

# Explanatory Statement

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## *VET Student Loans (Consequential Amendments and Transitional Provisions) Rule 2016*

### Summary

Under subitem 2(2) of Schedule 2 to the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016* (VET Student Loans Transitional Act), the Secretary of the Department of Education and Training can decide that providers of vocational education and training (VET) courses that are approved under Schedule 1A to the *Higher Education Support Act 2003* (the HESA) are suitable to operate under the new VET student loans program established by the *VET Student Loans Act 2016* (that is, to be approved course providers for the purposes of that Act) for a 6 month period from 1 January 2017 (transition period).

The *VET Student Loans (Consequential Amendments and Transitional Provisions) Rule 2016* (VET Student Loans Transitional Rule) sets out the requirements against which the Secretary assesses VET providers for the transition period.

### Background

The VET Student Loans Transitional Rule forms part of the Australian Government's reform of the student loan arrangements for VET courses, the full policy context and background for which is set out in the Explanatory Memorandum to the VET Student Loans Bill 2016. The purpose of the VET Student Loans Act is to effectively replace the VET FEE-HELP loan scheme from 1 January 2017 and introduce a vastly improved student loans program for VET courses.

In order for a student to be eligible for a VET student loan under the VET Student Loans Act, the VET course the student is or will be undertaking must be provided by a body that is approved by the Secretary under Part 4 of that Act. Such approved bodies are called "approved course providers".

Under subitem 2(1) of Schedule 2 to the VET Student Loans Transitional Act, certain providers of VET courses that are currently approved under Schedule 1A to the *Higher Education Support Act 2003* (the HESA) are taken to be approved course providers for the purposes of the VET Student Loans Act from 1 January 2017. These "listed course providers" include major Australian universities (Table A and Table B providers under the HESA), TAFEs established under relevant State and Territory laws, and training organisations owned by the Commonwealth, a State or a Territory.

Under subitem 2(2) of Schedule 2 to the VET Student Loans Transitional Act, other existing VET FEE-HELP providers are only taken to be approved course providers if the Secretary decides that they are suitable to be approved for the six month transition period from 1 January to 30 June 2017. Providers must apply to the Secretary for approval within a specified time, with such applications being assessed against prescribed suitability requirements and exclusionary circumstances.

To be approved for this transition period, the Secretary must be satisfied that the provider meets the suitability requirements, and is not excluded because of non-compliance, in accordance with the VET Student Loans Transitional Rule.

In order to be approved course providers after 30 June 2017, providers of VET courses (other than the listed course providers) will need to apply for approval and be approved under Part 4 of the VET Student Loans Act.

## Consultation

In April 2016, the then Minister for Vocational Education and Skills, Senator the Hon Scott Ryan, hosted a series of face-to-face consultations in Perth, Adelaide, Melbourne, Sydney, Brisbane and Cairns, to inform the content of a VET FEE-HELP discussion paper. 176 VET FEE-HELP providers and peak bodies attended the consultations.

On 29 April 2016, the Government released the '*Redesigning VET FEE-HELP discussion paper*' to inform the final design of the new program. The discussion paper included the consideration of whether a reapplication process for all existing providers should apply and how transition measures for students should be managed.

## Regulatory Impact Statement

The VET Student Loans Transitional Rule gives effect to policies and proposals examined in the Regulatory Impact Statement for the VET Student Loans Bill 2016, entitled *VET FEE-HELP Redesign*.

## Authority

The VET Student Loans Transitional Rule is made under items 3 and 4 of Schedule 2 to the VET Student Loans Transitional Act.

## Explanation of Provisions

### Part 1—Preliminary

**Sections 1, 2 and 3** of the VET Student Loans Transitional Rule are formal provisions setting out the name, date of commencement, and authority for making of the Rule.

**Section 4** sets out the definitions of terms used in the Rule. Subsection (1) sets out specific defined terms, including the definition of *compliance period* for a VET provider, being the period beginning on 5 October 2016 and ending before the day on which the Secretary decides whether or not the provider is suitable to be an approved course provider for the transition period. 5 October 2016 is the date that the Government announced the details of the new VET student loans program, and various compliance actions taken against the provider since that date could exclude the provider from being approved (see section 6).

