Explanatory Statement

VET Student Loans Amendment Rules (No. 1) 2018

Issued by the authority of the Minister for Small and Family Business, Skills and Vocational Education.

Background

Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018

The Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018 (VET Student Loan Debt Separation Act) separated VET student loan debts from other forms of Higher Education Loan Program debts (HELP debts) and established VET student loans as a separate income contingent loan administered under the VET Student Loans Act 2016 (Act). To do this, the VET Student Loans Debt Separation Act amended the Higher Education Support Act 2003 (HESA) and the Act to (among other things):

(a) provide that debts incurred under section 137-19 of HESA as in force at any time before 1 July 2019 are pre-1 July 2019 VSL debts. These debts continue to be administered as HELP debts under HESA and are subject to the repayment provisions in Chapter 4 of HESA;

(b) provide that if the Secretary uses an amount of a VET student loan approved under the Act to pay tuition fees for a person on or after 1 July 2019, the person incurs a debt under the Act. These debts are known as VETSL debts and are administered under the Act;

(c) insert provisions in the Act that are modelled on Chapter 4 of HESA to provide for the calculation and repayment of VETSL debts. The repayment thresholds, repayment rates and indexation with respect to VETSL debts are the same as the repayment thresholds, repayment rates and indexation for HELP debts under HESA; and

(d) provide that, consistent with existing arrangements for HELP debts, persons residing overseas and who have a VETSL debt are required to make repayments in respect of those debts by paying a levy to the Commonwealth.

The VET Student Loan Debt Separation Act also amended the Act to allow the courses and loan caps determination made by the Minister by legislative instrument under subsection 16(1) of the Act (currently the VET Student Loans (Courses and Loan Caps) Determination 2016)), to incorporate, by reference, any matter contained in an instrument or other writing as in force from time to time.
Student Loan Sustainability Act

The Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018 (Student Loans Sustainability Act) had the purpose of improving the sustainability of the Higher Education Loan Program (HELP) and debt recovery of the Student Financial Supplement Scheme (SFSS). It did this through (among other things):

- setting FEE-HELP loan limits for 2019 for FEE-HELP loans, VET FEE-HELP loans and VET Student Loans;
- introducing the combined HELP loan limits for HECS-HELP loans, FEE-HELP loans, VET FEE-HELP loans and VET Student Loans from 1 January 2020; and
- allowing for renewable HELP balances, beginning with HELP debt repayments made during the financial year 2019-20 re-crediting HELP balances from 2020.

As a result of the amendments made to the Act by the VSL Debt Separation Act and the Student Loan Sustainability Act, various consequential amendments are required to the VET Student Loans Rules 2016 (Rules), made pursuant to section 116 of the Act, to ensure the Rules are consistent with the principal legislation under which they are made and operate.

Authority

The Commonwealth Minister for Small and Family Business, Skills and Vocational Education makes this instrument under section 116 of the Act.

Subsection 4(2) of the Acts Interpretation Act 1901 (AIA) allows a power to make a legislative instrument to be exercised after the enactment of the Act under which the power is conferred, but before the start time, as if the relevant commencement had occurred. Subsection 4(2) is relied on to make the amendments in Schedule 1, Part 1 and 2.

Subsection 33(3) of the AIA also 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) is relied in amending and repealing various provisions in the Rules.

Purpose and operation

The VET Student Loans Amendment Rules (No. 1) 2018 (Amendment Rules) make various consequential amendments to the Rules as a result of amendments made to the Act by the VET Student Loan Debt Separation Act and the Student Loan Sustainability Act. The Amendment Rules also make minor amendments to section 158 of the Rules regarding when the approved course provider charge is due for payment by approved course providers whose approval has been revoked prior to the end of a financial year.

Schedule 1, Part 1 of the Amendment Rules commences on 1 July 2019. These amendments relate to amendments made to the Act by Schedule 1, Part 1 of the VET Student Loan Debt Separation Act, which separated VETSL debts from HELP debts. Schedule 1, Part 1 of the Amendment Rules inserts a new Part 3A into the Rules dealing with VETSL Debts. The new Part 3A, Division 2 of the Rules deals with Notices to be given to the Commissioner for the
purposes of section 23ED of the Act. Notably, the obligations imposed on persons under the new Part 3A, Division 2 replicate the obligations that were already imposed on overseas debtors with VET student loans debts under the HESA and the Overseas Debtors Repayment Guidelines 2017, prior to the separation of such debts from a person’s accumulated HELP debt. These requirements remain largely the same but are now set out in Act, instead of the HESA, to reflect the separation of VETSL debts from HELP debts.

