

EXPLANATORY STATEMENT

Issued by the authority of the VSL Tuition Protection Director

VET Student Loans (VSL Tuition Protection Levy) Act 2020

VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022

PURPOSE AND OPERATION

The purpose of the *VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022* (the Instrument) is to determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the VSL Tuition Protection Levy (the VSL Levy) for the 2022 calendar year.

The VSL Levy is imposed under section 6 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Act) on all liable providers (as defined in section 5 of the Act) and provides an industry contribution towards the costs of tuition protection for students with a VET student loan. The amount of the VSL Levy for a year for a liable provider is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component. The VSL Levy is payable into the VSL Tuition Protection Fund (the Fund), which is established under section 66J of the *VET Student Loans Act 2016* and managed by the VSL Tuition Protection Director (the Director).

The Director is accountable for the appropriate and sustainable management of the Fund. This Instrument assists the Director in exercising their functions under the *VET Student Loans Act 2016* by maintaining a high level of student protection and ensuring sufficient funds are held in the Fund to place students in a suitable replacement course or re-credit their HELP balance in the event of provider defaults.

AUTHORITY

This instrument is made by the Director under section 13 of the Act.

Subsection 13(1) of the Act requires the Director to, before 1 August each year, determine by legislative instrument the matters set out in section 13 of the Act for the purposes of sections 11 and 12 of the Act. Such matters relate to the calculation of the risk rated premium component and special tuition protection component of the VSL Levy for the year.

In making an instrument under section 13, the Director must have regard to any advice given by the VSL Tuition Protection Fund Advisory Board (the Advisory Board) and the sustainability of the Fund (subsection 13(4) of the Act). The Director may also have regard to any other matter that the Director considers appropriate (subsection 13(5) of the Act).

The Treasurer must approve the instrument in writing before it is made by the Director under subsection 13(1) of the Act (subsection 13(6) of the Act).

BACKGROUND

The Act commenced on 1 January 2020 and imposes the VSL Levy on leviable providers (as defined in section 5 of the Act). The Act was part of a package of legislation to implement a new tuition protection model for students participating in the VET Student Loans program and for higher education students accessing FEE-HELP or HECS-HELP assistance at private higher education providers.

The VSL Levy comprises three components:

- the administrative fee component;
- the risk rated premium component; and
- the special tuition protection component.

The Act specifies the amounts, or methods for calculating the amounts, for each component of the VSL Levy. It also specifies the manner in which, and by whom, various matters relevant to each component of the VSL Levy must be determined each year.

The Director is responsible for determining, through a legislative instrument each year, various matters relevant to the calculation of the risk rated premium component and special tuition protection component.

The Minister is responsible for determining, also through a legislative instrument, amounts relevant to the calculation of the administrative fee component.

If a leviable provider is a new provider for a year, the new provider only pays part of the administrative fee component in their first year (noting the amount of both the new provider's risk rated premium component and special tuition protection component is zero) as specified in subsections 11(1) and 12(1) of the Act).

The risk rated premium component is intended to cover the risk of each provider defaulting (including where the provider fails to start to provide, or ceases to provide, a course or part of a course). It is calculated according to a detailed methodology provided for in subsection 11(2) of the Act and as represented by the formula below.

Risk rated premium component

$$= \left\{ \left(\begin{array}{c} \text{total VSL students} \\ \text{for the year} \\ \times \\ \text{amount determined} \\ \text{by the Director} \end{array} \right) + \left(\begin{array}{c} \text{VET student} \\ \text{loan amounts paid for} \\ \text{previous year} \\ \times \\ \text{percentage determined} \\ \text{by the Director} \end{array} \right) \right\} \times \{(risk\ factor\ values) + 1\}$$

‘Total VSL students’ means the total number of students who were enrolled with the provider in an approved course with a census date occurring in the previous calendar year and have been approved for a VET student loan for the course.

For the purposes of subsection 11(2) of the Act, the following risk factor values are specified:

- financial strength risk factor;
- completion rate risk factor; and
- non-compliance history and registration renewal risk factor.

The special tuition protection component of the VSL Levy is intended to enable the Fund to grow and to ensure against future systemic shocks. Subsection 12(2) of the Act sets out how

the special tuition protection component is to be calculated, as represented by the formula below.

