

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Skills and Training

VET Student Loans Act 2016

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 4) 2022

AUTHORITY

The VET Student Loans (Courses and Loan Caps) Amendment Determination (No.4) 2022 (Amendment Determination) is made under section 16 of the *VET Student Loans Act 2016* (VET Student Loans Act). Subsection 16(1) of that Act provides that the Minister may, by legislative instrument, determine: courses of study for which vocational education and training (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 Amendment Determination is to amend the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) to:

- extend the list of courses for which VET student loans may be approved under the VET Student Loans Act;
- remove courses from the tables to the Courses and Loan Caps Determination 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; sets the maximum loan amounts for those courses and provides for the annual indexation of the maximum loan amounts.

In order for courses to be approved for VET student loans they must be:

- on at least two state and territory subsidy/skills lists; or
- science, technology, engineering, agriculture or mathematics (STEM) related; or
- 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 OBPR22-03531).

CONSULTATION

Schedules 1 and 2

On 4 August 2022, States and Territories (States) were consulted on their subsidised training courses, course prices, subsidy amounts and courses with licensing requirements. With the exception of WA (who advised that the data provided for the 2022 update would be appropriate) all jurisdictions provided updated subsidy data.

The information that was provided in response to the consultation process was used to determine the eligibility for the VET student loans course list requiring that courses must be on at least two state and territory subsidy/skills lists, or are STEM related, or are tied to licensing requirements for a particular occupation.

In addition, course price and subsidy amount information received from States has been used to inform the VET student loans course loan caps, as set out in this Amendment Determination.

Schedule 3

The Department of Employment and Workplace Relations conducts an annual application process for listed providers (as defined under section 27 of the VET Student Loans Act) and for not-for-profit providers to have additional courses approved for VET student loans, under Schedule 3 of the Determination. Courses listed on Schedule 3 are only approved for VET student loans for the provider listed against them and must not already be on Schedule 1 or 2 of the Determination.

The department invited applications from eligible providers through its annual Schedule 3 Application process, open from 5 September to 25 September 2022.

One new course was added to Schedule 3 of the Amendment Instrument, as approved under the Schedule 3 annual application process.

Additional courses were also added to Schedule 3 by the Amendment Determination as replacement courses previously included in Schedule 3 for courses that have become superseded. No consultation was necessary in relation to the addition of superseding courses.

Internal departmental stakeholders were also consulted on new training packages and replacement courses, as part of the department's quality assurance process

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. 4) 2022

The *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 4) 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

The purpose of the *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 4) 2022* (Amendment Determination) is to amend the *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) to:

- extend the list of courses for which VET student loans may be approved under the *VET Student Loans Act 2016* (VET Student Loans Act);
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Human rights implications

The 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 contained 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 could be 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 criteria according to which courses are eligible for loan access is intended to ensure that students are undertaking courses that are focused on areas of skills needs, more likely to result in an employment outcome, and consider students' capacity to repay. To the extent that VET student loan eligibility represents a constraint on course choice, this limitation is necessary and proportionate to the broader policy objective which is to maximise students' educational and employment outcomes, by ensuring that they are receiving value for money, and that there is a high level of quality assurance, transparency and rigour in the training courses offered to them.

The Amendment Determination is compatible with, and in furtherance of, the right to education. The promotion of the right to education inherently leads into the promotion of the right to work, as education is one of the pathways to employment.

Right to Work

The Amendment Determination engages the right to work contained 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.

In particular, the Amendment Determination promotes the objects of Article 6(2) of the ICESCR, which include access to *"technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment ... "*

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.

Further, the 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.

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 Skills and Training
the Hon Brendan O'Connor MP

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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. 4) 2022* (Amendment Determination).

Section 2: Commencement

2. Subsection 2(1) contains a table that sets out the commencement information for the Amendment Determination instrument. Each provision of the Amendment Determination 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 to Schedule 1 and anything else in the Amendment Determination commence the day after the Amendment Determination is registered on the Federal Register of Legislation.

