VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016

No. 100, 2016

An Act to deal with consequential and transitional matters in relation to the enactment of the *VET Student Loans Act 2016*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Contents

1 Short title 2
2 Commencement 2
3 Schedules 3

Schedule 1—Consequential amendments 4

Part 1—Main amendments 4

Higher Education Support Act 2003 4

National Vocational Education and Training Regulator Act 2011 9

Student Identifiers Act 2014 9

Part 2—Contingent amendments 10

Higher Education Support Act 2003 10

Schedule 2—Transitional provisions 11

Authorised Version C2016A00100

VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016

No. 100, 2016

An Act to deal with consequential and transitional matters in relation to the enactment of the *VET Student Loans Act 2016*, and for related purposes

[*Assented to 7 December 2016*]

The Parliament of Australia enacts:

Authorised Version C2016A00100

1 Short title

This Act is the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	7 December 2016
2. Schedule 1, Part 1	At the same time as the *VET Student Loans Act 2016* commences. However, the provisions do not commence at all if that Act does not commence.	1 January 2017
3. Schedule 1, Part 2	The later of: (a) the commencement of the *VET Student Loans Act 2016*; and (b) immediately after the commencement of Schedule 2 to the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016*. However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	1 January 2017 (paragraph (a) applies)
4. Schedule 2	The day this Act receives the Royal Assent.	7 December 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

Authorised Version C2016A00100

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Authorised Version C2016A00100

Schedule 1—Consequential amendments

Part 1—Main amendments

Higher Education Support Act 2003

1 Paragraph 104-15(1)(a)

Omit "and *VET FEE-HELP assistance", substitute ", *VET FEE-HELP assistance and *VET student loans".

2 Paragraph 104-15(1)(a)

Omit "or Subdivision 7-B of Schedule 1A", substitute ", Subdivision 7-B of Schedule 1A or Part 6 of the *VET Student Loans Act 2016*".

3 Subsection 104-15(2)

Omit "and *VET FEE-HELP assistance", substitute ", *VET FEE-HELP assistance and *VET student loans".

4 Section 129-1

After "under Schedule 1A", insert "or the *VET Student Loans Act 2016*".

5 Section 134-1

After:

> A person also incurs a HELP debt if he or she receives, as VET FEE-HELP assistance, a loan from the Commonwealth under Schedule 1A.

insert:

> A person also incurs a HELP debt if the Secretary uses an amount of a VET student loan approved under the *VET Student Loans Act 2016* to pay tuition fees for the person.

Authorised Version C2016A00100

6 At the end of section 137-1

Add:

; (e) *VET student loan debts.

7 After section 137-18

Insert:

137-19 VET student loan debts

Incurring VET student loan debts

(1) A person incurs a debt to the Commonwealth if, under the *VET Student Loans Act 2016*, the Secretary:

(a) approves a *VET student loan for the person; and

(b) uses an amount (the ***loan amount***) covered by the VET student loan to pay tuition fees for the person for a course.

The debt is a ***VET student loan debt***.

(2) The amount of the *VET student loan debt is:

(a) 120% of the loan amount; or

(b) if the rules made under the *VET Students Loans Act 2016* specify a lesser percentage of the loan amount for the person—that lesser percentage of the loan amount.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

When VET student loan debts are incurred

(3) A *VET student loan debt is incurred on the day that the Secretary pays the loan amount.

Remission of VET student loan debts

(4) A person's *VET student loan debt in relation to a loan amount is taken to be remitted if the person's *FEE-HELP balance is re-credited under Part 6 of the *VET Student Loans Act 2016* in relation to the loan amount.

Authorised Version C2016A00100

8 Subsection 140-5(1) (method statement, step 2, paragraph (g))

Omit "provider.", substitute "provider; or".

9 Subsection 140-5(1) (method statement, step 2, after paragraph (g))

Insert:

> (h) a *VET student loan in relation to one particular course of study.

10 Subsection 140-5(1) (method statement, step 2, note)

Omit "(f) or (g)", substitute "(f), (g) or (h)".

11 Subsection 140-25(1A) (method statement, step 1, paragraph (g))

Omit "provider.", substitute "provider; or".

12 Subsection 140-25(1A) (method statement, step 1, after paragraph (g))

Insert:

> (h) a *VET student loan in relation to one particular course of study.

13 Subsection 140-25(1A) (method statement, step 1, note)

Omit "(f) or (g)", substitute "(f), (g) or (h)".

14 At the end of clause 1 of Schedule 1A

Add:

Note: VET FEE-HELP assistance will be phased out during 2017 and 2018: see subclauses 6(5) and 43(3) to (5).

15 At the end of clause 2 of Schedule 1A

Add:

Authorised Version C2016A00100

Note: The Minister must not approve a body as a VET provider after 4 October 2016: see subclause 6(5).

16 At the end of clause 6 of Schedule 1A

Add:

(5) The Minister must not approve a body as a *VET provider after 4 October 2016.

