



Education and Other Legislation Amendment Act (No. 1) 2017

No. 31, 2017

**An Act to amend the law relating to tertiary
education and research, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Education and Other Legislation Amendment Act (No. 1) 2017

No. 31, 2017

An Act to amend the law relating to tertiary education and research, and for related purposes

[Assented to 12 April 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Education and Other Legislation Amendment Act (No. 1) 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2017
2. Schedule 1	1 July 2017.	1 July 2017
3. Schedule 2	The day after this Act receives the Royal Assent.	13 April 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—VET Student Loans Ombudsman

Ombudsman Act 1976

1 Title

Omit “and a Private Health Insurance Ombudsman”, substitute “, a Private Health Insurance Ombudsman and a VET Student Loans Ombudsman”.

2 Subsection 3(1)

Insert:

VET loan assistance has the meaning given by subsection 20ZM(4).

VET student means:

- (a) a student enrolled in a course of study with a VET student loan scheme provider; or
- (b) a prospective student, or a former student, in relation to such a course.

VET student loan officer has the meaning given by subsection 20ZS(4).

VET student loan principal executive officer has the meaning given by subsection 20ZS(5).

VET student loan scheme provider means:

- (a) an approved course provider within the meaning of the *VET Student Loans Act 2016*, including a body that has been (but is no longer) such a provider; or
- (b) a VET provider within the meaning of the *Higher Education Support Act 2003*, including a body that has been (but is no longer) such a provider.

3 At the end of paragraph 4A(e)

Add:

; and (vi) the functions of the VET Student Loans Ombudsman referred to in section 20ZM.

4 After Part IID

Insert:

Part IIE—VET Student Loans Ombudsman

Division 1—Establishment and functions

20ZL Establishment of office of VET Student Loans Ombudsman

- (1) For the purposes of this Act, there is to be a VET Student Loans Ombudsman.
- (2) The office of VET Student Loans Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office because of an appointment under section 29.

20ZM Functions of VET Student Loans Ombudsman

- (1) The functions of the VET Student Loans Ombudsman are as follows:
 - (a) to conduct investigations, and make recommendations and other reports, under this Part in relation to the following:
 - (i) VET loan assistance;
 - (ii) compliance by VET student loan scheme providers with the *VET Student Loans Act 2016*, the *Higher Education Support Act 2003* and any legislative instruments under either of those Acts;
 - (b) to give VET student loan scheme providers advice and training about the best practice for the handling of complaints made to them by VET students in relation to VET loan assistance;
 - (c) to develop and promote, and to review from time to time, a code of practice relating to the following:
 - (i) the provision of services to VET students by VET student loan scheme providers in relation to VET loan assistance;

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- (ii) the handling of complaints made by VET students to VET student loan scheme providers in relation to VET loan assistance;
 - (d) to perform any other function conferred on the VET Student Loans Ombudsman by this Act or another Act, or a legislative instrument made under this Act or another Act.

Note: The VET Student Loans Ombudsman may conduct an investigation in relation to a complaint, or on his or her own initiative (see section 20ZO).

- (2) In developing or reviewing a code of practice for the purposes of paragraph (1)(c), the VET Student Loans Ombudsman may consult with the following:
 - (a) VET student loan scheme providers;
 - (b) vocational education and training industry groups;
 - (c) vocational education and training student bodies;
 - (d) Commonwealth, State and Territory agencies and other bodies with responsibilities in relation to vocational education and training, including the following:
 - (i) the Department responsible for the administration of the *VET Student Loans Act 2016*;
 - (ii) the National VET Regulator within the meaning of the *National Vocational Education and Training Regulator Act 2011*;
 - (iii) State and Territory bodies with responsibility for registering vocational education and training providers.
- (3) A code of practice developed for the purposes of paragraph (1)(c) is not a legislative instrument.
- (4) **VET loan assistance** means:
 - (a) a VET student loan within the meaning of the *VET Student Loans Act 2016*; or
 - (b) VET FEE-HELP assistance within the meaning of the *Higher Education Support Act 2003*.

Note: This Part does not prevent actions taken by a Department, the Secretary of a Department or a Minister in relation to the provision of VET loan assistance from being investigated by the Commonwealth Ombudsman under provisions of this Act other than this Part: see section 20ZZA.