Section 3: Authority

4. Section 3 provides that the making of the Amendment Determination 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 Amendment Determination.

Section 5: Transitional arrangements

6. Section 5 of the Amendment Determination is inserted into the instrument to clarify, for the avoidance of doubt, the transitional arrangements for the courses which are being removed.
7. The transitional arrangements make 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 measure 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 Courses and Loan Caps 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 2, 5, 8, or 12 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 38 courses to Schedule 1 (which is divided into three different loan cap bands) of the Courses and Loan Caps 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 105 courses from Schedule 1 of the Courses and Loan Caps Determination because (as indicated on the National Register) they have become 'non-current', or 'expired' or were '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 2 courses from Schedule 1, Part 1 to Schedule 1, Part 2 and an additional 13 courses 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 adds one course to Schedule 2, which replaces a superseded version of this course.
13. The Amendment Determination adds six additional courses for specific providers to Schedule 3 and removes 10 courses for specific providers from Schedule 3.
14. The Amendment Determination also increases the loan cap for students undertaking 3 courses in Schedule 3 from \$10,000 to \$15,000 at the specified providers.

Item 1 – Schedule 1, Part 1 (table)

15. Item 1 provides that the table in Schedule 1, Part 1 (which lists the courses in loan cap band 1) is amended by inserting a row setting out the details of one new approved course.

Item 2 – Schedule 1, Part 1 (table)

16. Item 2 provides that the table in Schedule 1, Part 1 is amended by omitting seven rows setting out the details of seven 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 ‘expired’ or were ‘superseded’ more than 12 months ago.

Item 3 – Schedule 1, Part 1 (table)

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

Item 4 – Schedule 1, Part 2 (table)

18. Item 4 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 16 new approved courses. The rows are to be added to the table in ascending numerical order, ordered by course code.

Item 5 – Schedule 1, Part 2 (table)

19. Item 5 provides that the table in Schedule 1, Part 2 is amended by omitting 37 rows setting out the details of 37 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 ‘expired’ or were ‘superseded’ more than 12 months ago.

Item 6 – Schedule 1, Part 2 (table)

20. Item 6 provides that all items in the table in Schedule 1, Part 2 are to be renumbered starting at 1.

Item 7 – Schedule 1, Part 3 (table)

21. Item 7 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 36 new approved courses. The rows are to be added to the table in ascending numerical order, ordered by course code.

Item 8 – Schedule 1, Part 3 (table)

22. Item 8 provides that the table in Schedule 1, Part 3 is amended by omitting 74 rows setting out the details of 74 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 'expired' or were 'superseded' more than 12 months ago.

Item 9 – Schedule 1, Part 3 (table)

23. Item 9 provides that all items in the table in Schedule 1, Part 3 are to be renumbered starting at 1.

Item 10 – Schedule 2 (table)

24. Item 10 provides that the table in Schedule 2 (which lists approved courses with specific maximum loan amounts) is amended by inserting one row setting out the details of one new approved course. This row is to be added to the table in ascending numerical order, ordered by course code.

Item 11 – Schedule 3 (table)

25. Item 11 provides that the table in Schedule 3 (which lists approved courses for specific providers) is amended by inserting 11 additional rows setting out the details of an additional nine courses at ten specified approved course providers. The rows are to be added to the table in alphabetical order by approved course provider.

Item 12 – Schedule 3 (table)

26. Item 12 provides that the table in Schedule 3 is amended by omitting 10 rows setting out the details of 10 courses at 10 specified approved course providers. These courses are to be removed because (as indicated on the National Register) they have become 'non-current' or 'expired' or were 'superseded' more than 12 months ago.

Item 13 – Schedule 3 (table, column headed 'Item')

27. Item 13 provides that all items in the table in Schedule 3 are to be renumbered starting at 1.