered higher education provider; and
 - (b) in a case where *TEQSA has made either of the following decisions under the *TEQSA Act, the decision has not been set aside or quashed, and is no longer *subject to review:
 - (i) a decision under section 36 of that Act to refuse an application to renew the body’s registration under Part 3 of that Act;
 - (ii) a decision under section 101 of that Act to cancel the body’s registration under Part 3 of that Act.
- (2) The Minister must notify the body in writing of the revocation. The notice must specify that the revocation takes effect on the day that the notice is registered in the *Federal Register of Legislative Instruments.
- (3) A notice of revocation under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the notice.

- (4) A decision of the Minister to revoke a body's approval as a higher education provider takes effect on the day that the notice of revocation under subsection (2) is registered in the *Federal Register of Legislative Instruments.

22-3 Automatic revocation of approval if winding up order made

- (1) The Minister must revoke a body's approval as a higher education provider if:
- (a) an order is made by a court, or by the Australian Securities and Investments Commission under Part 5.4C of the *Corporations Act 2001*, for the winding up of the body; and
 - (b) the order has not been set aside or quashed, and is no longer *subject to review.
- (2) The Minister must notify the body in writing of the revocation. The notice must specify that the revocation takes effect on the day that the notice is registered in the *Federal Register of Legislative Instruments.
- (3) A notice of revocation under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the notice.
- (4) A decision of the Minister to revoke a body's approval as a higher education provider takes effect on the day that the notice of revocation under subsection (2) is registered in the *Federal Register of Legislative Instruments.

3 Subsection 22-10(6)

Repeal the subsection.

4 Paragraph 29(a) of Schedule 1A

After "Subdivision", insert "5-AA,".

5 After Subdivision 5-A of Schedule 1A

Insert:

Subdivision 5-AA—Revocation of approval if registration ceases or winding up order made

29B Automatic revocation of approval if registration ceases

- (1) The Minister must revoke a body's approval as a *VET provider if:
 - (a) the body ceases to be listed as a *registered training organisation on the *National Register; and
 - (b) in a case where the relevant *VET Regulator has made any of the following decisions, the decision has not been set aside or quashed, and is no longer *subject to review:
 - (i) a decision under section 31 of the *National Vocational Education and Training Regulator Act 2011* to refuse an application to renew the body's registration as an NVR registered training organisation;
 - (ii) a decision under section 39 of that Act to cancel the body's registration as an NVR registered training organisation;
 - (iii) a decision under a law of a State that has a similar effect to a decision referred to in subparagraph (i) or (ii).
- (2) The Minister must notify the body in writing of the revocation. The notice must specify that the revocation takes effect on the day that the notice is registered in the *Federal Register of Legislative Instruments.
- (3) A notice of revocation under subclause (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the notice.
- (4) A decision of the Minister to revoke a body's approval as a *VET provider takes effect on the day that the notice of revocation under subclause (2) is registered in the *Federal Register of Legislative Instruments.

29C Automatic revocation of approval if winding up order made

- (1) The Minister must revoke a body's approval as a *VET provider if:
 - (a) an order is made by a court, or by the Australian Securities and Investments Commission under Part 5.4C of the *Corporations Act 2001*, for the winding up of the body; and

- (b) the order has not been set aside or quashed, and is no longer *subject to review.
- (2) The Minister must notify the body in writing of the revocation. The notice must specify that the revocation takes effect on the day that the notice is registered in the *Federal Register of Legislative Instruments.
- (3) A notice of revocation under subclause (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the notice.
- (4) A decision of the Minister to revoke a body's approval as a *VET provider takes effect on the day that the notice of revocation under subclause (2) is registered in the *Federal Register of Legislative Instruments.

6 Clause 32 of Schedule 1A

Repeal the clause.

7 Subclause 1(1) of Schedule 1

Insert:

subject to review: a decision (however described) is ***subject to review*** until:

- (a) any applicable time limits for applying for a review (however described) or lodging an appeal (however described) of or in relation to the decision have expired; and
- (b) if there is such a review or appeal of or in relation to the decision—the review or appeal (and any later reviews or appeals) have been finally disposed of.

Part 2—Application of amendments

8 Application of amendments—general

The amendments made by this Schedule apply in relation to a higher education provider or a VET provider approved before, on or after the commencement of this item.

