

EXPLANATORY STATEMENT

TRADE SUPPORT LOANS LEGISLATION AMENDMENT INSTRUMENT 2021

AUTHORITY

The *Trade Support Loans Legislation Amendment Instrument 2021* (the Amendment Instrument) is made under sections 105 and 106 of the *Trade Support Loans Act 2014* (the Act).

Section 105 of the Act requires the Minister to establish and maintain the TSL Priority List, which specifies either (or both) the occupations and the qualifications for which, in the opinion of the Minister, skilled persons are a priority.

Subsection 106(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters:

- required or permitted by the Act to be prescribed by the rules; or
- necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

PURPOSE AND OPERATION

The Act enables eligible apprentices to receive trade support loans, which are income-contingent loans, claimed on a voluntary basis. Broadly, the requirements to receive trade support loan may be met by a person who is undertaking a qualifying apprenticeship. One of the requirements for an apprenticeship to be a qualifying apprenticeship is that it must lead to an occupation or qualification on the TSL Priority List.

The Amendment Instrument amends the:

- *Trade Support Loans Priority List 2014* (F2014L01006) (TSL Priority List) made by the Minister under section 105 of the Act; and
- *Trade Support Loan Rules 2014* (F2014L01007) (TSL Rules) made under section 106 of the Act.

The TSL Priority List specifies both the occupations and the qualifications for which, in the opinion of the Minister, skilled persons are a priority. The Amendment Instrument amends the TSL Priority List to update a reference to the TSL Qualifications List, which is now published on a different website.

The TSL Rules provide for matters relating to qualification for trade support loan, determinations granting trade support loan, lodging applications and other matters. The Amendment Instrument makes a number of minor amendments to the TSL Rules, including:

- changing the name of the TSL Rules, for consistency with the Act and TSL Priority list;
- updating the name of the administering Department;
- updating references to external instruments;
- updating the list of prescribed circumstances in which the Secretary may determine special case qualification and payability, for consistency with amendments to section 11 of the Act;
- updating the means for new trade support loan recipients to lodge an application to receive trade support loan;
- updating the means for existing trade support loan recipients to lodge an application to receive subsequent trade support loan;
- updating the list of rural and regional postcodes in Schedule 1 to the TSL Rules;
- other editorial changes to clarify the operation of the TSL Rules.

REGULATORY IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) has advised that it considers that the amendments are unlikely to have a more than minor regulatory impact. Therefore, the preparation of a Regulation Impact Statement is not required. The OBPR reference is ID 43378.

COMMENCEMENT

The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The department's state network and selected network providers were consulted to ensure the updates support and align with current practice.

The list of postcodes has been extended with additional postcodes to align with the list used for the Australian Apprenticeships Incentives Program (AAIP).

As the amendments to the TSL Priority List and TSL Rules are minor and mainly of an administrative nature, no formal stakeholder consultation was undertaken.

TRADE SUPPORT LOANS LEGISLATION AMENDMENT INSTRUMENT 2021

EXPLANATION OF PROVISIONS

1. Name

1. Section 1 establishes and names the Amendment Instrument as the *Trade Support Loans Legislation Amendment Instrument 2021*.

2. Commencement

2. Section 2 provides that the Amendment Instrument will commence on the day after registration.

3. Authority

3. Section 3 provides that the Amendment Instrument is made under sections 105 and 106 of the Act.

4. Schedule

4. Section 4 provides that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Trade Support Loans Priority List 2014

Item 1

5. Section 6 of the TSL Priority List provides that, for the purposes of paragraph 105(1)(b) of the Act, the list of qualifications leading to occupations for which skilled persons are a priority is specified in the list known as the TSL Qualifications List.
6. Item 1 of the Amendment Instrument amends section 6 of the TSL Priority List by replacing the website reference with a reference to the Australian Apprenticeships website, www.australianapprenticeships.gov.au. The Australian Apprenticeships website is hosted by the Department of Education, Skills and Employment, which is the agency that has portfolio responsibility for the Trade Support Loans Program.
7. For the purposes of subsection 14(2) of the *Legislation Act 2003* (Legislation Act), subsection 105(2) of the Act allows the TSL Priority List to incorporate material in another instrument (whether or not a legislative instrument) as that instrument exists from time to time. Section 6 of the TSL Priority List will incorporate the TSL Qualifications List available through the Australian Apprenticeships website at it exists from time to time.

