Australian Government

Department of Industry Innovation, Science, Research and Tertiary Education

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Mr Tim Watling
Secretary
Senate Standing Committee on Education,
Employment and Workplace Relations
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Dear Mr Watling

Thank you for your email of 12 October 2012 inviting a submission from the Department of Industry, Innovation, Science, Research and Tertiary Education to the Senate Standing Committee on Education, Employment and Workplace Relations Legislation inquiry into the Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012.

The bill contains amendments to the *Higher Education Support Act 2003* that will position the Government to deliver timely improvements to the Higher Education Loan Program (HELP) schemes, particularly VET FEE-HELP. The amendments will enable the Government to act on the recommendations arising from the *Post Implementation Review of the VET FEE-HELP Scheme Final Report September 2011* and its commitments under the 2012 COAG *National Partnership Agreement on Skills Reform,* particularly the redesign of VET FEE-HELP.

The Department has prepared the attached submission to the inquiry, specifically to inform the Committee of the key activities that contributed to the development of the proposed amendments contained in the bill. These activities demonstrate the substantial stakeholder consultations, including the regulatory impact assessment, undertaken to develop the bill.

The Committee may wish to note that, in addition to the 2011 post implementation review of VET FEE-HELP, the Department prepared, distributed and consulted extensively on the proposed amendments in the bill through the *VET FEE-HELP Redesign 2012* discussion paper. Consultations included invitations for written submissions, and face-to-face and teleconference forums with stakeholders including students, state and territory governments,

representative peak bodies, and a wide variety of registered training organisations and higher education providers.

The Department also prepared a regulatory impact statement (RIS) outlining the preferred options for implementation. The Office of Best Practice Regulation, within the Department of Finance and Deregulation, assessed the RIS positively against Government requirements.

The aforementioned documents are available publicly online:

- The *Post Implementation Review of the VET FEE-HELP Scheme Final Report September 2011* is available on the Department's website at http://www.innovation.gov.au/Skills/SkillsTrainingAndWorkforceDevelopment/VETFeeHelp/Pages/PostImplementationReviewOfTheVETFEEHELPAssistanceScheme.aspx
- The *VET FEE-HELP Redesign 2012* discussion paper is available on the Department's website at http://www.innovation.gov.au/Skills/SkillsTrainingAndWorkforceDevelopment/VETFeeHelp/Pages/DiscussionPaperRedesignOfTheVETFEEHELPScheme.aspx
- The *VET FEE-HELP Redesign Regulation Impact Statement* is available on the Office of Best Practice Regulation's website at http://ris.finance.gov.au/2012/10/02/vet-fee-help-redesign/

I hope this information is of use to the Committee.

Yours sincerely

Dr Don Russell
Secretary
Department of Industry, Innovation,
Science, Research and Tertiary Education

October 2012

Australian Government

Department of Industry
Innovation, Science, Research
and Tertiary Education

Submission to the Senate Standing Committee on Education, Employment and Workplace Relations Legislation inquiry into the Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012

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Policy context for income contingent loans

Government income contingent loans (ICLs) are well established in Australian higher education. The education sector strongly supports the role of ICLs in increasing individual participation in education. ICLs however, were only made available to vocational education and training (VET) students in 2008 through the establishment of the VET FEE-HELP Assistance Scheme. VET FEE-HELP is one of a number of ICLs offered by the Government under the umbrella of its Higher Education Loan Program (HELP). HELP also includes FEE-HELP which operates in the higher education sector. VET FEE-HELP has authority under the *Higher Education Support Act 2003* (the Act) and has very similar legislative requirements to FEE-HELP which also has authority under the Act.

Post implementation review of VET FEE-HELP

VET FEE-HELP was introduced in 2008 to remove the financial barrier associated with upfront costs of higher level VET study. On 17 February 2009, the then Prime Minister requested that a post implementation review (PIR) of VET FEE-HELP be undertaken. A PIR was conducted in 2011, which included a qualitative and quantitative analysis of VET FEE-HELP's performance against its 2008 strategic objectives.

Wide-ranging stakeholder consultations were conducted to capture perceptions of, and experiences with, VET FEE-HELP. To maximise its reach, consultations utilised a range of approaches, including an online survey, face-to-face focus groups, teleconferences, face-to-face meetings, and invitations for written submissions. A total of 549 online survey responses were received from an invitation to over 2,000 registered training organisations (RTOs) with varying levels of characteristics and VET FEE-HELP experience. Face-to-face focus groups and teleconferences were held with a total of 33 RTOs, including those approved to offer VET FEE-HELP, those who had withdrawn their application, and VET sector peak bodies. Discussions were held with state and territory government departments including the New South Wales Department of Education and Communities, the Queensland Department of Education and Training, Skills Victoria, and the South Australian Department of Further Education, Employment, Science and Technology. State and territory governments also provided written submissions.