17 Before subclause 11(1) of Schedule 1A

Insert:

(1A) The Minister is not required to comply with this clause after 4 October 2016.

Note: The Minister must not approve a body as a VET provider after 4 October 2016: see subclause 6(5).

18 Clause 40 of Schedule 1A (note)

Omit "Note", substitute "Note 1".

19 At the end of clause 40 of Schedule 1A

Add:

Note 2: VET FEE-HELP assistance will be phased out during 2017 and 2018: see subclauses 43(3) to (5).

20 At the end of clause 43 of Schedule 1A

Add:

(3) A student is not entitled to *VET FEE-HELP assistance for a *VET unit of study if:
  (a) the *census date for the unit is on or after 1 January 2017; or
  (b) if the student is covered by subclause (4)—the census date for the unit is on or after:
    (i) unless subparagraph (ii) applies—1 January 2018; or
    (ii) if the Minister is satisfied that exceptional circumstances justify continued entitlement to VET FEE-HELP assistance for the student—a day determined in writing by the Minister.

(4) A student is covered by this subclause if:

Authorised Version C2016A00100

(a) immediately before 1 January 2017, the student was enrolled in the *VET course of study of which the *VET unit of study forms a part; and

(b) the unit is provided:

(i) by the *VET provider with whom the student was enrolled immediately before 1 January 2017; or

(ii) in compliance with the *VET tuition assurance requirements as they apply in relation to the provider; and

(c) before 1 January 2017, the student received *VET FEE-HELP assistance for another unit that formed a part of the course; and

(d) the Secretary is satisfied that, at all times from the commencement of this paragraph, the student has been a genuine student (within the meaning of the *VET Student Loans Act 2016*).

(5) A student is not entitled to *VET FEE-HELP assistance for a *VET unit of study if a *VET student loan has been approved for the student for the *VET course of study of which the unit forms a part.

(6) The *VET Guidelines may specify matters to which the Minister must or may have regard in deciding for the purposes of subparagraph (3)(b)(ii) whether exceptional circumstances justify continued entitlement to *VET FEE-HELP assistance for the student.

(7) A determination under subparagraph (3)(b)(ii) is not a legislative instrument.

21 Subclause 1(1) of Schedule 1

Insert:

VET student loan has the same meaning as in the *VET Student Loans Act 2016*.

VET student loan debt has the meaning given by subsection 137-19(1).

Authorised Version C2016A00100

National Vocational Education and Training Regulator Act 2011

22 After section 24

Insert:

24A Condition—complying with student assistance laws

(1) An NVR registered training organisation that is a VET provider within the meaning of the *Higher Education Support Act 2003* must comply with that Act.

(2) An NVR registered training organisation that is an approved course provider within the meaning of the *VET Student Loans Act 2016* must comply with:
   (a) the *VET Student Loans Act 2016*; and
   (b) any Act or instrument to the extent that it is included in the definition of ***this Act*** in the *VET Student Loans Act 2016*.

Student Identifiers Act 2014

23 After section 18

Insert:

18A Collection, use or disclosure for administration of VET student loans

A VET-related body or the Commissioner of Taxation is authorised to collect, use or disclose a student identifier of an individual if the collection, use or disclosure is reasonably necessary for the purposes of performing functions or exercising powers in relation to:
   (a) the *VET Student Loans Act 2016*; or
   (b) any Act or instrument to the extent that it is included in the definition of ***this Act*** in the *VET Student Loans Act 2016*.

Authorised Version C2016A00100

Part 2—Contingent amendments

Higher Education Support Act 2003

24 Paragraph 180-28(6)(b)

After "Schedule 1A", insert "or the *VET Student Loans Act 2016*".

25 At the end of section 180-28

Add:

(9) For the purposes of this section, *Higher Education Support Act information includes VET information (within the meaning of the *VET Student Loans Act 2016*).

Authorised Version C2016A00100

Schedule 2—Transitional provisions

1 Definitions

In this Schedule:

loan amount has the same meaning as in the *VET Student Loans Act 2016*.

provider transition period means the period:

(a) beginning on 1 January 2017; and

(b) ending on 30 June 2017 or a later date determined by the Minister under item 8.

Secretary means the Secretary of the Department.

Table A provider has the same meaning as in the *Higher Education Support Act 2003*.

Table B provider has the same meaning as in the *Higher Education Support Act 2003*.

VET provider has the same meaning as in the *Higher Education Support Act 2003*.

