Explanatory Statement

***VET Student Loans Amendment Rules (No. 1) 2017***

Issued by the authority of the Minister for Education and Training

## Background

## The *VET Student Loans Amendment Rules (No. 1) 2017* (Amendment Rules) amend the *VET Student Loans Rules 2016* (Rules). The Amendment Rules predominantly amend Part 6 of the Rules to enhance the regulation and administration of tuition assurance arrangements required for the VET Student Loans program. These amendments, including minor administrative enhancements, build on the knowledge gained since the VET Student Loans program commenced on 1 January 2017.

## Authority

The Commonwealth Minister for Education and Training (the Minister) makes this instrument under section 116 of the *VET Student Loans Act 2016*.

**Purpose and operation**

## The Rules were introduced in late 2016 as part of the Australian Government’s reform of the student loan arrangements for vocational education and training (VET) courses. The *VET Student Loans Act 2016* (the Act) and the Rules set out the legislative requirements for the VET Student Loans program.

The main purpose of the Amendment Rules is to amend Part 6 of the Rules which refer to tuition assurance arrangements. Tuition assurance ensures students are protected in the event an approved course provider ceases to provide a course. It is a requirement under the Act that an approved course provider must be party to an approved tuition assurance arrangement.

The Amendment Rules strengthen the regulation of tuition assurance operators by enabling the Secretary to impose conditions on the approval of operators, introducing time limits to apply to operators’ approval and allowing the Secretary to request operators to produce information and documents. The Amendment Rules improve the administration of tuition assurance arrangements by aligning the recognition of documentary evidence of students’ past learning with those specified by the National VET Regulator and imposing additional record keeping requirements on operators.

The amendments to the Rules also extend the transitional period for tuition assurance arrangements, which applied under the VET FEE-HELP scheme, to be approved under the VET Student Loans program for a further six months to 31 December 2017.

The Amendment Rules make other minor administrative updates to the Rules.

## Consultation

The Department of Education and Training (the department) consulted externally with the *VET Student Loans Implementation Advisory Group* (the Group). The Group consists of key stakeholders, including tuition assurance operators and providers, and has met monthly since November 2016.

The Group was provided a copy of the draft Amendment Rules to allow for external written feedback and consultation. The department considered the feedback provided by the Group.

The Rules have been a standing agenda item for the Group, where the department has continually sought feedback on any unintended consequences of the Rules.

## Regulatory Impact Statement

The Office of Best Practice Regulation assessed that a Regulation Impact Statement was not required for the Amendment Rules due to the minor impact of the regulatory changes. The Rules give effect to policies and proposals examined in the Regulation Impact Statement for the Act, entitled ‘*VET FEE-HELP Redesign’.*

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights is set out in Attachment B. It has been prepared in accordance with section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

## Explanation of Provisions

***VET Student Loans Amendment Rules (No. 1) 2017***

**Preliminary**

**Section 1 – Name**

This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 1) 2017.*

**Section 2 – Commencement**

The table in this section specifies that the Amendment Rules commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Amendment Rules are made under the authority of the *VET Student Loans Act 2016* (the Act).

**Section 4 – Schedule**

This section provides that the Rules are amended as set out in the Schedule to this instrument.

**Schedule 1—Amendments to the VET Student Loans Rules 2016**

**Item 1 – Section 4 (Definition of financially viable)**

This item amends the definition of ‘financially viable’ by correcting a minor cross-referencing error (from subsection 23(4) to subsection 23(3)).

**Item 2 – Section 4 (Definitions)**

The item inserts into section 4 a new defined term ‘Student Identifiers Registrar’. This term is used in the amendments to paragraph 53(2)(e) (made under item 5) and paragraph 54(1)(b) (made under item 6). ‘Student Identifiers Registrar’ is defined as having the same meaning as in the *Student Identifiers Act 2014*.

