

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**VET STUDENT LOANS (VSL TUITION PROTECTION LEVY)
BILL 2019**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for Employment, Skills, Small
and Family Business, Senator the Hon Michaelia Cash)**

VET STUDENT LOANS (VSL TUITION PROTECTION LEVY) BILL 2019

OUTLINE

The purpose of the VET Student Loans (VSL Tuition Protection Levy) Bill 2019 (**the Bill**) is to impose the VSL tuition protection levy, specify the amounts that are payable by various classes of providers and prescribe the levy components and the manner in which, and by whom, they will be determined each year. The Bill is 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 a private education provider or TAFE.

The tuition protection arrangements that apply to approved course providers are specified in amendments made to the *VET Student Loans Act 2016* (**VSL Act**) under the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019 (**Tuition Protection and Other Measures Bill**). Details of the collection and recovery of the VSL tuition protection levy will be dealt with in amendments to the *VET Student Loans Rules 2016*. The levy amounts collected will be credited into the VSL Tuition Protection Fund which is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*. This Fund is established under new section 66J of the Tuition Protection and Other Measures Bill.

Together, the Tuition Protection and Other Measures Bill, the Higher Education Support (HELP Tuition Protection Levy) Bill 2019 and this Bill will implement the expansion of the successful tuition protection service (**TPS**) for international students to cover students accessing a VET student loan, FEE-HELP assistance or HECS-HELP assistance at private education providers or TAFEs for their vocational education and training course or higher education courses respectively, with effect from 1 January 2020.

There will be three elements to the VSL tuition protection levy:

- the administrative fee component – this is intended to cover the ongoing administration costs of the tuition protection arrangements, such as the remuneration of the VSL Tuition Protection Director, members of the VSL Tuition Protection Fund Advisory Board and any consultants engaged by the Director to assist and support the performance of his or her role and functions. This component of the levy is payable by all leviable providers, but a new provider only pays part of the component in their first year;
- the risk rated premium component – this is intended to cover the risk of each provider defaulting. This component is payable only by private providers, that is, it is not payable by TAFEs or by providers which are owned by the Commonwealth, a State or a Territory;
- the special tuition protection component – this is intended to be imposed in instances where the levy funds are below the ‘target fund size’ or to insure against future systemic shocks. This component is payable only by private providers.

The responsibility for determining the levy’s components is as follows:

- the Minister will determine the administrative fee component; and
- the VSL Tuition Protection Director will determine the risk rated premium component and special tuition protection component of the levy.

The VSL Tuition Protection Fund Advisory Board advises the VSL Tuition Protection Director in determining the components of the levy for which the Director is responsible and the Treasurer is required to approve the relevant legislative instrument made by the Director. The VSL Tuition Protection Fund Advisory Board includes membership from the Australian Government Actuary, the Department that administers the *Public Governance Performance and Accountability Act 2013* (currently the Department of Finance) as well as other members appointed for their qualification and experience. Thus, the Board will be well positioned to provide transparent and sound advice.

The levy will be reviewed annually. A key objective of the Bill is to ensure there is sufficient flexibility to allow the levy to respond to sector trends through regular review. This is essential to ensure the sustainability of the arrangements to Government and to ensure that liable providers are charged reasonably and proportionately in line with market costs of delivering tuition protection, and to reflect their actual risk levels.

FINANCIAL IMPACT STATEMENT

The measure to introduce new tuition protection arrangements to cover VSL students, FEE-HELP or HECS-HELP students studying at a private education provider or TAFE will generate an expected surplus of approximately \$3 million over the forward estimates. This is a result of the projected revenue collected through the levy system.

Impact on underlying cash (\$ millions)					
	2019–20	2020–21	2021–22	2022–23	Total
New tuition protection measures	-0.5	+0.2	+1.6	+1.7	+3.0

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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The VET Student Loans (VSL Tuition Protection Levy) Bill 2019 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 Bill

The purpose of the VET Student Loans (VSL Tuition Protection Levy) Bill 2019 (**the Bill**) is to impose the VSL tuition protection levy, specify the amounts that are payable by various classes of providers and prescribe the levy components and the manner in which, and by whom, they will be determined each year. The Bill is 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.

