

EXPLANATORY STATEMENT

VET Student Loans (Approved Course Provider Application Fee) Determination 2017

Authority

The instrument is made by the Secretary of the Department of Education and Training under subsection 31(1) of the *VET Student Loans Act 2016*.

Purpose

The purpose of the *VET Student Loans (Approved Course Provider Application) Determination 2017* (Determination) is to prescribe a fee for making applications for approval as an approved course provider under the *VET Student Loans Act 2016* (the Act). The Act is part of a package of legislation which was introduced to reform the student loan arrangements for vocational education and training (VET) courses.

Providers of VET courses are approved as approved course providers for the purposes of VET student loans under the Act. Subsection 28(2) of the Act provides that an application by a body for approval as an approved course provider must be accompanied by the application fee. Subsection 31(1) of the Act provides that the Secretary may prescribe fees for the making of such applications. Applicants will be invoiced the amount of the fee after receipt of the application. Applicants must pay the fee by the due date detailed on the invoice.

The application fee assists with the recovery of the costs incurred by the Department of Education and Training associated with processing and assessing applications. These costs were determined by identifying the activities that comprise the assessment of each application and the time, skills and resources required to complete each activity. This process is detailed in the Cost Recovery Implementation Statement for VET student loans, found at www.education.gov.au/vet-student-loans.

The Act does not specify any conditions that need to be satisfied before the power to make the Determination may be exercised.

Commencement

The Determination commences on the day after it is registered.

Consultation

The department consulted on the Cost Recovery Implementation Statement with the VET Student Loans Implementation Advisory Group (Advisory Group) on 24 January 2017 and 23 June 2017. The Advisory Group was established to ensure stakeholder views are understood and considered during the transition period. The Advisory Group comprises representatives of industry, regulators, consumer protection advocates and VET student loans providers.

Further, consultation on fees was consistent with the Senate Education and Employment Legislation Committee Inquiry into the VET Student Loans Bill 2016 and two related bills, which encouraged the Department of Education and Training to consult with key stakeholders to

ensure that fees and charges are implemented on a fair and equitable basis, taking into account any impact on students.

Regulation Impact Statement

A Regulation Impact Statement (RIS) on the redesign of the VET FEE-HELP scheme, of which the VET Student Loans program was the outcome, was prepared and certified by the Commonwealth Department of Education and Training under the best practice regulation requirements in October 2016, OPBR ID 20451. This RIS outlined the option that was reflected in the *VET Student Loans Act 2016*, including charging application fees.

Explanation of provisions

Section 1 states the name of the Determination.

Section 2 states that the Determination commences on the day after it is registered.

Section 3 states the authority for making the Determination is subsection 31(1) of the Act.

Section 4 states that for subsection 31(1) of the Act, the fee for making an application for approval as an approved course provider under the Act is \$5 110.

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

Section 31 of the *VET Student Loans Act 2016* (the Act) provides that the Secretary may by legislative instrument prescribe fees, or a method of working out fees, for making an application for approval as an approved course provider. A fee for making an application for approval must not be such as to amount to taxation.

The *VET Student Loans (Approved Course Provider Application Fee) Determination 2017* (Determination) is made under section 31 of the Act and prescribes that the fee for making an application for approval as an approved course provider is \$5,110.

Human Rights Implications

The purpose of the Determination is to prescribe the amount of the fee for applications for approval as an approved course provider under the Act. The imposition of the fee and the prescription of the amount of the fee through this Determination is duly authorised by the Act, which provides that an application by a body for approval as an approved course provider must be accompanied by the application fee and that the Secretary may prescribe fees for making such applications.

In summary, the Determination contains mechanical provisions to give effect to the Government's reforms to the VET student loan arrangements. The principal reforms are contained in the Act (**C2017C00183**). The human rights implications associated with implementing more robust registration and performance requirements on providers seeking approval under the VET student loans program are dealt with in the comprehensive Statement of Compatibility with Human Rights contained in the Explanatory Memorandum to the VET Student Loans Bill 2016. The Parliamentary Joint Committee on Human Rights considered that the VET Student Loans Bill, which supports and underpins the measures contained in the Determination, did not give rise to human rights concerns (see Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: report 8 of 2016*, 9 November 2016 at p 55).

In particular, in relation to the **right to education**, the Explanatory Memorandum stated:

In addition, more 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 imposition of an application fee on bodies which apply for approval as approved course providers engages the right to education insofar as the measure relates to the provision of high quality vocational education and training (VET) courses. The measure is a reasonable and proportionate mechanism to achieve a legitimate policy objective of incentivising the entry of genuine participants into the VET sector, maximising education outcomes and bolstering oversight and accountability of entrants to the market. The ability to charge an application fee for the approval of providers also supports and complements the suite of reforms to student loan arrangements for VET courses introduced by the Act. Moreover the application of this measure in practice is fair and reasonable in that under section 32 of the Act, where the Secretary does not consider or decide an application for approval, the Secretary must refund the application fee to the applicant.

Articles 13(3) and (4) of the *International Covenant on Economic, Social and Cultural Rights* state that State Parties are obliged to establish "minimum educational standards" to which all education institutions established are required to conform. State Parties must also maintain a transparent and effective system to monitor such standards. One such mechanism is an application fee process which promotes these rights by mitigating operational risk associated with market entry of new VET providers. The measure will, by implication, improve the regulation of the VET sector and enhance institutional quality by facilitating the assessment and management of VET course provider entry into the sector.

The application fee reflects the costs incurred by the Department of Education and Training (department) associated with processing and assessing applications made by providers. The amount of the fee was calculated and set on a cost recovery basis having regard to the cost to the department of assessing an application for approval. To this end, the amount of the fee specified in the Determination is proportionately aligned with the reasonable costs associated with activities that comprise the assessment of each application and the time, skills and resources required to complete each activity by officers of the department.

Conclusion

To the extent that the right to education is engaged, the measures contained in the Determination are compatible with, and promote, the right to education. Such fees are designed to incentivise the entry of genuine participants into the VET sector, maximise educational outcomes and bolster oversight and accountability of entrants to the market. Such measures, together with the broader VET sector reforms, will ensure overall fiscal sustainability for the Commonwealth to effectively regulate the VET sector.

Mr David Learmonth
(A/g) Secretary of the Department of Education and Training