

EXPLANATORY STATEMENT

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

VET Student Loans Act 2016

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 3) 2022

AUTHORITY

The Amendment Determination is made under section 16 of the *VET Student Loans Act 2016* (VET Student Loans Act). Subsection 16(1) provides that the Minister may, by legislative instrument, determine: courses of study for which VET student loans may be approved; and maximum loan amounts, or methods for working out maximum loan amounts, for those courses.

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.

PURPOSE AND OPERATION

The purpose of the *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 3) 2022* (Amendment Determination) is to amend the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) to:

- insert a note to clarify the operation of section 6 which provides for the indexation of maximum loan amounts;
- extend the list of courses for which VET student loans may be approved under the VET Student Loans Act;
- remove courses from the tables which are no longer available for students to enrol in; and
- increase the loan caps for some of the approved courses.

The Courses and Loan Caps Determination specifies the courses for which VET student loans may be approved under the VET Student Loans Act; it sets the maximum loan amounts for those courses and provides for the annual indexation of the maximum loan amounts.

The methodology used to determine course eligibility is that: courses are on at least two state and territory subsidy/skills lists; or are science, technology, engineering, agriculture or mathematics (STEM) related; or are tied to licensing requirements for a particular occupation.

REGULATORY IMPACT

The Office of Best Practice Regulation assessed that a Regulation Impact Statement was not required for the Amendment Determination because it is unlikely to have a more than minor regulatory impact (OBPR reference OBPR21-01207).

CONSULTATION

On 28 September 2021, States and Territories were consulted on their subsidised training courses, course price, subsidy amount and courses with licensing requirements.

The information provided in response to the consultation process by States and Territories on subsidised training courses and courses with licensing requirements was used to determine the VET Student Loans course eligibility as the methodology is that: courses are on at least two state and territory subsidy/skills lists, or are STEM related, or are tied to licensing requirements for a particular occupation.

Course price and subsidy amount information received from States and Territories has been used to inform the VET Student Loans course loan caps, as set out in this Amendment Determination.

The courses added to Schedule 3 as part of this amendment replace courses previously included in Schedule 3 that have become superseded. Accordingly, no consultation was necessary in relation to the addition of these courses.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 3) 2022

The *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 3) 2022* (Amendment Determination) 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 Amendment Determination

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The Courses and Loan Caps Determination specifies the courses for which VET student loans may be approved under the VET Student Loans Act; it sets the maximum loan amounts for those courses and provides for the annual indexation of the maximum loan amounts.

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Human rights implications

This Amendment Determination engages the following human rights:

- *Right to Education* – Article 13, *International Covenant on Economic, Social and Cultural Rights* (ICESR);
- *Right to Work* – Articles 6(1) and 7 of the ICESCR.

Right to Education

The Amendment Determination engages the right to education, set out in Article 13 of the ICESR. The right to education recognises the important personal, societal, economic and intellectual benefits of education and provides that higher education shall be made equally

accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

The right to education is positively engaged by the measures contained in the Amendment Determination because these amendments will ensure that students have access to educational opportunities in courses that prepare students to meet industry needs within the vocational education and training (VET) sector, thereby providing students with educational opportunities in relevant fields that lead to genuine employment opportunities.

To the extent that the Amendment Determination is interpreted in any way as to limit students' access to particular courses and confine course choice, this is justifiable to ensure fiscal accountability and quality output from providers. The limit on which courses are eligible for loan access ensures that students are undertaking courses that are more likely to result in an employment outcome. This limitation is necessary and proportionate to the policy objective, as the measures are designed to protect students by enhancing educational and employment outcomes, ensuring they are receiving value for money, and that there is a high level of quality assurance and transparency in the training courses.

The Amendment Determination is compatible with, and in furtherance of, the right to education.

Right to Work

The Amendment Determination engages the right to work, set out in Articles 6 and 7 of the ICESCR. The right to work recognises the right of everyone to the opportunity to gain their living by work, which they freely choose or accept and under conditions where their fundamental political and economic freedoms are safeguarded. Positive steps by States Parties towards the progressive realisation of the right to work include assisting individuals to identify and access available employment by enabling and supporting access to technical and vocational education.

VET equips students with workplace specific skills, designed by industry, for a wide range of occupations. It also represents an important economic and social opportunity for those seeking new employment opportunities, or those seeking to retrain.

