

EXPLANATORY STATEMENT

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

VET Student Loans (VSL Tuition Protection Levy) Act 2020

VET Student Loans (VSL Tuition Protection Levy) (Administrative Fee) Determination 2020

Purpose and operation

The purpose of the *VET Student Loans (VSL Tuition Protection Levy) (Administrative Fee) Determination 2020* (the Instrument) is to specify the amounts that enable the administrative fee component of the VSL tuition protection levy (the VSL Levy) to be calculated.

The VSL Levy is imposed on all leviable providers under section 6 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Act) and provides an industry contribution towards the costs of tuition protection for students with a VET student loan. The amount of the VSL Levy for a year for a leviable provider is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component. The VSL Levy is payable into the VSL Tuition Protection Fund (the Fund) which is established under section 66K of the *VET Student Loans Act 2016* and managed by the VSL Tuition Protection Director (the Director).

The administrative fee component of the VSL Levy is intended to cover the ongoing administration costs of the tuition protection arrangements, such as the remuneration of the the Director, members of the VSL Tuition Protection Fund Advisory Board (Advisory Board) and any consultants engaged by the Director to assist and support the performance of his or her role and functions.

The administrative fee component is payable by all leviable providers (as defined in section 5 of the Act), but a new provider only pays part of the component in their first year.

This Instrument ensures sufficient funds are held to cover the ongoing administration costs of tuition protection for students with a VET student loan and therefore maintains a high level of student protection.

Authority

Subsection 9(1) of the Act provides that, before 1 August 2020, the Minister must determine by legislative instrument two separate amounts which are used to calculate the administrative fee component of the VSL Levy for the 2020 calendar year.

Under subsection 9(2) of the Act, the Minister may choose to make a legislative instrument for the following calendar years (i.e. 2021 onwards).

If the Minister does not make a new instrument for the following calendar years, the amounts determined in this Instrument will continue to apply subject to indexation in accordance with section 10 of the Act, until the Minister makes a new instrument under subsection 9(2) of the Act.

The Minister cannot exceed the 'upper limits' set out in subsection 9(3) of the Act in determining the amounts for the administrative fee of the VSL Levy. The Minister must also have regard to the sustainability of the Fund, and any other matter he or she considers appropriate, in determining such amounts.

Overview

Section 5 of the Instrument specifies the amounts relevant to the calculation of the administrative fee component of the VSL Levy for the 2020 calendar year.

Under section 8 of the Act, a leviable provider's administrative fee component for a calendar year is the sum of:

- the amount determined for the purposes of paragraph 8(2)(a) of the Act;
- the amount determined for the purposes of paragraph 8(2)(b) of the Act, multiplied by the total VSL students for the provider for the year.

'Total VSL students' means the total number of students who were enrolled with the provider in an approved course with a census date occurring in the previous calendar year and have been approved for a VET student loan for the course.

The administrative fee component is payable by all leviable providers. If a leviable provider is a new provider for a year, the amount of the provider's administrative fee component is the amount determined for the purposes of paragraph 8(2)(a) only.

TAFEs and other government funded entities are exempt from payment of any part of the levy (see the definition of leviable provider in subsection 5(1) of the Act), so the entire levy collection will be from private sector providers.

The Minister has considered two major factors in setting the administrative fee component of the VSL Levy. Firstly, the target funds, as advised by the the Australian Government Actuary (AGA), of between \$5,850,000 and \$7,800,000 required for the long-term sustainability of the Fund. Secondly, broadly supportive feedback from the sector who were consulted on the levy setting in the context of the COVID-19 pandemic which has created a period of uncertainty and unprecedented circumstances.

In 2020, the administrative fee component is the sum of:

- a) \$107; and
- b) \$9, multiplied by the total number of students who were enrolled with the provider in an approved course with a census date occurring in the previous year (2019) and have been approved for a VET student loan for the course.

Consultation

The Department of Education, Skills and Employment has consulted the Department of the Prime Minister and Cabinet, the Australian Government Actuary, and the Director prior to the setting of the administrative fee component through this Instrument.

Consultation with the VET sector was also undertaken in respect to the levy setting in the context of the COVID-19 pandemic.

More broadly, the Director and the Advisory Board undertook extensive consultation with VSL providers and their representatives on the levy framework and the components of the VSL Levy. The Advisory Board released its draft advice in relation to the proposed settings for the risk rated premium and special tuition protection components of the VSL Tuition Protection Levy in May 2020. A copy of the draft advice is available on the Australian Government Tuition Protection Service website: <https://tps.gov.au>. Providers and industry peak bodies were invited to provide feedback during this public consultation, which was considered by the Director and the Advisory Board.

Regulatory Impact Statement

The Office of Best Practice Regulation (OPBR) has advised that a regulation impact statement is not required for this Instrument (OPBR references 23325 and 23228).

