

Explanatory Statement

VET Student Loans (External Dispute Resolution Scheme) Specification 2017

Summary

The *VET Student Loans (External Dispute Resolution Scheme) Specification 2017* specifies the scheme that provides for investigation and resolution of disputes in relation to loans and/or assistance provided under and compliance with the *VET Student Loans Act 2016* (**VSL Act**) and the *Higher Education Support Act 2003* (**HESA**).

Background

The purpose of the VSL Act is to replace the VET FEE-HELP assistance scheme under the HESA from 1 January 2017. Among other things, the VSL Act enables the Minister to approve by legislative instrument an external dispute resolution scheme providing for the investigation and resolution of disputes relating to loans and/or assistance provided under and compliance with the VSL Act and the HESA.

In her second reading speech introducing the VET Student Loans Bill, the Assistant Minister for Vocational Education and Training stated that the Government would establish a VET Student Loans Ombudsman. The background and policy reasons for the VET Student Loans Ombudsman are set out in the Explanatory Memorandum to the Education and Other Legislation Amendment Bill (No. 1) 2017. In summary, the *Education and Other Legislation Amendment Act (No. 1) 2017*, establishes the VET Student Loans Ombudsman and extends the jurisdiction of the Commonwealth Ombudsman to matters related to the VSL Act and the HESA.

This instrument specifies the VET Student Loans Ombudsman as the external dispute resolution scheme pursuant to section 42A of the VSL Act and specifies the Commonwealth Ombudsman as the operator of that scheme.

Consultation

The Regulatory Impact Statement (**RIS**) for the VET Student Loans Bill 2016, entitled *VET FEE-HELP Redesign*, provides that extensive consultations were undertaken to engage stakeholders through the development of the VET FEE-HELP redesign. In particular, the RIS notes there was strong support for a student support mechanism, either through an ombudsman, the Australian Skills Quality Authority or department complaints handling function.

Regulatory Impact Statement

The external dispute resolution scheme specification gives effect to policies and proposals examined in the RIS for the VET Student Loans Bill 2016.

Authority

The *VET Student Loans (External Dispute Resolution Scheme) Specification 2017* is made under section 42A of the VSL Act.

Explanation of Provisions

Section 1 sets out that the name of the instrument is the *VET Student loans (External Dispute Resolution Scheme) Specification 2017*.

Section 2 provides that the instrument commences on 1 July 2017.

Section 3 sets out that the authority for the instrument comes from the *VET Student Loans Act 2016*.

Section 4 specifies the VET Student Loans Ombudsman as the scheme for investigation and resolution of disputes relating to:

- VET Student Loans as provided under the VSL Act
- compliance by approved course providers with the VSL Act
- VET FEE-HELP assistance under the HESA
- compliance by VET providers under the HESA.

Section 5 specifies that the person who holds the office of the Commonwealth Ombudsman is the operator of the VET Student loans Ombudsman scheme.

Statement of Compatibility with Human Rights

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

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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

The *VET Student Loans (External Dispute Resolution Scheme) Specification 2017* specifies the VET Student Loans Ombudsman as the scheme that provides for investigation and resolution of disputes in relation to:

- VET Student Loans under the *VET Student Loans Act 2016 (VSL Act)*,
- compliance by approved course providers with the VSL Act
- VET FEE-HELP assistance *Higher Education Support Act 2003 (HESA)*
- compliance by VET providers under the HESA.

The instrument also specifies the Commonwealth Ombudsman as the operator of the scheme.

The full policy context and background for the VET Student Loans Ombudsman is set out in the *Education and Other Legislation Amendment Act (No. 1) 2017 (EOLA Act)*.

Human Rights Implications

The instrument engages the right to a fair and public hearing as set out in article 14 of the *International Covenant on Civil and Political Rights (ICCPR)*. Article 14 ensures ‘*everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*’ and subject to exceptions requires judgments to be publicly available.

By establishing an independent external mechanism to hear disputes relating to the VSL Act and the HESA, this instrument promotes the rights set out in article 14.

The human rights implications of the establishment of the VET Student Loans Ombudsman are discussed in the explanatory statement to the EOLA Act. In summary, the explanatory statement to the EOLA Act states that the following rights are engaged in the establishment of the VET Student Loans Ombudsman and notes that any limitations on these rights are reasonable and proportionate:

- right to privacy – article 17 ICCPR
- right to a fair and public hearing – article 14(1) ICCPR
- right to be presumed innocent – article 14(2) ICCPR.

Conclusion

This instrument is compatible with human rights as it promotes the right to a fair and public hearing set out in article 14 of the ICCPR by establishing a mechanism for dealing with disputes about loans or assistance provided under or compliance with the VSL Act and the HESA.

Simon Birmingham
Minister for Education and Training