

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Skills and Training

VET Student Loans Act 2016

VET Student Loans Amendment Rules (No. 1) 2023

AUTHORITY

This instrument is made under section 116 of the *VET Student Loans Act 2016* (the **Act**).

Subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**) 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 various provisions in the *VET Student Loans Rules 2016* (the **Rules**).

PURPOSE AND OPERATION

The Rules were introduced in late 2016 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 (**VSL**) program.

The VSL program has been operating for more than five years since legislative requirements were first put in place in 2016. Since that time, opportunities for program improvement have been identified through multiple program reviews, stakeholder feedback and operational experience. The main purpose of the VET Student Loans Amendment Rules (No. 1) 2023 (the **Amendment Rules**) is to make amendments to the Rules to give effect to these program improvements.

The Amendment Rules make amendments to Part 7 of the Rules to:

- replace the 'annual forecast' requirements at section 116 with 'annual reporting' in which approved course providers (**providers**) are to provide information relevant to their compliance with various statutory obligations. This will not only enable the Department of Employment and Workplace Relations (the **department**) to better support providers to comply with their obligations, but will also reduce the administrative burden for most providers in circumstances where the information required by 'annual reporting' is expected to be substantially less than was under the existing requirements for 'annual forecasts'; and
- extend the timeframe for lodgement of annual financial statements by non-listed VSL providers from 3 months to 4 months after the end of each financial year. This gives relevant providers more time to prepare their financial statements and is consistent with timeframes under other regulatory frameworks.

The Amendment Rules also makes amendments to Part 4 of the Rules to:

- adjust the requirements relating to transactions between providers, their key personnel and other related parties so that they apply to a broader range of transactions; and
- increase the number of course provider requirements that listed providers are taken to meet, meaning that those matters will not need to be addressed in reapproval applications or as part of ongoing program participation. The matters to which listed providers will be taken to meet are either: (a) not relevant in the case of public organisations or (b) already controlled under other regulatory frameworks.

In addition, the Amendment Rules makes amendments to Part 6 of the Rules to allow the Secretary to waive the VSL Tuition Protection levy for providers that are no longer in operation in the VET sector before a levy notice is issued to the provider. This will provide a consistent approach to the administration of levy invoices in tertiary sector regarding ceased providers. It also reduces the administrative burden for all entities involved.

The Amendment Rules also make other minor administrative updates to improve the clarity and operation of the Rules.

REGULATORY IMPACT

The Office of Impact Analysis assessed that a Regulation Impact Statement was not required for the Amendment Rules due to the minor regulatory impact of the proposed changes (OBPR reference: 22-03805).

COMMENCEMENT

The amendments commence on the day after the Amendment Rules are registered on the Federal Register of Legislation.

CONSULTATION

During 2022, the department consulted on the changes with VSL approved providers and with the VSL Provider Reference Group, which includes peak bodies such as TAFE Directors Australia, the Independent Tertiary Education Council of Australia, and Independent Higher Education Australia. The department also consulted with relevant government organisations such as the Australian Skills Quality Authority and with the VSL Ombudsman which presented a student-oriented perspective in their contribution.

Consultation papers were released and submissions invited. The department considered all feedback during the development of the proposed changes. Stakeholders responded positively to the proposed changes, welcoming program improvements that would reduce the administrative cost of participating in the program and enhance flexibility for providers in meeting VSL program requirements.

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) 2023

The *VET Student Loans Amendment Rules (No. 1) 2023* (the **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 *VET Student Loans Rules 2016* (the Rules) were introduced in late 2016 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 (**VSL**) program.

The VSL program has been operating for more than five years since legislative requirements were first put in place in 2016. Since that time, opportunities for program improvement have been identified through multiple program reviews, stakeholder feedback and operational experience. The main purpose of the *VET Student Loans Amendment Rules (No. 1) 2023* (the **Amendment Rules**) is to make amendments to the Rules to give effect to these program improvements.

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providers will be taken to meet are either: (a) not relevant in the case of public organisations or (b) already controlled under other regulatory frameworks.

In addition, the Amendment Rules makes amendments to Part 6 of the Rules to allow the Secretary to waive the VSL Tuition Protection levy for providers that are no longer in operation in the VET sector before a levy notice is issued to the provider. This will provide a consistent approach to the administration of levy invoices in tertiary sector regarding ceased providers. It also reduces the administrative burden for all entities involved.

Human rights implications

The Amendment Rules engage the following rights:

- the right to education contained in Article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR); and
- the right to work contained in Article 6 of the ICESCR.

Right to Education

The Amendment Rules engage the right to education set out in Article 13 of the ICESCR, which recognises the right of everyone to education, and is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society.

In addition, paragraph 13(2)(b) recognises that secondary education, in all its different forms, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

The Amendment Rules are compatible with, and promote, the right to education because they give effect to program improvement measures that will make it easier for more students to enrol and access VET student loans (**VSL**) for their courses. Specifically, the Amendment Rules promote the right to education by expanding the requirements associated with related party transactions to a broader range of transactions such as conveyances, guarantees, security interests, waivers and obligations. This will ensure the VSL program has related party transaction controls consistent with standard financial regulation practice. This will limit the risk of a provider's financial viability being compromised by unreasonable related party transactions, and any subsequent impact this may have on students and their vocational education e.g., in the event a provider no longer remains financially viable.