Schedule 1, Part 2 of the Amendment Rules commences on 1 January 2020. These are consequential amendments made in relation to amendments made to the Act by Schedule 3, Part 1 of the Student Loan Sustainability Act and Schedule 1, Part 2 of the VET Student Loan Debt Separation Act. These amendments are primarily to replace the terminology of “FEE-HELP balance” with that of “HELP balance.” In addition, provisions in the Rules, which deal with re-crediting of HELP balances resulting in remission of debts are also amended to refer only to “re-credits under Division 2 or 3 of Part 6”. This is because re-credits under Division 4 of Part 6 will not result in debts being remitted as those debts would already have been discharged through repayment.

Schedule 1, Part 3 of the Amendment Rules commences on registration. It amends section 80 of the Rules regarding assessment of students’ academic suitability to undertake particular approved courses. It also amends section 158 of the Rules to provide that where an approved course provider’s approval is revoked under Part 4, Division 3 of the Act, the amount of the provider’s approved course provider charge may be due and payable on a business day that is after the date that the revocation takes effect and either before or after the end of the financial year. This is to address a situation where providers have been revoked earlier in the financial year.

Regulatory Impact Statement

There are no regulatory impacts associated with separating VET Student Loans debts from other forms of Higher Education Loan Program debts (reference #22673). The amendments to sections 80 and 158 of the Rules are machinery in nature. Relevantly, in respect of the amendment to section 158 – no new charges are imposed, and there are no changes to the amount charged. Only the timing of when the charges may be charged will change.

Consultation

The Australian Taxation Office (ATO) manage income-contingent loan repayments through the tax system and was consulted on implementation. This included the timeframe and costs of the VET Student Loan Debt Separation measure, to ensure necessary IT systems changes were taken into account, as well as other considerations including a financial year start due to personal tax impacts.

The separation of debts provides greater transparency and reporting of repayment rates for VET students. The VET Student Loan Debt Separation does not change any of the VET Student Loans program’s characteristics. As such, broader consultation was not required.
because the separation is administrative. Consultation was not required regarding the amendments to sections 80 and 158 of the Rules. These amendments are machinery in nature and do not change any of the VET Student Loans program’s characteristics.

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**Explanation of Provisions**

**VET Student Loans Amendment Rules (No. 1) 2018**

**Preliminary**

**Section 1 – Name**

This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 1) 2018*.

**Section 2 – Commencement**

The table in this section sets out when the provisions of the instrument commence.

Sections 1 to 4 and anything in the instrument not covered elsewhere by the table commence on the day after the instrument is registered on the Federal Register of Legislative Instruments (FRL).

Schedule 1, Part 1 of the instrument commences on 1 July 2019, which is the date that the main amendments to the *VET Student Loans Act 2016* (the Act), made by Schedule 1, Part 1 of the *Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018* (VET Student Loan Debt Separation Act) commence.

Schedule 1, Part 2 of the instrument commences on 1 July 2020, which is the date that the main amendments to the Act made by Schedule 3, Part 1 of the *Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018* (Student Loan Sustainability Act) commence.

Schedule 1, Part 3 commences on the day after the instrument is registered on the Federal Register of Legislative Instruments.

**Section 3 – Authority**

This section provides that the Amendment Rules are made under the authority of the Act.

**Section 4 - Schedule**

This section provides that the Rules are amended as set out in the Schedule to this instrument.

**Schedule 1—Amendments to the VET Student Loans Rules 2016**

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Part 1—Main Amendments

Schedule 1, Part 1 contains the main amendments to the VSL Rules resulting from amendments to the Act made by Schedule 1, Part 1 of the VSL Debt Separation Act.

Item 1 – Part 3

Part 1, Schedule 1 of the VSL Debt Separation Act repeals subsections 137-19(1) to (3) of the Higher Education Support Act 2003 (HESA) with effect from 1 July 2019.

Part 3 of the Rules was made for the purposes of paragraph 137-19(2)(b) of the HESA. As paragraph 137-19(2)(b) is repealed, Part 3 is no longer needed and is repealed.

Item 2 – Before Part 4

This item inserts a new Part 3A dealing with VETSL debts.

