

Explanatory Statement

VET Student Loans Amendment Rules (No. 2) 2019

Issued by the authority of the Minister for Employment, Skills, Small and Family Business.

Background

Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019

The *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* (**Tuition Protection Act**) implements a new tuition protection model for students accessing VET Student Loans, FEE-HELP or HECS-HELP to provide greater tuition protection to students to commence from 1 January 2020.

Tuition protection aims to ensure students are protected and supported in the event that their course provider defaults – that is, where the student has not withdrawn from the course and either:

- the provider fails to start to provide a course or a part of a course to the student on the day on which the course or part was scheduled to start; or
- the provider ceases to provide a course or a part of a course to the student at any time after the course or part starts but before it is completed.

The Tuition Protection Act amended the *VET Student Loans Act* (**VSL Act**) to (among other things):

- (a) require non-exempt providers to contribute annual levies, commensurate with their size and risk (which levy is to be imposed by the proposed VET Student Loans (VSL Tuition Protection Levy) Bill 2019 – once enacted). The levy system will ensure the new arrangements are sustainable and can respond to sector trends;
- (b) establish the VET Student Loans Tuition Protection Fund (**the Fund**) as a special account;
- (c) establish a VSL Tuition Protection Director (**the Director**) to administer the new tuition protection arrangements and manage the Fund and establish the VSL Tuition Protection Fund Advisory Board to provide advice to the Director;
- (d) provide assistance to students to continue their studies in the same or similar course with a replacement provider, and where there is no suitable replacement course, provide a re-credit to students equal to the amount of the VET student loan used to pay tuition fees for the part of their original course which was not completed due to the provider's default;
- (e) impose obligations on defaulting providers to notify the Director and students of the default in a timely manner, and cooperate with the Director; and
- (f) impose obligations on providers, which accept students in replacement courses, to enrol students as soon as practicable, give the student course credits in recognition of their prior completed studies, as appropriate, and not charge students for the

replacement component of the replacement course if tuition fees have been paid for the affected part of the original course.

Once enacted the VET Student Loans (VSL Tuition Protection Levy) Bill 2019 will impose the VSL tuition protection levy on leviable providers, and establish the method for calculating various components of the levy.

As a result of the amendments made to the Act by the Tuition Protection Act, various consequential amendments are required to the *VET Student Loans Rules 2016 (Rules)*, made pursuant to section 116 of the Act. Other changes to the Rules allow approved course providers to charge fees to establish the suitability of a person for admission into a specialist approved course, and the Commonwealth to recover unpaid amounts of the annual approved course provider charge from a loan amount that would otherwise be payable to the provider.

Authority

The Minister for Employment, Skills, Small and Family Business makes this instrument under section 116 of the Act.

Subsection 4(2) of the *Acts Interpretation Act 1901 (AIA)* allows a power to make a legislative instrument to be exercised after the enactment of the Act under which the power is conferred, but before the start time, as if the relevant commencement had occurred.

Subsection 4(2) of the AIA is relied on to make the amendments in Schedule 1.

Subsection 33(3) of the AIA also provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument. Subsection 33(3) of the AIA is relied on to amend and repeal various provisions in the Rules.

Purpose and operation

The *VET Student Loans Amendment Rules (No. 2) 2019 (Amendment Rules)* make various amendments to the Rules as a result of amendments made to the VSL Act by the Tuition Protection Act. These amendments are contained in Part 1 of Schedule 1 of the Amendment Rules.

The amendments repeal and substitute Part 6 of the Rules, to replace rules made for the purposes of the pre-existing tuition assurance arrangements with new rules made for the purposes of the new tuition protection model. The new rules exempt TAFEs and government-owned registered training organisations from the new tuition protection arrangements and prescribe further details relating to the collection and recovery of the VSL tuition protection levy, prescribe the information that a provider who defaults must give to students and the Director and the circumstances in which the Director may make a payment to a replacement provider in relation to a student who accepts an offer in a replacement course.

Similarly, Subdivision J of Division 1, Part 7 of the Rules is also repealed and replaced to require an approved course provider to have procedures in place that reflect the new tuition protection arrangements. A small number of other provisions, including the definitions of terms used in the Rules, have also been amended or repealed to reflect amendments made by the Tuition Protection Act.

