

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. 2) 2023

AUTHORITY

The *VET Student Loans (Courses and Loan Caps) Amendment Determination (No.2) 2023* (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 *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) specifies the courses for which VET Student Loans (VSL) 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.

Courses are approved for VSL where they are:

- on at least two state and/or territory subsidy/skills lists; or
- a science, technology, engineering, agriculture or mathematics (STEM) related course; or
- required for occupational licensing.

The purpose of the Amendment Determination is to amend the 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 cap for one approved course under Schedule 3 of the Courses and Loan Caps Determination.

REGULATORY IMPACT

The Office of Impact Analysis assessed that an Impact Analysis was not required for the Amendment Determination because it is unlikely to have a more than minor regulatory impact (OIA reference OIA23-05921).

CONSULTATION

Schedules 1 and 2

In August and September 2023, states and territories (States) were consulted on their subsidised training courses, course prices, subsidy amounts and courses which form part of occupational licensing requirements.

This consultation informs whether courses meet the eligibility criteria for VSL approval – i.e. are on at least two state and territory subsidy/skills lists, are STEM related, or are tied to licensing requirements for a particular occupation.

The consultation also fulfils the Australian Government’s commitment to consult with States on the development of the VSL course list under National Skills Agreement arrangements.

Schedule 3

The Department of Employment and Workplace Relations (the department) 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 Courses and Loan Caps 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 Courses and Loan Caps Determination.

The department invited applications from eligible providers through its annual Schedule 3 Application process, open from 7 August 2023 to 28 August 2023.

Six courses were added to Schedule 3 of the Amendment Instrument, as approved under the Schedule 3 annual application process. One course was moved from Loan Cap Band 2 to Loan Cap Band 3.

Additional courses were also added to Schedule 3 by the Amendment Determination as replacements for courses previously included in Schedule 3 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. 2) 2023

The *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 2) 2023* (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 *VET Student Loans (Courses and Loan Caps) Determination 2016* (Courses and Loan Caps Determination) specifies the courses for which VET Student Loans (VSL) 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.

Courses are approved for VSL where they are:

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The purpose of the Amendment Determination is to amend the Courses and Loan Caps Determination to:

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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); and

- *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 ICESCR. 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, up to the appropriate loan cap amount. These courses prepare students to meet industry needs within the 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 VSL 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 State 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 Courses and Loan Caps 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**

VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 2) 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument to be *VET Student Loans (Courses and Loan Caps) Amendment Determination (No. 2) 2023* (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 the Amendment Determination will commence on 1 January 2024, or – if the Amendment Determination is registered on a day later than 1 January 2024 – the day after the Amendment Determination is registered.

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: Schedules

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 2, 5, 8, 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 74 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 92 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 adds two courses to Schedule 2 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.
12. The Amendment Determination removes two courses from Schedule 2 because (as indicated on the National Register) they have become 'non-current', or 'expired' or were 'superseded' more than 12 months ago. 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.

13. The Amendment Determination adds 11 additional courses for 11 specific providers to Schedule 3 and removes five courses for seven specific providers from Schedule 3.

14. The Amendment Determination also increases the loan cap for one course for a specific provider (Royal Melbourne Institute of Technology – 10871NAT: Diploma of Fashion Styling) in Schedule 3. The loan cap for this course has moved from \$10,000 to \$15,000.

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 eight 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 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 Training Register) they have become ‘non-current’ or ‘expired’ or have been replaced by new versions of these courses that have been inserted by Item 1.

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 13 new rows setting out the details of 13 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 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 Training Register) they have become ‘non-current’ or ‘expired’ or have been replaced by new versions of these courses that have been inserted by Item 4.

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 53 new rows setting out the details of 53 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 71 rows setting out the details of 71 courses to be removed from the table. These courses are to be removed because (as indicated on the National Training Register) they have become ‘non-current’ or ‘expired’ or have been replaced by new versions of these courses that have been inserted by Item 7.

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 course with specific maximum loan amounts) is amended by inserting two new rows setting out the details of two new approved courses. The rows are to be added to the table in ascending numerical order, ordered by course code.

Item 11 – Schedule 2 (table)

25. Item 11 provides that the table in Schedule 2 is amended by omitting two rows setting out the details of two courses to be removed from the table. These courses are to be removed because (as indicated on the National Training Register) they have become ‘non-current’ or ‘expired’.

Item 12 – Schedule 2 (table)

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

Item 13 – Schedule 3 (table)

27. Item 13 provides that the table in Schedule 3 (which lists approved courses for specific providers) is amended by inserting 16 additional rows setting out the details of an additional 11 courses at 11 specific approved course providers.

28. Item 13 also amends the table in Schedule 3 by inserting an additional row setting out the details of one course. The relevant course in this row is Royal Melbourne Institute of Technology – 10871NAT: Diploma of Fashion Styling. This row is being omitted by Item 14, and added by Item 13, for the purposes of increasing the loan cap amount for this course from \$10,000 to \$15,000.

29. The rows are to be added to the table in alphabetical order by approved course provider.

Item 14 – Schedule 3 (table)

30. Item 14 provides that the table in Schedule 3 is amended by omitting seven rows setting out the details of five courses at seven specified approved course providers. These courses are to be removed because (as indicated on the National Training Register) they have become ‘non-current’ or ‘expired’ or have been replaced by new versions of these courses that have been inserted by Item 13.

31. Item 14 also amends the table in Schedule 3 by omitting an additional row which sets out the details of one course. The relevant course in this row is Royal Melbourne Institute of Technology – 10871NAT: Diploma of Fashion Styling. This row is being omitted by Item 14, and added by Item 13, for the purposes of increasing the loan cap amount for this course from \$10,000 to \$15,000.

Item 15 – Schedule 3 (table)

32. Item 15 provides that all items in the table in Schedule 3 are to be renumbered starting at 1.