The tuition protection arrangements that apply to approved course providers are specified in amendments made to the *VET Student Loans Act 2016 (VSL Act)* under the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019 (**Tuition Protection and Other Measures Bill**). Details of the collection and recovery of the VSL tuition protection levy will be dealt with in amendments to the *VET Student Loans Rules 2016*. The levy amounts collected will be credited into the VSL Tuition Protection Fund which is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*. This Fund is established under new section 66J of the Tuition Protection and Other Measures Bill.

Together, the Tuition Protection and Other Measures Bill, the Higher Education Support (HELP Tuition Protection Levy) Bill 2019 and this Bill will implement the expansion of the successful tuition protection service (**TPS**) for international students to cover students accessing a VET student loan, FEE-HELP assistance or HECS-HELP assistance for their vocational education and training course or higher education courses at private education providers or TAFEs respectively, with effect from 1 January 2020.

Analysis of human rights implications

The Bill in isolation does not engage any of the applicable rights or freedoms. It provides a VSL tuition protection levy to be imposed on leviable providers as a tax. This Bill is necessary to give effect to the Government's reforms to the tuition protection arrangements in place for students under the VET Student Loans program. The principal reforms are set out in Tuition Protection and Other Measures Bill. A Statement of Compatibility with Human Rights in relation to the reforms is attached to the Explanatory Memorandum for that Bill.

Conclusion

This Bill is compatible with human rights because it does not, in itself, raise any human rights issues.

LIST OF ABBREVIATIONS

TPS Tuition Protection Service established under the *Education Services for Overseas Students Act 2000*

VSL Act *VET Student Loans Act 2016*

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NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1 - Short title

Clause 1 provides for the Act to be the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*.

Clause 2 - Commencement

The table in this clause specifies that the whole of the Bill, once enacted, commences at the same time as Part 1 of Schedule 1 to the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019*, which when enacted is to commence on 1 January 2020.

Clause 3 – Act binds the Crown

Clause 3 provides that the Bill binds the Crown in each of its capacities. This clause will ensure that, in keeping with principles of competitive neutrality, leviable providers that are instrumentalities of the Crown in right of the Commonwealth or of a State or Territory are not excluded from paying the levy merely because they are instrumentalities of the Crown. See, however, subclauses 7(2) and (3).

Clause 4 – Act does not impose tax on property of a State

Subclause 4(1) provides that the Bill does not impose a tax on property of any kind belonging to a State and subclause 4(2) defines *property of any kind belonging to a State* as having the same meaning as in section 114 of the Constitution. Clause 4 ensures the Bill does not contravene section 114, which prohibits the Commonwealth imposing any tax on the property of any kind belonging to a State.

Clause 5 – Definitions

This clause contains definitions of the terms and expressions used in the Bill, including *administrative fee component, leviable provider, new provider, risk rated premium component, special tuition protection component and VSL tuition protection levy*.

A “*leviable provider*” is defined to be an approved course provider to whom Part 5A of the VSL Act applies. Part 5A is the proposed new part in the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019 which sets out the arrangements relating to tuition protection. Part 5A (with the exception of proposed sections 66F and 66G) does not apply to Table A providers or to any providers of a kind prescribed by the rules. (A provider to which only proposed sections 66F and 66G of the VSL Act applies is not a provider to which Part 5A of the Act applies, and hence is not a leviable provider). Table A providers are defined in section 16-15 of the *Higher Education Support Act 2003* and essentially comprise Australian public universities.

A “*new provider*” for a year is a leviable provider that was not an approved course provider at any time during the previous year – that is, it is an approved course provider in its first year of approval (or re-approval, if it was previously an approved course provider but was not one the previous year).