Part 2, Schedule 1 of the Amendment Rules includes a number of other changes to the Rules to allow approved course providers to charge fees for a special admissions test, and to allow the Commonwealth to recover amounts of the annual course provider charge owed by a provider from loan amounts that would otherwise be payable to the course provider.

The amendments commence on 1 January 2020, immediately after the commencement of the Tuition Protection Act, except for sections 1 to 4 which commence the day after the Amendment Rules are registered and Division 1 of Part 6 in Item 7 of Schedule 1 which commences immediately after the commencement of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020*

An explanation of the provisions of the Amendment Rules is set out at [Attachment A](#).

Regulatory Impact Statement

The Office of Best Practice Regulation assessed that a Regulation Impact Statement was not required for the Amendment Rules because they give operational effect to the Act and the likely impacts of the Act have been assessed as minor in nature (reference #23325).

Financial Impact Statement

The explanatory memorandum accompanying the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019 calculated the expected revenue of the new tuition protection arrangements for VSL students, FEE-HELP or HECS-HELP students studying at a *private education provider or TAFE* as being \$3 million over the forward estimates as a result of the revenue projected to be collected through the levy system.

The proposed exemption of the TAFEs and Government-owned providers from the new tuition protection arrangements will reduce the projected amount of levies (revenue) to be collected under the measure by \$0.6 million per year (reflecting \$0.55 million for VSL and \$0.05 million for FEE-HELP/HECS-HELP).

The measure to introduce new tuition protection arrangements to cover VET Student Loans (VSL) students, FEE-HELP or HECS-HELP students studying at a private education provider will now generate expected revenue of \$0.6 million over the forward estimates.

Impact on underlying cash (\$ millions)					
Amendments to cover private providers only					
	2019–20	2020–21	2021–22	2022–23	Total
New tuition protection measures – removal of TAFEs and government providers	-1.1	-0.4	+1.0	+1.1	+0.6

Consultation

A draft version of the Amendment Rules was published on the Department’s website on 20 November 2019, and stakeholder feedback was sought by 27 November 2019. All VSL approved providers were notified of the publication and invited to comment. Four stakeholders responded with feedback, the detail of which was considered prior to the Amendment Rules being finalised.

Subsequent to publishing the draft Amendment Rules, the decision was made to exempt TAFEs and other Government-owned registered training organisations from Part 5A of the new tuition protection arrangements. This means these bodies are not required to pay any component of the VSL tuition protection levy. This amendment was made following the Government’s consideration of the report from the Senate Education and Employment Legislation Committee, stakeholder submissions to the Committee and public hearings before the Committee. The decision was also made having regard to these kinds of bodies having the capability and capacity to deal with any defaults without the assistance of the new VSL Director.

Providers and sector stakeholders were widely consulted on the new tuition protection arrangements in the Tuition Protection Bills, including through the Senate Committee for the Scrutiny of Bills, and the Senate Education and Employment Legislation Committee’s consideration of the Bills.

Statement of compatibility of 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. 2) 2019

Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 2) 2019* (**Amendment Rules**).

Section 2 – Commencement

The table in this section sets out when the provisions of the instrument commence.

Sections 1 to 4 and anything in the instrument not covered elsewhere by the table commence on the day after the instrument is registered on the Federal Register of Legislation (**FRL**).

Schedule 1 of Part 1 (other than Division 1 of Part 6 in item 7 to Schedule 1) and Schedule 1 of Part 2 of the Instrument commences immediately after the commencement of the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* (**Tuition Protection Act**) which commences on 1 January 2020.

Division 1 of Part 6 in item 7 to Schedule 1, commences immediately after the commencement of the proposed *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Levy Act).

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 VET Student Loans Rules (**the Rules**) are amended as set out in the Schedule to the instrument.

Schedule 1—Amendments to the VET Student Loans Rules 2016

Item 1 – Section 4 (Definitions)

Item 2 – Section 4 (Definition of key personnel)

Item 3 – Section 4 (Definition of National Register)

Item 4 – Section 4 (Definitions)

Item 5 – Section 4 (Definition of replacement provider)

Item 6 – Section 4 (Definition of replacement tuition offer)

Section 4 of the Rules sets out the meaning of a number of terms defined for the purposes of the Rules. Items 1-6 repeal and amend a number of existing definitions and insert several new definitions.