2 Bodies taken to be approved course providers on 1 January 2017

(1) Each of the following bodies is taken to be approved by the Secretary, under Division 1 of Part 4 of the *VET Student Loans Act 2016*, as an approved course provider on 1 January 2017 if, immediately before 1 January 2017, the body is a VET provider:

(a) a Table A provider;

(b) a Table B provider;

(c) a body established to provide vocational education or training under one of the following:

(i) the *Technical and Further Education Commission Act 1990* (NSW);

(ii) the *Education and Training Reform Act 2006* (Vic.);

(iii) the *TAFE Queensland Act 2013* (Qld);

(iv) the *Vocational Education and Training Act 1996* (WA);

(v) the *TAFE SA Act 2012* (SA);

Authorised Version C2016A00100

(vi) the *Training and Workforce Development Act 2013* (Tas.);

(vii) the *Canberra Institute of Technology Act 1987* (ACT);

(d) a training organisation owned by the Commonwealth, a State or a Territory.

(2) A body is taken to be approved by the Secretary, under Division 1 of Part 4 of the *VET Student Loans Act 2016*, as an approved course provider on 1 January 2017 if:

(a) before 1 January 2017:

(i) the body applies to the Secretary; and

(ii) the Secretary decides that the body is suitable for being an approved course provider during the provider transition period; and

(b) immediately before 1 January 2017, the body is a VET provider.

(3) For the purposes of subparagraph (2)(a)(i), the application must be in the form approved by the Secretary.

(4) For the purposes of subparagraph (2)(a)(ii), the Secretary may decide that a body is suitable if the Secretary is satisfied that the body:

(a) meets the requirements determined by the Minister under item 3; and

(b) is not excluded because of circumstances determined by the Minister under item 4.

(5) If a body applies to the Secretary under subparagraph (2)(a)(i), the Secretary must give the body written notice of the Secretary's decision as to whether the body is suitable.

3 Minister may determine suitability requirements

(1) The Minister may, by legislative instrument, determine requirements for the purposes of ensuring that course providers to whom loan amounts are paid during the provider transition period are suitable.

(2) The requirements may deal with the following in relation to a course provider:

(a) financial performance;

(b) management and governance;

Authorised Version C2016A00100

(c) experience in providing vocational education;
(d) scope of courses;
(e) fees and modes of delivery for courses;
(f) student outcomes;
(g) industry links.

(3) Subitem (2) does not limit the requirements the Minister may determine.

4 Minister may determine circumstances in which body is excluded

(1) The Minister may, by legislative instrument, determine circumstances in which a body is excluded from being an approved course provider during the provider transition period.

(2) Without limiting subitem (1), the circumstances may relate to:
(a) the past compliance of the body or its officers or agents with the *Higher Education Support Act 2003*, another law of the Commonwealth or a law of a State or Territory; or
(b) action taken under the *Higher Education Support Act 2003*, another law of the Commonwealth or a law of a State or Territory in relation to the body or its officers or agents.

5 Period of approval

(1) An approval as an approved course provider under subitem 2(1) is for a period of 7 years beginning on 1 January 2017.

(2) An approval as an approved course provider under subitem 2(2) is for the provider transition period.

(3) Section 33 of the *VET Student Loans Act 2016* does not apply to an approval under subitem 2(2).

6 Conditions of approval

An approval as an approved course provider under item 2 is subject to the same conditions (if any) that the body's approval as a VET provider is subject to immediately before 1 January 2017.

Authorised Version C2016A00100

7 Approval may be revoked or suspended

(1) After the commencement of the *VET Student Loans Act 2016*, an approval as an approved course provider under item 2 may be revoked or suspended under that Act.

(2) If, at any time during the provider transition period, a body approved under subitem 2(2) ceases to be a VET provider, the approval is revoked.

8 Minister may extend provider transition period

(1) The Minister may, by legislative instrument, determine a date after 30 June 2017 as the end of the provider transition period.

(2) The Minister must not make a legislative instrument under subitem (1) on or after 30 June 2017.

9 Approval under *VET Student Loans Act 2016* not to commence before 1 July 2017

(1) The period of an approval as an approved course provider under Division 1 of Part 4 of the *VET Student Loans Act 2016* must not begin before 1 July 2017.

(2) To avoid doubt, subitem (1) does not apply to an approval that is taken to have been given under item 2.

10 Delegation by Secretary

(1) The Secretary may, in writing, delegate his or her powers under this Schedule to an SES employee, or an acting SES employee, in the Department.

(2) In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

11 Regulations about transitional matters

(1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) in relation to:

(a) the amendments made by Schedule 1 to this Act; or

Authorised Version C2016A00100

(b) the enactment of this Act or the *VET Student Loans Act 2016*.

(2) Without limiting subitem (1), regulations made for the purposes of that subitem may do any of the following:

(a) modify the operation of provisions of the *VET Student Loans Act 2016*;

(b) modify the operation of provisions of any Act or instrument to the extent that it is included in the definition of ***this Act*** in the *VET Student Loans Act 2016*;

(c) modify the operation of this Act.

(3) Provisions modified by the regulations have effect as if they were so modified.

(4) However, the regulations must not modify the operation of an Act, or continue to modify the operation of an Act, after 31 December 2017.

[*Minister's second reading speech made in—*
House of Representatives on 13 October 2016
Senate on 7 November 2016]

(154/16)

Authorised Version C2016A00100