Subsection 4(2) makes it clear that terms used both in the VET Student Loans Transitional Rule and in the VET Student Loans Act have the same meaning in the Rule as they do in that Act. This supplements the operation of paragraph 13(1)(b) of the *Legislation Act 2003*.

## Part 2—Suitability of bodies to be approved course providers

Under subparagraph 2(2)(a)(ii) of Schedule 2 to the VET Student Loans Transitional Act, the Secretary can decide that VET providers are suitable to be approved course providers for the transition period. Subitem 2(4) of Schedule 2 provides that the Secretary may decide that a VET provider is suitable if the Secretary is satisfied that the provider:

- (a) meets the suitability requirements determined by the Minister under item 3; and
- (b) is not excluded because of the circumstances determined by the Minister under item 4.

Part 2 of the VET Student Loans Transitional Rule sets out the suitability requirements for item 3 of Schedule 2 to the Act (**section 5**), and the exclusionary circumstances for item 4 of Schedule 2 to the Act (**section 6**).

**Subsection 5(2)** sets out four suitability requirements for VET providers:

- (a) the provider has sufficient experience in providing courses that will be approved courses under the VET Student Loans Act (i.e. the courses specified in the *VET Student Loans (Courses and Loan Caps) Determination 2016*);
- (b) the provider has an adequate student pass rate for VET units of study that form part of those courses;
- (c) the provider has adequate links with industry in relation to those courses; and
- (d) the provider has satisfactory management and governance.

Subsections 5(3), (4) and (5) set out matters that the Secretary can consider when assessing a provider against the requirements in paragraphs (2)(a), (b) and (d) respectively.

Subsection (3) provides that the Secretary may be (although need not be) satisfied that a provider has sufficient experience in providing approved courses if it both provided and delivered those courses to at least one VET FEE-HELP student in 2016. This relates to each approved course that the provider will deliver in 2017 – that is to say, for each approved course that the provider will deliver in 2017, it must have provided and delivered that course to at least one student who accessed VET FEE-HELP assistance in 2016.

Subsection (4) provides that the Secretary may be (although need not be) satisfied that a provider has an adequate student pass rate for VET units of study that form part of approved courses if at least half the students who accessed VET FEE-HELP assistance who completed each unit with a census date in 2015 passed the unit.

Subsection (5) provides that, in assessing whether a provider has satisfactory management and governance, the Secretary may have regard to both the provider's history of compliance with relevant education, trade practices and consumer protection, and criminal laws.

More information on how the Department will assess VET providers against the suitability requirements in the VET Student Loans Transitional Rule can be found on the Department's web site, at: [www.education.gov.au/vet-student-loans](http://www.education.gov.au/vet-student-loans).

The majority of circumstances set out in **section 6** of the Rule relate to actions taken against a provider by a relevant regulator on or after 5 October 2016, in order to enforce compliance with a law relating to education, trade practices or consumer protection.

Subsection 6(2) excludes a VET provider if the Minister takes compliance action under Schedule 1A to the HESA against the provider, or is required by operation of law to cancel the provider's approval under Schedule 1A to the HESA.

Subsection 6(3) excludes a VET provider if the Australian Skills Quality Authority (ASQA, the National VET Regulator under the *National Vocational Education and Training Regulator Act 2011* (NVETR Act)) takes significant compliance action under the NVETR Act.

Subsection 6(4) excludes a VET provider if the VET Regulator of a State – the Victorian Registration and Quality Authority or the Western Australian Training Accreditation Council – takes compliance action under its State law that is analogous to the actions set out in subsection (3).

Subsection 6(5) excludes a VET provider if the provider is given an infringement notice (however described – e.g. “expiation notice”, “penalty notice”) under a law of the Commonwealth or a State or Territory relating to education, trade practices or consumer protection.

Subsection 6(6) excludes a VET provider if there are current legal proceedings against the provider, or any of its officer or agents, for any breach or contravention of a Commonwealth or a State or Territory law relating to education, trade practices or consumer protection, or the *Corporations Act 2001*, or the *Crimes Act 1914* or the *Criminal Code Act 1995*.

