

Explanatory Statement

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 4) 2018

Summary

The *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 4) 2018* (Amendment Determination) amends section 5 of the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) to provide that the courses for which VET student loans may be approved include both:

- the VET courses with the course codes specified in Schedules 1, 2 and 3 to the Courses and Loan Caps Determination (each a ‘specified course’); and
- any course identified in the National Register as a later version of, or superseding course to, a specified course (‘later version of a specified course’).

The Amendment Determination repeals and substitutes subsection 5(1) of the Courses and Loan Caps Determination to provide that VET student loans may also be approved, for any course which is identified in the National Register as a later version of, or superseding course to, a course specified in the Courses and Loan Caps Determination.

The Amendment Determination also amends Schedule 1 – Approved courses – general (Schedule 1) and Schedule 3 – Approved courses for specified providers (Schedule 3) of the Courses and Loan Caps Determination. More specifically, the Amendment Determination:

- adds 8 courses to Schedule 1, Part 1 – Courses in loan cap band 1;
- removes 1 course from Schedule 1, Part 2 – Courses in loan cap band 2 (Part 2);
- adds 10 courses to Schedule 1, Part 2;
- removes 2 courses to Schedule 1, Part 3 – Courses in loan cap band 3 (Part 3);
- adds 22 courses to Schedule 1, Part 3;
- moves 1 course from Schedule 1, Part 2 to Schedule 1, Part 3;
- adds 13 course to Schedule 3.

Background

The Courses and Loan Caps Determination specifies the courses, by reference to their course code, for which VET student loans may be approved under the *VET Student Loans Act 2016* (the 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](#).

For a course to be added to the Courses and Loan Caps Determination it must meet a defined methodology. The methodology for approved courses is that courses must be current, and be subsidised by two state or territory, or be science, technology, engineering or mathematics courses, or be required for a licensed occupation.

The Courses and Loan Caps Determination was developed, in consultation with state and territory education authorities and the 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 Courses and Loan Caps Determination, that did not otherwise meet the approved methodology (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 Courses and Loan Caps 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 updated once or twice annually, to ensure that the Courses and Loan Caps Determination aligns VET Student Loans with courses that meet industry needs and skills shortages.

It is not possible for the Minister, when making the Courses and Loan Caps Determination, to predict what courses will become superseded or reaccredited, nor will superseding or reaccredited courses be allocated a course code until they are approved. The timing of updates, and because VET student loans are approved only for courses specified by reference to their course code on the Courses and Loan Caps Determination, often resulted in a delay between when a course is superseded or reaccredited and when VET student loans could be approved for a later (current) version of the course.

The *Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018* amended section 16 of the VET Student Loans Act to enable the Courses and Loan Caps Determination to incorporate, by reference, any matter contained in an instrument of other writing as in force from time to time. To resolve the issue of courses being superseded prior to the updates to the Courses and Loans Caps Determination taking effect, and to reflect the dynamic nature of the VET system, this Amendment Determination amends the Courses and Loan Caps Determination to reference the National Register of courses. The National Register, as defined in section 3 of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act), is a register that contains the most up to date information about vocational education and training (VET) courses and their status. The National Register is publicly available and accessible free of charge at www.training.gov.au.

As such, if any approved course listed on the Courses and Loan Caps Determination, is superseded or reaccredited and replaced by a new course (with a new course code) as determined by reference to the National Register, then that new course is automatically also a course for which VET student loans may be approved. At the next update to the Course and Loan Caps Determination, the new course will be included and the non-current course removed, as per usual practice.

This Amendment Determination also updates the list of courses for which VET student loans are available, by adding additional courses that meet the methodology and removing courses, which do not. Courses that have recently become superseded at the time of this update have not been removed. They will however, be removed in the next determination amending the Courses and Loan Caps Determination. This is to allow a longer transition period for both providers and students and to better align with standard VET transition practices.

As with previous determinations amending the Courses and Loan Caps Determination, non-current accredited courses, which have a replacement course at the time of the update amendments have been removed from the Courses and Loan Caps Determination to reflect standard VET practices which do not permit students to enrol in non-current accredited courses.