20ZN Performance of functions

- (1) The VET Student Loans Ombudsman is not required to act in a formal manner in the performance of his or her functions, unless otherwise required to do so under this Act, or any other Act or legislative instrument.
- (2) In the performance of his or her functions, the VET Student Loans Ombudsman may, subject to this Act, and any other Act or legislative instrument:
 - (a) inform himself or herself on any matter in any way he or she thinks fit; and
 - (b) consult with anyone he or she thinks fit; and
 - (c) receive written or oral information or submissions.
- (3) The VET Student Loans Ombudsman has power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her functions.

Division 2—Investigations and complaints

20ZO Investigations

In performing his or her functions, the VET Student Loans Ombudsman may conduct an investigation:

- (a) in relation to a complaint made under section 20ZP; or
- (b) on his or her own initiative.

20ZP Complaints

A complaint may be made to the VET Student Loans Ombudsman against a VET student loan scheme provider:

- (a) by a VET student; or
- (b) on behalf of a VET student.

20ZQ Referral of complaints to other bodies

- (1) If, in the opinion of the VET Student Loans Ombudsman, a complaint raises a matter that could be dealt with more effectively or conveniently by another body, the VET Student Loans Ombudsman must refer the matter to that body.

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- (2) If the VET Student Loans Ombudsman refers the matter to the other body, the VET Student Loans Ombudsman must:
- (a) give notice to the complainant of the referral; and
 - (b) give the other body any information or documents that relate to the complaint and that are in the possession or under the control of the VET Student Loans Ombudsman.

20ZR Deciding not to investigate complaints

The VET Student Loans Ombudsman may decide not to investigate, or not to further investigate, a complaint with respect to an action by a VET student loan scheme provider if he or she is of the opinion that:

- (a) the complaint is frivolous or vexatious, or was not made in good faith; or
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (c) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances; or
- (d) the complainant has not yet raised the subject matter of the complaint with the VET student loan scheme provider; or
- (e) the action came to the complainant's knowledge more than 3 years before the complaint was made; or
- (f) the complainant has, or had, a right to cause the action to be reviewed by a court or by a tribunal constituted by or under an enactment but has not exercised that right.

Division 3—Other powers of the VET Student Loans Ombudsman

20ZS Application of Act to VET Student Loans Ombudsman

- (1) Each provision of this Act specified in Column 1 of this table applies in relation to the VET Student Loans Ombudsman in accordance with the table:

Schedule 1 VET Student Loans Ombudsman

Application of Act to VET Student Loans Ombudsman			
	Column 1	Column 2	Column 3
Item	This provision of this Act ...	applies in relation to the VET Student Loans Ombudsman as if any reference in that provision to ...	were a reference to ...
1	A provision covered by subsection (2) of this section	the Ombudsman, or the Commonwealth Ombudsman	the VET Student Loans Ombudsman.
2	A provision covered by subsection (2) of this section	a Department or a prescribed authority	a VET student loan scheme provider.
3	A provision covered by subsection (2) of this section	the principal officer of a Department or a prescribed authority	the VET student loan principal executive officer of a VET student loan scheme provider.
4	A provision covered by subsection (2) of this section	an officer of a Department or a prescribed authority	a VET student loan officer of a VET student loan scheme provider.
5	Subsection 7A(1) (preliminary inquiries)	paragraph 5(1)(b) (functions of Ombudsman)	paragraph 20ZO(b) (investigations).
6	Subsection 8A(1) (investigations by Commonwealth and State Ombudsmen)	a matter of administration	a function of the VET Student Loans Ombudsman.
7	subsection 11A(4) (powers of the Federal Court of Australia)	the Minister	the Minister administering this Act and the Minister administering the <i>VET Student Loans Act 2016</i> .
8	subsections 12(4) and (5) (complainant and Department etc. to be informed)	section 15 (reports by Ombudsman)	section 20ZV (reports to VET student loan scheme providers).