Trade Support Loan Rules 2014

Items 2 and 3

8. Items 2 and 3 amend the title and naming section of the '*Trade Support Loan Rules 2014*', to replace the singular 'Loan' with the plural 'Loans'. These changes are being made for consistency with the name of the Act and TSL Priority List, which both use the plural 'Loans'.

Item 4

9. Under Subdivision AA of the Act, a person who has an TSL debt (i.e. a debt to the Commonwealth arising from a student loan made to the person under the Act), and who is a foreign resident during a year (overseas debtor), is liable to pay the Commonwealth a levy. The amount of the levy an overseas debtor must pay is contingent on the debtor's assessed worldwide income for the year, which is essentially the sum of the debtor's Australian income and foreign-sourced income for the year.
10. Rule 16 of the TSL Rules provides three methods for working out an overseas debtor's foreign-sourced income. One of these methods, the simple self-assessment method, allows an overseas debtor to advise the ATO of their gross (pre-tax) foreign-sourced income and the occupation from which they derived the majority of that income. The ATO then applies a standard deduction against their gross foreign-sourced income based on the nominated occupation in accordance with its own salary and wages occupation code. Where the occupation has not been designated with an occupation code, the deduction is nil.
11. Item 4 of Schedule 1 to the Amendment Instrument updates the definition of 'ATO Occupation Code' in rule 4 of the TSL Rules, so that it refers to most recent salary and wage occupation codes published by the Australian Taxation Office in November 2021.
12. A note explains that as of November 2021, the *Salary and wage occupation codes 2020* was available at www.ato.gov.au/forms/salary-and-wage-occupation-codes-2021/.

Item 5

13. Item 5 of Schedule 1 to the Amendment Instrument omits and replaces the definition of 'rural or regional area' to make minor editorial changes to that definition. The changes are made for clarity and do not change the operation of the definition.

Item 6

14. Item 6 of Schedule 1 to the Amendment Instrument amends paragraph 6(a) of the TSL Rules by removing a reference to Schedule 1 to the TSL Priority List and replacing it with a reference to the TSL Priority List. This corrects an error as the TSL Priority List does not include any Schedules.

Item 7

15. Item 7 of Schedule 1 to the Amendment Instrument amends paragraph 8(b) of the TSL Rules by replacing the reference to the ‘Department of Industry’ with a reference to the ‘Department’. Item 1 of the table in subsection 19A(1) of the Acts Interpretation Act provides that such a reference to the Department shall be taken to refer to the Department of State of the Commonwealth that is administered by the Minister or Ministers administering that provision in relation to the relevant matter, and that deals with that matter. As at October 2021 this was the Department of Education, Skills and Employment.