Division 1—VETSL debts

Section 11 – Purpose of this Division

New section 11 provides that Division 1 is made for the purposes of paragraph 23BA(2)(b) of the Act. Paragraph 23BA(2)(b) enables the Rules to specify a lesser percentage of the loan amount as being the VETSL debt.

Section 12 – Amount of a VETSL debt

Ordinarily, the amount of the VETSL debt is 120% of the loan amount. New section 12 provides that if the course to which the VETSL debt relates is a State or Territory subsidised course, the percentage of the loan amount for the person is 100% of the loan amount.

Division 2 – Notices to be given to the Commissioner

Section 12A – Purpose of this Division

New section 12A provides that Division 2 sets out matters relating to the notices that must be given to the Commissioner under section 23ED of the Act. Under section 23ED of the Act, the notices that must be given to the Commissioner are: notices relating to leaving Australia; notices relating to absence from Australia; and notices relating to income (including foreign-sourced income). Under subsection 23ED(4) of the Act, the Rules may provide for the content of notices under section 23ED.

Section 12B – Notices relating to leaving Australia

Under subsection 23ED(1) of the Act, persons with an undischarged VETSL debt (debtors), who leave Australia with the intention of remaining outside Australia for at least 183 days
must notify the Commissioner in the approved form no later than 7 days after leaving Australia.

New subsection 12B(1) of the Rules sets out the content for notices relating to a person leaving Australia under subsection 23ED(1). Such notices must contain the person’s:

- name; and
- date of birth; and
- intended country of residence; and
- contact details, including email address and telephone number. Note that the intention is for the person to provide their up-to-date contact details, so if known, they should provide the telephone number they will be using overseas, otherwise they should provide their Australian telephone number.

Paragraph 23ED(1)(b) of the Act enables the Rules to specify circumstances where a person who leaves Australia with the intention of remaining outside for at least 183 days, does not need to notify the Commissioner. New subsection 12B(2) of the Rules provides that a person is not required to notify the Commissioner that they are leaving Australia if:

- they have already notified the Commissioner in relation to a previous departure and their details have not changed; and
- they have not been an Australian resident for taxation purposes since notifying the Commissioner.

This exception is to prevent persons who previously notified the Commissioner they left Australia from being required to re-notify if they return for a short period of time, for example a family visit. See Example One.

**EXAMPLE ONE**

Ariel moved to Japan to start a new job in September 2019 and notified the Commissioner of her overseas address when she moved. In October 2020, Ariel flew back to Australia for ten days to attend her sister’s wedding. As she remained a foreign resident for tax purposes and had previously told the Commissioner she was living overseas, she did not need to re-notify the Commissioner when she flew back to Japan after her sister’s wedding.

12C Notices relating to absence from Australia

Under subsection 23ED(2) of the Act, debtors who have been outside Australia for at least 183 days in any 12 month period and who were not required to give a notice under subsection 23ED(1) of the Act, are required to notify the Commissioner of their absence no later than 7 days after the end of the 183 days, in the approved form.

New subsection 12C(1) of the Rules sets out the content for notices relating to a person absence from Australia under subsection 23ED(2). Such notices must contain the person’s:
• name; and
• date of birth; and
• country of residence; and
• contact details including email address and telephone number. Note that the intention is for the person to provide their up-to-date contact details, so if they are using an overseas telephone number, they should provide that.

This requirement caters for individuals whose plans change after they leave Australia, for example a debtor may be offered a job opportunity while on an intended visit of less than six months and choose to extend their stay overseas. See Example Two.

EXAMPLE TWO

Bella left Australia on an overseas holiday, with the intention of only being absent for three months. While overseas, she found a job in Ireland and decided to stay overseas for at least another 12 months. As Bella did not leave with the intention of being overseas for more than 183 days she did not need to give the Commissioner a ‘Notice relating to leaving Australia’, when she left. However, on account of her change of plans, she would be overseas for at least 183 days in a 12 month period, therefore, no later than 7 days after the end of 183 days from her departure, she is required to give the Commissioner a ‘Notice relating to absence from Australia’.

For the avoidance of doubt, a person is not required to re-notify the Commissioner that they are absent from Australia under subsection 23ED(2) of the Act if they have already notified the Commissioner under subsection 23ED(2) and they have not been an Australian resident for taxation purposes since notifying the Commissioner. This is to prevent persons who previously notified the Commissioner of their absence from Australia from being required to re-notify if they have remained living overseas, or have returned to Australia only for a short period of time (e.g. for a family visit and without becoming an Australian resident again).

