



Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009

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Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009

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House: House of Representatives

Portfolio: Education

Commencement: The day after Royal Assent

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:

- broaden the application of the Higher Education Loan Program (HELP) category for Vocational Education and Training students called VET FEE-HELP, and
- provide that officers of Tertiary Admission Centres (TACs) have the same status and duty of care as those of higher education providers in relation to processing student information.

Background

The amendments provided for in this Bill were previously part of the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009 (the original Bill) that was first introduced into Parliament in February 2009. That Bill was finally rejected by the Senate in August 2009, primarily due to the controversial nature of the provisions relating to student services and amenities. Those provisions are now in a separate Bill, the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2009.

VET FEE-HELP provisions

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 vocational education and training (VET) sector in 2007 under the *Higher Education Support Amendment (Extending Fee-Help for VET Diploma, Advanced Diploma, Graduate Diploma and Graduate Certificate Courses) Act 2007*. The VET FEE-HELP loans, as they are known, were

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introduced by the Coalition Government as part of its agenda to increase productivity, and address skills shortages. They were introduced to assist students fund their own study as part of a strategy to meet the increasing skills and training needs of a growing economy. At a time when growth in government VET budgets has been constrained, encouraging higher levels of private investment has gained greater acceptance as a strategy for achieving this.

The introduction of VET FEE-HELP was justified on equity grounds. VET students were disadvantaged by having to pay up-front fees and should have parity with their higher education counterparts who did have access to ICLs; VET providers could not compete with their higher education counterparts—were some of the equity arguments. Access to VET FEE-HELP was therefore made available for, and is still limited to those courses that are provided by both the university and the VET sectors—Diploma, Advanced Diploma, Graduate Diploma, and Graduate Certificate courses. Modelled as an extension to the Higher Education Loan Program (HELP) that exists for full-fee paying higher education students, VET FEE-HELP was, on introduction, also limited to full-fee VET courses. Other conditions on accessing these loans included that the provider had to be a corporate body and that arrangements needed to be put in place between the approved VET provider and a higher education provider to credit the qualification towards a higher education award.¹ The credit transfer arrangements reinforced this policy's connection with higher education qualifications. Not only did it treat the courses common to both sectors alike, but the credit transfer arrangements also facilitated pathways to the higher level qualifications that are believed to be in demand in the Australian labour force.

The amendments provided for in this Bill enable access to VET FEE-HELP to be broadened, essentially by reducing the level of legislative prescription on eligibility and allowing more flexibility through the use of the VET FEE-HELP Guidelines. Specifically the amendments would relegate the details of matters relating to the value of the loan debt, credit transfer arrangements and the eligibility of courses and students to the VET FEE-HELP Guidelines. As legislative instruments, the VET FEE-HELP Guidelines do not command the same level of Parliamentary scrutiny as legislation, and can therefore be more flexibly adapted to cater for changing policy parameters.²

Since the introduction of the original Bill the proposed scope of access to VET FEE-HELP has become clearer with the release of amendments to the VET FEE-HELP Guidelines.

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1. For an overview of the issues relating to the introduction of VET FEE-HELP see C Kempner, [Higher Education Support Amendment \(Extending Fee-Help for VET Diploma and VET Advanced Diploma Courses\) Bill 2007](#), Bills digest, no. 11, 2007–08, Parliamentary Library, Canberra, 2007 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 \[Provisions\]](#), Commonwealth of Australia, Canberra, 2007.
 2. Guidelines are however disallowable instruments.

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The amended [VET FEE-HELP Guidelines](#) extend access to government-subsidised students, but only for Diploma and Advanced Diploma courses. Access is also limited to those courses provided by a ‘VET Reform State or Territory’ (as defined in the newly amended VET Provider Guidelines).³

With these amendments the Commonwealth is therefore able to meet its commitment to Victoria to provide ICLs to ‘eligible students, studying Government-subsidised diploma and advanced diploma courses’ in support of that state’s package of VET reforms which commenced on 1 July 2009.⁴ While the Commonwealth has offered similar support to any other state/territory that pursues such market related VET reforms, the financial impact statement in the Explanatory Memorandum is based only on the estimated costs for Victoria. At this stage the estimated fiscal impact is approximately \$5 million in each of the first two years.⁵

Key issues—VET FEE-HELP provisions

Through changes to the VET FEE-HELP Guidelines the Government is expanding access to ICLs to government-subsidised VET students, but only to those doing Diploma and Advanced Diploma courses (it is not clear why Graduate Diploma and Graduate Certificate courses have not been included), and only to those courses provided by a ‘VET Reform State or Territory’. At this stage only Victorian government-subsidised students will be eligible, as Victoria is the only state/territory that would currently meet the definition of a ‘VET Reform State or Territory’.

