

Explanatory Statement

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 2) 2018

Summary

The *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 2) 2018* (Amendment Determination) amends Schedule 1 – Approved courses – general (Schedule 1) and Schedule 3 – Approved courses for specified providers (Schedule 3) of the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination). More specifically, the Amendment Determination:

- removes 2 courses from Schedule 1, Part 1 – Courses in loan cap band 1 (Part 1)
- adds 2 courses to Schedule 1, Part 1
- removes 2 courses from Schedule 1, Part 2 – Courses in loan cap band 2 (Part 2)
- adds 4 courses to Schedule 1, Part 2
- adds 5 courses to Schedule 1, Part 3 – Courses in loan cap band 3
- removes 3 courses from Schedule 3
- adds 1 course to Schedule 3.

Background

The Courses and Loan Caps Determination specifies the courses for which VET student loans may be approved under the *VET Student Loans Act 2016* (VET Student Loans Act); sets the maximum loan amounts for those courses; and provides for the annual indexation of the maximum loan amounts. The full policy context and background for the Courses and Loan Caps Determination was set out in the [Explanatory Statement to the Courses and Loan Caps Determination](#).

The Courses and Loan Caps Determination was developed, in consultation with state and territory education authorities and the vocational education and training (VET) sector, in the second half of 2016. During this process, the Government agreed to include specific courses for public and not-for-profit providers in the Determination (that is to say, VET student loans would only be available to students studying those specified courses at the specified public and not-for-profit providers). These were included in Schedule 3 to the Determination, which came into operation on 1 January 2017.

The Government intends for the list of approved courses in the Courses and Loan Caps Determination to be reviewed and updated twice yearly from 2018, to ensure that the Courses and Loan Caps Determination aligns VET Student Loans with courses that meet industry needs and skills shortages. Accordingly, this Amendment Determination updates the list of courses for which VET student loans are available, by removing courses which are no longer current and adding additional courses that meet the methodology.

The methodology currently used to determine course eligibility is: courses are current (in other words, not superseded); and are on at least two state and territory subsidy/skills lists, or are science, technology, engineering or mathematics (STEM) related, or are tied to licensing requirements for a particular occupation.

The Government assessed the Courses and Loan Caps Determination, to ensure that the list of courses is current and includes all courses that meet the current methodology used to determine course eligibility. As a result of this assessment, 7 courses were identified as suitable for removal and 12 courses were identified as being eligible for inclusion.

Consultation

Consultation on courses eligible for VET Student Loans occurred with states and territories, and key stakeholders throughout the VET Student Loans courses and loan caps methodology review. In particular, the review included the release of a public discussion paper, receipt of over 300 submissions, and extensive consultations.

Information on previous consultation undertaken in the development of the *VET Student Loans (Courses and Loan Caps) Determination 2016*, including in relation to the *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 1) 2017* is set out in the [Explanatory Statement](#) to the *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 2) 2017*.

Regulatory Impact Statement

The Courses and Loan Caps Determination 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 Courses and Loan Caps Determination is made under section 16 of the VET Student Loans Act.

Explanation of Provisions

Sections 1, 2 and 3 of the Amendment Determination are formal provisions setting out the name, date of commencement, and authority for making of the Determination.

Section 4 of the Amendment Determination provides that the Courses and Loan Caps Determination is amended as set out in Schedule 1 to the Amendment Determination.

Section 5 of the Amendment Determination clarifies the transitional arrangements for the courses which are removed.

Once a VET student loan for an approved course has been approved by the Secretary for a student, the loan for that course remains approved for that student even if the course is later removed from the approved course list in the Courses and Loan Caps Determination. This means that, although no new VET student loans can be approved in respect of a course that has been removed from the Determination, the Secretary may continue to pay VET student loan amounts for a student for the course, where the loan was approved prior to the course being removed from the Determination, as the student continues to progress through the course.

Section 5 of the Amendment Determination makes it clear that this can occur for the courses that are listed in items 1, 4 or 9 of Schedule 1 to the Amendment Determination (courses that are non-current or deleted and are being removed from the Courses and Loan Caps Determination from the day the instrument commences).

Schedule 1 sets out the amendments to the Courses and Loan Caps Determination.

Item 1 of Schedule 1 provides that the table in Schedule 1, Part 1 is amended through omitting two rows setting out the details for two approved courses.

Item 2 of Schedule 1 provides that the table in Schedule 1, Part 1 is amended through adding two additional rows setting out the details for two additional approved courses. These rows are to be added in ascending numerical order, ordered by course code.

Item 3 of Schedule 1 provides that all item numbers in the table in Schedule 1, Part 2 are to be renumbered starting at 1.

Item 4 of Schedule 1 provides that the table in Schedule 1, Part 2 is amended through omitting two rows setting out the details for two approved courses.

