



Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009

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Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009

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Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill amends the *Higher Education Support Act 2003* (the Act) to:

- Make clear that access to VET FEE-HELP is only available for units of study that are essential for the awarding of the approved qualification and not for units that are in excess of that requirement
- Ensure that the measures relating to the revocation of vocational education and training (VET) providers are consistent with the provisions in the Act relating to the revocation of higher education providers, by allowing the Minister to revoke the approval of a body corporate as a VET provider in cases where the body no longer offers at least one VET course of study, or is no longer established at law, or no longer carries on business in Australia, or no longer has its central management control in Australia
- Speed up access to the higher education FEE-HELP and VET FEE-HELP by enabling providers to offer this support to students immediately following the registration of the provider's notice of approval on the Federal Register of Legislative Instruments (FRLI) as allowed for under the *Legislative Instruments Act 2003*. At the same time the amendments ensure that if a notice of approval then ceases to have effect for example by being disallowed by Parliament under Part 5 the *Legislative Instruments Act 2003*, any rights and responsibilities accrued under the Act will not be affected.

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Background

Income contingent loans (ICLs) for students such as those that have been available in the higher education sector for some time were extended to the VET sector for the first time in 2007. Part of the rationale for their introduction was that government support arrangements in the two sectors were inequitable in that while higher education students had access to government support through ICLs, VET students studying for qualifications at the same level did not. To date, limited to those qualifications that are common to both the higher education and VET sectors— Diploma, Advanced Diploma, Graduate Diploma, and Graduate Certificate courses—ICLs were introduced in VET by using the existent framework for the higher education FEE-HELP loans provided for by the *Higher Education Support Amendment (Extending Fee-Help for VET Diploma, Advanced Diploma, Graduate Diploma and Graduate Certificate Courses) Act 2007*.

Basis of policy commitment

Initially VET ICLs were only made available for **full-fee** Diploma, Advanced Diploma, Graduate Diploma, and Graduate Certificate courses and on condition that there be credit transfer arrangements in place to credit the qualification towards a higher education award, and also that the providers be bodies corporate. At the time there were concerns that these conditions might in practice limit access to the loans. Credit transfer arrangements needed to be negotiated between individual providers in the two sectors and Technical and Further Education (TAFE) providers in some states were not then bodies corporate.¹

However, it would appear that the number of providers applying for access to VET FEE-HELP has been on the increase. As of 20 March 2009 there were 12 approved VET providers, and some 15 others on the Federal Register of Legislative Instruments awaiting the parliamentary disallowance period.² This may in part be because in practice the credit transfer arrangements as provided for by the VET FEE-HELP Guidelines, are perhaps not quite as limiting as they might have been. To qualify, VET providers ‘must have in place

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1. For an overview of the issues relating to the introduction of VET FEE-HELP see Carol Kempner, [‘Higher Education Support Amendment \(Extending Fee-Help for VET Diploma and VET Advanced Diploma Courses\) Bill 2007’](#), *Bills Digest*, no.11, Parliamentary Library, Canberra, 2007-08 and Senate. Education, Employment and Workplace Relations Committee, [Higher Education Support Amendment \(Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses\) Bill 2007 \[Provisions\]](#), 2007.
 2. See *List of approved providers* at http://www.dest.gov.au/sectors/training_skills/programmes_funding/Programme_categories/key_skills_priorities/vet_fee_help/List_of_Approved_VET_Providers.htm, accessed on 13 April 2009 and *Register of Legislative Instruments* at <http://www.comlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/browseview?OpenForm&VIEW=current&ORDER=bytitle&COUNT=100&START=1&CLASSIFICATION=&CATEGORY=legislativeinstrumentcompilation-Hi>

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at least one VET credit transfer arrangement for at least one of [the] courses' on offer.³ In addition since the introduction of VET FEE-HELP some states have also incorporated their TAFEs.⁴

Furthermore, there is currently before the Parliament other proposed legislation that is likely to add to demand from providers for access to VET FEE-HELP.⁵ This legislation would provide for greater flexibility by reducing the level of legislative prescription on eligibility. In its place more of the conditions for eligibility would be specified in the VET FEE-HELP Guidelines which are legislative instruments.⁶ Specific areas where this flexibility may be exercised include allowing for a reduction in the value of a student's loan debt, relaxing the credit transfer requirements for eligible courses, and establishing different requirements for different students or ones that may relate only to some students taking a particular unit of study.