12D Notices relating to income (including foreign-sourced income)

Under subsection 23ED(3) of the Act, persons who are foreign residents and on 1 June immediately preceding an income year, and had an accumulated VETSL debt, are required to give the Commissioner a notice relating their income (including foreign-sourced income) for the income year, using the approved form and within the period specified in the form. It is envisaged that the lodgement period will correspond with the Australian financial year and tax assessments onshore, meaning individuals will need to lodge the notice by 31 October following the end of the income year. The Commissioner also has the power to defer the lodgement date for individuals in section 388-55 of Schedule 1 of the Taxation Administration Act 1953.

New subsection 12D(1) of the Rules requires the notice relating to income to contain:
(a) the person’s name;
(b) the person’s date of birth;
(c) the person’s country of residence;
(d) the person’s occupation;
(e) the amount of the person’s income (including foreign sourced income) for the income year;
(f) the method used to work out that foreign sourced income;
(g) if the overseas assessed method was used—the person’s identification number used for tax purposes by the taxation authority of a foreign country that made the assessment of the person’s income.

A note to subsection 12D(1) states that the Overseas Debtors Repayment Guidelines provides for how to work out a person’s foreign-sourced income for an income year and how to convert a person’s foreign-sourced income into Australian currency.

Situations where overseas debtors can lodge a simplified notice of income

New subsection 12D(2) of the Rules provides that the paragraphs 12D(1)(d) to (g) do not apply if the person’s income (including foreign sourced income) for the income year does not exceed 25% of the minimum repayment income for the income year; and the notice includes a declaration to that effect. This means that low-income earners are only required to submit a simplified notice providing only their name, date of birth, country of residence and the declaration that their income does not exceed the published amount. This makes it easier for low-income earners to comply with the notice requirement. See Example Three.

A note to new subsection 12D(2) provides that ‘Minimum repayment income’ is defined in section 6 of the Act. The amount of the minimum repayment income will be published annually on the ATO website. It is A$45,880 in the 2019-2020 financial year, to be indexed annually.

EXAMPLE THREE

Callum who has a VETSL debt, moved to Canada in July 2019. He notified the Commissioner of his overseas address within seven days of leaving Australia.

On 1 July 2020 Callum is required to submit a notice relating to income. Callum has been doing amateur acting and working causally as a waiter to support himself in between attending acting auditions.

Callum has earned the equivalent of A$10,500 for his work as a waiter. Because Callum received income below the 25 per cent threshold, he is able to declare his income is under the reporting threshold. He is only required to give his name, date of birth and to declare he is living in Canada in order to submit a simplified notice.
12E  Approved forms

New section 12E of the Rules provides that Part 3A does not affect the Commissioner’s power under section 388-50 of Schedule 1 of the *Taxation Administration Act 1953* to request additional content to be included in the approved form of the notices required under section 12B, 12C and 12D.

### Part 2—Consequential Amendments

Schedule 1, Part 2 makes a number of amendments to the Rules consequential to changes made to the Act by Schedule 3, Part 1 of the Student Loan Sustainability Act and Schedule 1, Part 2 of the VET Student Loan Debt Separation Act.

Schedule 3, Part 1 of the Student Loan Sustainability Act introduced a new combined limit to how much students can borrow under HELP to cover their tuition fees from 1 January 2020, called the “HELP loan limit”. The combined HELP loan limit in 2020 will be the previous FEE-HELP limit as indexed for one year. Correspondingly, the Student Loan Sustainability Act replaced the terminology of “FEE-HELP balance” with “HELP balance.”

Part 2 of the VET Student Loan Debt Separation Act introduced a new Division 4 to Part 6 of the Act, comprising a new section 73A dealing with re-crediting by the Secretary on discharge of VETSL debts. Under section 73A of the Act the Secretary must re-credit a person’s HELP balance with the amount of any compulsory and voluntary repayments of the person’s VETSL debt that the person paid in the preceding financial year, as notified to the Secretary by the Commissioner after the end of that financial year. A re-credit under section 73A does not have the same effect as a re-credit under Division 2 or 3 of Part 6 of the VSL Act, as it does not result in the remission of the debt concerned, because those debts would have already been discharged through repayments. Therefore, provisions in the Rules which deal with re-crediting of HELP balances resulting in remission of debts need to be amended to refer only to “re-credits under Division 2 or 3 of Part 6” and not to re-credits under Division 4 of Part 6.