The Amendment Rules also promote the right to education by providing that listed providers are taken to meet a greater range of course provider requirements. This is because listed providers (which are Table A and B universities under sections 16-15 and 16-20 of *Higher Education Support Act 2003* (HESA), TAFEs and other government entities) are already subject to a range of regulatory controls, either as a part of performance and

accountability arrangements that apply to public organisations or, in the case of Table A and B universities, regulation under the *Tertiary Education Quality and Standards Agency Act 2011* and HESA. This amendment enables the Government to allocate more resources towards regulatory and course provider compliance in respect of higher risk program work.

The Amendment Rules promote the right to education.

Right to Work

Article 6(1) of the ICESCR provides that State Parties to the ICESCR 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) of the ICESCR 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.

By providing greater assurance of VSL provider's financial viability and compliance with course provider requirements, the Amendment Rules promote greater access to quality vocational education and training to support people moving into employment or better employment situations.

The Amendment Rules promote the right to work.

Conclusion

The Amendment Rules are compatible with human rights because they promote the protection of human rights and to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Skills and Training

VET STUDENT LOANS AMENDMENT RULES (NO. 1) 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the name of the instrument is the *VET Student Loans Amendment Rules (No. 1) 2023* (the **Amendment Rules**).

Section 2: Commencement

2. The table in subsection 2(1) sets out when the provisions of the Amendment Rules will commence.
3. The whole of the Amendment Rules are to commence on the day after the Amendment Rules are registered.

Section 3: Authority

4. This section provides that the Amendment Rules are made under section 116 of the *VET Student Loans Act 2016* (the **Act**).

Section 4: Schedule

5. This section provides that each instrument that is specified in a Schedule to the Amendment Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Rules has effect according to its terms.

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

Item 1: Section 4

1. Item 1 is a consequential amendment to Item 4. This item inserts new definitions of **PPSA retention of title property**, **related party** and **transaction** into section 4 of the *VET Student Loans Rules 2016* (the **Rules**).
2. The term **PPSA retention of title property** is defined to have the same meaning as is given to it in the *Corporations Act 2001*. Section 51F of that Act provides that property is PPSA retention of title property (short for Personal Property Securities Act retention of title property) of a corporation if:
 - the property is personal property; and
 - the property is used or occupied by, or is in the possession of, the corporation; and
 - the corporation does not have title to the property; and
 - a PPSA security interest is attached to the property, within the meaning of the *Personal Property Securities Act 2009*; and
 - the corporation is the grantor in relation to the PPSA security interest, within the meaning of the *Personal Property Securities Act 2009*.
3. This amendment is necessary because the definition of **transaction** inserted by this item refers to PPSA retention of title property.
4. The term **related party** is defined to mean:
 - An entity which is:
 - a holding company of an approved course provider (**provider**); or
 - a subsidiary of a provider; or
 - a subsidiary of a holding company of a provider;
 - A person or entity related to key personnel of a provider which is:
 - a spouse or child of key personnel; or
 - a child of the key personnel's spouse; or
 - a dependant of the key personnel or of the key personnel's spouse; or
 - anyone else who is one of the key personnel's family and may be expected to influence the key personnel, or be influenced by the key personnel, in the key personnel's dealings with the entity; or

- a company that is controlled by key personnel of the provider or a person listed in subparagraphs (i), (ii), (iii) or (iv), with **control** having the same meaning as in section 50AA of the *Corporations Act 2001*.
5. This definition clarifies that a related party covers incorporated entities which are related to the provider in a corporate group structure. This would include a holding company or subsidiary of the provider. This definition also captures subsidiaries of the provider's holding company as a related party.
 6. This definition also clarifies that a related party covers family members, such as a spouse, child, dependant or another family member who may be expected to exert influence over the key personnel, and additionally, any company that is controlled by any of these persons. Control in this definition has the same meaning as in section 50AA of the *Corporations Act 2001*. Control will be exercised where, key personnel or a person listed in subparagraphs (i), (ii), (iii) or (iv), has the capacity to determine the outcome of decisions about the company's financial and operating policies.
 7. The definition of **related party** has been introduced into the Rules given that the definition of **transaction** inserted by this item refers to related parties.
 8. The term **transaction** is defined to mean a transaction, between a provider and its key personnel or related parties, for example:
 - a conveyance, transfer or other disposition of property;
 - a security interest granted in property (including a security interest in an entity's PPSA retention of title property);
 - a guarantee;
 - a payment;
 - an obligation;
 - a release or waiver; and
 - a loan,and includes such a transaction that has been completed or given effect to, or that has terminated.
 9. This definition clarifies that any transaction between the provider and either, the provider's key personnel or a related party, are covered by new subsection 24(2).

Item 2: Paragraph 5(2)(g)

10. Item 2 is a technical and consequential amendment to Item 3. Item 2 omits “course;” and substitutes “course.” in paragraph 5(2)(g) of the Rules.