The PIR built on findings from 2011 market research[1] on the effectiveness of printed HELP scheme information and communication material. Qualitative and quantitative research was undertaken through focus groups and questionnaires with approximately 200 participants, including students.

The PIR's final report, released on 19 June 2012, found that the sector strongly supported the Government's initiatives improve RTO and student access to VET FEE-HELP and made ten recommendations, as summarised below:

1. Remove the requirement for RTOs to have credit transfer arrangements in place with higher education providers to become an approved provider.
2. Continue to extend the offer to waive the 20 per cent student loan fee to state and territory government subsidised students as part of the VET reform package.
3. Investigate the cost, feasibility and desirability of expanding VET FEE-HELP to include certificate IV level qualifications, particularly for pre-requisites to higher level VET qualifications.
4. Seek to simplify and streamline HELP legislation to better achieve VET FEE-HELP objectives and support a high-quality, innovative and adaptive VET sector.
5. Continue to consider the synergies between HELP requirements and the national and non-referring jurisdiction regulators to further simplify and streamline requirements and minimise duplicity.

[1] GfK bluemoon, *My University + HELP Products: Developmental & Product Testing*, 2011.

6. Continue to prioritise improvements to simplify and streamline administrative compliance requirements to support a responsive VET sector without compromising VET FEE-HELP objectives.
7. Develop an engagement strategy to address participation issues for RTOs, students, peak bodies, tuition assurance scheme administrators, regulators and state and territory governments.
8. Continue to improve information provision, education and promotion of VET FEE-HELP and its benefits to students and the VET sector as a priority, including the adoption of a user-friendly and plain English approach in all communications.
9. Monitor and undertake further research into funding and tuition fees, approved courses, completion rates, pathways, student experience and employment outcomes across HELP.
10. Continue to monitor and review VET FEE-HELP against its objectives and expected outcomes and undertake a subsequent formal evaluation when five years of information is available.

The *Post Implementation Review of the VET FEE-HELP Scheme Final Report September 2011* is publically available on the Department's website at: http://www.innovation.gov.au/Skills/SkillsTrainingAndWorkforceDevelopment/VETFeeHelp/Pages/PostImplementationReviewOfTheVETFEEHELPAssistanceScheme.aspx

VET FEE-HELP and the COAG *National Partnership Agreement on Skills Reform*

On 13 April 2012, COAG signed a new *National Partnership Agreement on Skills Reform* (NP). The Government committed to providing state and territory governments with $1.75 billion in funding from 2012-13 to 2016-17 to support the Australian VET sector.

Schedule 4 of the NP sets out key requirements relating to VET FEE-HELP. One of the requirements in order to receive access to ICLs for diploma and advanced diploma places is that state and territory governments must ensure that public RTOs approved in the state or territory comply with relevant legislative requirements and guidelines, and the agreed outcomes from the *2011 Post Implementation Review of the VET FEE-HELP Assistance Scheme* (PIR).

The Government agreed to remove the 20 per cent loan fee in relation to training places in subsidised training courses at the diploma and advanced diploma level and remove the credit transfer requirements relating to all diploma and advanced diploma courses both subsidised and full-fee paying, amongst other items. In addition, the Government will work with state and territory governments including developing a limited trial of extending the eligibility for ICLs under VET FEE-HELP to students undertaking selected certificate IV qualifications.

VET FEE-HELP redesign discussion paper and stakeholder consultations

An extensive round of stakeholder consultations regarding the redesign was carried out in mid-2012. In June 2012, the Department released the discussion paper, *VET FEE-HELP Redesign 2012*, incorporating findings from the PIR. This discussion paper provided to approximately 2,500 stakeholders and made publicly available on the Department's website.

Throughout June and July 2012, stakeholders were invited to comment on the discussion paper, and were specifically asked to consider any implementation and financial implications of the proposed redesign. Consultations canvassed the views of a cross section of relevant stakeholders, including VET students, representative bodies, state and territory governments, higher education providers and RTOs. The range of RTOs included in the consultation ranged from small, private RTOs to large, broad-based RTOs, approved VET FEE-HELP providers, RTOs in the application stage, prospective VET FEE-HELP applicants, and all RTOs that offer diploma and above qualifications.