**Items making consequential amendments to change references to ‘FEE-HELP’ to ‘HELP’**

The following items make consequential amendments to change references to FEE-HELP balance to HELP balance.

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<thead>
<tr>
<th>Item number</th>
<th>Rules provision</th>
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<tbody>
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<td>Subsection 54(4)</td>
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<tr>
<td>4</td>
<td>Subsection 69(1)(k)(ii)</td>
</tr>
</tbody>
</table>
Items making consequential amendments to headings

The following items make consequential amendments to some headings in the Rules to change reference to FEE-HELP balance to HELP balance. The changed headings are listed in the following table.

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<tr>
<th>Item</th>
<th>Description</th>
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<tr>
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<td>Part 7, Division 1, Subdivision G (heading)</td>
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<td>Part 8 (heading)</td>
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**Item 7 – Part 7, Division 1, Subdivision G (heading)**

*Subdivision G—Re crediting HELP balances.*

**Item 17 – Part 8 (heading)**

*Part 8—Recrediting HELP balances*

**Item 19 – Section 149 (heading)**

*149 Requirements for application to Secretary to re credit student’s HELP balance*

**Item 9 – Paragraph 89(2)(a)**

This item omits “FEE-HELP balance can be re-credited under Part 6”, and substitutes “HELP balance can be re-credited under Division 2 or 3 of Part 6”. This is a consequential amendment to change the reference to FEE-HELP balance to HELP balance and to refer only to re-credits under Division 2 or 3 of Part 6, excluding re-credits under Division 4 of Part 6.

**Item 13 – Paragraph 90(c)**
This item omits “FEE-HELP balance under Part 6”, and substitutes “HELP balance under Division 2 or 3 of Part 6”. This is a consequential amendment to change the reference to FEE-HELP balance to HELP balance and to refer only to re-credits under Division 2 or 3 of Part 6, excluding re-credits under Division 4 of Part 6.

Part 3—Miscellaneous Amendments

Item 21—Subparagraph 80(2)(c)(i)

Section 80 of the Rules deals with the academic suitability requirements, which a student must meet to be academically suited to undertake a particular approved course. To satisfy the requirement at paragraph 80(1)(a), the student must satisfy one of the requirements set out at subsection 80(2).

This item repeals subparagraph 80(2)(c)(i) and replaces it with a requirement that the provider obtains a copy of a certificate (however described) that the student has been awarded a qualification, either:

- at level 4 or above in the Australian Qualifications Framework; or
- that has been assessed by a Federal, State or Territory government agency which assesses overseas qualifications (or an organisation contracted by such an agency to undertake such assessments) as equivalent or comparable to a qualification at level 4 or above in the Australian Qualifications Framework.

The requirement at subparagraph 80(2)(c)(ii), that the course for the qualification must have been delivered in English, continues to apply.

As is currently the case, a student may still meet the requirement at paragraph 80(2)(c) by providing to his or her provider, a certificate that demonstrates that he or she has been awarded a qualification at level 4 or above in the Australian Qualifications Framework, in a course delivered in English.

However, this amendment also allows this requirement to be met by a student, who has a qualification obtained outside Australia for a course that was delivered in English, if the student obtains a letter or certificate issued by a Federal, State or Territory government agency which assesses overseas qualification (or an organisation contracted by such an agency to undertake such assessments), that evidences that the student’s qualification has been assessed by that agency (or contracted organisation) and determined to be equivalent or comparable to a qualification in the Australian Qualification Framework at level 4 or above. For example, in 2018, such certifications may be issued by a State or Territory’s overseas qualification unit or the Australian Government Department of Education and Training’s qualification assessment service.

This amendment is intended to address a situation where students with higher level overseas qualifications in courses delivered in English have been unable to demonstrate that they meet...
the academic suitability requirement at paragraph 80(1)(a) without undertaking an assessment of their competence in reading and numeracy using a tool approved under section 82 of the Rules.

**Item 22 – Paragraph 158(1)(b)**

**Item 23 – After subsection 158(2)**

Section 158 of the Rules provides when the amount of approved course provider charge for a financial year, which an approved course provider is liable for, is due and payable. Paragraph 158(1)(b) provides that the day must not be a business day earlier than the end of the financial year to which the approved course provider charge relates.

These items provide an exception to the requirement at paragraph 158(1)(b), allowing an approved course provider charge to be due and payable on a business day before the end of the financial year, where an approved course provider’s approval is revoked under Division 3 of Part 4 of the Act.