Competition in Victoria’s VET market is also likely to be enhanced by the amendments that will enable more flexibility around the credit transfer arrangements that were a

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3. Department of Education, Employment and Workplace Relations, *VET FEE-HELP Guidelines*, Commonwealth of Australia, 2009, viewed 11 September 2009, [http://www.comlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/4F49176DC950F09ACA2575FC002FCFB1/\\$file/FINALCompilationVETFEEHELPGLS9July2009.pdf](http://www.comlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/4F49176DC950F09ACA2575FC002FCFB1/$file/FINALCompilationVETFEEHELPGLS9July2009.pdf); and *VET Provider Guidelines*, Commonwealth of Australia, 2009, viewed 11 September 2009, <http://www.comlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/current/bytitle/927A56F18B6911C9CA2575EE001C539D?OpenDocument&mostrecent=1>
 4. 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, http://parlinfo/parlInfo/download/media/pressrel/5JKR6/upload_binary/5jkr60.pdf;fileType=application%2Fpdf#search=%22tafe%20victoria%20fee-help%22
 5. J Gillard (Minister for Education), *Commonwealth will support States willing to reform VET*, media release, Parliament House, Canberra, 26 August 2008; and Explanatory Memorandum, Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009, p. 3.

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requirement of the original VET FEE-HELP policy. For example, subject to the VET FEE-HELP Guidelines, access could be provided to smaller private providers who may not have credit transfer arrangements in place, or who may provide niche courses for which ‘there is no obvious tertiary equivalent as the course has traditionally been covered by VET’.⁶ While this relaxation of the credit transfer requirements is likely to facilitate competition between small and large, and public and private providers, it could also have the effect of weakening the VET FEE-HELP policy’s connection to higher education courses and pathways.⁷

Critics of the introduction of income contingent loans into the VET sector expressed their concerns that access to such loans would lead to substantial fee increases in the VET sector, thereby increasing the burden on individual VET students. They were particularly concerned about students from disadvantaged sectors of society who as government-subsidised students currently pay relatively low fees.⁸ They therefore argued that rather than expanding participation in VET, ICLs may act as a barrier to further training and much needed skills development.⁹ The expansion of ICLs to government-subsidised students in the context of Victoria’s market based VET reforms, that as anticipated have involved an increase in TAFE fees, has reinforced these concerns.¹⁰

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6. This point about the possible limitations of the credit transfer provisions was made by the Australian Council of Private Education and Training (ACPET) when VET FEE-HELP was originally introduced. See 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, op. cit., p. 5.
 7. For more on the issues relating to credit transfer arrangements see L Wheelahan, ‘Across the divide’, *Campus review*, 17 February 2009, p. 17, viewed 14 September 2009, http://parlinfo/parlInfo/download/library/jrnart/B1US6/upload_binary/b1us61.pdf;fileType=application%2Fpdf#search=%22wheelahan%20divide%20across%202009%22
 8. See for example A Trounson, ‘TAFE loans could go national’, *The Australian*, 18 June 2008, p. 23, http://parlinfo/parlInfo/download/media/pressclp/9BRQ6/upload_binary/9brq62.pdf;fileType=application%2Fpdf#search=%22chapman%20hecs%20tafe%22, viewed on 20 February 2009.
 9. F Tomazin, ‘Canberra stalls on Brumby’s TAFE loan scheme: threat to low-income students: union’, *The Age*, 2 August 2008, p. 9, http://parlinfo/parlInfo/download/media/pressclp/4W5R6/upload_binary/4w5r60.pdf;fileType=application%2Fpdf#search=%22canberra%20stalls%22, viewed on 20 February 2009.
 10. See for example M Perkins, ‘Higher fees slug for TAFEs’, *The Age*, 8 July 2009, p. 6, viewed 14 September 2009, http://parlinfo/parlInfo/download/media/pressclp/DA2U6/upload_binary/da2u60.pdf;fileType=application/pdf#search=%22victoria%20TAFE%20fees%202009%22, M Perkins, ‘TAFE fee rises may shut-out returnees’, *The Age*, 14 April 2009, p. 6, viewed 14 September 2009, http://parlinfo/parlInfo/download/media/pressclp/K69T6/upload_binary/k69t60.pdf;fileType

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Given that the Commonwealth Government does not currently have a role in determining VET fees, the question of VET fee levels may also have occupied the Commonwealth Government in costing and planning for the reach of its VET FEE-HELP policy. A paper published by the Treasury that was influential in the introduction of ICLs for VET had warned of possible risks to the Commonwealth Government associated with fee increases by state and territory authorities made possible by the introduction of ICLs:

The Commonwealth government has traditionally not been directly involved in TAFE and it would need to be satisfied that the risks associated with, for example, the level of fees being raised, have been fully thought through.¹¹