The Department received 25 written submissions. Face-to-face consultation forums were also held in Brisbane, Sydney, Melbourne and Adelaide. Teleconferences were conducted with stakeholders in Tasmania and the Australian Capital Territory.

During consultations, the Department explicitly sought quantitative information from stakeholders on the costs and benefits likely to be incurred in relation to implementing the VET FEE-HELP redesign. Stakeholders did not provide definitive costings of the impact of the VET FEE-HELP redesign, and indicated that it was beyond their scope to provide quantitative data at this stage. The majority of stakeholders recognised the benefits to be gained from streamlining and simplifying administrative processes.

Approved VET FEE-HELP providers and applicants are being kept informed of the proposed redesign elements and timing. Peak sector bodies have also offered assistance in keeping the VET industry abreast of the changes. In addition, a tertiary education HELP forum has been scheduled for 23 November 2012 to inform providers and applicants of the progress of the redesign.

The *VET FEE-HELP Redesign 2012* discussion paper is publically available on the Department's website at: http://www.innovation.gov.au/Skills/SkillsTrainingAndWorkforceDevelopment/VETFeeHelp/Pages/DiscussionPaperRedesignOfTheVETFEEHELPScheme.aspx

Regulation impact statement

Following on from the extensive stakeholder consultations as outlined above, the Department prepared a regulation impact statement (RIS), outlining the preferred redesign option. The RIS considered implementation and financial implications of the proposed redesign along with legislative and governance matters raised during consultations. The RIS was assessed as adequate by the Office of Best Practice Regulation (OBPR) within the Department of Finance and Deregulation on 6 September 2012.

The RIS is publically available on OBPR's website at: http://ris.finance.gov.au/2012/10/02/vet-fee-help-redesign/.

Implementation and review

To minimise the costs associated with the redesign implementation, a staged implementation approach has been proposed. Such an approach allows different elements of the redesign to be implemented over a period of three years with adequate lead in times for providers, taking into account stakeholder feedback, and aligns with the COAG NP.

The PIR recommended a formal evaluation of VET FEE-HELP occur when five years of data becomes available. This will occur during 2015. Under the NP, all states and territories have undertaken to expand into Government ICLs for the subsidised training market by 2015. It is proposed that the review of the VET FEE-HELP scheme occur during 2016-2017 to ensure that sufficient data will be available to evaluate VET FEE-HELP.

Each of the three major elements of the proposed redesign will be subject to ongoing business review as part of the Department's business planning. Success of the proposed VET FEE-HELP redesign will be measured by increases in the numbers of students taking up loans, approved quality providers, and eligible courses.

Policy objectives and the Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012

VET FEE-HELP has an important role to play in strengthening the overall quality of the VET sector. Since its inception in 2008, take-up of VET FEE-HELP by RTOs, and consequently students, has been below Government expectations. This has limited the extent to which VET FEE-HELP can fully achieve its objectives, including improving VET access and participation, consequently limiting the HELP scheme's ability to realise its full potential in supporting national skill reform and productivity agendas.

VET FEE-HELP's requirements for participating RTOs are rigorous to ensure there are effective safeguards for students and public monies. However, the administrative burden imposed by the Government is proving to be a barrier to participation for most RTOs. Competing interests exist between reducing barriers to increase participation in VET FEE-HELP and maintaining the HELP scheme's integrity. As VET FEE-HELP will be progressively extended to state and territory subsidised VET diploma and advanced diplomas nationally, it is vital that VET FEE-HELP is underpinned by a framework supporting quality outcomes for all stakeholders.

The specific objectives of the bill are to:

1. Implement a risk managed approach to provider approvals and administrative compliance, including consideration of reports by the national education regulators;
2. Implement more effective suspension and revocation actions;
3. Simplify the guidelines around VET FEE-HELP;
4. Allow for greater flexibility in the future for the census date requirement;
5. Provide enabling legislation for specified certificate IV level qualifications to be eligible for VET FEE-HELP; and
6. Improve Ministerial and Secretarial delegation arrangements.

The bill aims to implement a better balance of policy settings to achieve these objectives as follows.