Item 5 of Schedule 1 provides that the table in Schedule 1, Part 2 is amended through adding four additional rows setting out the details for four additional approved courses. These rows are to be added in ascending numerical order, ordered by course code.

Item 6 of Schedule 1 provides that all item numbers in the table in Schedule 1, Part 2, are to be renumbered starting at 1.

Item 7 of Schedule 1 provides that the table in Schedule 1, Part 3 is amended through adding five additional rows setting out the details for five additional approved courses. The rows are to be added in ascending numerical order, ordered by course code.

Item 8 of Schedule 1 provides that all item numbers in the table in Schedule 1, Part 3, are to be renumbered starting at 1.

Item 9 of Schedule 1 provides that the table in Schedule 3 is amended through omitting three rows setting out the details for three approved courses.

Item 10 of Schedule 1 provides that the table in Schedule 3 is amended through adding one additional row setting out the details for one additional approved course. The row is to be added in alphabetical order, ordered by approved course provider.

Item 11 of Schedule 1 provides that all item numbers in the table in Schedule 3 are to be renumbered starting at 1.

The background to the approval of these courses is set out in the Background to the Explanatory Statement.

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 (Courses and Loan Caps) Amendment Determination (No. 2) (2018)* (Amendment Determination) amends Schedule 1 – Approved courses – general (Schedule 1) and Schedule 3 – Approved courses for specified providers (Schedule 3) of the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination). More specifically, the Amendment Determination removes four courses from Schedule 1 and adds eleven courses to Schedule 1. Further, the Amendment Determination removes 3 courses from Schedule 3 and adds 1 course to Schedule 3.

The Courses and Loans Cap Determination forms 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 Courses and Loan Caps Determination specifies the courses for which VET student loans may be granted under the *VET Student Loans Act 2016* (VET Student Loans Act); sets the maximum loan amounts for those courses; and provides for the annual indexation of the maximum loan amounts.

Human Rights Implications

The Amendment Determination in isolation does not engage any of the applicable rights or freedoms. It merely amends the Courses and Loans Cap Determination, which contains mechanical provisions necessary to give effect to the Government's reforms to the VET student loan arrangements. The principal reforms are set out in the VET Student Loans Act, and the human rights implications associated with limiting the courses for which loans are available, and capping the amount of those loans, are dealt with the comprehensive Statement of Compatibility with Human Rights in relation to the reforms which was attached to the Explanatory Memorandum for the VET Student Loans Bill 2016. For completeness, the Parliamentary Joint Committee on Human Rights considered that the VET Student Loans Bill, which supports and underpins the measures contained in the Amendment 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 55).

In particular, in relation to the **right to work**, the Explanatory Memorandum to the VET Student Loans Bill stated:

By enabling the Minister to make a loans and caps determination, this Bill also establishes a new framework to limit course eligibility for VET student loans to those courses approved by the Minister and introduces maximum loan amounts for eligible courses. While this measure may limit the right by limiting the scope of VET courses students might otherwise undertake and the amount of loans available, reform is justified as it ensures that the focus of the VET student loans program will be to provide support for students in respect to courses that have a high national priority, align with

industry needs, contribute to addressing skills shortages and lead to employment outcomes.

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

To the extent that the new courses and loan caps determination may limit students' access to particular courses and confine course choice, this is justifiable to ensure fiscal accountability and quality output from providers. Although this measure limits the loan amount available to the student, the intent of the measure is to put downward pressure on rising tuition fees to make education more affordable to students. The limit on courses eligible for loan access will ensure students are undertaking courses that are more likely to result in an employment outcome. These limitations are necessary and proportionate to the policy objective as the measures are designed to protect students by enhancing educational and employment outcomes, ensuring they are receiving value for money, and that there is a high level of quality assurance and transparency in the training courses by ensuring all providers are suitably experienced and have met statutory suitability requirements in order to operate as approved course providers.

It should be noted that the Amendment Determination adds 12 courses to the list of courses for which VET student loans may be granted, thereby expanding students' access to loans and, by extension, promoting the right to education.

In addition, although 7 courses have been removed from the list of courses for which VET student loans may be granted, these courses were identified for removal on the basis that they did not meet the methodology for course list eligibility in that they are no longer current or have been deleted from registered offerings. Moreover, the Amendment Determination provides transitional arrangements for students currently enrolled in and accessing a VET student loan for these courses. If such students have not completed the course before the commencement of the Amendment Determination, then on or after the day it commences they are allowed to continue to access VET student loans for the remainder of the course. Therefore, any negative impact on students' access to loans has been mitigated. Accordingly, to the extent the removal or attenuation of course offerings for which VET student loans apply, the measure is not an impermissible limitation on the right to education and is reasonable, necessary and proportionate to achieve a legitimate policy objective.

Conclusion

This Amendment Determination is compatible with human rights because it merely amends the Courses and Loans Cap Determination, which in turn is part of the mechanisms in the VET Student Loans Act that promote the human rights to work and education.

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