Subsection 6(7) excludes a VET provider not due to compliance risk, but due to financial risk. It excludes VET providers that are under external administration before the day the Secretary makes a decision on whether or not they are suitable. This will mitigate the risk of VET student loans being paid to providers in circumstances where the money may not benefit students (e.g. because it is not used to provide education but is immediately directed to creditors of the provider), and which might otherwise not be recoverable by the Commonwealth.

## Statement of Compatibility with Human Rights

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*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***VET Student Loans (Consequential Amendments and Transitional Provisions) Rule 2016***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

Under subitem 2(2) of Schedule 2 to the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016* (VET Student Loans Transitional Act), the Secretary of the Department of Education and Training can decide that providers of vocational education and training (VET) courses that are approved under Schedule 1A to the *Higher Education Support Act 2003* are suitable to operate under the new VET student loans program established by the *VET Student Loans Act 2016* (that is, to be approved course providers for the purposes of that Act) for a 6 month period from 1 January 2017 (transition period).

The *VET Student Loans (Consequential Amendments and Transitional Provisions) Rule 2016* (VET Student Loans Transitional Rule) sets out the requirements against which the Secretary assesses VET providers for the transition period.

The VET Student Loans Transitional Act and Rule form part of the Australian Government's reform of the student loan arrangements for vocational education and training (VET) courses, the full policy context and background for which is set out in the Explanatory Memorandum to the VET Student Loans Bill 2016. The purpose of the VET Student Loans Act is to effectively replace the VET FEE-HELP loan scheme from 1 January 2017 and introduce a vastly improved student loans program for VET courses.

### **Human Rights Implications**

The VET Student Loans Transitional Rule in isolation does not engage any of the applicable rights or freedoms. It contains mechanical provisions necessary to give effect to the Government's reforms to the VET student loan arrangements, in particular, the transition of existing VET providers to the new VET student loans program under the VET Student Loans Transitional Act.

The principal reforms are set out in the VET Student Loans Act, and the human rights implications associated with establishing a new VET student loans program with higher standards for VET course providers, are dealt with in the comprehensive Statement of Compatibility with Human Rights in relation to the reforms which is attached to the Explanatory Memorandum for the *VET Student Loans Bill 2016*.

In particular, in relation to the **right to work**, the Explanatory Memorandum states (emphasis added):

*This right is limited in that the Bill introduces some measures which may make it more difficult for some prospective students to access the VET student loan program. Such measures include requiring students to be genuine students, strengthening the academic suitability provisions and lifting the bar for providers to be approved in the new program. However, these measures represent a reasonable and proportionate limitation on the right, as they protect vulnerable people from being enrolled in VET courses and being imposed with a FEE-HELP debt where they are not in a position to undertake and complete the VET course.*

And in relation to the **right to education**, the Explanatory Memorandum states (emphasis added):

*Article 13 [of the International Covenant on Economic, Social and Cultural Rights] provides that secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means. The intent of the Bill is to make technical and vocational secondary education more accessible to students who may not otherwise have had access and to undertake systemic improvements to the quality of the training by ensuring greater regulatory oversight and accountability of approved course providers within the marketplace. These measures engage and promote the right to education as they are designed to improve affordability of vocational education and training, maximise educational outcomes and prioritise student loans to accord with skills need and ensure overall fiscal sustainability for the Commonwealth to effectively regulate the sector.*

...

*[M]ore robust registration and performance requirements will be introduced in respect of providers seeking approval under the VET student loans program. This is intended to enhance the integrity of the program by ensuring that providers are properly scrutinised to ensure they have experience in providing VET, satisfy financial requirements, meet governance and management standards and that students obtain value and quality outcomes for their investment in education and training. The Bill will also further enhance the Commonwealth's power to redress unscrupulous behaviours on the part of course providers by expanding regulatory powers and making it easier to freeze payments to providers who would do the wrong thing. These measures are intended to better protect students whilst they are undertaking educational opportunities.*

## **Conclusion**

This VET Student Loans Transitional Rule is compatible with human rights because it is part of the mechanisms in the VET Student Loans Act that promote the human rights to work and education.

**Simon Birmingham**  
**Minister for Education and Training**