

Explanatory Statement

VET Student Loans Amendment Rules (No. 2) 2017

Issued by the authority of the Assistant Minister for Vocational Education and Skills

Background

The *VET Student Loans Amendment Rules (No. 2) 2017* (Amendment Rules) amend the *VET Student Loans Rules 2016* (Rules). The Amendment Rules provide for the collection and recovery of an annual approved course provider charge.

Authority

The Commonwealth Assistant Minister for Vocational Education and Skills (the Assistant Minister) makes this instrument under section 116 of the *VET Student Loans Act 2016*.

Purpose and operation

The Rules were introduced last year as part of the Australian Government's reform of the student loan arrangements for vocational education and training (VET) courses. The *VET Student Loans Act 2016* (the Act) and the Rules set out the legislative requirements for the VET Student Loans program.

The Amendment Rules introduce new Division 3 of Part 9 which provides rules for the collection and recovery of an annual approved course provider charge which is imposed as a tax on approved course providers by the *VET Student Loans (Charges) Act 2016*. The *VET Student Loans (Charges) Regulations 2017* prescribe the amount of the annual approved course provider charge payable by an approved course provider worked out by reference to the approved course provider's size.

Consultation

The department consulted on the Cost Recovery Implementation Statement with the VET Student Loans Implementation Advisory Group on 24 January and 23 June 2017.

Further, consultation on fees was consistent with the Senate Education and Employment Legislation Committee Inquiry into the VET Student Loans Bill 2016 and two related bills, which encouraged the Department of Education and Training to consult with key stakeholders to ensure that fees and charges are implemented on a fair and equitable basis, taking into account any impact on students.

Regulatory Impact Statement

A Regulation Impact Statement (RIS) on the redesign of the VET FEE-HELP scheme, of which the VET Student Loans program was the outcome, was prepared and certified by the Commonwealth Department of Education and Training under the best practice regulation requirements in October 2016, OPBR ID 20451.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights is set out in Attachment B. It has been prepared in accordance with section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Attachment A - Explanation of Provisions

VET Student Loans Amendment Rules (No. 2) 2017

Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 2) 2017*.

Section 2 – Commencement

The table in this section specifies that the Amendment Rules commence 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 *VET Student Loans Act 2016* (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

Item 1 – Section 4 (Definitions)

This item inserts a new defined term ‘approved course provider charge’.

‘Approved course provider charge’ is used in new Division 3 of Part 9 and has the same meaning as in the *VET Student Loans (Charges) Act 2016*.

Item 2 – After section 155 (Collection and recovery of approved course provider charge)

This item inserts new Division 3 into Part 9 of the Rules and provides for the collection and recovery of an approved course provider charge which is prescribed under the *VET Student Loans (Charges) Act 2016* (VSL Charges Act).

Section 6 of the VSL Charges Act imposes an approved course provider charge on approved course providers as a tax. Section 7 of the VSL Charges Act provides that the amount of approved course provider charge is the amount prescribed by the regulations or worked out in accordance with a method prescribed by the regulations.

The *VET Student Loans (Charges) Regulations 2017* commenced on 1 July 2017. The regulations provide a method to calculate the amount of approved course provider charge, which an approved course provider will be liable to pay annually in arrears. The amount of charge an approved course provider is liable for is calculated by reference to the size of the provider.

Section 156 – Purpose of this Division

This section provides that Division 3 of Part 9 is made for the purposes of subsection 116(6) of the Act. Subsection 116(6) of the Act enables rules to be made to provide for the collection and recovery of an amount of approved course provider charge within the meaning of the VSL Charges Act.

Section 157 – Liability to pay approved course provider charge

New section 157 provides that an approved course provider is liable for the charge imposed on it for the financial year. The note to this section explains that the approved course provider charge is imposed on approved course providers under the VSL Charges Act and that the amount of the charge is worked out on a financial year basis under the *VET Student Loans (Charges) Regulations 2017*.

Section 158 – When approved course provider charge due for payment

New section 158 sets out when an amount of approved course provider charge for a financial year is due and payable by the provider. The provider will be liable to pay the charge on a business day that is specified in a written notice given to the provider by the Secretary (new subparagraph 158(1)(a)). The notice must specify a business day that is not earlier than the end of the financial year to which the approved course provider charge relates (subparagraph 158(1)(b)) and not earlier than 30 days after the day on which the notice is given (subparagraph 158(1)(c)).