“*Total VSL students*” is relevant to determining the administrative fee component and the risk rated premium component of the levy. It means the total number of students who were enrolled with the provider in an approved course with a census date occurring in the previous year and have been approved for a VET student loan for the course. That is, it is a measure of the actual number of students who were enrolled in an approved course with the provider and were approved for a VET student loan for the course. This means that a student enrolled in multiple courses at a single provider in the previous year will count only once towards that provider’s total VSL students. For new providers the ‘Total VSL students’ will in effect be zero since they will not have had any actual VSL students in the previous year.

Subclause 5(2) provides that any expression used in the Bill that is also used in the VSL Act has the same meaning as in that Act.

Part 2 – VSL tuition protection levy

This part sets out the three components of the VSL tuition protection levy being the administrative fee, risk rated premium and special tuition protection components and the method of calculating these amounts.

A number of factors used in the calculations of the levy components will be set out in legislative instruments made under this Bill. The Minister will make the legislative instrument in respect of the administrative fee component; and the VSL Tuition Protection Director will make the instrument in respect of the risk rated premium component and the special tuition protection component.

The approach of using legislative instruments gives the Minister and the Director flexibility in setting the various components of the levy to ensure the VSL Tuition Protection Fund fulfils its purpose and that leviable providers pay an amount which reflects the current state of the Fund, the risk rating of each provider and its level of exposure in the VET Student Loans program. Before making a legislative instrument, the Director must first obtain the written approval of the Treasurer to the determinations he or she makes (see subclause 13(6)). In addition, as per the usual process, these legislative instruments are subject to scrutiny and disallowance by both Houses of Parliament.

The mechanism of setting components of the levy that reflect the costs of operating the tuition protection scheme and particular providers’ risks of defaulting, by enabling flexible year-on-year adjustments through legislative instrument, is consistent with the successful and industry-accepted mechanism for the TPS Levy established under the *Education Services for Overseas Students (TPS Levies) Act 2012*.

Clause 6 – Imposition VSL tuition protection levy

This clause imposes a levy on a body for a year if the body is a leviable provider at any time during the year.

Clause 7 – Amount of VSL tuition protection levy

Subclause 7(1) provides that the amount of VSL tuition protection levy for a year for a leviable provider, other than a provider referred to in subclause 7(3), is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component for that year. These components are calculated in accordance with the methods set out in clauses 8 to 13 of the Bill.

The note underneath subclause 7(1) assists the reader by referring to proposed section 14 which enables the rules to prescribe classes of providers that may be exempt from the requirement to pay one or more components of the VSL tuition protection levy. The Bill also expressly provides for certain classes of leviable providers to be partially exempt as outlined below.

Subclause 7(2) provides that the amount of VSL tuition protection levy for a leviable provider that is covered by subclause 7(3) is the administrative fee component of the levy only. Providers covered by subclause 7(3) are registered training organisations that are the TAFEs of each State and Territory, and other government-owned training organisations. The lower levy on such providers recognises that they are at lower risk of default.

Subclauses 11(1) and 12(1) also deem a new provider's risk rated premium component and special tuition protection component as both being zero.

Clause 8 – Administrative fee component

The administrative fee component is intended to cover the Commonwealth's operational costs of tuition protection under proposed Part 5A and Part 5B of the VSL Act.

A leviable provider's administrative fee component for a year is the sum of:

- the amount determined in an instrument made under section 9 for the purposes of paragraph 8(2)(a) for the year; and
- the amount determined in an instrument made under section 9 for the purposes of paragraph 8(2)(b) for the year, multiplied by the total VSL students for the provider for the year.

Factoring in a provider's total VSL student numbers for the year allows for the provider's degree of exposure in the VET Student Loans program to be taken into account. If the leviable provider is a new provider, subclause 8(1) provides that the amount of the provider's administrative fee component is the amount determined for the purposes of paragraph 8(2)(a) only.

Clause 9 – Legislative instrument for purposes of section 8

The Minister is responsible for making the legislative instrument setting the amounts used to calculate a leviable provider's administrative fee component.