Special tuition protection component

$$= \left(\frac{\text{VET student loan amounts paid for previous year}}{\text{paid for previous year}} \right) \times \left(\frac{\text{percentage determined by the Director}}{\text{by the Director}} \right)$$

CHANGES TO THE CALCULATION OF THE VSL LEVY

The *VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020* (the 2020 Instrument) was made by the Director in 2020, but the Minister, in accordance with paragraph 49A(2)(f) of the *VET Student Loans Act 2016*, subsequently waived payment of the VSL Levy for all leviable providers for the 2020 and 2021 calendar years. These waivers supported leviable providers at a time when they were dealing with the financial impact of the COVID-19 pandemic. Because of this, the Director did not make a determination in 2021.

The Instrument is largely consistent with the 2020 Instrument, such that the calculation of the risk rated premium component and special tuition protection component of the Levy for the 2022 calendar year largely reflects the intended calculation of those components of the Levy for the 2020 calendar year.

The Instrument makes several changes to the way the risk rated premium component and special tuition protection component of the Levy will be calculated for the 2022 calendar year compared to how these components were calculated in the 2020 Instrument. These changes include those planned for 2021 by the previous TPS Director and 2022 changes approved by the current TPS Director, having regard to advice from the Advisory Board and the Australian Government Actuary.

2021

- As a temporary COVID-19 pandemic relief measure, reducing the risk factor values for providers with completion rates of less than 60 per cent.
- A change to improve the completion rate risk factor - replacing the existing single risk factor value for providers with completion rates of 60 per cent or more, with the introduction of two risk factor values for providers with completion rates of 60 per cent or more, but less than 85 per cent, and for providers with completion rates of 85 per cent or more. This change provides additional granularity to the completion rate risk factor commensurate with the risk of a provider default.
- A change to improve the performance of the financial strength risk factor component – the thresholds used to determine a score for a provider’s net profit ratio, which is one of the factors which contributes to its financial strength score, will be amended. A provider previously needed a net profit ratio greater than 0.7 to receive a net profit ratio score of 3, but will now only need a net profit ratio greater than 0.2 to receive the same score. Changes have also been made to the net profit ratio required to receive a net profit ratio score of 1 or 2. This change improves the financial strength risk factor by more evenly distributing providers across the net profit ratio scores reflective of the risk of default.
- A change to expand the non-compliance history risk factor to include a component related to the renewal of a provider’s registration as a registered training organisation for less than the maximum period specified in the relevant legislation.

2022

- In recognition of the absence of any claims on the Fund, a reduction in the percentage specified for the calculation of the special tuition protection component of the Levy.
- A change to add a VSL Tuition Protection Levy component to the calculations for working out a leviable provider's weighted late payment measure.
- A change to introduce a financial strength risk factor value of 0.0 for providers that were not required to submit financial statements.

CONSULTATION

The TPS Director has consulted and considered the Advisory Board's advice in making this Instrument. In May 2022, the Advisory Board released its draft advice in relation to the proposed settings for the risk rated premium and special tuition protection components of the Levy. Providers and industry peak bodies were invited to provide feedback during this public consultation, which was considered by the Director and the Board. In June 2022, the Advisory Board provided its final advice to the TPS Director. A copy of the final advice is available on the Australian Government Tuition Protection Service website: <https://www.dese.gov.au/resources/tps>. The Director consulted closely with the Board in developing the Instrument and the Instrument as formulated reflects the Board's advice and guidance.

Members of the TPS Advisory Board (section 66Q of the *VET Student Loans Act 2016*) are appointed by the Minister under section 55D of the *Education Services for Overseas Students Act 2000* (taking into account the membership specifications set out in section 55C of that Act). The Board currently comprises seven non-government sector representatives, selected on the basis of their qualifications and experience in the sector, and six government representatives.

The Director has also worked extensively with the Australian Government Actuary in determining the risk factors and methods for working out the risk factor values.

The Director and the Advisory Board have consulted with VSL providers and their representatives on the Levy framework and the risk rated premium and special tuition protection components of the VSL Levy.

The Director has also consulted the Department of Employment and Workplace Relations regarding the Advisory Board's draft advice. No concerns were raised.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required (OBPR ID 23228).

FINANCIAL IMPACT STATEMENT

This Instrument will result in a projected revenue of approximately \$1.025 million.

Given the funds are credited to a special account, and are derived from industry contributions, the funds can only be appropriated for the purposes of the special account.

In determining the matters relevant to the calculation of the risk rated premium component and special tuition protection component of the VSL Levy, the Director considered not only the sustainability of the Fund and feedback from VSL providers, but also the reality of the economy-wide ramifications and impact of the COVID-19 pandemic on businesses and education in Australia. The Director's focus and intention in determining those matters was on supporting Australian businesses and student welfare.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011
VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022

The *VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022* (the 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 purpose of the Instrument is to determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the VSL Tuition Protection Levy (the VSL Levy) for the 2022 calendar year.