**Item 3 – After subsection 41(4) (Operator must be approved)**

This item inserts a new subsection 41(4A) and provides that approval as a tuition assurance operator has effect for the period specified in the approval. Previously the approval of an operator was for an indefinite period, with the Secretary only having the power to revoke the approval under subsection 41(5). Introducing a period of time for which an operator is approved provides the Secretary with greater flexibility to intermittently review the operator’s capacity and the tuition assurance arrangements.

**Item 4 – After section 41(Operator must be approved)**

This item inserts a new section 41A to enable the Secretary to impose conditions on, or vary a condition of, the approval of a person as the operator of a tuition assurance arrangement. The Secretary may impose or vary a condition at any time.

Section 41A does not specify or limit the type of conditions which the Secretary may impose. Generally-speaking, a condition will be imposed to maintain the integrity and sustainability of tuition assurance arrangements under the VET Student Loans program. For example, a condition may be imposed to provide for KPIs to be met by operators for tuition assurance activations to better measure the operator’s capacity to meet their obligations.

Subsection 41A(2) requires the Secretary to give the operator written notice of and reasons for a decision to impose or vary a condition of approval.

**Item 5 - Paragraph 53(2)(e) (Notice and information when course ceases)**

**Item 6 - Paragraph 54(1)(b) (Replacement courses)**

Items 5 and 6 both make amendments to ensure the Rules align with the National VET Regulator requirements as set out in the *Standards for Registered Training Organisations (RTOs) 2015* (RTO Standards)*.*

Subsection 53(2) provides that tuition assurance arrangements must require providers to give operators certain information about covered students within three business days after the provider ceases to provide the course. Item 5 repeals paragraph 53(2)(e) and substitutes a new paragraph 53(2)(e). The substituted paragraph 53(2)(e) provides that the information provided to the operator must include, for the parts of the course which the student has completed:

* a copy of a statement of attainment or other Australian Qualifications Framework certification documentation issued by the course provider or an authorised issuing organisation in accordance with the Australian Qualifications Framework; or
* a copy of an authenticated VET transcript issued by the Student Identifiers Registrar.

The amendment to paragraph 53(2)(e) is consistent with the National VET Regulator requirements, as set out in section 3.5 of the RTO Standards. The RTO Standards require RTOs to accept and provide credit to learners for units of competency and/or modules (unless licensing or regulatory requirements prevent this) where these are evidenced by:

* Australian Qualifications Framework certification documentation issued by any other RTO or Australian Qualifications Framework authorised issuing organisation; or
* authenticated VET transcripts issued by the Student Identifiers Registrar.

Item 6 makes similar amendments to paragraph 54(1)(b) for the same reasons.

**Item 7 – Subsection 58(3) (Transitional period for tuition assurance arrangements)**

This item amends subsection 58(3) to extend the transitional period for tuition assurance arrangements operating for the purposes of Schedule 1A to the *Higher Education Support Act 2003* for a further six months. That is, those arrangements will be taken to meet the approved tuition assurance arrangement requirements in Division 1 of Part 6 of the Rules until
31 December 2017.

**Item 8 – Subsection 62(1), table item 6, column 2 (Information or documents to be given by operator to Secretary)**

**Item 9 – Paragraph 62(2)(a) (Information or documents to be given by operator to Secretary)**

Section 62 sets out a list of the information and documents tuition assurance scheme operators are required to give the Secretary, and the time by when they must be provided. Items 8 and 9 amends the time by when operators are required to provide to the Secretary a quarterly statement about the tuition assurance the operator provides. It brings the time forward to “before the beginning of the quarter,” rather than “within 30 days after the end of the quarter.”

Requiring the statement to be provided in advance of, rather than after, the quarter will allow the Commonwealth to be better informed about and have increased oversight over the tuition assurance arrangements in place for providers and covered students.