Item 3: Paragraph 5(2)(h)

11. Item 3 repeals paragraph 5(2)(h) of the Rules.
12. This amendment is necessary because paragraph 5(2)(h) refers to a now-redundant provision of Schedule 1A to the *Higher Education Support Act 2003* relating to students’ entitlements to VET FEE-HELP assistance. The VET FEE-HELP scheme ceased for new students on 31 December 2016.

Item 4: Subsection 24(2)

13. Item 4 repeals existing subsection 24(2) of the Rules and substitutes it with a new subsection 24(2).
14. New subsection 24(2) imposes limitations on providers’ ability to transact with its key personnel or other related parties.
15. The existing provision applies only to ‘payments’ to key personnel and related parties ‘for the provision of goods and services’. It requires that those payments only be made for goods and services reasonably necessary for the operation of the provider and on terms that apply the accounting standards.
16. New subsection 24(2) expands the content and scope of the limitations in subsection 24(2), such that they now apply to any transaction between the provider and its key personnel or related parties. It requires that those transactions only be entered into where it is reasonably necessary for the operation of the provider and, on terms and conditions a person in the position of the provider would consider to be reasonable.
17. A provider will contravene new subsection 24(2) where, for instance, the provider enters into an arrangement with:
 - a director of the provider, such that the director agrees to transfer title to real property to the provider for the purposes of its operations but on terms which require the provider to pay the director an amount which significantly exceeds the commercial value of the real property transferred; or
 - a company owned by a director of the provider, such that the provider agrees to loan monies to the company on terms and conditions which do not require repayment of the loaned monies within a reasonable period of time.

Item 5: Paragraph 37(b)

18. Item 5 repeals existing paragraph 37(b) of the Rules and substitutes it with a new paragraph 37(b).
19. Paragraph 37(b) previously provided that a listed course provider is taken to meet the provider suitability requirements set out in sections 23 (financial performance), 24 (dividends and related party transactions) and 31 (experience in providing vocational education and training) of the Rules.
20. New paragraph 37(b) expands upon the provisions taken to be met by a listed provider to include sections 25 (insurance), 26 (management and governance) and 27 (key personnel and advisers).
21. The effect of this amendment is to increase the number of course provider requirements that listed providers are taken to meet, meaning that those matters will not need to be addressed in reapproval applications or as part of ongoing program participation.

Item 6: At the end of section 41A

22. Item 6 inserts new subsection 41A(3) into the Rules.
23. New subsection 41A(3) provides the Secretary a discretion to waive the requirement for a provider to pay the VSL tuition protection levy in circumstances where the provider's registration as a registered training organisation is cancelled or, where the provider is no longer operating. The Secretary may only do so prior to the time the VSL Tuition Protection Director issues a written notice under subsection 41(1).

Item 7: Subsection 113(1)

24. Item 7 amends subsection 113(1) of the Rules to omit "3 months" and substitute "4 months".
25. This amendment extends the allowable period in which providers must give their general purpose financial statements (as described in subsection 113(1)) to the Secretary from 3, to 4 months, after the end of the financial year.

Item 8: Section 116 (heading)

26. Item 8 omits the existing heading for section 116 of the Rules and replaces it with the heading "Annual reporting".
27. The existing heading for section 116 is 'Annual forecasts'. This amendment reflects the amendments to subsection 116 made by the Amendment Rules, which will require

providers to give the Secretary more targeted information rather than forecast information.

Item 9: Subsection 116(1)

28. Item 9 repeals existing subsection 116(1) of the Rules and substitutes a new subsection 116(1).
29. Subsection 116(1) previously required providers to provide a range of information to the Secretary, including detailed ‘forecasts’ regarding a provider’s proposed course offerings for the next year.
30. Under new subsection 116(1), providers are no longer required to provide these detailed ‘forecasts’ to the Secretary. Instead, providers are required to give the Secretary information relevant to the department’s routine monitoring of activities to enable it to support providers in meeting their obligations under the Act and the Rules. This amendment will also reduce the administrative burden for most providers because the information to be given under the new ‘annual report’ is expected to be substantially less than was required under the existing ‘annual forecast’.
31. Specifically, under new subsection 116(1), providers are required to give to the Secretary:
 - information about the provider’s links with industry and other bodies as required under section 35 of the Rules;
 - information about any ‘third party arrangements’, whether approved or not, pursuant to which the provider has engaged a third party to deliver all or part of an approved course of the kind referred to in section 15(1)(b) of the Act;
 - a report on the results of the provider’s last annual assessment of student satisfaction in relation to each of its courses made under subsection 34(2) of the Rules; and
 - any other information determined by the Secretary.

Item 10: Subsection 116(2)

32. Item 10 is a consequential amendment to item 9 as it omits “paragraph (1)(l)” and substitutes “paragraph 1(d)” under subsection 116(2) of the Rules.
33. This amendment is necessary because the amendment made by item 9 of these Amendment Rules is such that existing paragraph 116(1)(l) is now contained in new paragraph 116(1)(d).