In such circumstances, the amount of the provider’s approved course provider charge may be due and payable on a business day that is after the date that the revocation takes effect and either before or after the end of the financial year. For the avoidance of doubt, in these circumstances, the discretion still remains for the charge to be charged after the end of the financial year. The reason for this amendment is to enable providers who have been revoked to be invoiced and charged their approved course provider charge in a timely manner after their revocation. Currently the amount of a provider’s charge for a year is determined by reference to the total number of VET student loans approved for students of the provider for approved courses with at least one census day in the financial year. This amendment will enable providers whose approval was revoked earlier in the financial year to be charged for their participation in the VET Student Loans Program earlier than the end of the financial year but will not change the amount of the charge.
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) 2018

The VET Student Loans Amendment Rules (No.1) 2018 (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 Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018 (VET Student Loan Debt Separation Act) separated vocational education and training (VET) student loan debts from other forms of Higher Education Loan Program debts (HELP debts) and established VET student loans as a separate income contingent loan administered under the VET Student Loans Act 2016 (Act). To do this, the VET Student Loans Debt Separation Act amended the Higher Education Support Act 2003 (HESA) and the Act to (among other things):

(e) provide that debts incurred under section 137-19 of HESA as in force at any time before 1 July 2019 are “pre-1 July 2019 VSL debts”. These debts continue to be administered as HELP debts under HESA and are subject to the repayment provisions in Chapter 4 of HESA;

(f) provide that if the Secretary uses an amount of a VET student loan approved under the Act to pay tuition fees for a person on or after 1 July 2019, the person incurs a debt under the Act. These debts are known as “VETSL debts” and are administered under the Act;

(g) insert provisions in the Act that are modelled on Chapter 4 of HESA to provide for the calculation and repayment of VETSL debts. The repayment thresholds, repayment rates and indexation with respect to VETSL debts are the same as the repayment thresholds, repayment rates and indexation for HELP debts under HESA; and

(h) provide that, consistent with existing arrangements for HELP debts, persons residing overseas and who have a VETSL debt are required to make repayments in respect of those debts by paying a levy to the Commonwealth.

The Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018 (Student Loans Sustainability Act) had the purpose of improving the sustainability of the Higher Education Loan Program (HELP) and debt recovery of the Student Financial Supplement Scheme (SFSS). It did this through (among other things):

- setting FEE-HELP loan limits for 2019 for FEE-HELP loans, VET FEE-HELP loans and VET Student Loans;
• introducing the combined HELP loan limits for HECS-HELP loans, FEE-HELP loans, VET FEE-HELP loans and VET Student Loans from 1 January 2020; and
• allowing for renewable HELP balances, beginning with HELP debt repayments made during the financial year 2019-20 re-crediting HELP balances from 2020.

The Amendment Rules make various consequential amendments to the *VET Student Loans Rules 2016 (Rules)* as a result of amendments made to the Act by the VET Student Loan Debt Separation Act and the Student Loan Sustainability Act. The Amendment Rules also make minor amendments to section 158 of the Rules regarding when the approved course provider charge is due for payment by approved course providers whose approval has been revoked prior to the end of a financial year.

Schedule 1, Part 1 of the Amendment Rules commences on 1 July 2019. These amendments relate to amendments made to the Act by Schedule 1, Part 1 of the VET Student Loan Debt Separation Act, which separated VETSL debts from HELP debts. Schedule 1, Part 1 of the Amendment Rules inserts a new Part 3A into the Rules dealing with VETSL debts. The new Part 3A, Division 2 of the Rules deals with Notices to be given to the Commissioner for the purposes of section 23ED of the Act. Notably, the obligations imposed on persons under the new Part 3A, Division 2 replicate the obligations that were already imposed on overseas debtors with VET student loans debts under the HESA and the *Overseas Debtors Repayment Guidelines 2017*, prior to the separation of such debts from a person’s accumulated HELP debt. These requirements remain largely the same but are now set out in the Act, instead of the HESA, to reflect the separation of VETSL debts from HELP debts.

Schedule 1, Part 2 of the Amendment Rules commences on 1 January 2020. These are consequential amendments made in relation to amendments made to the Act by Schedule 3, Part 1 of the Student Loan Sustainability Act and Schedule 1, Part 2 of the VET Student Loan Debt Separation Act. These amendments are primarily to replace the terminology of “FEE-HELP balance” with that of “HELP balance.” In addition, provisions in the Rules, which deal with re-crediting of HELP balances resulting in remission of debts, are also amended to refer only to “re-credits under Division 2 or 3 of Part 6”. This is because re-credits under Division 4 of Part 6 will not result in debts being remitted as those debts would already have been discharged through repayment.