The Amendment Determination is intended to ensure the VET student loans program is focused on providing support for students in respect to courses that have a high national priority, align with industry needs, contribute to addressing skills shortages and lead to employment outcomes.

This Amendment Determination allows the Courses and Loan Caps Determination to be updated with approved courses to ensure that Commonwealth income contingent loans are

available to support students in VET training courses where genuine employment opportunities exist.

The Amendment Determination is compatible with, and in furtherance of, the right to work.

Conclusion

The Amendment Determination is compatible with human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Minister for Employment, Workforce, Skills, Small and Family Business,
the Hon Stuart Robert MP**

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 3) 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument to be the *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 3) 2022*.

Section 2: Commencement

2. Subsection 2(1) contains a table that sets out the commencement information for the instrument. Each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.
3. The table has the effect of providing that sections 1 to 5, Schedule 1 and anything else in the instrument commence the day after the instrument is registered on the Federal Register of Legislation.

Section 3: Authority

4. Section 3 provides that the making of the instrument is authorised under section 16 of the *VET Student Loans Act 2016*.

Section 4: Amendment in Schedule

5. Section 4 provides that the *VET Student Loans (Courses and Loan Caps) Determination 2016 (Courses and Loan Caps Determination)* is amended as set out in Schedule 1 to the instrument.

Section 5: Transitional arrangements

6. Section 5 of the Amendment Determination is inserted in the instrument to clarify, for the avoidance of doubt, the transitional arrangements for the courses which are removed.
7. This amendment makes clear that if a VET student loan for an approved course has been approved by the Secretary and the student has not yet completed the course of study, the loan remains approved even if the course is later removed from the approved course list in the Courses and Loan Caps Determination (for example, because the course is no longer current). This ensures that, if the full loan amount has not been paid by the Secretary to the approved course provider at the time a course is removed from the Determination, the Secretary can continue to make loan payments to the provider for the course which has been removed.
8. Section 5 of the Amendment Determination makes it clear that this can occur for the courses that are listed in items 3, 6, 9, 11 and 14 of Schedule 1 to the Amendment Determination (courses that are non-current or deleted and are being removed from

the Courses and Loan Caps Determination from the day the Amendment Determination commences).

Schedule 1 – Amendments

9. Schedule 1 sets out the amendments to the Courses and Loan Caps Determination. The Amendment Determination adds 88 courses to Schedule 1 (which is divided into three different loan cap bands) of the Courses and Loan Caps Determination. This includes 68 courses that replace non-current courses or courses superseded more than 12 months ago on the Courses and Loans Cap Determination. The addition of these courses in the Determination will benefit students because they will be able to apply for a VET Student Loan to undertake their study of these courses.
10. The Amendment Determination removes 57 courses from Schedule 1 of the Courses and Loan Caps Determination because (as indicated on the National Register) they have become 'non-current', or were 'expired' or 'superseded' more than 12 months ago. The National Register is a register maintained by the Department and is referred to in section 216 of the *National Vocational Education and Training Act 2011*. It is accessible at <https://training.gov.au/Home/Tga> and includes details of nationally registered training, including accredited courses. It is important to remove these courses from the Courses and Loan Caps Determination as students are no longer able to enrol in these courses.
11. The Amendment Determination also moves 11 courses from Schedule 1, Part 1 to Schedule 1, Part 2 and an additional course from Schedule 1, Part 2 to Schedule 1, Part 3. The movement of these courses increases the loan cap for students undertaking those courses from \$5,000 to \$10,000 in the case of courses which have moved from Schedule 1, Part 1 to Schedule 1, Part 2, and from \$10,000 to \$15,000 in the case of the course which moved from Schedule 1, Part 2 to Schedule 1, Part 3.
12. The Amendment Determination removes six courses from Schedule 2 which have been superseded. The current versions of these courses are already included in Schedule 2 of the Courses and Loan Caps Determination.
13. The Amendment Determination adds eight additional courses for specific providers to Schedule 3 and removes nine courses for specific providers from Schedule 3. One of the courses removed from Schedule 3 has been included in Schedule 1 of the Courses and Loans Cap Determination due to now meeting course eligibility criteria, and so students can now access a VET student loan for this course with any approved course provider. The Amendment Determination also increases the loan cap for one course for a specific provider in Schedule 3 which has moved from \$10,000 to \$15,000.