Item 8

16. In certain circumstances where an amount is wrongly paid as an instalment of trade support loan, the Secretary is empowered under subsection 11(1) of the Act to make a determination that the recipient is taken to have been qualified for trade support loan and trade support loan is taken to have been payable to the person. In such circumstances, the amount will not be an overpayment debt and will instead give rise to a ‘TSL debt’, recoverable through the Australian tax system. Rule 11 of the TSL Rules, which is made under subsection 11(2) of the Act prescribes circumstances in which the Secretary is to make such a determination.
17. The *Trade Support Loans Amendment (Improving Administration) Act 2020* made amendments to the Secretary’s powers in section 11 of the Act. These amendments included removing the requirement that trade support loan was payable to the person in relation to the instalment period ending before the instalment period in which the instalment of trade support loan was wrongly paid (the ***final instalment period***). The removal of this limitation allows the Secretary to make a subsection 11(1) determination in a broader range of circumstances.
18. Item 8 of Schedule 1 to the Amendment Instrument repeals and replaces rule 11 to reflect the broader operation of section 11 of the Act. Paragraph (a) of rule 11 had provided for the Secretary to make a determination that trade support loan is payable where, before the end of the final instalment period specified in a determination made for the person under section 16 of the Act, the person had notified the Secretary of a change of circumstances which would affect payability of trade support loan, but payments of trade support loan continued to be made to the person for that period. New paragraph 11(1)(a) largely mirrors former paragraph 11(a) but does not use the term ‘final instalment period’ which is no longer used in section 11 of the Act.
19. New rule 11 does not retain paragraph (b) of the former rule, which provided for the Secretary to make a determination where a person has successfully completed a qualifying apprenticeship but the Secretary has not received notice from the designated State/Territory training authority, or from the person, of this completion. It is not necessary to prescribe these circumstances, as subparagraph 8(a)(iii) of the TSL Rules separately provides that for the purposes of subsection 8(3) of the Act, a person is taken to be undertaking a qualifying apprenticeship until notice of successful completion of the apprenticeship has been received by the Secretary from State Training Authority.
20. New paragraph (b) of rule 11 is included for the avoidance of doubt and provides that rule 11 does not prevent the Secretary from determining that subsection 11(1) of the Act applies to a person in other circumstances.

Item 9

21. Subsection 13(2) of the Act provides that a person's application for trade support loan must be 'in a form approved by the Secretary' (s 13(2)(a)) and 'lodged in a manner prescribed by the rules' (s 13(2)(b)).
22. Two types of application form have been approved by the Secretary – the application form (Form 1289) and the opt-in form (Form 1290). Rule 12 prescribes the manner in which each of these forms may be lodged.
23. Item 9 of Schedule 1 to the Amendment Instrument repeals rule 12 and substitutes it with a new rule 12, which does not refer to the two types of application form by name. The new rule 12 instead describes the particular circumstances in which those two forms are used. Prescribing the approved means of lodgement by reference to circumstances, rather than the name of the application forms, provides greater clarity. The new rule 12 prescribes additional manner in which a person may make an application for trade support loan. A person has the option to lodge a new application in person, by mail, by email, or electronically through a website or software program made available by the Department for that purpose. The electronic lodgement through a website or a software program contemplated under rule 12(a)(iv) is expected to be made available by the Department in 2023.
24. Where a person is undertaking a qualifying apprenticeship in respect of which the Secretary has previously granted an application by the person for trade support loan, and they are continuing their apprenticeship under the same training contract, new rule 12 prescribes an additional manner in which they may lodge their application for a subsequent instalment period. The option to lodge a subsequent application via fax has been removed as applicants have shown a clear preference for other lodgement channels. The person may now also submit their form electronically through a website or application made available by the Department administering the Act (r 12(b)(vi)).

Item 10

25. Subsection 8(3) of the Act provides that the rules may prescribe circumstances in which a person is, or is not, taken to be undertaking a qualifying apprenticeship. Pursuant to subsection 8(3), rule 7 of the TSL Rules provides that where a person is undertaking a qualification in the horticulture sector, as prescribed in the TSL Priority List, the person must also be working in a rural or regional area.
26. Rule 4 defines 'rural or regional area' by reference to the postcodes listed in Schedule 1 to the TSL Rules. Item 10 of Schedule 1 to the Amendment Instrument repeals and replaces Schedule 1 to the TSL Rules with a new Schedule. The new Schedule contains an updated list that includes additional regional and rural postcodes and corrects other editorial issues, such as duplicate postcodes.

