

## Submission from TAFE Directors Australia on:

### **Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019, VET Student Loans (VSL Tuition Protection Levy) Bill 2019 and the Higher Education Support (HELP Tuition Protection Levy) Bill 2019 [Provisions]**

Thank you for the opportunity to make a submission on the three Bills before the Senate proposing to establish new arrangements for the Tuition Protection Scheme (TPS) to support the operation of VET Student Loans (VSL) and FEE-HELP.

#### Overview

The measure covers three Bills for the purposes outlined below.

<i>Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019</i>	Establishes charging arrangements for Tuition Assurance plus changes to TPS and HLP administration and spells out conditions of TPS actions
<i>Higher Education Support (HELP Tuition Protection Levy) Bill 2019</i>	Adds TPS charging elements to Non-University Higher Education Providers in receipt of HELP
<i>VET Student Loans (VSL Tuition Protection Levy) Bill 2019</i>	Adds TPS charging elements to VSL approved providers

TAFE Directors Australia, the body representing TAFEs across Australia including TAFE Divisions of dual sector universities, endorses the transition from external tuition assurance to the Government run tuition protection service. The risks involved in the outsourced assurance provision which operated previously for VET FEE-HELP (plus HELP) are too high at this point given the state of the VET sector and likely ongoing provider closures from regulatory action.

However, three key points are made in this submission concerning the operation of the scheme as proposed through the Bills.

Firstly, TAFEs are at risk of carrying significant cost from poor decisions and oversight of VSL by the Secretary who has direct responsibility for the VSL scheme. Secondly, the TPS steps beyond reasonable protection of students and thirdly, opportunity ought to be taken to create a scheme which covers all students who face financial risk in enrolling in a non-public provider.

Although out of scope for this review, members of the committee should note that students who accrue a VET Student Loan or FEE-HELP are faced with an immediate tax of twenty per cent and twenty-five per cent respectively in the form of the legislated loan fee. Students seeking to improve their contribution to society through vocational and higher education face an immediate tax on learning, whereas university students do not.

#### **For VET Student Loans TAFEs will carry risk of poor legislative decisions and oversight by the Secretary of the owning Department**

Under clause 7(1) of the *VET Student Loans Act 2016* the Secretary of the owning department of the Act carries responsibility for approving loans to students:

The Secretary may approve a loan for a student for a course of study if the Secretary is satisfied that:

- (a) the student is an eligible student (see Division 2); and
- (b) the course is an approved course (see Division 3).

This is substantially different to the operation of FEE-HELP and HECS-HELP where the responsibility for taking out a loan is a matter between the student and approved provider with the responsibilities of both parties prescribed within covering Acts and supporting documentation.

In the tuition assurance schemes which operated prior to the Commonwealth takeover in 2017 the private operators managed and pooled the risk, being mindful of the risk they took on with the providers in their scheme. The tuition assurance schemes may have been regarded by the Government to have failed in response to the excesses of the VET FEE-HELP scheme, however, this is not the case. The approvals, lending practices and oversight of the Commonwealth caused the excesses of the scheme.

The effect of the VSL Act is that all responsibility rests with the Secretary, including the approval of providers to issue loans but also the *issuing* of the loan for each student on the basis of complying with the requirements of the VSL Act.

This may have been a reasonable approach following the excesses of the VET FEE-HELP scheme. However, under the proposed TPS good providers are likely to be forced to take on students from poor providers and most likely due to poor legislative decisions and oversight of the Secretary. The general principle of insurance – the price/premium is set between the insured and insurer based on direct measure or assessment of risk – is not respected in the structure of the TPS proposed through these bills. The Commonwealth takes unilateral action, potentially without regard to risk, yet places the rectification onus on providers.

As an example, the administering department has failed to make changes to data collection by which the Secretary can be clear about the progress of students through a course and the extent of the loan used. In the case of failure of a provider (or a course) there is no definitive data which outlines the extent the loan has expired against training delivery. In effect, the Secretary is reliant on the good will of the provider to outline how much of the loan has been used. Opportunity for providers intent on accumulating loan revenue in advance of delivery of the training, which was the core of the excesses of VET FEE-HELP, continues under VSL.

