



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

I, Simon Birmingham, Minister for Education and Training, make the following legislative instrument.

Dated 15 December 2016

Simon Birmingham
Minister for Education and Training

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Part 1—Preliminary

1 Name

This is the *VET Student Loans (Consequential Amendments and Transitional Provisions) Rule 2016*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016*.

4 Interpretation

- (1) In this instrument:

compliance period for a body means the period beginning on 5 October 2016 and ending immediately before the day on which the Secretary makes a decision under subparagraph 2(2)(a)(ii) of Schedule 2 to the Act in relation to the body.

the Act means the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016*.

the HESA means the *Higher Education Support Act 2003*.

the NVETR Act means the *National Vocational Education and Training Regulator Act 2011*.

VET FEE-HELP student, in relation to a VET unit of study or a course, means a student who has been loaned VET FEE-HELP assistance for that unit or a unit of that course.

VET unit of study has the same meaning as in the HESA.

- (2) A term used in this instrument that is used in the *VET Student Loans Act 2016* has the same meaning in this instrument as it has in that Act.

Part 2—Suitability of bodies to be approved course providers

5 Suitability requirements

- (1) For item 3 of Schedule 2 to the Act, this section sets out the requirements for the purposes of ensuring that course providers to whom loan amounts are paid during the provider transition period are suitable.
- (2) The requirements are that:
 - (a) the body has sufficient experience in providing courses that will be approved courses on 1 January 2017; and
 - (b) the body has an adequate student pass rate for VET units of study that form part of those courses; and
 - (c) the body has adequate links with industry in relation to those courses; and
 - (d) the body has satisfactory management and governance.
- (3) For paragraph (2)(a), the Secretary may be satisfied that the body has sufficient experience in providing courses that will be approved courses if it provided and delivered each such course for which it is approved, or the course superseded by it, to at least one VET FEE-HELP student in 2016.
- (4) For paragraph (2)(b), the Secretary may be satisfied that the body has an adequate student pass rate for VET units of study if at least half of the VET FEE-HELP students who completed each unit with a census date in 2015 passed the unit.
- (5) For paragraph (2)(d), the Secretary may have regard to the body's history of compliance with the laws mentioned in paragraphs 6(6)(a) to (d).

6 Circumstances in which body is excluded

- (1) For item 4 of Schedule 2 to the Act, this section sets out the circumstances in which a body is excluded from being an approved course provider during the provider transition period.
- (2) A body is excluded from being an approved course provider if any of the following occurs during the compliance period for the body:
 - (a) a compliance notice is given to the body, and not revoked, under clause 26A of Schedule 1A to the HESA;
 - (b) a provision of Subdivision 5-AA or Subdivision 5-D of Division 5 of Part 1 of Schedule 1A to the HESA applies to require the Minister to revoke the body's approval as a VET provider;
 - (c) the Minister or the Secretary makes a decision to suspend the body's approval as a VET provider under clause 36 of Schedule 1A to the HESA (irrespective of when that decision comes into effect);
 - (d) the Minister makes a decision to revoke the body's approval as a VET provider under Subdivision 5-B of Division 5 of Part 1 of Schedule 1A to the HESA (irrespective of when that decision comes into effect).

Note: If a body's approval as a VET provider ceases before 1 January 2017, it cannot be taken to be approved as an approved course provider: see paragraph 2(2)(b) of Schedule 2 to the Act. Clause 29 of Schedule 1A to the HESA sets out when a body's approval as a VET provider ceases.

- (3) A body is excluded from being an approved course provider if the National VET Regulator does any of the following during the compliance period for the body:
- (a) makes a decision to do any of the things mentioned in paragraphs 36(2)(d), (e) and (f) of the NVETR Act in relation to the body (irrespective of when that decision comes into effect);
 - (b) makes a decision to cancel a VET qualification or VET statement of attainment issued by the body under subsection 56(1) of the NVETR Act (irrespective of when that decision comes into effect);
 - (c) gives the body a direction under paragraph 56(2)(a) of the NVETR Act;
 - (d) accepts an undertaking from the body under subsection 146(1) of the NVETR Act.
- (4) A body is excluded from being an approved course provider if, during the compliance period for the body, a VET Regulator other than the National VET Regulator takes any action under a State law that it administers that is substantively the same as an action mentioned in subsection (3).
- (5) A body is excluded from being an approved course provider if, during the compliance period for the body, the body is given an infringement notice (however described) under:
- (a) a law of the Commonwealth or a State or Territory relating to the regulation or funding of education (including, without limitation, the *Education Services for Overseas Student Act 2000*, the HESA, the NVETR Act, and the *Tertiary Education and Quality Standards Agency Act 2011*); or
 - (b) a law of the Commonwealth or a State or Territory relating to trade practices or consumer protection; and
- the notice has not been withdrawn by the end of that period. This subsection applies even if the body pays any amount payable under the infringement notice.
- (6) A body is excluded from being an approved course provider if, at any time during the compliance period for the body, legal proceedings are on foot against the body or any of its officers or agents for any breach or contravention of:
- (a) a law of the Commonwealth or a State or Territory relating to the regulation or funding of education (including, without limitation, the *Australian Education Act 2013*, the *Education Services for Overseas Students Act 2000*, the HESA, the NVETR Act, and the *Tertiary Education and Quality Standards Agency Act 2011*); or
 - (b) a law of the Commonwealth or a State or Territory relating to trade practices or consumer protection; or
 - (c) the *Corporations Act 2001*; or
 - (d) the *Crimes Act 1914* or the *Criminal Code Act 1995*.
- (7) A body is excluded from being an approved course provider if, at the end of the compliance period for the body, the body is under external administration.
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