Invoices for charges for the 2017-18 financial year are expected to be issued to approved course providers from September 2018. Providers will then have 30 days from the date of issue to pay the charge, after which a late penalty will be incurred.

Subsection 158(2) provides that the Secretary may give an approved course provider a written notice extending the date to pay the approved course provider charge (an *extension notice*). An extension notice may be given at any time, including after the charge would have become due and payable under the original notice or an earlier extension notice. The Secretary can issue an extension notice to a provider on his or her own initiative, or as a result of the provider seeking an extension of time to pay the charge. Provider requests for an extension of time to pay the charge will be assessed by the Secretary on a case by case basis and according to the circumstances outlined in the request.

Section 159 – Late payment penalty

Section 159 provides that an approved course provider is liable to pay the Commonwealth a late payment penalty if an approved course provider charge remains unpaid after the day on which it is due and payable. The amount of the penalty is worked out using the formula set out in subsection 159(1). Subsection 159(2) provides that a late payment penalty is due and payable immediately.

Section 160 – Waiver of approved course provider charge and late payment penalty

Subsection 160(1) provides that the Secretary may, on behalf of the Commonwealth, waive the payment of the whole or a part of an amount of an approved course provider charge or

late payment penalty (or both) that is payable by an approved course provider, if the Secretary considers it appropriate to do so. Subsection 160(2) clarifies that the Secretary may waive amounts under subsection 160(1) on his or her own initiative or on written application by a person.

Section 161 – Recovery of approved course provider charge and late payment penalty

Section 161 provides that the Secretary may, on behalf of the Commonwealth, recover from an approved course provider an amount of an approved course provider charge that is due and payable and any late payment penalty that is due and payable as debts due to the Commonwealth.

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. 2) 2017

This legislative 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 *VET Student Loans Rules 2016* (the Rules) are made by the Assistant Minister under section 116 of the *VET Student Loans Act 2016* (the Act). The Rules were introduced last year as part of the Australian Government's reform of the student loan arrangements for vocational education and training (VET) courses. The Act and the Rules set out the legislative requirements for the VET Student Loans program.

The *VET Student Loans Amendment Rules (No. 2) 2017* (Amendment Rules) amend the Rules. The Amendment Rules introduce new Division 3 of Part 9. Division 3 of Part 9 provides rules for the collection and recovery of an annual approved course provider charge which is imposed as a tax on approved course providers by the *VET Student Loans (Charges) Act 2016*. The *VET Student Loans (Charges) Regulations 2017* prescribe the amount of the annual approved course provider charge payable by an approved course provider worked out by reference to the approved course provider's size.

Human Rights Implications

The Amendment Rules in isolation do not engage the applicable rights or freedoms.

The human rights implications associated with establishing the VET Student Loans program are dealt with in the comprehensive Statement of Compatibility with Human Rights attached to the Explanatory Memorandum for the Act. The Statement of Compatibility with Human Rights for the Rules focuses on those matters particular to the Rules rather than those matters addressed more generally in the Statement provided in respect to the Act.

In particular, in relation to the **right to work**, the Explanatory Statement to the Rules relevantly states (among other things):

Under Article 6(1), States Parties are required to recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides that the steps to be taken by a State Party to achieve the full realisation of this right include providing technical and vocational guidance and training programs.

This right goes to a purpose of the VET student loans program, which is to ensure loans to students are provided for vocational education and training that meet workplace needs and improve employment outcomes.

In relation to the **right to education**, the Explanatory Statement to the Rules relevantly states (among other things):

Article 13 recognises the important personal, societal, economic and intellectual benefits of education. The Article sets out that secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all, by every appropriate means.

The intent of the VET student loans program is to make technical and vocational secondary education more accessible to students who may not otherwise have had access. The measures in the Rules enhance the protection of students as they seek out educational opportunities within Australia ...

The Rules contain a wide range of provisions intended to increase protections available to students which is consistent with the right to education. ...

The Rules also specify mechanisms by which the VET student loans program will enhance the integrity of the VET sector and strengthen the protection of students as they seek out educational opportunities within Australia

The Amendment Rules provide for the collection and recovery of an annual approved course provider charge which is prescribed by the *VET Student Loans (Charges) Regulations 2017*. These amendments do not raise any human rights issues and are compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

These Amendment Rules are compatible with human rights because they merely amend the Rules, which in turn are compatible with and promote the rights to work, education and privacy, as well as the rights of the child and the rights of people with disabilities.

Karen Andrews

Assistant Minister for Vocational Education and Skills