1. Implement a risk managed approach to provider approvals and administrative compliance, including consideration of reports by the national education regulators

Schedule 1—COAG amendments
Part 1—Kinds of VET providers
Division 1—Amendments
Applicants for VET FEE-HELP and FEE-HELP are currently required to be bodies corporate under the Act. This requirement does not allow the Government to consider an applicant's broader business operations as applications are restricted to bodies corporate only and not the range of corporate structures. This is a problem as complex body corporate structures make it difficult to determine the legal entity responsible for education activities in these structures. This amendment seeks to remove barriers to participation in the VET FEE-HELP Scheme and increase take-up of VET FEE-HELP by quality RTOs and students. This amendment will enable the Minister to specify different approval requirements for providers that present a low risk to the Government.

Schedule 2—Approval and revocation of approval
Part 2—Approval and revocation of approval
Division 1—Amendments
The Government's ability to consider information from the national and non-referring jurisdiction education regulators is limited. Similarly, for RTOs offering both higher education and VET courses, information on their conduct across the HELP schemes cannot be exchanged for the purposes of approval, suspension or revocation. These amendments allow the Minister to seek information from the Tertiary Education Quality and Standards Agency (TEQSA) or the National Vocational Education and Training Regulator or the relevant regulators from non-referring jurisdictions to improve decision making for application, administrative compliance, suspension and revocation purposes for FEE-HELP or VET FEE-HELP. These amendments will improve information sharing and transparency with the regulators and will enhance arrangements to identify low quality providers.

Note that, while the bill does not contain explicit provisions with regards to the storage, handling and disposal of any information collected (which may include personal information), any personal information collected under the proposed changes to the Act will be regulated by the *Privacy Act 1988* (the Privacy Act) as well as the *Archives Act 1983* (the Archives Act).

2. Implement more effective suspension and revocation actions

Schedule 2—Approval and revocation of approval
Part 1—Date of effect of revocation of approval
Division 1—Amendments
The Government's ability to suspend and/or revoke HELP scheme approval for providers that cease to be a higher education provider or an RTO, or that cease to offer a course or lose course accreditation, is limited. Although the authority to approve, suspend or revoke higher education providers and RTOs lies with the education regulators, the Government must complete further legislated administrative processes and decision making exercises to suspend and/or revoke the approval to offer ICLs under the HELP schemes.

Notices of decisions to revoke a provider's approval to offer ICLs under the HELP schemes are legislative instruments. Consequently, notices must be laid before Parliament for 15 sitting days before the decision can take effect and not on the day after the notice is registered on the Federal Register of Legislative Instruments. This can substantially extend the period in which a provider could offer HELP scheme assistance to students, even though a decision has been made to suspend and/or revoke the provider's approval.

This amendment ensures that notices of revocation take effect in a more timely and effective manner to prevent an organisation from continuing to offer FEE-HELP or VET FEE-HELP to students during the period between the Minister's decision to revoke a provider's approval and the time when the notice of revocation of approval takes effect. This will minimise risks to students. Currently, the provisions under the Act in relation to the notice of revocation enable significant time delays to occur between the day of the instrument's registration and the date of commencement. The reason for the delay is that currently, a decision of the Minister to revoke the approval of a higher education or VET provider takes effect on the day following the last day on which a notice of motion to disallow the instrument can be moved in either House of Parliament. Given the variations in the Parliamentary sittings a significant delay can occur before the revocation commences.

Note that, the *Higher Education Support Act 2003* (the Act) expressly provides safeguards for students who are currently receiving FEE-HELP or VET FEE-HELP for studies undertaken through a provider that has been revoked. For FEE-HELP, under section 22-25, and for VET FEE-HELP, under clause 35 of Schedule 1A to the Act, the Minister can determine that an approval as a provider can be retained in respect of existing students. This means that the revocation is of no effect for the purposes of assistance payable for the revoked body's existing students.

Notwithstanding these provisions, the Act also requires approved providers to meet tuition assurance requirements to protect students in the case where a provider ceases to offer a course. In the situation where a provider is revoked and unable to deliver its courses, tuition assurance mechanisms would be activated (either under the Act or the legislation under the relevant national or state education regulators, whichever is appropriate). Students are either placed in a comparable course or provided with a refund of any upfront tuition fees paid.

Schedule 2—Approval and revocation of approval
Part 1—Date of effect of revocation of approval
Division 2—Amendments
This is an application provision which provides that the amendments made by Division 1 of Part 1 of Schedule 2 shall only apply in relation to decisions to revoke an approval of a higher education provider or VET provider made on or after commencement of this item.