Although the new VET FEE-HELP Guidelines that correspond to these proposed legislative changes are not yet available the Government has signalled that the immediate application of this flexibility would be to extend availability of these loans to **government-subsidised** Diploma and Advanced Diploma courses in Victoria in support of that State's VET reform agenda.⁷ The Commonwealth has offered similar support to any other State that pursues reform in VET.⁸

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3. *Higher Education Support Act 2003: VET Provider Guidelines*, Canberra, Commonwealth of Australia, 2008, 2.5.1, viewed 7 April 2009, <http://www.dest.gov.au/NR/rdonlyres/4E884348-34B3-4113-9487-147EDDFBAE31/22530/VETProviderGuidelinesignedPDF.pdf>.
 4. See *Queensland Skills Plan 2008*, Brisbane, Queensland Government, 2008, <http://www.training.qld.gov.au/resources/about/pdf/skills-plan-2008.pdf>, accessed on 13 April 2009 and J.Ross, 'Tying the nots', *Campus Review*, vol. 19, no. 34, pp.4-5, viewed 9 April 2009, <http://parlinfo.parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=Content%3Aatafe%20Content%3Aqueensland%20Content%3Astatutory%20Dataset%3Apressclp,jrnart,jrnart88;querytype=:rec=4;resCount=Default>.
 5. Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009.
 6. For background on the provisions in this Bill see Carol Kempner, 'Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009', *Bills Digest*, no. 107, Parliamentary Library, Canberra, 2008–09, viewed 7 April 2009, http://parlinfo.parlInfo/download/legislation/billsdgs/03YS6/upload_binary/03ys64.pdf;fileType=application%2Fpdf#search=%22vet%20fee%20help%22.
 7. B O'Connor (Minister for Employment Participation), *Speech: TAFE meets Parliament Skills Innovation 2020 Forum, 16 September 2008*, media release, Parliament House, Canberra, 16 September 2008, viewed 7 April 2009,

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Key issues

The measures in the Bill that would limit eligible units of study only to those that are essential for the approved award provide some insight into the administrative challenge posed by the expansion of ICLs into the VET sector. This relates to defining and containing the VET ICLs within a framework of VET units, modules and courses that is far broader than those provided by the higher education sector.

The measures in this Bill relating to the regulation of providers, while ostensibly technical in nature, in effect are a response to the broadening policy parameters for access to ICLs which are leading to the greater number and diversity of providers seeking approval to offer higher education FEE-HELP and VET FEE-HELP. The need to specify more clearly conditions for the revocation of providers is indicative of the broader range of providers that now can seek access to the ICLs in both sectors. For example and by way of contrast with the higher education sector, VET is provided through a national network of over 4,000 public and private registered training providers.⁹ The streamlined measures that would allow providers to offer the loans immediately on the registration of their notice of approval, rather than having to await the disallowance period as they currently do, is likely to facilitate the processing of the increasing number of applications and speed up access to the loans.

Financial implications

The Explanatory Memorandum states that there is no financial impact associated with these specific amendments.

Main provisions

The Bill provides for technical amendments to support the implementation of the policy framework for income contingent loans established in other legislation. As a continuation of this policy agenda, in isolation the amendments are therefore unlikely to be controversial. As the Explanatory Memorandum provides a detailed description of each item, only the major ones are highlighted here.

http://parlinfo/parlInfo/download/media/pressrel/5JKR6/upload_binary/5jkr60.pdf;fileType=application%2Fpdf#search=%22tafe%20victoria%20fee-help%22

8. J Gillard (Minister for Education), *Commonwealth will support States willing to reform VET*, media release, Parliament House, Canberra, 26 August 2008.
9. Department of Education, Science and Training (DEST), Annual national report of the Australian vocational and technical education system 2006, DEST, 2007, p. 6.

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Schedule 1 relates to the VET FEE-HELP provisions including:

- **Item 1** that inserts **new paragraph 6(da) of Schedule 1A** that requires that a body corporate must offer at least one VET course of study before the Minister may approve it as a VET provider
- **Item 3** that inserts **new clause 30A of Schedule 1A** that provides that the Minister may revoke a body's approval if it fails to meet the requirements provided for in paragraph 6(a), that is if it is no longer established at law, or no longer carries on business in Australia, or no longer has its central management control in Australia
- **Item 5** that inserts **new clause 32A of Schedule 1A** that provides that the Minister may revoke a body's approval if the body ceases to offer VET courses of study, and
- **Item 9** that inserts **new clause 45A of Schedule 1A** that does not entitle a student for VET FEE-HELP assistance for any unit done by the student that is more than required for the receipt of a VET Diploma, VET Advanced Diploma, VET Graduate Diploma or a VET Graduate certificate.

Schedule 2 deals with the provisions relating to the date of effect of the approval of providers including:

- **Items 2 and 6** that repeal and substitute provisions for higher education and VET providers respectively, that will allow for the Minister's decision to approve a body corporate to take effect in accordance with the *Legislative Instruments Act 2003*¹⁰, and
- **Items 4 and 8** that insert new provisions for higher education and VET providers respectively make clear that in the case of the cessation of a body as an approved provider responsibilities and rights under the Act before the cessation of the body as a provider will apply. These include that it will not affect the operation of the Act; anything done or suffered by the body; any right, privilege, obligation or liability acquired, accrued or incurred; any penalty, forfeiture or punishment incurred in respect of the body having been a provider; any investigation, legal proceeding or remedy relating to such rights, privileges, obligations, liabilities, penalties, forfeiture or punishment.

10. As noted earlier, approval will take effect on the day of being registered on the FRLI. Parliament can still disallow the notice of approval under the disallowance procedures of the *Legislative Instruments Act 2003*.

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