9 Application of amendments—automatic revocation: registration ceases

- (1) Section 22-2 of the *Higher Education Support Act 2003*, as in force on and after the commencement of this item, applies in relation to a higher education provider that ceases to be a registered higher education provider on or after that commencement.
- (2) Clause 29B of Schedule 1A to the *Higher Education Support Act 2003*, as in force on and after the commencement of this item, applies in relation to a VET provider that ceases to be listed as a registered training organisation on the National Register on or after that commencement.
- (3) To avoid doubt, subsection 22-10(6) of the *Higher Education Support Act 2003*, as in force immediately before the commencement of this item, continues to apply in relation to a higher education provider that had ceased to be a registered higher education provider before that commencement.
- (4) To avoid doubt, clause 32 of Schedule 1A to the *Higher Education Support Act 2003*, as in force immediately before the commencement of this item, continues to apply in relation to a VET provider that had ceased to be listed as a registered training organisation on the National Register before that commencement.

10 Application of amendments—automatic revocation: winding up order made

- (1) Section 22-3 of the *Higher Education Support Act 2003*, as in force on and after the commencement of this item, applies in relation to a higher education provider if an order is made, on or after that commencement, for the winding up of the provider.

Schedule 1 Automatic revocation of approval
Part 2 Application of amendments

- (2) Clause 29C of Schedule 1A to the *Higher Education Support Act 2003*, as in force on and after the commencement of this item, applies in relation to a VET provider if an order is made, on or after that commencement, for the winding up of the provider.

Schedule 2—Variation of approval: change of name

Part 1—Amendments

Higher Education Support Act 2003

1 At the end of Subdivision 16-C

Add:

16-70 Variation of approval if body's name changes

- (1) If a body corporate is approved as a higher education provider under section 16-25 and the body's name changes, the Minister may vary the approval to include the new name.
- (2) The Minister must notify the body in writing of the variation.
- (3) A notice of variation under subsection (2) is a legislative instrument.
- (4) The variation takes effect when the notice of variation takes effect under the *Legislative Instruments Act 2003*.

Note: Section 12 of the *Legislative Instruments Act 2003* provides for when a legislative instrument takes effect.

2 At the end of Subdivision 3-B of Schedule 1A

Add:

12C Variation of approval if body's name changes

- (1) If a body is approved as a *VET provider under clause 6 and the body's name changes, the Minister may vary the approval to include the new name.
- (2) The Minister must notify the body in writing of the variation.
- (3) A notice of variation under subclause (2) is a legislative instrument.

Schedule 2 Variation of approval: change of name
Part 1 Amendments

- (4) The variation takes effect when the notice of variation takes effect under the *Legislative Instruments Act 2003*.

Note: Section 12 of the *Legislative Instruments Act 2003* provides for when a legislative instrument takes effect.

Part 2—Application of amendments

3 Application of amendments

The amendments made by this Schedule apply in relation to a higher education provider or a VET provider approved before, on or after the commencement of this item.

Schedule 3—Compliance

Part 1—Amendments

Higher Education Support Act 2003

1 Subsection 19-1(1)

Omit “(1)”.

2 Subsection 19-1(2)

Repeal the subsection.

3 Subsection 19-65(1)

Repeal the subsection, substitute:

- (1) A higher education provider must comply with:
 - (a) this Act and the regulations; and
 - (b) the Guidelines made under section 238-10 that apply to the provider; and
 - (c) a condition imposed on the provider’s approval as a higher education provider.

4 At the end of Subdivision 19-E

Add:

19-82 Compliance notices

Grounds for giving a compliance notice

- (1) The Minister may give a higher education provider a written notice (a ***compliance notice***) in accordance with this section if the Minister is satisfied that the provider has not complied with, or is aware of information that suggests that the provider may not comply with, one or more of the following:
 - (a) this Act or the regulations;
 - (b) the Guidelines made under section 238-10 that apply to the provider;
 - (c) a condition imposed on the provider’s approval as a higher education provider.

Content of compliance notice

- (2) The compliance notice must:
- (a) set out the name of the provider to which the notice is given; and
 - (b) set out brief details of the non-compliance or possible non-compliance; and
 - (c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and
 - (d) specify a reasonable period within which the provider must take, or refrain from taking, the specified action; and
 - (e) if the Minister considers it appropriate—specify a reasonable period within which the provider must provide the Minister with evidence that the provider has taken, or refrained from taking, the specified action; and
 - (f) in any case—state that a failure to comply with the notice is a breach of a *quality and accountability requirement which may lead to the provider's approval as a higher education provider being suspended or revoked; and
 - (g) in any case—set out any other matters specified in the Higher Education Provider Guidelines for the purposes of this paragraph.