The VSL Levy is imposed under section 6 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Act) on all leviable providers (as defined in section 5 of the Act) and provides an industry contribution towards the costs of tuition protection for students with a VET student loan. The amount of the VSL Levy for a year for a leviable provider is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component. The VSL Levy is payable into the VSL Tuition Protection Fund (the Fund) which is established under section 66J of the *VET Student Loans Act 2016* and managed by the VSL Tuition Protection Director (the Director).

This Instrument ensures sufficient funds are held in the Fund to cover the ongoing costs of providing tuition protection for students with a VET student loan and therefore maintains a high level of student protection.

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, Article 13 provides that '[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...'

The Instrument is part of the broader VSL tuition protection scheme (the Scheme) set out in Part 5A and Part 5B of the *VET Student Loans Act 2016*. The Scheme's aim is to ensure students accessing VET student loans are protected and supported in the event that their approved course provider defaults (meaning the provider fails to start to provide, or ceases to provide, a course or part of a course) by either providing a suitable replacement course or re-credit to their HELP balance.

The Instrument determines various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the VSL Levy for the 2022 calendar year.

The risk rated premium component ensures that a leviable provider's risk of default is reflected in the amount of VSL Levy payable by that provider and ensures providers are financially incentivised to reduce their risk of defaulting.

The special tuition protection component of the VSL Levy ensures that the Fund builds to a sufficient balance.

Therefore, this Instrument will ensure that sufficient funds are held in the Fund to cover the ongoing costs of providing tuition protection for students with a VET student loan, thereby maintaining a high level of student protection in the event a course provider is no longer able to deliver a course. The Instrument is compatible with and will enhance the right to education by ensuring that there are appropriately funded tuition protection arrangements in place for VET students.

The instrument is compatible with, and promotes, the right to education.

Conclusion

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

VSL Tuition Protection Director

**VET STUDENT LOANS (VSL TUITION PROTECTION LEVY) (RISK RATED
PREMIUM AND SPECIAL TUITION PROTECTION COMPONENTS)
DETERMINATION 2022**

EXPLANATION OF PROVISIONS

Part 1 – Introduction

Section 1: Name

Sections 1 of the *VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022* (the Instrument) is a formal provision setting out the name of the Instrument.

Section 2: Commencement

Section 2 is also a formal provision. It sets out the date of commencement of the Instrument and provides that the Instrument will commence on the day after it is registered.

Section 3: Authority

Section 3 sets out the VSL Tuition Protection Director's (the Director) authority to make the Instrument.

The Instrument is made under section 13 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2020* (the Act), for the purposes of sections 11 and 12 of the Act, which relate to the calculation of the risk rated premium component and special tuition protection component of the VSL tuition protection levy (the VSL Levy) for the year.

In accordance with subsection 13(4) of the Act, in making this Instrument, the Director had regard to the advice of the VSL Tuition Protection Fund Advisory Board (the Advisory Board) and the sustainability of the VSL Tuition Protection Fund (the Fund). The Director also had regard to other matters that the Director considers appropriate (subsection 13(5) of the Act).

In accordance with subsection 13(6) of the Act, the Treasurer has approved the Instrument.

Section 4: Definitions

Section 4 includes definitions for the purposes of the Instrument.

In particular, 'financial statements' means the general purpose financial statements given by a leviable provider to the Secretary in accordance with section 52 of the *VET Student Loans Act 2016* and section 113 of the *VET Student Loan Rules 2016* for the financial year ending on a date in 2021. This term is used in section 6 of the Instrument and is relevant to the determination of the risk factor value for the financial strength risk factor for a leviable provider.

'Statements of general information' means statements of information or documents provided by a leviable provider to the Secretary in accordance with a notice under section 53 of the *VET Student Loans Act 2016*. This term is used in section 7 of the Instrument and is relevant to the determination of the risk factor value for the completion rate risk factor for a leviable provider.

Section 4 also includes a note, the purpose of which is to confirm that certain expressions used in the Instrument are defined in section 5 of the Act.

