

## **EXPLANATORY STATEMENT**

*Determination made under subclause 45D(6) of Schedule 1A to the Higher Education Support Act 2003*

### **VET Provider Credits Determination No. 3 of 2016**

**Issued by the authority of the Minister**

#### **Authority**

Subclause 45D(6) of Schedule 1A to the *Higher Education Support Act 2003* (HESA) provides that the Minister may, by legislative instrument, determine that credits arise in the VET FEE-HELP accounts of specified vocational education and training (VET) providers, and the amounts of such credits, when another body ceases to be a VET provider.

Under section 238-5 of HESA the Minister has delegated his powers under subclause 45D(6) of Schedule 1A to HESA to certain Australian Public Service employees in the Department of Education and Training.

#### **Purpose**

The providers named in Column 2 of Schedule 1 to this Determination ceased to be VET providers on 11 April 2016.

This instrument:

- (a) determines that credits arise in the VET FEE-HELP accounts, established by subclause 45D(1) of Schedule 1A to HESA, of the VET providers named in Column 2 of Schedule 2 to this Determination; and
- (b) determines that the amounts of such credits shall be respectively the amounts set out in Column 3 of Schedule 2 to this Determination.

#### **Background**

Subclause 45D(1) of Schedule 1A to HESA establishes a notional VET FEE-HELP account for each VET provider. That account is credited and debited with the amounts, and at the times, set out in subclauses 45D(2) to (7).

Subclause 45D(7) of Schedule 1A to HESA provides for the debiting of a provider's account in line with student entitlements to VET FEE-HELP assistance. Should a VET provider's VET FEE-HELP account be in deficit at the end of a calendar year, clause 45E of Schedule 1A to HESA provides for the payment to the Commonwealth of an amount equal to that deficit.

Subclause 45D(6) of Schedule 1A to HESA provides that the Minister may determine, by legislative instrument, that further credits arise in the VET FEE-HELP accounts of specified VET providers, and the amount of those credits, when another body ceases to be a VET provider.

## **Commencement**

In accordance with subparagraph 45D(2)(e)(i) of Schedule 1A to HESA the credits arise in the VET FEE-HELP accounts of the VET providers named in Column 2 of Schedule 2 to this Determination at the time the providers named in Column 2 of Schedule 1 to this Determination ceased to be VET providers.

This Determination therefore commenced on 11 April 2016, which is when the providers named in Column 2 of Schedule 1 to this Determination ceased to be VET providers. This retrospective commencement does not adversely affect the rights of any person as it enables the VET providers named in Column 2 of Schedule 2 to this Determination to ensure continuity of VET FEE-HELP assistance to students previously enrolled with the providers named in Column 2 of Schedule 1 to this Determination without putting their respective VET FEE-HELP accounts into deficit at the end of the calendar year.

The retrospective commencement is appropriate and does not trigger subsection 12(2) of the *Legislation Act 2003*.

## **Consultation**

Consultation with Western Australian Department of Training and Workforce Development was undertaken. Broader consultation was not considered necessary in this case because the notice confers a benefit on West Australian TAFEs and these bodies are the only bodies affected by the notice. This notice will not have a direct or substantial indirect effect on business, nor will it restrict competition.

## **Statement of Compatibility with Human Rights**

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

### **VET Provider Credits Determination No. 3 of 2016**

This 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 Instrument is made by the Minister's delegate under subclause 45D(6) of Schedule 1A to HESA. The purpose of the Instrument is to determine that credits arise, and the amount of those respective credits, in the VET FEE-HELP accounts of the VET providers named in Column 2 of Schedule 2 to this Determination.

The condition precedent to the making of the determination is that another body ceases to be a VET provider. This condition is satisfied by the providers named in Column 2 of Schedule 1 to this Determination ceasing to be VET providers.

#### **Human rights implications**

##### *Right to education*

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this Instrument has an effect on the provision of vocational education and training by the VET providers named in Column 2 of Schedule 2 to this Determination by enabling them to offer VET FEE-HELP assistance to students previously enrolled with the providers named in Column 2 of Schedule 1 to this Determination without putting their respective VET FEE-HELP accounts into deficit at the end of the calendar year.

The objective of the Instrument is to enable eligible students of the providers named in Column 2 of Schedule 1 to this Determination to access VET FEE-HELP assistance for VET courses of study with the VET providers named in Column 2 of Schedule 2 to this Determination.

To the extent that the right to education is engaged, this right is promoted by the Instrument, as the Instrument enables eligible students of the providers named in Column 2 of Schedule 1 to this Determination to access VET FEE-HELP assistance for VET courses of study with the VET providers named in Column 2 of Schedule 2 to this Determination.

#### **Conclusion**

This Instrument is compatible with human rights because it advances the protection of human rights.