Item 1 repeals the definitions of ‘assurance exempt provider’ and ‘covered student’, item 4 repeals the definitions of ‘quarter’ and item 6 repeals the definition of ‘replacement tuition offer’. The definitions of each of these terms have been repealed because as a result of other changes made by the Amendment Rules, these terms are no longer included in the Rules.

Item 1 also repeals the definition of ‘affected part’ and item 4 repeals the definitions of ‘original course’, ‘replacement component’ and ‘replacement course’. The definitions of each of these terms have been repealed because they are now defined in the Act and in accordance with paragraph 13(1)(b) of the *Legislation Act 2003*, they have the same meaning in the Rules as in the Act.

Item 2 repeals and substitutes the definition of ‘key personnel’ and item 5 repeals and substitutes the definition of ‘replacement provider’. The definitions of these terms have been repealed and substituted to remove reference to the previous tuition protection arrangements.

Item 3 inserts a new definition of ‘National Register’, which is defined to have the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

Item 7 – Part 6 of the Rules

Item 7 repeals Part 6 of the Rules which related to the now former tuition assurance arrangements and substitutes it with new Rules reflecting the new arrangements relating to tuition protection for students made by the Tuition Protection Act as from 1 January 2020.

New Part 6 of the Rules exempts certain kinds of providers from the new tuition protection arrangements and prescribes further details relating to the collection and recovery of the VSL tuition protection levy (**the Levy**), the information that a provider who defaults must give to students and the Director, and the circumstances in which the Director may make a payment to a replacement provider in relation to a student who accepts an offer in a replacement course.

Division 1 – VSL tuition protection levy

Division 1 of Part 6 commences immediately after the commencement of the proposed Levy Act. New section 40 provides that Division 1 of Part 6 is made for the purposes of subsection 49A(2) of the Act. Subsection 49A(1) of the Act requires an approved course provider to whom Part 5A of the Act applies to pay the levy when it is due and payable. Subsection 49A(2) enables rules to be made in relation to a number of matters including the issue of notices setting out the amount of the Levy payable by a provider and when the Levy is due and payable.

New subsection 41(1) of the Amendment Rules requires the Director to give written notice to each provider who is liable to pay the Levy. The notice must state the amount of each

component of the Levy, the total amount of the Levy, an explanation of how each component of the provider's levy was calculated and the business day by which the provider must pay the Levy, which must be at least 14 days after the day the notice is given. Subsection 41(3) provides that a failure to give a provider the notice under subsection 41(1) does not affect the liability of the provider to pay the Levy.

A note underneath section 41 reminds the reader that a failure to pay the Levy when it is due and payable may result in compliance action being taken against the provider by the Secretary.

New section 42 of the Rules permits the Director to give a written notice to a provider which specifies a later day on which the levy is due and payable. This enables the Director to extend the time a provider has to pay the levy according to the terms of the notice. A note underneath section 42 makes clear that the Director can give a provider more than one extension notice.

New section 43 provides that the Director may recover an amount of the Levy that is due and payable by an approved course provider, on behalf of the Commonwealth, as a debt due to the Commonwealth.

Division 2 – Providers to whom Part 5A of the Act does not apply

New section 44 provides that Division 2 is made for the purposes of paragraph 66A(1)(b) of the Act. This provision allows rules to be made that exempt providers of a kind prescribed by the rules from the application of Part 5A of the Act.

New section 45 specifies the approved course providers to whom Part 5A of the Act does not apply. This is a registered training organisation that is:

- owned by the Commonwealth, a State or a Territory; or
- established to provide vocational education or training under one of the following:
 - the *Technical and Further Education Commission Act 1990* (NSW);
 - the *Education and Training Reform Act 2006* (Vic.);
 - the *TAFE Queensland Act 2013* (Qld);
 - the *Vocational Education and Training Act 1996* (WA);
 - the *TAFE SA Act 2012* (SA);
 - the *Training and Workforce Development Act 2013* (Tas.);
 - the *Canberra Institute of Technology Act 1987* (ACT).