Schedule 2—Approval and revocation of approval
Part 2—Approval and revocation of approval
Division 1—Amendments

These amendments allow the Minister to seek information from the Tertiary Education Quality and Standards Agency (TEQSA) or the National Vocational Education and Training Regulator or the relevant regulators from non-referring jurisdictions (VET regulator) to improve decision making for application, administrative compliance, suspension and revocation purposes for FEE-HELP or VET FEE-HELP. These amendments will improve information sharing and transparency with the regulators and will enhance arrangements to identify low quality providers.

3. Simplify the guidelines

Schedule 3—VET Guidelines
Part 1—Amendments
The current legislative guidelines consist of the VET Provider Guidelines, VET FEE-HELP Guidelines and the VET Administration Guidelines. Having multiple sets of guidelines results the duplication of information or the splitting of subject matter across multiple guidelines. These arrangements add complexity to VET FEE-HELP information and limit RTO ability to easily identify their obligations and responsibilities under VET FEE-HELP. This amendment will improve the accessibility, clarity and transparency of the obligations of providers through the simplifying and streamlining of the VET Guidelines. Under this amendment, the separate sets of guidelines will be consolidated within one instrument – the 'VET Guidelines'.

Currently subclause 99(1) of Schedule 1A to the Act allows the Minister to make, by legislative instrument, the following Guidelines: VET Provider Guidelines; VET FEE-HELP Guidelines; VET Tuition Fee Guidelines; and VET Administration Guidelines. As presently drafted, subclause 99(1) operates in a way that prohibits all matters dealt with regarding VET FEE-HELP from being covered in one set of Guidelines. This restricts the streamlining of the subordinate legislation made for the purposes of Schedule 1A and results in duplication of requirements.

4. Allow for greater flexibility in the future for the census date requirement

Schedule 4—Other amendments
Part 1—Amendments
All approved RTOs are required to publish information on census dates for each unit of study. The census date is the date the student incurs a HELP debt for the tuition fees for the unit. The Act prescribes that a census date cannot be less than 20 per cent of the way through a unit of study. The census date requirement limits the sector's ability to offer rolling enrolments and to be responsive to emerging student and industry needs. The requirement to calculate census dates for every unit, places an administrative burden on RTOs that offer a large number of courses and units of study.

RTOs are also required to publish a schedule of tuition fees up to five months before a unit of study commences. As RTOs must apply for variations to the published schedules, this requirement increases the administrative burden on providers and the Government to process variations. The sector's desire to deliver units based on demand, add new units of study and to accurately estimate the cost of tuition fees becomes administratively onerous.

The first amendment made by Schedule 4 moves the census date requirements to the Administration Guidelines for FEE-HELP and the VET Guidelines for VET FEE-HELP. The intent of this amendment is to enable the tertiary sector to deliver qualifications with greater flexibility. Moving the specific date requirement for census dates to the guidelines will enable approved providers to have greater flexibility to offer courses, meet student and industry needs, and minimise the administrative burden associated in meeting this obligation.

5. Provide enabling legislation for specified certificate IV level qualifications to be eligible under VET FEE-HELP

Schedule 1—COAG amendments
Part 2—VET qualifications
Division 1—Amendments
These provisions amend the definition of *VET course of study* to expand the Minister's powers to determine the course qualifications applicable for VET FEE-HELP. The Minister's powers are amended to determine a course of study, type of course of study and also kind of provider which may or may not offer a specified course of study. The purpose of this amendment is give effect to the 2012 COAG NP and to allow a managed trial of certificate IV qualifications under VET FEE-HELP. Under this trial, the Minister may limit the certificate IV courses that are eligible for VET FEE-HELP assistance and the providers who are able to offer courses. An ICL Working Group comprising the representatives from the Commonwealth and State and Territory Governments has been formed to develop the terms of a trial commencing from 2013.

6. Improve Ministerial and Secretarial delegation arrangements

Schedule 4—Other amendments
Part 1—Amendments
Schedule 4 will also amend the Ministerial and Secretarial powers of delegation to Australian Public Service (APS) employees. This will remove the current restriction that the delegation must be made to an APS employee of the Department. These arrangements will support the Department's day-to-day business operations during unforeseen situations like machinery of government changes and changes to Administrative Arrangement Orders. This amendment will enable the Government to minimise disruption to program administration and more efficiently and effectively manage programs where funding is administered by different Government departments.

The proposed amendments in the bill, which are in response to clear stakeholder feedback, will streamline administration and improve the flexibility of the legislative requirements. Providers will have greater capacity to respond to student and industry needs without onerous administration. Accordingly, the bill seeks to improve participation in VET FEE-HELP by quality providers, therefore increasing student access and participation in tertiary education.