Under the proposed TPS arrangements receiving providers such as TAFEs will be forced to take on these students when, for example, the Secretary could implement simple data measures to mitigate the risk.

Further, the TPS bills enforce civil penalties on second providers to take on these students – see Clause 66G Obligations of replacement provider of the *Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019*.

These measures amount to enforcing good providers to take on, at cost, the students from failing providers which ultimately falls at the feet of the Secretary who approved their operation and the payment of loans.

TDA Recommends that for VSL, the Secretary, who approves and allocates loans, should carry the full financial responsibility for rectification processes.

TDA Recommends that all penalties on second providers be removed as a result.

### Tuition Assurance is triggered before there is any financial loss to the student

Subclause 66B (1) of the *Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019* says tuition assurance is triggered if a course or part of a course is not **started** on the scheduled date AND where the student has a pre-existing HELP debt.

This gives rise to two inconsistencies.

Firstly, the existence of a HELP debt triggers tuition assurance action. This means students who have **completed** courses or units (with any provider, including university) which resulted in HELP debt are entitled to be transferred to another provider, while a brand-new student without HELP debt is not.

The same condition for FEE-HELP has been added in subclause 166 10 (1) of *Higher Education Support (HELP Tuition Protection Levy) Bill 2019*.

Secondly, these requirements over-reach as they invoke tuition protection, and therefore course continuation, at the point a course or part of a course **does not start** and any point thereafter. Previously HELP (as well as VET FEE-HELP) activated when the provider closed or the course or part of the course closed AND the loan had been triggered (at the point of Census about 20 per cent of the way into the part of the course) AND the student incurred debt.

Where a course or part of a course has not started and the student has not incurred a debt to the Commonwealth for that course or part of a course it would be easier for the student to make arrangements to transfer to the provider of their choice. (If there is concern about private fees paid in advance of commencement being lost, the relevant provider regulation provides protection.) This also adds cost to the scheme and specifically to second providers which would be forced to take on these students. In addition, it may create incentives for providers to speculate with courses and when there are insufficient students simply trigger the tuition protection service. This transfers responsibility for the regular enrolment and transfer of students across providers to the TPS, and at cost to second providers.

TDA recommends that Subclause 66B(1) and 166 10 (1) of *Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019* is deleted. Subclause 66B(2) and 166 10 (2) covers circumstances for when a course has started or the course has started and a loan debt incurred.

### The opportunity should be taken to establish universal tuition protection

Tuition assurance operates when students pay fees (above certain amounts) in advance of the delivery of the education service. This also covers student loans under VET Student Loans and Higher Education Loans Program (HELP). Universities are exempt from tuition assurance for domestic students.

Tuition assurance is implemented for different circumstances across several Acts as shown in the table below.

	<b>VET (non-VSL) NVETR Act</b>	<b>VET Student Loans</b>	<b>Higher Education (non-HELP) Higher Education Standards Act</b>	<b>HELP</b>
<b>Requirement</b>	Required to be part of a private Tuition Assurance Scheme where upfront fees greater than \$1500	Must have paid levy and premium to TPS	As part of higher education standards must demonstrate business continuity (interpreted by TEQSA as being part of a private TAS)	Must have paid levy and premium to TPS
<b>RTOs</b>	<b>Required</b>	Administrative Fee plus Risk based Premium		
<b>Non-university Higher Education Provider</b>			<b>Required</b>	Administrative Fee plus Risk based Premium

Non-TAFE RTOs and Non-university higher education providers (except TAFEs) are required by the VET Provider Standards and Higher Education Standards to be members of a private tuition assurance scheme. Due to the high claims on underwriters from VET FEE-HELP closures it is proving difficult to establish a tuition assurance scheme. This leaves these providers needing to establish complex and expensive guarantees in order to meet these conditions.

While not of impact to TAFEs it would be sensible for good public administration for RTOs receiving fees in advance or Non-university higher education providers for meeting financial continuity requirements under Higher Education standards to be covered by TPS.