Statement of Compatibility with Human Rights

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

The *Trade Support Loans Legislation Amendment Instrument 2021* (the Amendment 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 Amendment Instrument is made under sections 105 and 106 of the *Trade Support Loans Act 2014* (the Act).

Section 105 of the Act requires the Minister to establish and maintain the TSL Priority List, which specifies either (or both) the occupations and the qualifications for which, in the opinion of the Minister, skilled persons are a priority.

Subsection 106(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters:

- required or permitted by the Act to be prescribed by the rules; or
- necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Act enables eligible apprentices to receive trade support loans, which are income-contingent loans, claimed on a voluntary basis. Broadly, the requirements to receive trade support loan may be met by a person who is undertaking a qualifying apprenticeship. One of the requirements for an apprenticeship to be a qualifying apprenticeship is that it must lead to an occupation or qualification on the TSL Priority List.

The TSL Priority List specifies both the occupations and the qualifications for which, in the opinion of the Minister, skilled persons are a priority. The Amendment Instrument amends the TSL Priority List to update a reference to the TSL Qualifications List, which is now published on a different website.

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- changing the name of the TSL Rules, for consistency with the Act and TSL Priority list;
- updating the name of the administering Department;
- updating references to external instruments;

- updating the list of prescribed circumstances in which the Secretary may determine special case qualification and payability, for consistency with amendments to section 11 of the Act;
- updating the means for new trade support loan recipients to lodge an application to receive trade support loan;
- updating the means for existing trade support loan recipients to lodge an application to receive subsequent trade support loan;
- updating the list of rural and regional postcodes in Schedule 1 to the TSL Rules;
- other editorial changes to clarify the operation of the TSL Rules.

Human right implications

The Amendment Instrument engages the following human rights:

Right to education

The Amendment Instrument engages the right to education is contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In particular, Article 13(2)(b) states that secondary education, 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 Act promotes an individual's right to education by providing access to financial assistance, in the form of the loans, during an apprenticeship. The loans are designed to help apprentices with the everyday living expenses associated with training (technical and vocational education). This improves the accessibility of technical and vocational education, as individuals need not miss out on enrolment due to the prospect of financial difficulties in undertaking an apprenticeship.

Right to work

Article 6 of the ICESCR requires that State Parties recognise the right to work, including through developing policies and techniques to achieve steady economic, social and cultural development and full and productive employment.

The Australian Government is maintaining its commitment to support workforce participation by supporting apprentices who wish to undertake occupations and qualifications that are needed in the community.

The Act supports workforce participation of apprentices by providing financial assistance during their apprenticeship. Apprentices will only be required to begin repaying the loans once their earnings are above the repayment threshold. The financial assistance makes it more financially viable for apprentices to pursue their desired occupation and qualification in areas of priority and promotes their workforce participation for the benefit of the general community.

Amendment Instrument's engagement with the right to education and right to work

The Amendment Instrument promotes both the right to education and the right to work by improving access to trade support loans under the Act. In particular:

- By updating references to external documents in the TSL Priority List and TSL Rules, the Amendment Instrument ensures that individuals have the most updated information to determine their eligibility for financial assistance when undertaking an apprenticeship.
- The changes to the list of prescribed circumstances in which the Secretary may determine special case qualification and payability will have neutral effect on the right to education as it simply reflects, and does not limit, the circumstances in which the Secretary may determine special case qualification and payability.
- By updating the means for new trade support loan recipients to lodge an application to receive trade support loan.
- By updating the means for existing trade support loan recipients to lodge an application to receive subsequent trade support loan, the Amendment Instrument promotes ongoing access to trade support loan.
- By updating the list of rural and regional postcodes in Schedule 1 to the TSL Rules, the Amendment Instrument provides more persons with access to trade support loan.

Conclusion

The Amendment Instrument is compatible with human rights. The amendments ultimately promote the right to education and the right to work by improving access to trade support loans under the Act.

Minister for Employment, Workforce, Skills, Small and Family Business
Senator the Honourable Stuart Robert