Matters that Minister must consider in giving compliance notice

- (3) In deciding whether to give the compliance notice, the Minister must consider all of the following matters:
- (a) whether the non-compliance or possible non-compliance is of a minor or major nature;
 - (b) the period for which the provider has been approved as a higher education provider;
 - (c) the provider's history of compliance with:
 - (i) this Act and the regulations; and
 - (ii) the Guidelines made under section 238-10 that apply to the provider; and
 - (iii) any conditions imposed on the provider's approval as a higher education provider;

- (d) the impact of the higher education provider's non-compliance or possible non-compliance, and of the proposed compliance notice, on:
 - (i) the provider's students; and
 - (ii) the provision of higher education generally;
- (e) the public interest;
- (f) any other matter specified in the Higher Education Provider Guidelines for the purposes of this paragraph.

Higher Education provider to comply with compliance notice

- (4) A higher education provider must comply with a compliance notice given to the provider under this section.

Note: A failure to comply with a compliance notice is a breach of a quality and accountability requirement which may lead to the provider's approval as a higher education provider being suspended or revoked (see sections 22-15 and 22-30).

Variation and revocation of compliance notice

- (5) The Minister may, by written notice given to the higher education provider, vary or revoke a compliance notice if, at the time of the variation or revocation, the Minister considers that taking such action is in the public interest.

Note: A variation could, for example, specify different action to be taken by the provider or a different period for complying with the notice.

- (6) In deciding whether to vary or revoke the compliance notice, the Minister must consider any submissions that are received from the higher education provider before the end of the period mentioned in paragraph (2)(d).

Compliance notice not required before suspending or revoking approval

- (7) To avoid doubt, the Minister need not give a compliance notice under this section before suspending or revoking the provider's approval as a higher education provider in accordance with Division 22.

5 Subparagraph 11(2)(b)(ii) of Schedule 1A

Omit "13(1)(a)", substitute "13(a)".

6 Subclause 13(1) of Schedule 1A

Omit “(1)”.

7 Subclause 13(2) of Schedule 1A

Repeal the subclause.

8 After subclause 17(1) of Schedule 1A

Insert:

- (1A) To avoid doubt, subclause (1) covers the quality of all of a *VET provider’s operations.

9 Before clause 24 of Schedule 1A

Insert:

23A Basic requirement

A *VET provider must comply with:

- (a) this Act and the regulations; and
- (b) *VET Guidelines that apply to the provider; and
- (c) a condition imposed on the provider’s approval as a VET provider.

10 At the end of Subdivision 4-E of Schedule 1A

Add:

26A Compliance notices

Grounds for giving a compliance notice

- (1) The Minister may give a *VET provider a written notice (a ***compliance notice***) in accordance with this clause if the Minister is satisfied that the provider has not complied with, or is aware of information that suggests that the provider may not comply with, one or more of the following:
- (a) this Act or the regulations;
 - (b) *VET Guidelines that apply to the provider;
 - (c) a condition imposed on the provider’s approval as a VET provider.

Content of compliance notice

- (2) The compliance notice must:
- (a) set out the name of the provider to which the notice is given; and
 - (b) set out brief details of the non-compliance or possible non-compliance; and
 - (c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and
 - (d) specify a reasonable period within which the provider must take, or refrain from taking, the specified action; and
 - (e) if the Minister considers it appropriate—specify a reasonable period within which the provider must provide the Minister with evidence that the provider has taken, or refrained from taking, the specified action; and
 - (f) in any case—state that a failure to comply with the notice is a breach of a *VET quality and accountability requirement which may lead to the provider's approval as a *VET provider being suspended or revoked; and
 - (g) in any case—set out any other matters specified in the *VET Guidelines for the purposes of this paragraph.

Matters that Minister must consider in giving compliance notice

- (3) In deciding whether to give the compliance notice, the Minister must consider all of the following matters:
- (a) whether the non-compliance or possible non-compliance is of a minor or major nature;
 - (b) the period for which the provider has been approved as a *VET provider;
 - (c) the provider's history of compliance with:
 - (i) this Act and the regulations; and
 - (ii) the *VET Guidelines that apply to the provider; and
 - (iii) any conditions imposed on the provider's approval as a VET provider;
 - (d) the impact of the VET provider's non-compliance or possible non-compliance, and of the proposed compliance notice, on:
 - (i) the VET provider's students; and

- (ii) the provision of vocational education and training generally;
- (e) the public interest;
- (f) any other matter specified in the VET Guidelines for the purposes of this paragraph.

VET provider to comply with compliance notice

- (4) A *VET provider must comply with a compliance notice given to the provider under this clause.

Note: A failure to comply with a compliance notice is a breach of a VET quality and accountability requirement which may lead to the provider's approval as a VET provider being suspended or revoked (see clauses 33 and 36).

Variation and revocation of compliance notice

- (5) The Minister may, by written notice given to the *VET provider, vary or revoke a compliance notice if, at the time of the variation or revocation, the Minister considers that taking such action is in the public interest.

Note: A variation could, for example, specify different action to be taken by the provider or a different period for complying with the notice.