Financial Impact Statement

This Instrument will result in a projected revenue of approximately \$0.5 million in 2020.

Given the funds are credited to a special account, and are derived from industry contributions, the funds cannot be redirected toward any other program or portfolio, as the funds can only be appropriated for the purposes of the special account.

In setting the amounts for the administrative fee component of the VSL Levy the Minister considered not only the sustainability of the Fund, but also the reality of the economy-wide ramifications and impact of the COVID-19 pandemic on businesses and education in Australia. The Minister's focus and intention in setting those amounts was on supporting Australian businesses and student welfare.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*
VET Student Loans (VSL Tuition Protection Levy) (Administrative Fee) Determination 2020

The *VET Student Loans (VSL Tuition Protection Levy) (Administrative Fee) Determination 2020* (the 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 purpose of the Instrument is to specify the amounts that enable the administrative fee component of the VSL tuition protection levy (the VSL Levy) to be calculated.

The VSL Levy is imposed on all leviable providers under section 6 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Act) and provides an industry contribution towards the costs of tuition protection for students with a VET student loan. The amount of the VSL Levy for a year for a leviable provider is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component. The VSL Levy is payable into the VSL Tuition Protection Fund (the Fund) which is established under section 66K of the *VET Student Loans Act 2016* and managed by the VSL Tuition Protection Director (the Director).

The administrative fee component of the VSL Levy is intended to cover the ongoing administration costs of the tuition protection arrangements, such as the remuneration of the the Director, members of the VSL Tuition Protection Fund Advisory Board (Advisory Board) and any consultants engaged by the Director to assist and support the performance of his or her role and functions. The administrative fee component is payable by all leviable providers (as defined in section 5 of the Act), but a new provider only pays part of the component in their first year.

This Instrument ensures sufficient funds are held to cover the ongoing administration costs of tuition protection for students with a VET student loan and therefore maintains a high level of student protection.

Human rights implications

Right to education

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, it provides that '[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...'

The Instrument specifies the amounts that enable the administrative fee component of the VSL Levy to be calculated for the 2020 calendar year.

The purpose of the administrative fee component of the VSL Levy is to cover the ongoing administration costs of tuition protection arrangements. When an approved course provider defaults in relation to a student, for example, by ceasing to provide a course to a student after it starts, but before it is completed, the Director manages the provision of tuition protection. This includes deciding whether a suitable replacement course is available for a student and assisting in the placement of that student. Leviable providers pay amounts calculated in accordance with the Act to enable the provision of tuition protection to students.

This instrument will ensure that sufficient funds are held to cover the ongoing administration costs of tuition protection for students with a VET student loan, thereby maintaining a high level of student protection in the event a course provider is no longer able to deliver a course. The Instrument is compatible with and will enhance the right to education by ensuring that there are appropriately funded tuition protection arrangements in place for VET students.

The instrument is compatible with the right to education.

Conclusion

This Instrument is compatible with human rights because it advances the protection of human rights.

**Minister for Employment, Skills, Small and Family Business,
Senator the Hon Michaelia Cash**

***VET Student Loans (VSL Tuition Protection Levy) (Administrative Fee)
Determination 2020***

Explanation of Provisions

Sections 1: Name and 2: Commencement

Sections 1 and 2 of the *VET Student Loans (VSL Tuition Protection Levy) (Administrative Fee) Determination 2020* (the Instrument) are formal provisions setting out the name and date of commencement of the Instrument.

Section 3: Authority

Section 3 of the Instrument sets out the Minister's legal authority to make the Instrument.

Section 4: Definitions

Section 4 defines terms used in the Instrument.

Section 5: Determination of administrative fee component

Section 5 of the Instrument specifies two amounts for the purposes of section 8 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Act), relevant to the calculation of the administrative fee component of the VSL tuition protection levy (the VSL Levy) for the calendar year beginning on 1 January 2020.

The amount of \$107 is specified for the purposes of paragraph 8(2)(a) of the Act, while the amount of \$9 is specified for the purposes paragraph 8(2)(a) the Act.

Therefore, in 2020, the administrative fee component of the VSL Levy is the sum of:

- a) \$107; and
- b) \$9, multiplied by the total number of students who were enrolled with the provider in an approved course with a census date occurring in the previous year (2019) and have been approved for a VET student loan for the course.

The Minister retains the ability to increase these amounts, up to the upper limits set out in subsection 8(3) of the Act, to ensure adequate tuition protection for students should a spate of large provider closures occur (which would affect the ongoing administration costs of the tuition protection arrangements).

The Minister has considered the sustainability of the Fund in setting these amounts and also had regard to other matters the Minister considers appropriate.

The note clarifies that these amounts are subject to indexation in accordance with subsection 10(1) of the Act, unless an instrument is made under section 9 of the Act for a subsequent year.