

# Explanatory Statement

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## *VET Student Loans Act 2016*

### *VET Student Loans Amendment Rules (No. 1) 2020*

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

## **Background**

### *Response to COVID-19*

The Australian Government is committed to supporting students and education providers as they deal with the financial consequences of the global outbreak of COVID-19. This support includes:

- reducing the cost to students to study short, online courses from universities and private providers to help Australians retrain;
- guaranteeing funding for universities at current levels;
- providing regulatory fee relief to tertiary and international education providers so they can better support domestic and international students;
- refunding or waiving fees charged by the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA); and
- providing a six month exemption from loan fees associated with FEE-HELP and VET student loans to encourage students to continue their studies despite these difficult times.

## **Authority**

The Minister for Employment, Skills, Small and Family Business makes this instrument under section 116 of the *VET Student Loans Act 2016* (**the Act**).

Subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**) 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 various provisions in the Rules.

## **Purpose and operation**

The *VET Student Loans Amendment Rules (No. 1) 2020* (**Amendment Rules**) makes amendments to the *VET Student Loans Rules 2016* (**the Rules**) to temporarily exempt students from the requirement to pay loan fees associated with VET student loans.

In accordance with subsection 23BA of the Act, a student incurs a VETSL (**VET Student Loan**) debt to the Commonwealth when the Secretary approves a VET student loan for the person; and uses a loan amount covered by the VET student loan to pay tuition fees for the

person for a course. Subsection 23BA(2) provides that the amount of the VETSL debt is 120% of the loan amount, or a lesser percentage of the loan amount if specified by the Rules. The 120% figure in subsection 23BA(2) of the Act is the full value of the loan and a loan fee which is designed to provide an offset to the Government for the costs it incurs in facilitating VET student loans.

Section 12 of the Rules is made for the purposes of paragraph 23BA(2)(b) of the Act. It provides that if a course to which the VETSL debt relates is a State or Territory subsidised course, the amount of a student's VETSL debt is 100% of the loan amount. This means that students studying a State or Territory subsidised course do not incur a loan fee. The Amendment Rules make an amendment to section 12 of the Rules, so that if the part of a course to which a VETSL debt relates has a census date between 1 April 2020 and 30 September 2020, the amount of the person's VETSL debt is 100% of the loan amount. This means that no students will incur a loan fee on any VETSL debt which arises in relation to census days which fall between 1 April 2020 and 30 September 2020. The Amendment Rules also make a minor consequential amendment to section 12. Providing a temporary six-month exemption from loan fees may provide an incentive to full-fee paying students to commence or continue one semester's study, despite the financial impact of the COVID-19 pandemic, and may also assist providers to maintain enrolment numbers during a period of economic uncertainty.

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

## **Commencement**

The amendments commence retrospectively on 1 April 2020.

The retrospective commencement of the Amendment Rules is necessary to ensure that students who have recently commenced courses, and are experiencing financial difficulty due to the economic impact of COVID-19, do not incur loan fees.

The retrospective commencement of the amendments does not have any adverse effect on students, approved course providers or any other persons, nor does it impose any liabilities on persons in respect of anything done or omitted to be done before registration. The nature of the amendments is beneficial to both students and providers and is therefore, not inconsistent with subsection 12(2) of the *Legislation Act 2003*.

## **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 regulatory impact of the proposed changes (OBPR reference 26451).

## **Financial Impact Statement**

A temporary exemption from loan fees for full fee-paying students for a period of six months may result in a cost to Government in fiscal balance terms of around \$8.9 million over the 2019-20 and 2020-21 financial years and a negligible cash impact.

## **Consultation**

No consultation was undertaken in relation to the amendments. The amendments are a temporary measure that are required urgently as part of the response to the COVID-19 pandemic, and are beneficial to both students and providers. Due to the urgency of having the amendments commence consultation was not feasible. In the current climate, many students seeking to undertake study find themselves without a source of income, and may defer any decision to enter into a loan, thus reducing enrolment numbers and potentially having a negative financial impact on providers as well. Providing a temporary exemption from loan fees is beneficial because it may provide an incentive to full-fee paying students to commence or continue their study, despite the financial impact of the COVID-19 pandemic, and may also assist providers to maintain enrolment numbers during a period of economic uncertainty. It is on this basis, that no consultation was undertaken.

