

Explanatory Statement

VET Student Loans Amendment Rules (No. 1) 2019

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

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 (VSL 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 VSL 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 VSL 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.

As a result of the amendments made to the Act by the VSL Debt Separation Act, various consequential amendments are required to the *VET Student Loans Rules 2016 (Rules)*, made pursuant to section 116 of the Act. Some of these have already been addressed in the *VET Student Loans Amendment Rules (No. 1) 2018*, but a small number of further amendments need to be made.

Other amendments

A number of other amendments are also made to improve the operation of the Rules and give effect to industry's feedback.

Authority

The Minister for Employment, Skills, Small and Family Business 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) of the AIA is relied on to make the amendments in Schedule 1, Part 1.

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) of the AIA is relied on to amend and repeal various provisions in the Rules.

Purpose and operation

The *VET Student Loans Amendment Rules (No. 1) 2019* (**Amendment Rules**) make various consequential amendments to the Rules as a result of amendments made to the Act by the VSL Debt Separation Act to give effect to the separation of VET student loan debts from HELP debts. These amendments are contained in Schedule 1, Part 1 of the Amendment Rules and, generally, they replace various references to "HELP debt(s)" or "VET student loan debt" that will no longer be correct following the separation of VET student loan debts from HELP debts. These consequential amendments commence on 1 September 2019 to ensure approved course providers have sufficient time to review and adjust their operations in light of the separation of VET student loan debts from HELP debts.

The Amendment Rules also make other miscellaneous amendments to the Rules. These amendments, which are contained in Schedule 1, Part 2 and commence on the day after the instrument is registered on the Federal Register of Legislation, relate to students' academic suitability to undertake approved courses (section 80 of the Rules) and annual reporting requirements for approved course providers (section 116 of the Rules). These amendments expand the requirements that can be met for a student to be considered to be academically suited to undertake a course and remove the requirement for approved course providers to provide certain information to the Secretary.

An explanation of the provisions of the Amendment Rules is set out at [Attachment A](#).

Regulatory Impact Statement

There are no regulatory impacts associated with separating VET student loans debts from other forms of HELP debts (reference #22673). The amendments to sections 80 and 116 of the Rules are machinery in nature and do not impose new requirements on providers.

Consultation

Consultation was not required regarding the amendments contained in the Amendment Rules. The amendments consequential to the separation of VET student loan debts from other forms of HELP debts and the amendments to sections 80 and 116 of the Rules are machinery in nature and do not change any of the VET Student Loans program's characteristics.

Statement of compatibility of 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*.

Explanation of Provisions

VET Student Loans Amendment Rules (No. 1) 2019

Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 1) 2019* (**Amendment Rules**).

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 Legislation (**FRL**).

Schedule 1, Part 1 of the instrument commences on 1 September 2019. Part 1 contains amendments to the *VET Student Loan Rules 2016* (**Rules**) that are consequential to the main amendments to the *VET Student Loans Act 2016* (**Act**), made by Schedule 1, Part 1 of the *Education and Other Legislation Amendment (VET Student Loan Debt Separation) Act 2018* (**VSL Debt Separation Act**). The 1 September 2019 commencement date allows approved course providers sufficient time to review and adjust their operations in light of the separation of VET student loan debts from HELP debts, including importantly with respect to information they are required to provide to students under the Rules.

Schedule 1, Part 2 of the instrument commences on the day after the instrument is registered on FRL.

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 the instrument.

Schedule 1—Amendments to the VET Student Loans Rules 2016

Part 1—Separation of VET student loan debts from HELP debts

Schedule 1, Part 1 contains amendments to the Rules resulting from amendments to the Act made by Schedule 1, Part 1 of the VSL Debt Separation Act. Generally, the amendments replace various references to “HELP debt(s)” or “VET student loan debt” that will no longer be correct following the separation of VET student loan debts from HELP debts.

Item 1 – Paragraph 23(3)(d)

Section 23 of the Rules sets out the financial performance requirements that course providers must satisfy to become approved course providers. Approved course provider must also

continue to comply with these (and other) provider suitability requirements. Specifically, subsection 23(3) lists indicators of a provider's financial viability.