Subclause 9(1) provides that before 1 August 2020 the Minister must, by legislative instrument, determine amounts for the purposes of paragraphs 8(2)(a) and (b) for 2020. Subclause 9(2) gives the Minister the discretion whether to determine a legislative instrument in subsequent years. If no instrument is made for a particular year before 1 August of that year, the administrative fee component of the levy is the same as the previous year subject to indexation as per clause 10.

Subclause 9(3) provides that the amount the Minister determines for the purposes of paragraph 8(2)(a) cannot exceed \$325 and the amount for paragraph 8(2)(b) cannot exceed \$15. The Australian Government Actuary was consulted in setting these upper limit amounts. This provision gives providers transparency and certainty as to the maximum possible amounts that can be charged for the administrative fee component. The note underneath subclause 9(3) clarifies that amounts under this subsection are to be indexed pursuant to clause 10.

Subclause 9(4) requires the Minister, in making a legislative instrument under clause 9, to have regard to the sustainability of the VSL Tuition Protection Fund. Subclause 9(5) enables the Minister to also have regard to any other matter the Minister considers appropriate.

Clause 10 – Indexation of administrative fee components etc.

Clause 10 provides for the indexation of both the administrative fee component of the VSL tuition protection levy and also the upper limits of the amounts of the administrative fee component prescribed in subclause 9(3). The Australian Bureau of Statistics was consulted on this clause.

Subclause 10(1) provides for indexation to apply in accordance with a prescribed formula from 1 August 2021, and each year later, to amounts mentioned in paragraphs 8(2)(a) or (b) or 9(3)(a) or (b). The prescribed formula multiplies the amount under the respective paragraph for the previous year, by the indexation factor for that 1 August. The amount mentioned in paragraphs 8(2)(a) or (b) or 9(3)(a) or (b) is then replaced by the new amount.

Subclause 10(2) provides that subclause 10(1) does not apply to an amount mentioned in paragraph 8(2)(a) or (b), if the Minister has determined an amount for the purposes of that paragraph for the current year.

Subclause 10(3) sets out the formula for working out the indexation factor for the purposes of subclause 10(1). The indexation factor for a 1 August is the index number for the reference quarter divided by the index number for the base quarter. The index number for a quarter means the All Groups Consumer Price Index number from the original series (being the weighted average of the capital cities) published by the Australian Statistician for that quarter. The base quarter means the last September quarter before the reference quarter and the reference quarter means the September quarter in the year before the current year.

Subclauses 10(4) to 10(7) provide for rounding factors to apply to the indexation factor and the amounts worked out under subclause 10(1). Subclause 10(4) provides that the indexation factor worked out under subclause 10(3) must be rounded up or down to 3 places and subclauses 10(5) and 10(6) provide for the rounding of amounts worked out under subclause 10(1). Subclause 10(7) provides that an indexation factor that is less than 1 is to be increased to 1. This ensures that amounts to be indexed are not reduced. Subclause 10(8) provides that, if at any time the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying clause 10 after the change, only index numbers published in terms of the new index reference period are to be used.

Subclause 10(9) requires the Minister to cause each amount worked out under subclause 10(1) to be made publically available in any manner the Minister considers appropriate. For example, the Minister may require that the VSL Tuition Protection Director publishes the indexed amounts on a particular website.

Clause 11 – Risk rated premium component

The risk rated premium component is calculated based on the provider's level of exposure under the VET Student Loans program, in terms of total student numbers and VET student loan amounts, as well as the provider's risk of default based on certain risk factors.

Subclause 11(1) 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.