Supporters of income contingent loans for VET such as the co-authors of the Treasury publication, viewed their introduction into the VET sector as a matter of equity. They argued that VET students, unlike their higher education counterparts, were disadvantaged by having to pay up-front fees—government-subsidised and full-fee students alike.¹² Although VET FEE-HELP was originally limited to full-fee students, these advocates would have welcomed its introduction and would presumably also welcome its current expansion. However, concerns about equity of access are likely to persist given that access to government-subsidised students is being extended selectively, only to Victoria—currently the only ‘VET Reform State or Territory’. Furthermore, while full-fee Graduate Diploma, and Graduate Certificate students can have access to VET FEE-HELP, government-subsidised students doing such courses have not been included in the revised VET FEE-HELP Guidelines. Any change in policy to include them could readily be addressed by amending the VET FEE-HELP Guidelines. The total fiscal impact of doing this would of course be increased.

Despite changes to the VET FEE-HELP policy parameters that have to a degree relaxed its original association with higher education pathways in ‘VET Reform States or Territories’, there is no indication that the Government has any plans to expand access to other qualifications. The possibility that there may be an interest in doing this in the future can not be ruled out as the authors of the Treasury paper noted that the economic basis for ICLs, that is the extent of private rates of return to investment in VET, applies to Certificate level III/IV courses as well.¹³ However, if the policy parameters were to be

[=application/pdf#search=%22victoria%20TAFE%20fees%202009%22](#), B Woodland, ‘Securing Victorian futures: no guarantees’, *Australian TAFE teacher*, Spring 2008, pp. 11–12.

11. B Chapman, M Rodrigues and C Ryan, ‘HECS for TAFE: the case for extending income contingent loans to the vocational education and training sector’, *Treasury working paper*, 2007-2, Treasury, 2007, p. 41, viewed 20 February 2009, <http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=1252>
12. B Chapman, M Rodrigues and C Ryan, op. cit., p 3. The study uses data on fees for publicly funded courses.
13. B Chapman, M Rodrigues and C Ryan, op. cit., pp. 30, 33.

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expanded to include access for courses other than at the Diploma, Advanced Diploma, Graduate Diploma, and Graduate Certificate levels, the legislation would need to be amended to effect such a change.

Main provisions

Schedule 1—VET FEE-HELP

Schedule 1 amends the Act and deals with the broadening of access to VET FEE-HELP.

Item 1 would allow for the VET FEE-HELP Guidelines to specify the conditions under which a less than 120 per cent debt is incurred by a VET FEE-HELP loan. Currently the loan debt is 120 per cent, of which 20 per cent is a loan fee. **Item 2** allows for this amendment to be applied to units of study with a census date on or after 1 July 2009. Owing to the delay in the passing of the earlier Bill it now provides for the loan debt measure to be applied retrospectively to debts incurred before, on or after the commencement of the amendment.¹⁴

Items 3-7 in the Bill would effectively relax the credit transfer provisions. **Item 3** removes the credit transfer conditions from the Minister's requirements to approve a body corporate as a VET provider. These requirements will then be dealt with through the VET FEE-HELP Guidelines.

The credit transfer arrangements for courses are also being relaxed. Currently under paragraph 45(1)(a) the course requirements for VET FEE-HELP assistance for a VET unit of study include that the unit 'is being undertaken as part of a VET course of study that meets any requirements set out in the VET FEE-HELP Guidelines relating to VET credit transfer arrangements'. **Item 5** removes the reference to credit transfer in paragraph 45(1)(a). **Item 6** then inserts a new section 45(1A) which would allow with respect to the arrangements for courses provided under the amended paragraph 45(1)(a), which are no longer limited by credit transfer arrangements, that the VET FEE-HELP guidelines can set out different requirements for different students and requirements that may relate only to some students taking a particular unit of study.

Schedule 3—Tertiary Admission Centres (TACs)

Schedule 3 amends the Act and deals with Tertiary Admission Centres (TACs)

14. This provision for retrospectivity was presented as an amendment to the original Bill, the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009, on the motion of Senator Carr and was debated and agreed to on 17 August 2009,
http://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r4049_amend_c1123a45-b464-4941-804c-aa29a48874f1/upload_pdf/B09BV228.pdf;fileType=application%2Fpdf

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Schedule 3 provides that officers of Tertiary Admission Centres (TACs) have the same status and duty of care as those of higher education providers in relation to processing students' personal information. According to the Department of Education, Employment and Workplace Relations this 'will ensure that student information may be shared between the Department, higher education providers, VET providers, and TACs as appropriate and be governed by the appropriate privacy safeguards.'¹⁵

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15. Department of Education, Employment and Workplace Relations, *Submission to inquiry into the Higher Education Legislation Amendment (Student Services and Amenities, and Other Measures) Bill 2009*, Canberra, 19 February 2009, viewed 25 February 2009, <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=88a47aa4-1b68-49e2-849e-25d02cb507b0>.

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