Item 1 adds a reference to "VETSL debts" in paragraph 23(3)(d) so that, from 1 September 2019, an indicator of financial viability for providers with at least 100 enrolments in courses leading to awards in qualifications in the Australian Qualifications Framework (AQF) will be that at least 20% of the provider's revenue for the previous financial year came from sources other than payments that gave rise to HELP debts or VETSL debts.

Items 2 and 3 – Subsection 98(2)

Section 98 of the Rules sets out the information that approved course providers must give to students before enrolment.

Items 2 and 3 replace references to "HELP debt" and "VET student loan debt" with references to "VETSL debt" in paragraph 98(2)(j) and subparagraph 98(2)(l)(iii), respectively.

Items 4, 5 and 6 – Subsection 99(4)

Section 99 of the Rules sets out the requirements for VET student loan fee notices that approved course providers must give to students enrolled in approved courses.

Item 4 replaces the reference to "HELP debt" with a reference to "VETSL debt" in subparagraph 99(4)(m)(ii), while items 5 and 6 replace the references to "VET student loan debt" with references to "VETSL debt" in subparagraph 99(4)(n)(ii) and paragraph 99(4)(s), respectively.

Item 7 – Paragraph 100(4)(n)

Section 100 of the Rules sets out the requirements for Commonwealth Assistance Notices that approved course providers must give to enrolled students who have VET student loans.

Item 7 replaces the reference to "HELP debt" with a reference to "VETSL debt" in paragraph 100(4)(n).

Item 8 – Subparagraph 142(a)(iv)

Section 142 of the Rules sets our requirements for marketing by approved course providers that mentions VET student loans.

Item 8 replaces the reference to "HELP debt" with a reference to "VETSL debt" in paragraph 142(a)(iv).

Part 2—Miscellaneous amendments

Schedule 1, Part 2 contains miscellaneous amendments to the Rules.

Items 9 and 10 – Subsection 80(2)

Section 80 of the Rules deals with approved course providers' student entry procedures. Subsection 80(1) requires a provider's student entry procedures to specify that a student is academically suited to undertake a particular approved course if, among other things, the requirements in subsection 80(2) are met (refer specifically to paragraph 80(1)(a)).

The amendments in items 9 and 10 amend subsection 80(2). In effect, these amendments expand the requirements that can be met by students to be considered to be academically suited to undertake particular approved courses. As a result, students who have successfully

completed the International Baccalaureate Diploma Programme, or a qualification under a framework that preceded the AQF at a level that is equivalent to level 4 or above in the AQF, will meet the academic suitability requirements in subsection 80(2) of the Rules.

With respect to qualifications under a framework that preceded the AQF:

- the amendment in item 10 also allows a student who has obtained an overseas qualification to meet the academic suitability requirements by providing evidence that their qualification has been assessed by a relevant body to be equivalent or comparable to a qualification under a framework that preceded the AQF, in a similar way to how existing sub-subparagraph 80(2)(c)(i)(B) operates;
- as a result of existing subparagraph 80(2)(c)(ii), the courses for these qualifications must have been delivered in English.

These amendments are intended to address situations where students with International Baccalaureate diplomas or certain qualifications under frameworks preceding the AQF have, to date, 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.

Items 11 to 15 – Subsection 116(1)

Section 116 imposes an annual reporting requirement on approved course providers, with subsection 116(1) specifying the information they must provide to the Secretary each year.

The amendments in items 13 to 17 remove or amend the requirements for certain information to be provided.

As a result of these amendments, approved course providers will no longer be required to provide to the Secretary:

- a list of any approved courses offered by the provider within which a lower level of qualification in the AQF can be completed;
- a list of any courses offered by the provider that lead to multiple qualifications at the same level;
- the provider's academic calendar, including the dates on which courses are expected to be provided;
- a comparison between the provider's tuition fees for each approved course for the next financial year and the current financial year, and, if the course replaces a course, the fees for the replaced course;
- the most recent results of the provider's assessment of the matters mentioned in subsection 34(2) of the Rules (which requires providers to assess students satisfaction in relation to each of its courses at least annually).