Application of Act to VET Student Loans Ombudsman			
	Column 1	Column 2	Column 3
Item	This provision of this Act ...	applies in relation to the VET Student Loans Ombudsman as if any reference in that provision to ...	were a reference to ...
9	subsection 35(6A) (officers to observe confidentiality)	paragraph 6(4D)(e) or 6(18)(d) (discretion not to investigate certain complaints)	paragraph 20ZQ(2)(b) (referral of complaints to other bodies).
10	paragraph 35AA(1)(a) (disclosure of information and documents to Integrity Commissioner)	paragraph 5(1)(b) (functions of Ombudsman)	paragraph 20ZO(b) (investigations).
11	subsections 35B(2) and 35C(2)(paragraph (a) of the definition of <i>listed disclosure method</i>) (disclosure of ACC and ACLEI information)	Division 2 of Part II (reports)	Division 4 of this Part (reporting by the VET Student Loans Ombudsman).
12	subsections 35B(2) and 35C(2) (paragraph (b) of the definitions of <i>listed disclosure method</i>) (disclosure of ACC and ACLEI information)	section 6 or 6A (discretion not to investigate certain complaints; transfer of complaints about ACC)	paragraph 20ZQ(2)(b) (referral of complaints to other bodies).

(2) This subsection covers the following provisions:

- (a) the definition of *authorized person* in subsection 3(1) (interpretation);
- (b) section 7 (complaints);
- (c) section 7A (preliminary inquiries);
- (d) section 8 (investigations), other than:
 - (i) paragraph (7A)(b); and
 - (ii) subsections (8) to (12);
- (e) section 8A (investigations by Commonwealth and State Ombudsmen), other than subsections (1A) to (1D);

- (f) section 9 (power to obtain information and documents), other than:
 - (i) paragraphs (1AA)(ab) and (ac); and
 - (ii) paragraph (4)(ab);
 - (g) section 11A (powers of Federal Court of Australia), other than subsections (1) and (5);
 - (h) section 12 (complainant and Department etc. to be informed);
 - (i) section 13 (power to examine witnesses);
 - (j) section 31 (staff), other than subsection (2);
 - (k) Part IV (miscellaneous), other than the following:
 - (i) subsections 34(1) to (2C) (delegation);
 - (ii) paragraph 35(1)(e) and (f) and subparagraph (3)(b)(ia) (officers to observe confidentiality);
 - (iii) subsection 35A(3) (disclosure of information by Ombudsman).
- (3) Section 14 (power to enter premises) applies in relation to the VET Student Loans Ombudsman as if paragraph 14(a) referred to:
- (a) a place that is occupied by a VET student loan scheme provider; or
 - (b) a place that is occupied by a VET student loan scheme officer of a VET student loan scheme provider predominantly for the purposes of:
 - (i) carrying out the officer's powers, duties and functions as an employee in the provider's service, or a member of the provider's staff; or
 - (ii) performing services for or on behalf of the provider.
- (4) A **VET student loan officer** of a VET student loan scheme provider is a person who:
- (a) is employed in the service of the provider; or
 - (b) is a member of the staff of the provider, whether or not the person is employed by the provider; or
 - (c) performs services for or on behalf of the provider.
- (5) The **VET student loan principal executive officer** of a VET student loan scheme provider is the person who has executive responsibility for the operation of the provider.

20ZT Duty to accord procedural fairness

The VET Student Loans Ombudsman must comply with the rules of procedural fairness when exercising a power under this Act.

Example 1: If the VET Student Loans Ombudsman sets out a critical opinion of a person in a report under section 20ZV (reports to VET student loan scheme providers), he or she must give that person an opportunity to appear and make submissions to him or her (see subsection 8(5)).

Example 2: The VET Student Loans Ombudsman must accord procedural fairness to a person if he or she sets out a critical opinion of the person:

- (a) in disclosing information, or making a statement, under subsection 35A(1) (disclosure of information by Ombudsman); or
- (b) in referring to an investigation in a report under section 20ZX (annual and other reports by the VET Student Loans Ombudsman).

Division 4—Reporting by the VET Student Loans Ombudsman**20ZU Disclosure of identifying information**

The VET Student Loans Ombudsman must not, in referring to an investigation in a report under section 20ZV or 20ZX, disclose the name of a complainant who is an individual, or any other matter that would enable such an individual to be identified, unless it is fair and reasonable in all the circumstances to do so.