These approved course providers have been excluded from Part 5A of the Act under the Rules because as a class of providers, they are considered to be at very low risk of default, and in the event they do default, should have the capacity and capability to place students in suitable replacement courses without the assistance of the Director.

Whilst this class of providers are now excluded from Part 5A of the Act, because of subsection 66A(2) of the Act, they are still required to comply with their obligations as replacement providers under sections 66F and 66G. Section 66F requires approved course

providers to provide the Director with information about replacement courses and section 66G imposes certain obligations on providers who provide replacement courses.

A consequence of these providers being excluded from Part 5A of the Act is that they are no longer required to contribute to any component of the VSL tuition protection levy (per subsection 49A(1)).

Division 3 – Notifying the Director of the details of a default

New section 46 provides that Division 3, Part 6 is made for the purposes of paragraph 66C(3)(b) of the Act. This provision allows the rules to prescribe matters an approved course provider must specify in a written notice the provider is required to give to the Director, within 3 business days of a default occurring.

If a provider defaults in relation to a student, section 66E of the Act requires the Director to decide if there are one or more suitable replacement courses for a student. In order to assist the Director to make this decision, subsection 66C(3) of the Act requires a defaulting provider to give a written notice to the Director specifying certain matters about each student in relation to which the provider has defaulted. New subsection 47(1) of the Rules prescribes further matters that an approved course provider must give to the Director in accordance with subsection 66C(3). These matters include:

- whether the student was studying part-time or full-time;
- the mode of delivery of the original course;
- the location where the original course was primarily delivered (if the student did not study online);
- whether the student has withdrawn or deferred study; and
- the completion status for each part of the course the student was enrolled in.

New subsection 47(2) requires the written notice to specify for each course the provider has defaulted in relation to a student the name and code of each unit of competency as it appears on the National Register for each part of the course. The National Register has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* (see section 216 of that Act) and is currently available for inspection at <https://training.gov.au/>.

Division 4 – Requirements of notice to VSL Tuition Protection Director

New section 48 provides that Division 4, Part 6 is made for the purposes of subsection 66C(5) of the Act. This provision allows the rules to prescribe requirements for a notice given by an approved course provider under subsections 66C(2) and 66C(3).

New section 49 of the Rules requires that the information required under section 66C of the Act must be given to the Director in a manner and form approved by the Director. This will allow the Director to specify that the information be provided in a particular format. For instance, the Director could request that information be provided in word or excel, or entered into a database.

Division 5 – Requirements of notice to student

New section 48 provides that Division 5, Part 6 is made for the purposes of subsection 66D(3) of the Act. Subsection 66D(2) requires an approved course provider, within 24 hours of the default occurring to give written notice of the default to the students in relation to whom the provider has defaulted. Subsection 66D(3) enables the rules to prescribe requirements relating to this notice.

New subsection 51(1) of the Rules requires the approved course provider to include in its written notice to students:

- the name of the course, or the part or parts of the course that the student was enrolled in at the time of the default;
- the date of the default; and
- a website specified by the Director where the student can get further information about tuition protection.

New subsection 51(2) of the Rules requires the defaulting provider to send the notice to the student's personal email or postal address as advised by the student, or to the student by another method agreed to by the student.

Division 6 – Payments to replacement providers and others

New section 52 provides that Division 6, Part 6 is made for the purposes of subsection 66L(2) of the Act. Section 66L sets out the purposes of the VSL Tuition Protection Fund which includes making payments in connection with tuition protection. Subsection 66L(2) enables the rules to make provision in relation to making such payments, including the circumstances in which payments may be made.

New subsection 53(1) enables the Director to make payment of such amounts that the Director considers appropriate to a replacement provider. At times it can be onerous for a replacement provider to enrol a student from a defaulting provider, for example, in certain circumstances assessing a student's prior learning can be complicated. This provision would enable the Director to make a payment to a replacement provider to assist with the administrative costs a replacement provider may incur in placing the student.

Paragraph 53(1)(b) also enables the Director to make a payment to another person in order to facilitate a student's placement in a replacement course. For example, the Director could pay a third party (such as a liquidator) to provide information required for the purpose of facilitating placement of a student in a suitable replacement course.

