Explanatory Statement

***VET Student Loans Act 2016***

***VET Student Loans Amendment Rules (No. 2) 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 education providers as they deal with the financial consequences of the global outbreak of COVID-19. This support includes waiving the collection of the VSL tuition protection levy for 2020.

## Authority

This instrument is made under section 116 of the *VET Student Loans Act 2016* (**the Act**). Paragraph 49A(2)(f) of the Act specifically enables the VET Student Loans Rules 2016
(**the Rules**) to make provision for the waiver of the VSL tuition protection levy.

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. 2) 2020* (**Amendment Rules**) amend the Rules to waive the payment of the VSL tuition protection levy for all approved course providers for the calendar year 2020.

Part 5A of the Act establishes tuition protection for students. It 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are protected and supported in the event that their course provider defaults – that is, where the student has not withdrawn from the course and either: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 on a day after the course or part starts but before it is completed.

Part 5A of the Act applies to approved course providers other than Table A providers
(i.e. public universities) and registered training organisations that are government owned, or established to provide vocational education and training under specified legislation.

Tuition protection is administered by the VSL Tuition Protection Director (**the Director**) who is supported by the VSL Tuition Protection Fund Advisory Board (**the Board**). The Director is responsible for managing the VSL Tuition Protection Fund (**the Fund**). The
*VET Student Loans (VSL Tuition Protection Levy) Act 2020* requires non-exempt providers to contribute annual levies, commensurate with their size and risk which are credited to the Fund and used to make payments in relation to the arrangements to support displaced students, and for the remuneration and allowances of the Director and Board.

Section 41 of the Rules requires the Director to specify in a written notice given to each approved course provider who is liable to pay VSL tuition protection levy: the amount of each component of the provider’s levy; the total amount of the provider’s levy; an explanation of how each component of the provider’s levy was calculated and the business day by which the levy is due and payable by the provider.

Subsection 41(3) of the Rules provides that a failure to give a provider the notice under subsection (1) does not affect the liability of the provider to pay VSL tuition protection levy.

The Amendment Rules insert a new section 41A which waives payment of the VSL tuition protection levy for all approved course providers for the calendar year 2020. The Amendment Rules also insert a new subsection 41(4) that provides that subsections 41(1) and (3) do not apply if the liability to pay the VSL tuition protection levy is waived under section 41A and so avoids the Director having to issue the levy payment notice. The waiver of VSL tuition protection levy for 2020 will support providers at a time when they are dealing with the financial impact of the COVID-19 pandemic.

An explanation of the provisions of the Amendment Rules is set out at Attachment A.

## Commencement

The amendments commence on the day after the Amendment Rules are registered.

## 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 #23228).

## Financial Impact Statement

The amendments will result in reduced taxation revenue for the Fund of approximately
$2.7 million in 2020-21, due to the non-collection of the VSL tuition protection levy for 2020.

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| --- | --- | --- | --- | --- | --- |
|   | **2020-21** | **2021-22** | **2022-23** | **2023-24** | **Total** |
| **Fiscal Balance (000's)** | -2,729 | 0.0 | 0.0 | 0.0 | **-2,729** |
| **Underlying Cash Balance (000's)** | -2,729 | 0.0 | 0.0 | 0.0 | **-2,729**  |

## Consultation

No public consultation was undertaken in relation to the amendments. The amendments are a temporary measure that are part of the response to the COVID-19 pandemic, and provide a benefit to training providers at a time of economic uncertainty. It is on this basis, and having regard to the beneficial nature of these amendments that no public consultation was undertaken.

**Statement of Compatibility with 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*.

**Attachment A**

## Explanation of Provisions

***VET Student Loans Amendment Rules (No. 2) 2020***

**Preliminary**

**Section 1 – Name**

1. This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 2) 2020* (**Amendment Rules**).

**Section 2 – Commencement**

1. The table in this section provides that the whole of this instrument commences on the day after the Amendment Rules are registered.

**Section 3 – Authority**

1. This section provides that the Amendment Rules are made under the authority of the *VET Student Loans Act 2016* (**the Act**). Paragraph 49A(2)(f) of the Act specifically enables the VET Student Loans Rules 2016 (**the Rules**) to make provision for the waiver of the VSL tuition protection levy.

**Section 4 – Schedule**

1. This section provides that the Rules are amended as set out in the Schedule to the Amendment Rules.

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

**Item 1 – Subsection 41(4)**

1. Item 1 amends section 41 by inserting a new subsection (4). Subsection (4) provides that subsections (1) and (3) do not apply if the liability to pay the VSL tuition protection levy is waived under section 41A. This amendment is consequential to the amendment in item 2 of the Amendment Rules and avoids the Director having to issue a levy payment notice when it is not required for 2020.

**Item 2 – Section 41A**

1. Item 2 inserts a new section 41A into the Rules which provides that payment of the VSL tuition protection levy is waived for all approved course providers for the calendar year 2020.

**Attachment B**

## 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. 2) 2020***

The *VET Student Loans Amendment Rules (No. 2) 2020* (**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 amend the VET Student Loans Rules 2016 (**the Rules**) to waive payment of the VSL tuition protection levy for all approved course providers for the calendar year 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, and 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.

In addition, paragraph 13(2)(b) recognises that secondary education, in all its different forms, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

The Amendment Rules are compatible with and promote the right to education as they assist providers at a time of economic uncertainty. This amendment will give providers financial relief during difficult economic circumstances to assist them to continue operating and 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.

By giving providers financial relief during difficult economic circumstances caused by the COVID-19 pandemic, the Amendment Rules will assist providers to continue delivering courses to students now and in the future. In turn, these measures will support providers to maintain their workforce and support students to undertake study that will best prepare them to enter the workforce. Now more than ever, it is essential that people are qualified and skilled to take up employment opportunities to support Australia’s COVID-19 economic recovery.

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**