20ZV Reports to VET student loan scheme providers

- (1) This section applies if:
 - (a) an investigation under this Act into action taken by a VET student loan scheme provider has been completed; and
 - (b) the VET Student Loans Ombudsman is of the opinion that the action taken:
 - (i) appears to have been contrary to law; or
 - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
 - (iii) was otherwise, in all the circumstances, wrong; and
 - (c) the VET Student Loans Ombudsman is of the opinion that:

- (i) some particular action could be, and should be, taken to rectify, mitigate or alter the effects of the action taken; or
 - (ii) a policy or practice on which the action taken was based should be altered; or
 - (iii) reasons should have been, but were not, given for the action taken; or
 - (iv) any other thing should be done in relation to the action taken.
- (2) The VET Student Loans Ombudsman must report accordingly to the VET student loan scheme provider.
- (3) The VET Student Loans Ombudsman:
 - (a) must include in the report his or her reasons for the opinions specified in the report; and
 - (b) may also include in the report any recommendations he or she thinks fit to make.
- (4) The VET Student Loans Ombudsman may ask the VET student loan scheme provider to give him or her, within a specified time, particulars of any action that the VET student loan scheme provider proposes to take with respect to the matters and recommendations included in the report.
- (5) The VET student loan scheme provider may give the VET Student Loans Ombudsman comments about the report.
- (6) The VET Student Loans Ombudsman must give the Secretary of the Department administered by the Minister administering the *VET Student Loans Act 2016* a copy of:
 - (a) the report; and
 - (b) any comments given under subsection (5).
- (7) The VET Student Loans Ombudsman may also give to that Minister a copy of:
 - (a) the report; and
 - (b) any comments given under subsection (5).

20ZW Minister to table reports about VET student loan scheme providers in Parliament

- (1) This section applies if:
 - (a) the VET Student Loans Ombudsman has given a report under section 20ZV to a VET student loan scheme provider (together with any comments by the provider under that section); and
 - (b) action that is, in the opinion of the VET Student Loans Ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in the report within a reasonable time after the report was given to the VET student loan scheme provider.
- (2) The VET Student Loans Ombudsman may:
 - (a) give a copy of the report and any comments to the Minister administering the *VET Student Loans Act 2016* (if not already given to that Minister under 20ZV(7)); and
 - (b) request that Minister to cause copies of the report and any comments to be laid before each House of the Parliament.
- (3) If the VET Student Loans Ombudsman makes a request under subsection (2), the Minister administering the *VET Student Loans Act 2016* must cause copies of the report and any comments to be laid before each House of the Parliament within 15 sitting days of that House after that Minister receives the request.

20ZX Annual and other reports by the VET Student Loans Ombudsman*Annual reports and other reports*

- (1) As soon as practicable after the end of each financial year, the VET Student Loans Ombudsman must give an annual report to the Minister administering this Act, for presentation to the Parliament, on the operations of the VET Student Loans Ombudsman during the financial year.
- (2) The VET Student Loans Ombudsman may, from time to time, give the Minister administering this Act, for presentation to the Parliament, a report:

- (a) on the operations of the VET Student Loans Ombudsman during a part of a year; or
 - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the VET Student Loans Ombudsman.
- (3) The VET Student Loans Ombudsman may also give a copy of a report under subsection (1) or (2) to the Secretary of the Department administered by the Minister administering the *VET Student Loans Act 2016*.
- (4) Subsections (1), (2) and (3) do not affect the powers and duties of the VET Student Loans Ombudsman under section 20ZV or 20ZW.

Tabling and inclusion in other reports

- (5) If the VET Student Loans Ombudsman gives a report to the Minister administering this Act under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (6) A report relating to the operations of the VET Student Loans Ombudsman during a period may be included in a report under:
- (a) section 19 of this Act; or
 - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;
- relating to the operations of the Ombudsman during that period.

Content of report

- (7) A report relating to the operations of the VET Student Loans Ombudsman during a period must:
- (a) set out the number of complaints received by the VET Student Loans Ombudsman under this Part during that period; and
 - (b) if the VET Student Loans Ombudsman has investigated any matters under paragraph 20ZO(a)—set out:
 - (i) the number of such investigations started during that period; and

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- (ii) the number of such investigations completed during that period; and
 - (c) if the VET Student Loans Ombudsman has investigated any matters under paragraph 20ZO(b)—set out:
 - (i) the number of such investigations started during that period; and
 - (ii) the number of such investigations completed during that period; and
 - (d) set out:
 - (i) the number of times the VET Student Loans Ombudsman has made a requirement of a person under section 9 during that period; and
 - (ii) the circumstances in which each of those requirements was made.
- (8) A report relating to the operations of the VET Student Loans Ombudsman during a period may include:
- (a) details of the circumstances and number of occasions during that period when the VET Student Loans Ombudsman decided, under section 20ZQ, to refer a matter to another body; and
 - (b) details of recommendations made during that period in reports under section 20ZV; and
 - (c) statistical information about actions taken during that period as a result of such recommendations; and
 - (d) details of action that the VET Student Loans Ombudsman took during the period to promote best practice in dealing with complaints; and
 - (e) details of the VET Student Loans Ombudsman’s observations during the period regarding:
 - (i) any trends in complaints; or
 - (ii) any broader issues that arise from investigations.