Schedule 1, Part 3 of the Amendment Rules commences on registration. It amends section 158 of the Rules to provide that where an approved course provider’s approval is revoked under Part 4, Division 3 of the Act, the amount of the provider’s approved course provider charge may be due and payable on a business day that is after the date that the revocation takes effect and either before or after the end of the financial year. This is to address a situation where providers have been revoked earlier in the financial year.

**Human Rights Implications**

The Amendment Rules engage the following human rights:
the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);

the right to freedom of movement – Article 12 of the *International Covenant on Civil and Political Rights* (ICCPR);

the right to privacy – Article 17 of the ICCPR; and

the right to an adequate standard of living, including food, water and housing – Article 11 of ICESCR.

Notably, however, the obligations imposed on persons under the Amendment Rules through the insertion of a new Part 3A, Division 2 to the Rules for the most part replicate existing obligations that are already imposed on overseas debtors with VET student loans debts under the HESA and the *Overseas Debtors Repayment Guidelines 2017*, prior to the separation of such debts from a person’s accumulated HELP debt.

The measures in the Amendment Rules, therefore, do not impose new obligations on persons but rather are nomenclature and consequential in nature, to reflect the separation of VETSL debts from HELP debts enacted by the VET Student Loan Debt Separation Act.

**Right to Education**

The Amendment Rules promote the right to education set out in Article 13 of the ICESCR. Article 13 recognises the right of everyone to education, stating 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 Amendment Rules promote equal accessibility to education to all by continuing and ensuring the repayment of VET student loans debts from overseas residents. Ensuring the repayment of VET student loans debts from overseas residents ensures the integrity and accessibility of funding for students to pursue vocational and tertiary education in Australia by reducing the VETSL debts that would otherwise remain unpaid as a result of students leaving Australia after incurring a VET student loan debt. In turn, this ensures the viability of future funding for other students to access financial assistance from the Commonwealth to participate in and access VET training in Australia. The repayment thresholds and repayment rates for overseas debtors are the same as for those who remain onshore. This also protects low-income earners by preserving the income-contingent nature of the VETSL debt repayment arrangements, while ensuring that all income earners who earn above the minimum repayment threshold make repayments for their VET student loans debts (irrespective if they are overseas debtors or onshore debtors). Notably, the requirements imposed on overseas debtors through the Amendment Rules remain largely the same as the requirements that already applied to overseas debtors with HELP debts prior to the separation of VETSL debts from HELP debts. Thus, new obligations are not being imposed on overseas
debtors, rather the obligations are being imposed under a different legislative framework and using different terminology.

The Amendment Rules are compatible with the right to education.

**Right to Freedom of Movement**

The Amendment Rules engage the right to freedom of movement found in Article 12 of the ICCPR. Article 12 provides, among other things, that everyone shall be free to leave any country including his or her own, and shall not be subject to any restrictions except those provided by law, those necessary to protect national security, public order, public health or morals or the rights and freedoms of others and which are consistent with the other rights recognised in the present Covenant.

The Amendment Rules make nomenclature and consequential amendments to the Rules to ensure the Rules are consistent with the policy implemented by the VET Student Loan Debt Separation Act. The measures in the Amendment Rules therefore clarify the obligation on persons with a VETSL debt, who leave Australia for 183 days or more, to notify the Australian Tax Office (ATO) of their absence from Australia and to advise of their contact details. The obligation extends to requiring debtors to provide notices to the ATO regarding their income and absence from Australia for the purpose of facilitating repayments towards their VETSL debt while they are living overseas. Notably, the requirements imposed on overseas debtors through the Amendment Rules remain largely the same as the requirements that already applied to overseas debtors with HELP debts prior to the separation of VETSL debts from HELP debts.

The universal application of the Australian repayment threshold could be seen as placing a limitation on a person’s freedom of movement, namely where a person is moving to a country with high costs of living. However, this potential limitation is reasonable as it does not place a practical limitation on the right to the freedom of movement as any financial imposition would only affect those earning more than the Australian minimum repayment income, which is $45,880 in the 2019-2020 financial year (and indexed upwards thereafter). This threshold is above the minimum Australian wage, and remains high when compared to thresholds for repayment of income-contingent student loans worldwide. Low-income earners or those without incomes would not be adversely affected. In addition, the potential limitation is justified as it assists with ensuring VETSL debts are repaid to ensure the continued financial viability of Australia’s educational system, which ensures and protects the right to education for others. Further, the potential limitation is necessary and proportionate to achieve and promote the policy purpose the Amendment Rules are intending to achieve, namely ensuring the sustainability and accessibility of access to vocational education and training for all people in Australia.