Subclause 11(2) sets out a six-step method statement for calculating a leviable provider's risk rated premium component, as follows:

1. The first step is to multiply the total VSL students for the provider for the year by the amount determined in an instrument under section 13 for the purposes of this step for the year – this allows for the provider's level of exposure based on VSL student numbers to be taken into account.
2. The second step is to multiply the amount equal to the total loan amounts paid to the provider under section 19 of the VSL Act for the previous year by the percentage determined in an instrument under section 13 for the purposes of this step for the year – this allows for the provider's level of exposure based on actual VET student loan amounts paid to it for the previous year to be taken into account.
3. The third step is to add up the results of steps 1 and 2.
4. The fourth step is, for each risk factor determined in an instrument under section 13 for the purposes of this step for the year, work out the risk factor value for the provider for the year in accordance with the instrument. Examples of risk factors that may be specified in the instrument are: volatility in student numbers; course completion rates; length of operation as a registered training organisation; numbers of high-risk courses; compliance history. These are all factors which could impact on a provider's risk of default.
5. The fifth step is to add up the provider's risk factor values worked out under step 4 and add 1.
6. The sixth step is to multiply the results of step 3 (i.e. exposure based on student numbers and VET student loans) by the results of step 5 (i.e. exposure based on risk factors). The result is the provider's risk rated premium component for the year.

Clause 12 – Special tuition protection component

The special tuition protection component is intended to be imposed on providers to allow the VSL Tuition Protection Fund to grow. For example, it might be imposed in the early years to allow the Fund to grow to its target size. Alternatively, it might also be imposed in years of growth of the VET Student Loan program to build up contingency amounts in the Fund for future years.

Subclause 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. 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 VSL Act for the previous year, multiplied by the percentage determined in an instrument made under section 13 for the purposes of subsection 12(2) for a year. Factoring in a provider's total VET student loans amounts for the previous year allows for each provider's contribution to be fair and proportionate to their participation in the VET Student Loans program.

Clause 13 – Legislative instrument for purposes of section 11 or 12

The VSL Tuition Protection Director is responsible for making the legislative instrument that is necessary to calculate a leviable provider's risk rated premium component under section 11 and its special tuition protection component under section 12.

Subclause 13(1) provides that the VSL Tuition Protection Director must, by legislative instrument, determine before 1 August 2020 and for each later year, each of the following for the year:

- an amount for the purposes of step 1 of the method statement in subsection 11(2);
- a percentage for the purposes of step 2 of the method statement in subsection 11(2);
- one or more risk factors that reflect the risk of payments being made out of the VSL Tuition Protection Fund in respect of leviable providers with that factor or those factors, and for each risk factor, the risk factor value, or a method for working out the risk factor value, for leviable providers, or a class of leviable providers. This is for the purposes of step 4 of the method statement in subsection 11(2);
- a percentage for the purposes of subsection 12(2).

Subclause 13(2) provides that the percentage determined for the purposes of paragraphs 13(1)(b) or (d) may be zero. Subclause 13(3) provides that a risk factor value for a risk factor must be a number between zero and 10 inclusive.

Subclause 13(4) provides that, in making a legislative instrument under subsection 13(1), the VSL Tuition Protection Director must have regard to both any advice of the VSL Tuition Protection Fund Advisory Board and the sustainability of the VSL Tuition Protection Fund. Under subclause 13(5) the VSL Tuition Protection Director may also have regard to any other matter that the Director considers appropriate.

Before the VSL Tuition Protection Director makes a legislative instrument for the purposes of clause 13, subclause 13(6) requires the Treasurer to approve the legislative instrument in writing. This provides an extra measure of scrutiny to the legislative instrument.

Part 3 – Other matters

Clause 14 – Exemptions

This clause provides that the rules (a legislative instrument made under section 116 of the VSL Act) may prescribe one or more classes of leviable providers who are exempt from the requirement to pay one or more of the components of the levy. Notably, only *classes* of providers may be prescribed, and not individual providers.

This power to make a rule exempting a class of providers is necessary to provide flexibility and responsiveness in the requirements imposed on providers and the management of the VSL Tuition Protection Fund. It means that, if it becomes apparent that it is no longer appropriate for a class of providers to pay a particular component of the levy, for example

due to their risk of default, they can be exempted from the requirement to pay one or more of the components.

Clause 15 – Regulations

This clause enables the Governor-General to make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.