**Item 10 – After section 62 (Information or documents to be given by operator to Secretary)**

This item inserts a new section 62A. Under subsection 62A(1), the Secretary may, by notice in writing, require a tuition assurance scheme operator to give the Secretary information or documents that relate to:

* the provision and operation of a tuition assurance arrangement by the operator ( which will include in relation to a specific course provider(s) or to providers more generally);
* the operator’s role in facilitating tuition assurance for the students of an approved course provider; or
* the operator’s compliance with this Act.

This amendment facilitates access by the Secretary to information or documents in the operators’ possession or control, that relate to the provision and operation of services by the operators and their compliance with the Act. This clause bolsters the transparency and accountability of the operators’ service provision and compliance with the Act.

Subsection 62A(2) provides that the information or documents must be provided:

* in the form specified in the notice, which may be a statutory declaration; and
* in accordance with other requirements specified in the notice.

**Item 11 – Section 68 (Contact with students when course ceases)**

**Item 12 – After paragraph 68(a)**

**Item 13 – At the end of section 68**

Items 11, 12 and 13 amend section 68 of the Rules to insert a new paragraph 68(1)(aa) and a new subsection 68(2), which deal with the operators obligations to hold a tuition assurance meeting with covered students, where the provider fails to do so.

Under the new paragraph 68(1)(aa), if, after a course ceases, the course provider fails to hold the meeting with students (provider’s tuition assurance meeting) (as required under paragraph 91(b) of the Rules), the operator is required to arrange and hold the meeting with covered students as soon as practicable. This ensures students remain informed if the provider fails to hold the meeting.

The new subsection 68(2)) provides more details about the operator’s obligations for the meeting with the covered students. Where it is not practicable for the operator to hold this meeting either at or near the place that the provider was required to hold the meeting (i.e. the location where the course was primarily delivered), the meeting may be held by a means of electronic communication that enables all participants to communicate with each other. This may include, for example, by telephone, online or through video conference. The flexibility in allowing the operator to hold the meeting through other means of communication is to reduce practical difficulties that might arise in trying to arrange a physical meeting with the students.

**Item 14 – Paragraph 69(1)(h) (Requirements of replacement tuition offer)**

This amendment removes the previous requirement for replacement tuition offers to state that, if the student chooses to enrol in a course other than the replacement course, there is no obligation on the provider of the other course to offer course credits for the parts of the original course successfully completed by the student. This statement was not strictly correct, as RTOs are required to comply with the National VET Regulator requirements, as set out in the RTO Standards, in relation to credit for tuition completed.

Paragraph 69(1)(h) will now only require an explanation that if the student chooses to enrol in a course other than the replacement course, there is no obligation on the provider of the other course to offer a replacement component without charge to the student.

**Item 15 – Subsection 69(3) (Requirements of replacement tuition offer)**

This item amends subsection 69(3) to include a requirement for operators to also keep records of responses by the students to replacement tuition offers. These records are required to be kept for seven years. This amendment will ensure that operators have more complete records in relation to replacement tuition offers.

**Item 16 – At the end of section 70 (Requirements if no response from student to replacement tuition offer)**

This item inserts a new subsection 70(4) which requires the tuition assurance scheme operator to keep records of its attempts to contact the student. This requirement applies to contact both by telephone and in writing, whether by emails, letters and text messages. The records must include the date, time and outcome of the contact. The records must be kept for at least 7 years. This amendment will ensure that operators have more complete records of their attempts to contact students where they do not receive a response from a student to replacement tuition offer within 28 days after sending the offer to the student.

**Item 17 – Subsection 116(1) (Annual forecasts)**

**Item 18 – At the end of subsection 116 (Annual forecasts)**

These items amend section 116 by removing the specified date by which the provider must provide the annual forecast information and instead enabling the Secretary to, by notice in writing, specify the date by which the annual forecast information is due. These amendments give the Secretary flexibility to ensure the time by when annual forecasts must be provided is better aligned with the Department’s needs and accommodates providers where required.