- (6) In deciding whether to vary or revoke the compliance notice, the Minister must consider any submissions that are received from the *VET provider before the end of the period mentioned in paragraph (2)(d).

Compliance notice not required before suspending or revoking approval

- (7) To avoid doubt, the Minister need not give a compliance notice under this clause before suspending or revoking the *VET provider's approval as a VET provider in accordance with Division 5 of this Schedule.

11 Subclause 1(1) of Schedule 1 (definition of VET quality and accountability requirements)

Omit "means the meaning given by subclause 13(1)", substitute "has the meaning given by clause 13".

Part 2—Application of amendments

12 Application of amendments—general

The amendments made by this Schedule apply in relation to a higher education provider or a VET provider approved before, on or after the commencement of this item.

13 Application of amendments—complying with approval conditions

The amendments made by this Schedule apply in relation to a condition imposed on or after the commencement of this item on an approval of a higher education provider or a VET provider.

14 Application of amendments—compliance notices

Section 19-82 of the *Higher Education Support Act 2003*, as in force on and after the commencement of this item, and clause 26A of Schedule 1A to that Act, apply in relation to a compliance notice given on or after that commencement, even if the act or omission alleged to give rise to the notice occurred before that commencement.

Schedule 4—Indexation

Higher Education Support Act 2003

1 Paragraph 154-25(2)(b)

Omit “each of the 3 quarters immediately before that quarter”, substitute “the quarter ending on 30 June that is immediately before the quarter referred to in paragraph (a)”.

2 Application of amendment

The amendment made by this Schedule applies in relation to the indexation of the amounts referred to in subsection 154-25(1) of the *Higher Education Support Act 2003* for the 2013-14 income year, or a later income year.

Schedule 5—Other amendments

Part 1—Amendments

Higher Education Support Act 2003

1 Sections 16-42, 16-43, 22-22 and 22-23

Repeal the sections.

2 Division 180 (heading)

Repeal the heading, substitute:

Division 180—Disclosure or use of Higher Education Support Act information

3 At the end of Part 5-4

Add:

Division 182—Other rules about information

182-1 Minister may seek information from TEQSA and relevant VET regulator

- (1) The Minister may seek information relating to a higher education provider from *TEQSA or the *relevant VET regulator (or both) for the purposes of administering, or enforcing compliance with, one or more of the following:
 - (a) this Act and the regulations;
 - (b) the Guidelines made under section 238-10 that apply to the provider;
 - (c) a condition imposed on the provider's approval as a higher education provider.
- (2) The Minister may seek information relating to a *VET provider from *TEQSA or the *relevant VET regulator (or both) for the purposes of administering, or enforcing compliance with, one or more of the following:
 - (a) this Act and the regulations;

- (b) *VET Guidelines that apply to the provider;
- (c) a condition imposed on the provider's approval as a VET provider.

4 Clauses 9A, 9B, 34A and 34B of Schedule 1A

Repeal the clauses.

5 Subclause 1(1) of Schedule 1 (paragraph (b) of the definition of *VET advanced diploma*)

Omit "Australian Qualifications Framework Implementation Handbook", substitute "Australian Qualifications Framework".

6 Subclause 1(1) of Schedule 1 (paragraph (b) of the definition of *VET diploma*)

Omit "Australian Qualifications Framework Implementation Handbook", substitute "Australian Qualifications Framework".

7 Subclause 1(1) of Schedule 1 (paragraph (b) of the definition of *VET graduate certificate*)

Omit "Australian Qualifications Framework Implementation Handbook", substitute "Australian Qualifications Framework".

8 Subclause 1(1) of Schedule 1 (paragraph (b) of the definition of *VET graduate diploma*)

Omit "Australian Qualifications Framework Implementation Handbook", substitute "Australian Qualifications Framework".

Part 2—Application of amendments

9 Application of amendments—seeking information

- (1) Section 182-1 of the *Higher Education Support Act 2003*, as in force on and after the commencement of this item, applies in relation to a higher education provider or a VET provider:
 - (a) whether the provider is approved before, on or after that commencement; and
 - (b) whether the information relates to an act or omission by the provider, or an event, that occurs before, on or after that commencement.
- (2) However, that section only applies in relation to a condition of an approval of a higher education provider or a VET provider if the condition is imposed on or after the commencement of this item.

10 Transitional provision—VET definitions

To avoid doubt, a reference in the *Higher Education Support Act 2003* to the Australian Qualifications Framework Implementation Handbook is taken, from the day the Australian Qualifications Framework took effect, to have always included a reference to the Australian Qualifications Framework.

[Minister's second reading speech made in—
House of Representatives on 14 February 2013
Senate on 13 March 2013]

(27/13)

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