The Department 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, or meet the Schedule 3 requirements. As a result of this assessment, 3 courses were identified as suitable for removal and 53 courses were identified as being suitable for inclusion.

Consultation

On 10 October 2018, the Department wrote to each State and Territory requesting a list of the VET courses that would be subsidised in their State or Territory from January 2019. All States and Territories, with the exception of Tasmania provided a list of the VET courses that would be subsidised. Tasmania advised the Department to use the subsidy list published on

their website. Northern Territory advised that their subsidised training programs had ceased and therefore did not provide a list. The Department used the information provided by the States and Territories to identify whether courses should be considered for inclusion in or omission from the Courses and Loan Caps Determination based on the current methodology for determining approved courses.

On 15 October 2018, the Department wrote to the Skills Senior Officials' Network requesting identification of courses prescribed under state and territory law as a licenced occupation requirement. All of courses identified by the Skills Senior Official's Network were already on the Determination.

Regulatory Impact Statement

No Regulatory Impact Statement needed #22673.

Authority

The Courses and Loan Caps Determination is made under section 16 of the *VET Student Loans Act 2016*.

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.

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

Item 1 of Schedule 1 repeals subsection 5(1) and substitutes a new subsection which provides that the courses for which VET student loans may be approved are:

- the VET courses with the course codes specified in Schedules 1, 2 and 3 to this instrument (each a '**specified courses**');
- any course identified in the National Register as a new version of, or superseding course to, a specified course ('**later version of a specified course**').

The National Register contains course mapping information about both training package qualifications and (from 1 September 2018) VET accredited courses. Such information includes details about whether there is an earlier or later version of the course and whether there is a course that supersedes a particular course. In order for course to be a 'later version of a specified course', it will be sufficient for it to be identified on the National Register as "superseding" a specified course. It does not need to be identified as being "superseding and equivalent" to a specified course.

The new subsection 5(1) is intended to ensure that VET student loans are available for specified courses, and any later version or release of those course, which are identified on the National Register as the current version or release of the course.

As explained in the ‘Background’ to this Explanatory Statement, VET student loans may still be approved for a course on the Courses and Loan Caps Determination, notwithstanding that there is a later version of the course on the National Register, provided that this is not inconsistent with:

- the scope of registration (as a registered training organisation), of the relevant approved course provider; and
- approved course providers’ obligations as registered training organisations, regarding transition and teach-out of superseded or non-current courses.

Items 2 and 3 of Schedule 1 number the existing Note under subsection 5(1) as “Note 1” and a new “Note 2” explaining that Course mapping information about current and earlier versions of VET courses is included in the National Register. This allows providers and students to check the National Register to determine whether there is a later version of a specified course, for which VET student loans is available.

Items 5 to 8 of Schedule 1 add the words “or any later version of a specified course” to paragraphs (a) to (d) of subsection 5(3) to provide that, the course caps (including indexing) that apply to specified courses also apply to any National Register current versions of the course.

Item 9 of Schedule 1 provides that the table in Schedule 1, Part 1 is amended through adding eight additional rows setting out the details for eight additional approved courses. These rows are to be added in ascending numerical order, ordered by course code.

Item 10 of Schedule 1 provides that all item numbers in the table in Schedule 1, Part 1 are to be renumbered starting at 1.

Item 11 of Schedule 1 provides that the table in Schedule 1, Part 2 is amended through omitting two rows setting out the details for two courses, noting that one of these courses is moved to the table in Schedule 1, Part 3.

Item 12 of Schedule 1 provides that the table in Schedule 1, Part 2 is amended through adding ten additional rows setting out the details for nine additional approved courses. These rows are to be added in ascending numerical order, ordered by course code.

Item 13 of Schedule 1 provides that all item numbers in the table in Schedule 1, Part 2, are to be renumbered starting at 1.

Item 14 of Schedule 1 provides that the table in Schedule 1, Part 3 is amended through omitting two rows of the table setting out the details for one course.