Statement of Compatibility with Human Rights

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

***VET Student Loans Amendment Rules (No. 1) 2017***

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 Rules 2016* (the Rules) are made by the Minister under section 116 of the *VET Student Loans Act 2016* (the Act). The Rules were introduced last year as part of the Australian Government’s reform of the student loan arrangements for vocational education and training (VET) courses. The Act and the Rules set out the legislative requirements for the VET Student Loans program.

## The *VET Student Loans Amendment Rules (No. 1) 2017* (Amendment Rules) amend the Rules. The Amendment Rules predominantly amend Part 6 of the Rules to enhance the regulation and administration of tuition assurance arrangements required for the VET Student Loans program.

The Amendment Rules strengthen the regulation of tuition assurance operators by enabling the Secretary to impose conditions on the approval of operators, introducing time limits to apply to operators’ approval and allowing the Secretary to request operators to produce information and documents. The Amendment Rules improve the administration of tuition assurance arrangements by aligning the recognition of documentary evidence of students’ past learning with those specified by the National VET Regulator and by imposing additional record keeping requirements on operators.

The amendments to the Rules also extend the transitional period for tuition assurance arrangements, which applied under the VET FEE-HELP scheme, to be approved under the VET Student Loans program for a further six months to 31 December 2017. The Amendment Rules make other minor administrative updates to other sections of the Rules.

## Human Rights Implications

The Amendment Rules in isolation do not engage the applicable rights or freedoms.

The human rights implications associated with establishing the VET Student Loans program are dealt with in the comprehensive Statement of Compatibility with Human Rights attached to the Explanatory Memorandum for the Act. The Statement of Compatibility with Human Rights for the Rules focuses on those matters particular to the Rules rather than those matters addressed more generally in the Statement provided in respect to the Act.

In particular, in relation to the **right to work**, the Explanatory Statement to the Rules relevantly states (among other things):

*Under Article 6(1), States Parties are required to recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides that the steps to be taken by a State Party to achieve the full realisation of this right include providing technical and vocational guidance and training programs.*

*This right goes to a purpose of the VET student loans program, which is to ensure loans to students are provided for vocational education and training that meet workplace needs and improve employment outcomes.*

In relation to the **right to education**, the Explanatory Statement to the Rules relevantly states (among other things):

*Article 13 recognises the important personal, societal, economic and intellectual benefits of education. The Article sets out 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 VET student loans program is to make technical and vocational secondary education more accessible to students who may not otherwise have had access. The measures in the Rules enhance the protection of students as they seek out educational opportunities within Australia …*

*The Rules contain a wide range of provisions intended to increase protections available to students which is consistent with the right to education. …*

*The Rules also specify mechanisms by which the VET student loans program will enhance the integrity of the VET sector and strengthen the protection of students as they seek out educational opportunities within Australia.*

It should be noted that the Amendment Rules enhance the right to work and the right to education, through enhancing students’ ability to access vocational education and training.

It does this through strengthening the Commonwealth’s ability to regulate tuition assurance scheme operators – through being able to impose or vary conditions on their approval and being able to require the provision of information and documents about tuition assurance arrangements and compliance with the Act. In addition tuition assurance scheme operators are required to hold a meeting for students in the event that their provider does not, where a course ceases. These amendments will allow for the provision of improved tuition assurance assistance to students, which will facilitate the students resuming their studies more quickly and smoothly.

In addition the Amendment Rules align several provisions of the Rules with the National VET Regulator requirements, as set out in the *Standards for Registered Training Organisations (RTOs) 2015*, regarding the evidence a provider is required to accept to provide credit to students for prior learning. This consistency is in the students’ favour.

## Conclusion

These Amendment Rules are compatible with human rights because they merely amend the Rules, which in turn are compatible with and promote the rights to work, education and privacy, as well as the rights of the child and the rights of people with disabilities. Indeed the Amendment Rules enhance the rights to work and to education.

**Simon Birmingham**

**Minister for Education and Training**