The Amendment Rules are compatible with the right to freedom of movement.
Right to Privacy

The Amendment Rules also engage the right to privacy outlined in Article 17 of the ICCPR. Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

The Amendment Rules make nomenclature and consequential amendments to the Rules to reflect the separation of VETSL debts from HELP debts enacted by the VET Student Loan Debt Separation Act. Therefore, the measures in the Amendment Rules, which prescribe:

- the requirement for persons leaving Australia or persons who are absent from Australia and who have a VETSL debt, to provide certain personal information to the ATO including the person’s name, date of birth, intended country of residence and contact details, and
- that information about a person’s occupation and income is also required (unless the person earns less than 25% of the minimum repayment income

are not new obligations and do not result in an expansion of personal information that is required to be provided to the ATO, to that which debtors with VETSL debts are already required to provide under the Overseas Debtors Repayment Guidelines 2017 (when such debts were HELP debts).

The collection of such information could be seen as limiting a person’s right to privacy. However, the requirement for this information to be provided to the ATO is reasonable in the circumstances as it is necessary to achieve the legitimate purpose of recovering VETSL debts from persons who voluntarily requested financial assistance, in the form of a VET student loan, from the Commonwealth to access and undertake vocational education and training in Australia. In turn, this ensures the financial viability of the Commonwealth providing assistance to people to access vocational education and training, and promotes the right to education for people in Australia.

The requirement for this information to be provided to the ATO is also authorised by law and is not arbitrary. The information specified for collection is limited to the information that is reasonably necessary for the ATO to facilitate and ensure the repayment of VETSL debts. Further, all parties with access to this information are required by Australian privacy laws to use appropriate safeguards to ensure the appropriate and lawful collection, use and storage of this information. Personal information collected by the ATO is considered taxation information, and is governed by robust privacy and taxation legislation. Taxation information is held on a classified server, and access is limited only to individuals who require the information in the course of their employment. The safeguards for information collected as a result of the Amendment Rules will be the same as for other taxation information which ensure that any lawful interference is not arbitrary or at risk of abuse. Finally, the cohort from whom the ATO will receive personal information is limited to VETSL debtors who are living, or intend to live overseas.
The Amendment Rules engage the right to privacy and the requirement on VETSL debtors who are living, or intend to live overseas, to provide information to the ATO for the repayment of their debt could be seen as an interference with a person’s right to privacy. However, for the reasons discussed, any such interference is lawful and subject to robust privacy laws, it is reasonable, necessary and proportionate to achieve a legitimate policy outcome and ensure the right to education for others, and it is not arbitrary as the requirement is clear, precise and does not give decision-makers discretion in authorising further requirements for information.

The Amendment Rules are compatible with the right to privacy.

Right to an adequate standard of living, including food, water and housing

The Amendment Rules also engage the right to an adequate standard of living, including food, water and housing outlined in Article 11 of the ICESCR.

Article 11 recognises that everyone be entitled to an adequate standard of living for himself/herself and his or her family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The Amendment Rules may be seen to impact this right, as they deal with the content of the notices debtors must provide to the ATO regarding their income and absence from Australia for the purpose of facilitating repayment of their VETSL debt while they are living overseas. The universal application of the Australian repayment threshold may be seen to disproportionately affect individuals in countries with higher costs of living. However, it is not considered a practical limitation, as any financial imposition would only affect those earning more than the Australian minimum repayment income, which is above $A45,880 in the 2019-2018 financial year and indexed upwards thereafter. This threshold is above the minimum Australian wage, and remains high when compared to thresholds for repayment of income-contingent student loans worldwide. Low-income earners or those without incomes who are below this threshold would not be adversely affected, as they would not need to make repayments. To the extent this right could be seen as being limited, it is just, reasonable and proportionate, as it ensures the repayment of a loan the person has requested and benefited from, and which it is reasonable to expect to be repaid irrespective of whether the person remains in Australia or pursues opportunities overseas.

The Amendment Rules are compatible with the right to an adequate standard of living, including food, water and housing.

Conclusion

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

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