## **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

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### *VET Student Loans Amendment Rules (No. 1) 2020*

#### **Preliminary**

##### **Section 1 – Name**

1. This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 1) 2020* (**Amendment Rules**).

##### **Section 2 – Commencement**

2. The table in this section sets out when the provisions of the Amendment Rules commence.
3. Sections 1 to 4, Schedule 1 and anything in the Amendment Rules not covered elsewhere by the table commence on 1 April 2020.

##### **Section 3 – Authority**

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

##### **Section 4 – Schedule**

5. This section provides that the VET Student Loans Rules (**the Rules**) are amended as set out in the Schedule to the Amendment Rules.

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

##### **Item 1 – Section 12**

6. Item 1 makes a minor amendment to insert subsection (1) into section 12 of the Rules. This amendment is consequential to the amendment in item 2 of the Amendment Rules.

##### **Item 2 – Subsection 12(2)**

7. Item 2 amends section 12 of the Rules by specifying a new class of persons whose VETSL (**VET Student Loan**) debt is less than 120% of the loan amount under paragraph 23BA(2)(b) of the Act. Item 2 provides that for any person that incurs a VETSL debt for a part of a course with a census date between 1 April 2020 and 30 September 2020, the VETSL debt for that person is 100% of the loan amount. This means that students will not incur a loan fee in respect of any VETSL debts which arise in accordance with subsection 23BA(1), if in relation to census dates in the period 1 April 2020 to 30 September 2020.

## **Statement of Compatibility with Human Rights**

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

### ***VET Student Loans Amendment Rules (No. 1) 2020***

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 Amendment Rules are part of the Government's response to the economic consequences of the global outbreak of COVID-19. In particular, the Amendment Rules will mean that students will not incur a loan fee on any VETSL (**VET Student Loan**) debt which arises in relation to parts of courses which have a census date between 1 April 2020 and 30 September 2020.

### **Human Rights Implications**

The Amendment Rules engage the following human rights:

- the right to education; and
- the right to work.

### **Right to Education**

The Amendment Rules engage the right to education set out in Article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR), which recognises the right of everyone to education, is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society.

The Amendment Rules are compatible with and promote the right to education as they reduce the loan fee for a VETSL to zero for a six month period. This amendment is designed to encourage existing students who may have experienced a reduction in their income as a result of the financial consequences of the global outbreak of COVID-19 to continue studying. The Amendment Rules will also encourage other persons to commence studying. By removing part of the financial obligations associated with accessing education through a VETSL, this measure promotes the right to education and ultimately makes education more accessible.

Having students remain enrolled and engaged in courses with their providers also promotes the right to education, as providers are less likely to lose students due to students deferring decision to enter into the loan-assisted study. This means that providers will be available to continue delivering courses to students now and in the future.

The Amendment Rules promotes the right to education.

## **Right to Work**

Under Article 6(1) of the ICESCR provides that States Parties to the ICESCR 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) of the ICESCR 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 encourage students to continue studying to attain the skills that will make them attractive to the workforce. The measures are intended to ensure that students are not deterred from studying, or prevented from studying, whilst possibly facing other financial pressures during the COVID-19 pandemic. Now more than ever, it is essential that people are qualified and skilled to take up employment, and supporting students to study will ensure they are best prepared to enter the workforce. The Amendment Rules also encourage other persons to commence studying or retrain.

The Amendment Rules, therefore, have a positive impact on, and promote the right to work.

## **Conclusion**

The Amendment Rules are compatible with human rights because they promote the protection of human rights such as the right to education and the right to work.

**Michaelia Cash**

**Minister for Employment, Skills, Small and Family Business**