New subsection 53(2) requires the Director to have regard to the sustainability of the VSL Tuition Protection Fund when deciding whether to make such a payment. The Director may also have regard to any other matters the Director considers relevant.

Item 8 – Repeal and substitute Subdivision J of Division 1, Part 7

Item 8 repeals subdivision J of Division 1, Part 7 of the Rules which provided for procedures relating to the now former tuition assurance arrangements and substitutes it with new rules reflecting changes made by the Tuition Protection Act. Subdivision J requires an approved course provider to have certain procedures in place which relate to tuition protection.

New section 91 requires an approved course provider to have a procedure to ensure that within 24 hours of a default occurring the provider notifies in writing:

- students enrolled in the course that the course is no longer being provided; and
- the Director of the circumstances of the default.

The procedure must also require the provider:

- to update it's website as soon as practicable, to reflect that the course is no longer being provided; and
- to give the Director information about tuition protection required by subsection 66C(3) of the Act within 3 business days of the default occurring.

The requirement for a procedure that meets paragraph 91(a) and (c) reflects obligations imposed on defaulting providers by subsection 66C(2) and subsection 66D(2) of the Act. Paragraph 91(b) in effect, imposes an additional obligation on providers in the event of a default to update the provider's website with information about the course that is no longer being provided and with information about tuition protection.

New section 92 requires an approved course provider to have a procedure, to ensure that if a student accepts an offer of a place in a replacement course, the student is granted course credits for parts of the original course successfully completed by the student. This may be evidenced by:

- a statement of attainment or other Australian Qualifications Framework certification documentation issued in accordance with the Australian Qualifications Framework; or
- an authenticated VET transcript prepared by the Student Identifiers Registrar.

The procedure must also ensure:

- the student is not charged tuition fees for the replacement component of the replacement course if tuition fees have been paid for the affected part of the original course;
- the student is enrolled in the replacement course as soon as practicable; and
- the Director is given written notice of the student's acceptance within 14 days of the acceptance.

A note under section 92 informs the reader that the requirements of a procedure for the purposes of section 92 reflect the actual obligations imposed on a replacement provider by section 66G of the Act.

Item 9 – Paragraph 94(2)(d)

Subsection 94(2) sets out the matters approved course providers must include in their processes and procedures for handling personal information. Item 9 replaces the term “tuition assurance scheme operators” with “the VSL Tuition Protection Director”, to reflect the new tuition protection arrangements. As such, new paragraph 94(2)(d) of the Rules will require an approved course provider’s processes and procedures to include information that a student’s personal information may be disclosed to the Commonwealth and the Director.

Item 10 – Repeal Subdivision C of Division 3 Part 7

Item 10 repeals Subdivision C of Division 3 Part 7 of the Rules. This division included requirements for approved course providers to publish statements on their website about the nature of the tuition assurance arrangements the provider had in place for students. With the new tuition protection scheme being managed by the Director, on behalf of the Commonwealth, it is intended that the Department of Employment, Skills, Small and Family Business will publish information about the new tuition protection arrangements on its website. Defaulting providers are required under section 66D of the Act and proposed subsection 51(1) of the Rules to give students information at the time of their default.

Item 12 – Paragraph 111(a)

Item 13 – Subsection 111(2)

Item 14 – End of subsection 111(2)

Section 111 of the Rules requires an approved course provider to give the Secretary written notice of specified events within 24 hours of the event occurring. Item 12 omits “ceases to provide an approved course” and item 13 omits “cease providing a course after it starts but before it is completed”. In each case these words are substituted with “defaults in relation to a student” to reflect the new tuition protection arrangements included in the Tuition Protection Act. In effect, a defaulting provider is required to give both the Secretary and the Director (under subsection 66D(2) of the Act) notice of a default, within 24 hours of the default.

Item 14 inserts a note at the end of subsection 111(2) that refers the reader to section 66B of the Act which describes when an approved course provider defaults in relation to a student.

Item 15 – Section 112

Item 15 repeals section 112 of the Rules which required an approved course provider to give the Secretary of the Department detailed information within 3 business days of the provider ceasing to provide an approved course. This section is repealed because an approved course provider is required to provide this same information to the Director in accordance with the Tuition Protection Act.

Part 2—Miscellaneous amendments

Part 2 of Schedule 1 contains miscellaneous amendments to the Rules.