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) 2019

The *VET Student Loans Amendment Rules (No. 1) 2019* (**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* (**VSL 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 VSL 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 Amendment Rules make various consequential amendments to the *VET Student Loans Rules 2016* (**Rules**), made pursuant to section 116 of the Act, to give effect to the separation of VET student loan debts from HELP debts. These amendments are contained in Schedule 1, Part 1 of the Amendment Rules and commence on 1 September 2019 to ensure approved course providers have sufficient time to review and adjust their operations in light of the separation of VET student loan debts from HELP debts. Generally, the amendments replace various references to “HELP debt(s)” or “VET student loan debt” that will no longer be correct following the separation of VET student loan debts from HELP debts. The

amendments are in addition to the consequential amendments to the Rules made by the *VET Student Loans Amendment Rules (No. 1) 2018*.

The Amendment Rules also make other miscellaneous amendments to improve the operation of the Rules and give effect to industry's feedback regarding the Rules. These amendments, which are contained in Schedule 1, Part 2 of the Amendment Rules and commence on the day after the instrument is registered on the Federal Register of Legislation, relate to students' academic suitability to undertake approved courses (section 80 of the Rules) and annual reporting requirements for approved course providers (section 116 of the Rules). These amendments expand the requirements that can be met for a student to be considered to be academically suited to undertake a course and remove the requirement for approved course providers to provide certain information to the Secretary.

Human Rights Implications

Separation of VET student loan debts from HELP debts

The consequential amendments contained in Schedule 1, Part 1 of the Amendment Rules relating to the separation of VET student loan debts from HELP debts do not, in isolation, engage the applicable human rights or freedoms.

The human rights implications associated with the separation of VET student loan debts from HELP debts are dealt with the comprehensive Statement of Compatibility with Human Rights attached to the Explanatory Memorandum for the VSL Debt Separation Act.

In particular, in relation to the **right to education**, the Statement of Compatibility for the measures in the VSL Debt Separation Act relevantly states:

The Bill engages the right to education contained in Article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR).

Article 13 provides that vocational education is a part of secondary education (article 13(2)(b)), and secondary education must be available and accessible to all on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education (article 13(2)(c)). It recognises the important personal, societal, economic and intellectual benefits of education, and provides that technical and vocational education should enable students to acquire knowledge and skills which contribute to their employability and enhance their productivity. Articles 13(3) and (4) of the ICESCR state that State Parties are obliged to establish "minimum education standards" to which all education institutions established are required to conform. They must also maintain a transparent and effective system to monitor such standards.

The measures in the Bill will have a positive effect on the provision of education services to students by VET providers. This Bill promotes this right through consolidating the legislative basis for the administration of the VET Student Loans program, increasing transparency over the VET Student Loans program and ensuring its fiscal sustainability into the future.

In relation to the **right to work**, the Statement of Compatibility for the measures in the VSL Debt Separation Act relevantly states:

The Bill engages the right to work and rights in work which are set out in Articles 6, 7 and 8 of the ICESCR.

Article 6(1) specifies that State 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. The labour market is to be open to everyone and there can be no discrimination in access to and maintenance of employment on the grounds enumerated in Article 2 of the ICESCR, including birth or status.

Article 6(2) recognises the steps to be taken by a State Party to achieve the full realisation of this right including providing technical and vocational guidance and training programs.

The measures in this Bill to separate VET student loan debts from other forms of HELP debts will have a positive effect on ensuring this right by increasing the transparency of the VET Student Loans program, and ensuring its fiscal viability into the future. The measures will allow greater transparency over the performance and sustainability of the VET Student Loan program, which in turn, ensures ongoing access to VET student loans by students to financially support them to enter into and undertake vocational education training that is freely chosen, meets workplace needs, and improves their employment opportunities and outcomes.

The Statement of Compatibility for the measures in the VSL Debt Separation Act concludes that the measures in that Act are compatible and promote both the right to education and the right to work.

Miscellaneous amendments

The amendments to section 80 of the Rules engage and promote the **right to education** in Article 13 of the ICESCR by expanding the requirements that students can meet to demonstrate their academic suitability to undertake particular approved courses.

The amendments to the annual reporting requirements for approved course providers in section 116 of the Rules do not raise any human rights issues.

Conclusion

The Amendment Rules are compatible with human rights.

Michaelia Cash

Minister for Employment, Skills, Small and Family Business