Part 2 – Risk rated premium component

Section 11 of the Act deals with the risk rated premium component of the VSL Levy:

- subsection 11(1) of the Act provides that, if a leviable provider is a new provider for a year, the amount of the provider's risk rated premium component for the year is zero;
- subsection 11(2) of the Act sets out a six-step method statement for calculating a leviable provider's risk rated premium component. The Director is responsible for determining various matters for the purposes of different steps in the method statement in subsection 11(2).

Sections 5 to 8 of the Instrument set out the matters determined by the Director for the purposes of subsection 11(2) of the Act, allowing the risk rated premium component of the VSL Levy for the 2022 calendar year to be calculated.

Section 5: Risk rated premium component

Subsection 5(1) of the Instrument provides that the amount for the purposes of step 1 of the method statement in subsection 11(2) of the Act is \$6.00.

Subsection 5(2) of the Instrument provides that the percentage for the purposes of step 2 of the method statement in subsection 11(2) of the Act is 0.17 per cent.

For the purposes of step 4 of the method statement in subsection 11(2) of the Act, subsection 5(3) of the Instrument specifies three risk factors that reflect the risk of payments being made out of the Fund in respect of leviable providers as a result of those factors. They are:

- (a) the financial strength risk factor;
- (b) the completion rate risk factor;
- (c) the non-compliance history and registration renewal risk factor.

Subsection 13(3) of the Act provides that a risk factor value for a risk factor must be a number between zero and 10 (inclusive). As set out below, the possible risk factor values for all risk factor values fall within this range.

Section 6: Risk factor – Financial strength

Subsection 6(1) of the Instrument specifies the risk factor value for the financial strength risk factor for a leviable provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.

The risk factor value is:

- (a) 2.5, if the provider did not submit financial statements (except in the circumstances outlined in paragraph (b));
- (b) 0.0, if the provider was not required to submit financial statements;
- (c) as set out in the table in paragraph 6(1)(c), if the provider submitted financial statements. Under the table, the risk factor value will depend on the financial strength score of the provider.

Paragraph 6(1)(b) is intended to capture providers that are approved under the *VET Student Loans Act 2016* in 2021 but, given the timing of the approval, were not required to submit a financial statement for the annual financial reporting period ending in 2021. A risk factor of 0.0 is appropriate for such a provider because in the absence of paragraph (b):

- a provider may attract a risk factor value of 2.5, which could be considered to be undue given the provider was not required to submit financial statements; and
- if a calculation, as set out in 6(1)(c) could be undertaken in respect of the provider, given the provider's recent approval, the calculation would likely result in a risk factor rating of 0.0.

Subsections 6(2) and (3) explain how a provider's financial strength score is to be determined. A provider's financial strength score is the sum of the scores for the net profit ratio, the return on assets and the debt to equity. The table in subsections 6(3) sets out formulas for calculating the score for each ratio, with the relevant information for those formula being taken or derived from the provider's financial statements.

In order to work out the score for the 'net profit ratio':

Based on the leviable provider's financial statement, the provider's 'net profit before tax' (NPBT) is divided by the provider's 'total revenue'. If the result is less than or equal to 0.1, then the provider's score is one. If the result is greater than 0.1 but less than or equal to 0.2, then the provider's score is two. If the result is greater than 0.2, then the provider's score is three.

In order to determine the score for the 'return on assets' ratio:

Based on the leviable provider's financial statement, the provider's NPBT is divided by the provider's 'total assets'. If the result is less than or equal to zero, then the provider's score is one. If the result is greater than zero but less than or equal to 0.1, then the provider's score is two. If the result is greater than 0.1, then the provider's score is three.

In order to determine the score for the 'debt to equity' ratio:

Based on the leviable provider's financial statement, the provider's 'total liabilities' is divided by the provider's 'total equity'. If the result is greater than or equal to 2.5, then the provider's score is one. Alternatively, if the provider's total equity is less than or equal to zero (i.e. the provider has a negative value of equity or zero equity), then the provider's score is also one. If the result is less than 2.5 but greater than or equal to 1.5, then the provider's score is two. If the result is less than 1.5 but greater than or equal to zero, then the provider's score is three.

Section 7: Risk factor – Completion rate

Subsection 7(1) of the Instrument specifies the risk factor value for the completion rate risk factor for a leviable provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.

The risk factor value is determined by reference to information reported by leviable providers in their statements of general information and is:

- (a) zero, if the provider did not report any units of study for the calendar year beginning on 1 January 2021 (previous calendar year) in its statements of general information. For example, the provider did not deliver any units in 2021 and therefore there were no units to report;
- (b) the amount set out in the table in paragraph 7(1)(b), otherwise. Under the table, the risk factor value will depend on the provider's completion rate percentage.