20ZY VET Student Loans Ombudsman may notify of misconduct

- (1) This section applies if the VET Student Loans Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that a VET student loan officer of a VET student loan scheme provider has engaged in misconduct.

- (2) If the VET Student Loans Ombudsman is of the opinion that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so, the VET Student Loans Ombudsman may bring the evidence to the notice of the VET student loan principal executive officer of the provider.

20ZZ Limitation on liability where information or documents provided in good faith or when required to do so

- (1) A person is neither liable to a proceeding, nor subject to a liability, under an enactment merely because the person, in good faith and in relation to the VET Student Loans Ombudsman's functions or powers:
- (a) gives information to the VET Student Loans Ombudsman (other than in accordance with a requirement under section 9); or
 - (b) gives a document or other record to the VET Student Loans Ombudsman (other than in accordance with a requirement under section 9).

Note: For information, documents or other records given in accordance with a requirement under section 9, see subsections 9(4) and (5).

- (2) To avoid doubt, subsection (1) does not prevent the person from being liable to a proceeding, or being subject to a liability, for conduct of the person that is revealed by the information, document or record given to the VET Student Loans Ombudsman.
- (3) This section does not limit section 37.

Division 5—Other provisions relating to the VET Student Loans Ombudsman

20ZZA Part does not limit application of other provisions

This Part does not, by implication, affect the operation of other provisions of this Act.

20ZZB Alternative constitutional basis

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to a VET student loan

scheme provider were expressly confined to a VET student loan scheme provider that is a corporation to which paragraph 51(xx) of the Constitution applies.

5 Section 20ZL

Renumber as section 21A.

6 After subsection 34(2C)

Insert:

- (3) The VET Student Loans Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under, or referred to, in the following provisions:
- (a) section 20ZV (reports to VET student loan scheme providers);
 - (b) section 20ZW (Minister to table reports about VET student loan scheme providers in Parliament);
 - (c) section 20ZX (annual and other reports by the VET Student Loans Ombudsman).

VET Student Loans Act 2016

7 Section 6

Insert:

member of an approved external dispute resolution scheme that is Part IIE of the *Ombudsman Act 1976* (which establishes the VET Student Loans Ombudsman): see section 42BA of this Act.

8 Section 6 (paragraph (b) of the definition of *officer of an approved external dispute resolution scheme operator*)

Repeal the paragraph, substitute:

- (b) if the VET Student Loans Ombudsman is an approved external dispute resolution scheme operator—the VET Student Loans Ombudsman or a member of the staff of the VET Student Loans Ombudsman (see Part IIE of the *Ombudsman Act 1976*); or

- (c) in any case—a person who performs services for or on behalf of an approved external dispute resolution operator.

9 At the end of paragraph 25(2)(h)

Add:

Note: If Part IIE of the *Ombudsman Act 1976* (VET Student Loans Ombudsman) is an external dispute resolution scheme, all approved course providers are taken to be members of the scheme (see section 42BA).

10 After section 42B

Insert:

42BA External dispute resolution scheme—VET Student Loans Ombudsman

If Part IIE of the *Ombudsman Act 1976* is specified as an external dispute resolution scheme under section 42A:

- (a) the scheme is taken to be operated by the VET Student Loans Ombudsman; and
- (b) all approved course providers are taken to be members of the scheme.

Schedule 2—Amendment of the Australian Research Council Act 2001

Australian Research Council Act 2001

1 At the end of subsection 48(2)

Add:

; (p) the financial year starting on 1 July 2019.

2 Paragraphs 49(q) to (s)

Repeal the paragraphs, substitute:

- (q) for the financial year starting on 1 July 2016—\$744,363,000;
and
 - (r) for the financial year starting on 1 July 2017—\$746,852,000;
and
 - (s) for the financial year starting on 1 July 2018—\$736,179,000;
and
 - (t) for the financial year starting on 1 July 2019—\$747,812,000.
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*[Minister's second reading speech made in—
House of Representatives on 16 February 2017
Senate on 23 March 2017]*

(30/17)