TDA supports amendments (to VET and Higher Education Standards) to refer to membership of the TPS for meeting these requirements.

### **TAFEs are likely to have to take the greater load of VSL defaults**

It is likely TAFEs will be expected to take the bulk of the load for TPS under VSL because:

- VSL requires course continuation rather than loan recredits so there is an increased flow of students being forced to other providers;
- there are fewer approved VSL providers in the pool of providers to take on students; and
- the trigger of TPS when a course fails to start adds to the rate of TPS actions.

A proposed handling fee from the TPS to assist receiving providers is welcome, although it needs to be sufficient to meet the administrative and teaching costs incurred in handling the students. However, there are other follow-on costs. When a provider takes on a student from another provider it also takes on the record of prior training. Increased regulatory scrutiny and compliance requirements in meeting training package requirements per student means that TAFEs carries the risk of poor training practices of the original provider. There are still too many instances of poor provider practice. TAFEs risk being penalised by the regulator for the poor practice of the closing providers in being forced to take on their students.

There are several approaches to dealing with this issue:

- ASQA, as the regulatory body, should guarantee the records of the transferring students; and
- TAFEs should be given the right to reject students or force them to start the course afresh if there is evidence of poor training practices against the training package requirements.

The same penalties apply for HELP. Given there is less concordance between higher education courses there is a likelihood of TAFEs being forced to take on students whose courses do not align and give credit where it is not warranted.

TDA recommends an appeal mechanism outside the TPS for TAFEs to reject transferring students on reasonable grounds. This is particularly the case as:

- subclauses 66F(3) and 166 30 of the *Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019* imposes civil penalty and offence in not complying
- subclause 66B(3) and 166 32 of the *Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019* also stipulates that credit must be given and civil penalty and offence may apply for not complying.

TDA recommends that ASQA certify the statement of attainment for VSL units completed with the first provider.

### **TAFEs need representation on the TPS and improved transparency of TPS risk monitoring**

At present, TAFEs are not represented on the Tuition Protection Fund Advisory Board, yet TAFEs carry a larger proportion of the risk. Current members with education background, apart from the chair, are not experienced in tertiary education, especially vocational education and would not be alert to the inherent risks in the sector's schemes and volatility around closures.

In addition, while risk ratings are developed to guide premiums there is little transparency to the sector about risk trends with individual providers. While the TPS may liaise with the regulators greater insight would be gained from practitioners as they are experienced operatives in the sector. Their insights would mitigate TPS risks by early identification and early intervention. These operatives, if not part of the Advisory Board, could sign confidentiality agreements in order to access data from the scheme by which to give advice.

TDA recommends that a TAFE representative be appointed to the Tuition Protection Fund Advisory Board and practices put in place for experienced providers to give advice to the board.

### **VSL and HELP Loan Fees act as a tax on learning**

VSL and HELP imposes student loan fees of twenty and twenty-five per cent of the loan for students at TAFEs, private RTOs and NUHEPS, whereas university students are not charged the fee.

This provision was likely justified on the grounds of a sense of higher default rates at these providers but most likely the view that fewer graduates would reach the repayment thresholds by which to pay off the loan.

Recent changes to HELP and VSL repayments rules have repayment commencing when annual income is greater than \$45,881 for 2019-20, much lower than previous repayment thresholds. On this basis the loan fee is no longer justified and acts as a tax on learning.

TDA recommends that the Government remove the loan fees on VSL and FEE-HELP.

**The proposed review of the TPS should be instructed to look at alignment of provisions across the schemes.**

The Bills requires a review of the operation of tuition protection before 1 July 2021. In this review the Minister should be required as a minimum to review the alignment between the provisions of the student loan schemes to promote fairer treatment of students regardless of the provider they attend and to promote better alignment across the two sectors.

TDA recommends that the Review of operation of tuition protection also require review of the alignment between the loan schemes to increase alignment between the schemes and promote red-tape reduction.

**TAFE Directors Australia**

31 October 2019