The table at paragraph 7(1)(b) introduces a risk factor value of 0.0 for providers with completion rates of 60 per cent or more, but less than 85 per cent, and for providers with completion rates of 85 per cent or more. This replaces the single risk factor value of 0.0 for providers with completion rates of 60 per cent or more as set out in the 2020 Instrument. This additional step signals future possible different risk factor values for these two ranges.

In addition, the risk factor values specified in the table have been halved for leviable providers with completion rate percentages of less than 60 per cent. This is intended to be a temporary reduction in recognition of the effects of the COVID-19 pandemic. Specifically, the reduction recognises the impact on completion rates for certain courses due to social distancing and other pandemic-related restrictions.

In accordance with the definition of 'statements of general information' in section 4, a leviable provider's completion rate risk factor value will be calculated by reference to data reported by the provider.

Subsection 7(2) of the Instrument sets out the formula for determining a provider's completion rate percentage, with the relevant information for that formula also being taken from the provider's statements of general information. This includes:

- the total EFTSL value for units with a census day in the previous calendar year for which no unit of study completion status has been reported (Data missing EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of 'failed' (Failed EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of 'unit of study to be commenced later in the year or still in process of completing or completion status not yet determined' (Ongoing EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of 'successfully completed all the requirements' (Passed EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of 'withdrew without academic penalty' (Withdrawn EFTSL).

Subsections 7(3) to 7(7) of the Instrument define 'EFTSL' and 'EFTSL value' in a similar way to how those terms are defined in the *Higher Education Support Act 2003*.

Section 8: Risk factor – Non-compliance history and registration renewal

Subsection 8(1) of the Instrument specifies the risk factor value for the non-compliance history and registration renewal risk factor for a leviable provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.

As set out in the table in subsection 8(1) of the Instrument, the risk factor value will depend on the provider's weighted late payment measure, which is worked out (for 2019, 2020 and 2021) in accordance with the calculations set out in subsection 8(3). A provider's weighted late payment measure is worked out by reference to the number of days after the due date on which the approved course provider charge and VSL tuition protection levy for each specified year were received (respectively, the 'VSLPC' and 'VSLTPL' components of the calculations set out in subsection 8(3)). The approved course provider charge was imposed in 2019, 2020 and 2021, so the 'VSLPC' component features in all weighted late payment measure calculations. The VSL tuition protection levy was imposed in 2020 and 2021, so the 'VSLTPL' only features in the weighted late payment measure calculations for those years. Because the VSL tuition protection levy was not payable in those years the 'VSLTPL' component will not affect calculations of the weighted late payment measure.

The risk factor also depends on whether the provider applied for renewal of its registration and whether the period of registration set out in a notice given to the provider, or as updated on the National Register in 2021, was less than the maximum period permitted under the relevant legislation. Depending on the circumstances and location of the provider, the duration of a provider's registration is contingent on decisions made under the *National Vocational Education and Training Regulator Act 2011* (maximum period seven years); the *Education Training and Reform Act 2006* (Vic) (maximum period five years); or the *Vocational Education and Training (General) Regulations 2009* (WA) (maximum period seven years). It is an ongoing requirement for approved course providers under subsection 25(2) of the *VET Student Loans Act 2016* to be registered training organisations. This term has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* which means a training organisation listed on the National Register as a registered training organisation.

Subsection 8(2) of the Instrument provides that when more than one item in the table at subsection 8(1) applies, the risk factor value for the non-compliance and registration renewal risk factor is the sum of the applicable risk factor values in column 3 of the table at subsection 8(1). For example, if a leviable provider has a weighted late payment measure of 30 days or more and its registration under the *National Vocational Education and Training Regulator Act 2011* was renewed for a period of four years, the provider's risk factor value would be 3.0.

Part 3 – Special tuition protection component

Section 9: Percentage

Section 12 of the Act deals with the special tuition protection component of the VSL Levy:

- subsection 12(1) provides that if a leviable provider is a new provider for a year, the amount of the provider's special tuition protection component for the year is zero;
- subsection 12(2) provides that, otherwise, a leviable provider's special tuition protection component for a year is the total loan amounts paid to the provider under section 19 of the *VET Student Loans Act 2016* for the previous year, multiplied by the percentage determined in an instrument made under section 13 for the purposes of that subsection for a year.

Section 9 of the Instrument provides that the percentage for the purposes of subsection 12(2) of the Act is 0.10 per cent.