Item 16 – Definition of Special admissions test

Item 16 inserts into section 4 of the Rules a definition of ‘Special admissions test’. This term is defined to mean a test to determine the suitability of a person seeking admission into a specialist approved course that is necessary to establish the suitability of the person for admission into that approved course, and includes specialist auditions, tests and interviews that are different from the normal requirements for admissions.

Item 17 – Subsection 93(2)

Item 18 – Subsection 93(3)

Item 19 – After paragraph 118(1)(f)

Subsection 93(1) of the Rules provides that an approved course provider must not charge fees, other than tuition fees, unless the provider has processes and procedures for ensuring the student understands:

- that the fees are not for tuition;
- the purpose of the fees;
- the student’s total liability for the fees; and
- when and how the fees are to be paid.

Paragraph 93(2)(a) provides that an approved provider’s processes and procedures in relation to fees other than tuition fees must not require fees to be paid for assessments to determine whether a student is academically suited to undertake a course and applying for enrolment, or enrolling in, an approved course. Items 17 and 18 amend this rule to enable a provider to include, outside of tuition fees, fees to be paid for a special admissions test.

As a consequence of this change, item 19 amends subsection 118(1) of the Rules to ensure that fees for a special admission test are not included as part of tuition fees. Outside of the fees for a special admission test, it remains the case that fees for assessments of a student’s academic suitability may be included in the tuition fees (per paragraph 118(1)(b) of the Rules).

Item 20 – Subsection 161(1)

Item 21 – Subsections 161(2) and 161(3)

Section 161 of the Rules allow the Secretary to recover, on behalf of the Commonwealth as a debt due to the Commonwealth any amount of the approved course provider charge and late payment penalty that is due and payable. Item 20 amends existing section 161 by making the existing section 161 a new subsection 161(1).

Item 21 inserts two further subsections into section 161. New subsection 161(2) provides that the Commonwealth may recover a debt referred to in subsection 161(1) from one or more loan amounts that would otherwise be payable to the course provider. New subsection 161(3) provides that if a debt is recovered from an amount that is otherwise payable in relation to a student, the amount recovered is taken to have been paid to the course provider in relation to the student.

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) 2019

The *VET Student Loans Amendment Rules (No. 1) 2019* (**Amendment Rules**) are 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 *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* (**Tuition Protection Act**) implements a new tuition protection model for students accessing VET Student Loans, FEE-HELP or HECS-HELP to provide greater tuition protection to students as from 1 January 2020.

Tuition protection aims to ensure students are protected and supported in the event that their course provider defaults – that is, where the student has not withdrawn from the course and either:

- the provider fails to start to provide a course or a part of a course to the student on the day on which the course or part was scheduled to start; or
- the provider ceases to provide a course or a part of a course to the student at any time after the course or part starts but before it is completed.

To do this the Tuition Protection Act amended the *VET Student Loans Act* (**VSL Act**) to (among other things):

- (a) require non-exempt providers to contribute annual levies, commensurate with their size and risk (which levy is to be imposed by the proposed VET Student Loans (VSL Tuition Protection Levy) Bill 2019 – once enacted). The levy system will ensure the new arrangements are sustainable and can respond to sector trends;
- (b) establish the VET Student Loans Tuition Protection Fund (**the Fund**) as a special account;
- (c) establish a VSL Tuition Protection Director (**the Director**) to administer the new tuition protection arrangements and manage the Fund and the VSL Tuition Protection Fund Advisory Board to provide advice to the Director;
- (d) provide assistance to students to continue their studies in the same or similar course with a replacement provider, and where there is no suitable replacement course, provide a re-credit to students equal to the amount of the VET student loan used to pay tuition fees for the part of their original course which was not completed due to the provider's default;
- (e) impose obligations on defaulting providers to notify the Director and students of the default in a timely manner, and cooperate with the Director; and

- (f) impose obligations on providers, which accept students in replacement courses, to enrol students as soon as practicable, give the student course credits in recognition of their prior completed studies, as appropriate, and not charge students for the replacement component of the replacement course if tuition fees have been paid for the affected part of the original course.

Once enacted the VET Student Loans (VSL Tuition Protection Levy) Bill 2019 will impose the VSL tuition protection levy on leviable providers, and establish the method for calculating various components of the levy.

