

Explanatory Statement

VET Student Loans Act 2016

VET Student Loans Amendment Rules (No. 1) 2021

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

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 Interpretation Act) 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 Interpretation Act is relied on to amend various provisions in the Rules.

Purpose and operation

The *VET Student Loans Amendment Rules (No. 1) 2021* (the Amendment Rules) amend the Rules to waive the payment of the VSL tuition protection levy for all approved course providers for the calendar year 2021. The Rules were previously amended by the *VET Student Loans Amendment Rules (No.2) 2020* to waive 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to ensure students are protected and supported if their course provider defaults – that is, where the student has not withdrawn from the course and either: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 amend section 41A to waive payment of the VSL tuition protection levy for all approved course providers for the calendar year 2021. The waiver of VSL tuition protection levy for 2021 will provide continued support for providers at a time when they are dealing with the financial impact of the COVID-19 pandemic.

Commencement

The amendments commence on the day after the Amendment Rules are registered on the Federal Register of Legislation.

Regulatory Impact Statement

The Office of Best Practice Regulation assessed that a Regulation Impact Statement was not required for the Amendment Rules (OBPR reference #23228).

Financial Impact Statement

The amendments will have a negative \$1.270 million impact on the underlying cash balance in the 2021-22 financial year. The impact is a result of the reduced taxation revenue due to the non-collection of the VSL tuition protection levy for 2021.

	2021-22	2022-23	2023-24	2024-25	Total
Fiscal Balance (000's)	-1,270	0.0	0.0	0.0	-1,270
Underlying Cash Balance (000's)	-1,270	0.0	0.0	0.0	-1,270

Consultation

No public consultation was undertaken in relation to the amendments. VSL providers are aware of the proposed Levy settings and expected collection, due to consultation undertaken by the VSL Tuition Protection Director earlier in 2021. While no adverse responses were received on the 2021 Levy collection during this consultation, the sector has noted the financial challenges it has experienced due to the ongoing COVID-19 pandemic. In response, the amendments are a temporary measure for the sector, that are part of the Australian Government's economic 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.

Explanation of Provisions

VET Student Loans Amendment Rules (No. 1) 2021

Preliminary

Section 1 – Name

1. This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 1) 2021* (Amendment Rules).

Section 2 – Commencement

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

Section 3 – Authority

3. 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

4. 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 – Section 41A

5. Item 1 amends section 41A by inserting a new subsection (1). This amendment is consequential to the amendment in item 2 of the Amendment Rules which inserts subsection 41A(2) of the Rules.

Item 2 – Subsection 41A(2)

6. Item 2 inserts a new subsection (2) into section 41A of the Rules which provides that payment of the VSL tuition protection levy is waived for all approved course providers for the calendar year 2021.

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) 2021

The *VET Student Loans Amendment Rules (No. 1) 2021* (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 2021.

Human Rights Implications

The Amendment Rules engage the following human rights:

- the right to education contained in Article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR), and
- the right to work contained in Article 6 of the ICESCR.

Right to Education

The Amendment Rules engage the right to education set out in Article 13 of the 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 promote 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 States 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.

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

Conclusion

The Amendment Rules are compatible with human rights because they promote the protection of human rights.

Stuart Robert

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