Item 1 – At the end of section 6

14. Item 1 inserts a note at the end of section 6 which makes clear that new courses specified in Schedule 1, 2 or 3 (by later amending instruments) are taken to be indexed from 1 January 2018. This removes any ambiguity with respect to the indexation of maximum loan cap amounts in relation to courses inserted into the Courses and Loan Caps Determination after 1 January 2018.

Item 2 – Schedule 1, Part 1 (table)

15. Item 2 provides that the table in Schedule 1, Part 1 (which lists the courses in loan cap band 1) is amended by inserting rows setting out the details of eight new approved courses. The rows are to be added to the table in ascending numerical order, ordered by course code.

Item 3 – Schedule 1, Part 1 (table)

16. Item 3 provides that the table in Schedule 1, Part 1 is amended by omitting 14 rows setting out the details of 14 courses to be removed from the table. These courses are to be removed because (as indicated on the National Register) they have become ‘non-current’, or were ‘expired’ or ‘superseded’ more than 12 months ago.

Item 4 – Schedule 1, Part 1 (table)

17. Item 4 provides that all items in the table in Schedule 1, Part 1 are to be renumbered starting at 1.

Item 5 – Schedule 1, Part 2 (table)

18. Item 5 provides that the table in Schedule 1, Part 2 (which lists the courses in loan cap band 2) is amended by inserting rows setting out the details of 25 new approved courses. The rows are to be added to the table in ascending numerical order, ordered by course code.

Item 6 – Schedule 1, Part 2 (table)

19. Item 6 provides that the table in Schedule 1, Part 2 is amended by omitting 13 rows setting out the details of 13 courses to be removed from the table. These courses are to be removed because (as indicated on the National Register) they have become ‘non-current’, or were ‘expired’ or ‘superseded’ more than 12 months ago.

Item 7 – Schedule 1, Part 2 (table)

20. Item 7 provides that all items in the table in Schedule 1, Part 2 are to be renumbered starting at 1.

Item 8 – Schedule 1, Part 3 (table)

21. Item 8 provides that the table in Schedule 1, Part 3 (which lists the courses in loan cap band 3) is amended by inserting rows setting out the details of 67 new approved courses. The rows are to be added to the table in ascending numerical order, ordered by course code.

Item 9 – Schedule 1, Part 3 (table)

22. Item 9 provides that the table in Schedule 1, Part 3 is amended by omitting 42 rows setting out the details of 42 courses to be removed from the table. These courses are to be removed because (as indicated on the National Register) they have become ‘non-current’, or were ‘expired’ or ‘superseded’ more than 12 months ago.

Item 10 – Schedule 1, Part 3 (table)

23. Item 10 provides that all items in the table in Schedule 1, Part 3 are to be renumbered starting at 1.

Item 11 – Schedule 2 (table)

24. Item 11 provides that the table in Schedule 2 (which lists approved course with specific maximum loan amounts) is amended by omitting six rows setting out the details of six courses to be removed from the table. These courses are to be removed because (as indicated on the National Register) they have become ‘non-current’, or were ‘expired’ or ‘superseded’ more than 12 months ago.

Item 12 – Schedule 2 (table)

25. Item 12 provides that all items in the table in Schedule 2, are to be renumbered starting at 1.

Item 13 – Schedule 3 (table)

26. Item 13 provides that the table in Schedule 3 (which lists approved courses for specific providers) is amended by inserting nine additional rows setting out the details of an additional eight courses at nine specific approved course providers. The rows are to be added to the table in alphabetical order by approved course provider.

Item 14 – Schedule 3 (table)

27. Item 14 provides that the table in Schedule 3 is amended by omitting 19 rows setting out the details of nine courses at 12 specified approved course providers. These courses are to be removed because (as indicated on the National Register) they have become ‘non-current’, or were ‘expired’ or ‘superseded’ more than 12 months ago.

Item 15 – Schedule 3 (table, maximum loan amounts)

28. Item 15 provides the table in Schedule 3 is amended by increasing the maximum loan amount to \$15 000 for one course at a specified provider, being SHB60118 Advanced Diploma of Intense Light and Laser for Hair Reduction at the Technical and Further Education Commission of NSW (TAFE NSW).

Item 16 – Schedule 3 (table, column headed ‘Item’)

29. Item 16 provides that all items in the table in Schedule 3 are to be renumbered starting at 1.