As a result of the amendments made to the Act by the Tuition Protection Act, various consequential amendments are required to the *VET Student Loans Rules 2016 (Rules)*, made pursuant to section 116 of the VSL Act. Other changes to the Rules allow approved course providers to charge fees to establish the suitability of a person for admission into a specialist approved course, and the Commonwealth to recover unpaid amounts of the annual approved course provider charge from a loan amount that would otherwise be payable to the provider.

Human Rights Implications

The Amendment Rules engage the following human rights:

- the right to education
- the right to work
- the right to privacy

Tuition Protection

The human rights implications associated with establishing tuition assurance arrangements are dealt with in the comprehensive Statement of Compatibility with Human Rights attached to the Explanatory Memorandum for the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019*.

Right to Education

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

The Bill engages the right to education, which is set out in Article 13 of the ICESCR. Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

Article 13 provides 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 Bill is to implement a new tuition protection model for students participating in the VET Student Loans program, and students who are in receipt of FEE-HELP or HECS-

HELP assistance for higher education studies. The Bill aims to ensure that students are protected and supported in the event that their approved course provider or higher education provider defaults – that is where the student has not withdrawn from the course and:

- *the provider fails to start to provide a course or a part of a course to the student on the day on which the course or part was scheduled to start; or*
- *the provider ceases to provide a course or a part of a course to the student on a day after the course or part starts but before it is completed.*

The Bill establishes the offices of the VSL Tuition Protection Director and the HELP Tuition Protection Director, who have the role and function of facilitating tuition protection for students and managing and administering the VSL Tuition Protection Fund and the HELP Tuition Protection Fund respectively.

The measures in the Bill promote the right to education as they are designed to ensure that in the event that a student's provider defaults, the student will be assisted to continue his or her studies in a suitable replacement course or receive a re-credit to his or her HELP balance in respect of the affected part of the course. Where students receive a re-credit, they will be able to independently seek to continue to undertake further education or training.

The Bill also imposes obligations on providers in the event that they default – such as a requirement to notify students and the Tuition Protection Director of the default. It also imposes obligations on providers in their capacity as replacement providers – such as to enrol the students in the replacement courses as soon as practicable, to give them course credits as appropriate and to not charge them tuition fees for the replacement component of a course.

The Amendment Rules, by giving operational effect to the Act, is compatible with and promotes the right to education. The Amendment Rules do this by providing mechanisms to enable the Director to obtain the information necessary to be able to identify whether a suitable replacement course for a student exists, and by ensuring replacement providers have procedures in place to minimise disruption to students who accept a place in a replacement course.

The Amendment Rules promotes the **right to education**.

Right to Work

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.

The Amendment Rules prescribe actions that a defaulting provider and a replacement provider must take to ensure students are supported to continue studying to attain the skills that will make them attractive to the workforce. The Amendment Rules, therefore, promote the **right to work**.

Right to Privacy

The Amendment Rules also engage the right to privacy outlined in Article 17 of the ICCPR. Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

The Amendment Rules require a defaulting provider to provide information about a student to the Director. This information allows the Director to determine whether a suitable replacement course is available. The collection of such information could be seen as limiting a person's right to privacy. However, the requirement for this information to be provided to the Director is reasonable in the circumstances and necessary for the purposes of providing tuition protection to students.

The collection and use of this information is authorised by law and is not arbitrary. It is information which is reasonably necessary for the Director to undertake his/her functions. The collection and use of this information is subject to robust privacy laws, and is reasonable, necessary and proportionate to achieve a legitimate policy outcome and ensure the right to education for students.

The Amendment Rules are compatible with the right to privacy.

Conclusion

The Amendment Rules are compatible with human rights, to the extent that it may limit human rights, the limitations are reasonable, necessary and proportionate.

Miscellaneous amendments

The amendments in Part 2 include measures that will facilitate the provision of specialist courses to students by allowing providers to charge fees for a special admissions test to determine the suitability of a person into a specialist approved course. This measure will encourage approved course providers to offer specialist courses which will in turn promote the right to education and the right to work.

Conclusion

The Amendment Rules are compatible with human rights.

Michaelia Cash

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