Item 15 of Schedule 1 provides that the table in Schedule 1, Part 3 is amended through adding 22 additional rows setting out the details for 22 additional approved courses and adding one row setting out the details of an approved course that is moved into this table from the table in Schedule 1, Part 2. As a result of this move, the Advanced Diploma of Professional Game Development (10702NAT) is added to courses in loan cap band 3 to reflect the high cost of delivery of this course.

The rows are to be added in ascending numerical order, ordered by course code.

Item 16 of Schedule 1 provides that all item numbers in the table in Schedule 1, Part 3, are to be renumbered starting at 1.

Item 17 of Schedule 1 provides that the table in Schedule 3 is amended through adding 13 additional rows, each setting out the details for one additional approved course. The rows are to be added in alphabetical order, ordered by approved course provider name.

Item 18 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. 4) (2018)* (Amendment Determination) amends section 5 of the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) to provide that the courses for which VET student loans may be approved include both:

- the VET courses with the course codes specified in Schedules 1, 2 and 3 to the Courses and Loan Caps Determination (each a ‘specified courses’); and
- if a later version or release of a specified course is identified in the National Register as the current version or release of the course - that course (‘National Register current version of the course’).

VET student loans are only available for courses specified on the Courses and Loan Caps Determination, which is updated bi-annually. This resulted in an issue where, if a course was superseded or reaccredited, VET student loans could not be approved for the new course until the next bi-annual update to the Courses and Loan Caps Determination.

The National Register, as defined in section 3 of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act), is a register that contains the most up to date information about vocational education and training (VET) courses and their status. This amendment provides that if a later version or release of a course for which VET student loans may be approved, is identified in the National Register as the current version or release of the course, then VET student loans may also be approved for that later version of the course. At the next update, the new course will be included and the non-current course removed, as per usual practice.

The Amendment Determination also amends Schedule 1 – Approved courses – general (Schedule 1) and Schedule 3 – Approved courses for specified providers (Schedule 3) of the Courses and Loan Caps Determination. More specifically, the Amendment Determination removes three courses from Schedule 1 and adds 40 courses to Schedule 1. One course is moved from one part of Schedule 1 to another part of Schedule 1 in recognition of the high cost of delivery for that course. Further, the Amendment Determination adds 13 courses to Schedule 3.

The Courses and Loans Cap Determination forms part of the Australian Government’s reform of the student loan arrangements for 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 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 in the comprehensive Statement of Compatibility with Human Rights in relation to the reforms, in 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 2018 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 to the VET Student Loans Bill 2018 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 53 courses to the list of courses for which VET student loans may be granted. In addition, VET student loans are also available for a later version or release of a course, as identified in the National Register, prior to the later version or release being expressly added to the Courses and Loan Caps Determination. This expands students' access to loans and, by extension, promotes the right to education.

In addition, although three courses have been removed from the list of courses for which VET student loans may be granted, for one of these courses its replacement course has been added to the Amendment Determination. The other was identified for removal on the basis that it did not meet the methodology for course list eligibility in that it is no longer subsidised

by more than two states or territories and the other course was removed because it has been deleted.

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.

The human rights implications associated with amending the Courses and Loan Caps Determination to reference the National Register of courses are dealt with in the Explanatory Memorandum to the Education and Other Legislation Amendment (VET Student Loan Debt Separation) Bill 2018.

In particular, in relation to the **right to education**, the Explanatory Memorandum to the Bill relevantly states (among other things):

By enabling the Determination to incorporate, by reference, matters contained in other instruments or writing, as in force from time to time (most relevantly information published on the National Register), the Determination will refer to the most up to date information on nationally recognised VET courses, so that VET student loans for students can be approved for courses listed in the Determination, and new courses that replace them, when they become superseded or reaccredited, without having to wait for updates to the Determination. This ensures the legislative framework according to which financial assistance is provided to students in the VET sector has legal efficacy and reflects the dynamic nature of the VET sector.

Conclusion

This Amendment Determination is compatible with human rights because it 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.

Michaelia Cash

Minister for Small and Family Business, Skills and Vocational Education