

## REVISED EXPLANATORY STATEMENT

### Family Tax Benefit (Studying Overseas Full-time) Determination 2011

The *Family Tax Benefit (Studying Overseas Full-time) Determination 2011* (the Determination) is made under section 3C of the *A New Tax System (Family Assistance) Act 1999* (the Act).

#### Background

The *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Act 2011* (the Amending Act) extended family tax benefit eligibility in respect of children or young people who are studying overseas full-time. Section 3C, as inserted into the Act by the Amending Act, provides that 'studying overseas full-time' has the meaning given by a legislative instrument made by the Minister for the purposes of section 3C.

This Determination has been made to give meaning to the term 'studying overseas full-time'.

#### Explanation of provisions

**Part 1** (sections 1 to 3) of the Determination sets out provisions of a technical nature.

**Section 1** sets out the title of the Determination.

**Section 2** provides that the Determination commences on the day after it is registered.

**Section 3 and 4** contain definitions and interpretation provisions that are relevant to the Determination.

In particular, subsection 3(1) includes the definition of 'foreign educational institution'. It is intended that the foreign educational institution is a bona fide educational institution and, as such, is established by a law of a foreign country, or registered by the relevant education recognition authority of the foreign country, as an educational institution. As far as possible, this definition mirrors the definitions for Australian educational institutions in the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*.

A foreign educational institution could satisfy the definition at subsection 3(1) regardless of whether it is located inside or outside of Australia.

Subsection 3(2) provides the meaning for an 'approved foreign course of education or study'. It is intended that the course is provided by a bona fide foreign educational institution, as defined by subsection 3(1), that the course is appropriately accredited as a secondary or tertiary level course, and that

completing the course results in a level of education that is broadly equivalent to an approved Australian secondary or tertiary course as determined under subsection 5D(1) of the *Student Assistance Act 1973*. Again, it is intended that a course may be regarded as an approved foreign course of education or study regardless of whether the course is delivered inside or outside of Australia.

**Section 4** provides for when an individual is taken to be undertaking the 'required amount of study'. This is designed to mirror the concept of 'undertaking full-time study' in section 541B of the *Social Security Act 1991*.

Subsection 4(1) provides that an individual is undertaking the required amount of study in an approved foreign course of education or study, for the period in which the individual is enrolled in the course, if:

- (a) in the general case (where subsection 4(3) does not apply) – the individual is studying the course for at least three-quarters of the defined amount of full-time study; or
- (b) where subsection 4(3) applies to an individual – the individual is studying the course for at least two-thirds of the defined amount of full-time study.

Subsection 4(2) provides for an exception to the above rule, in respect of the first fortnight of classes in a particular study period. That is, an individual is taken to be undertaking the required amount of study in the first fortnight of classes if the individual is enrolled in the course and undertakes study in the course on at least one day in the first fortnight of classes. This exception acknowledges that a student may not undertake a full workload in their first two weeks due to rearrangement of timetables and other administrative matters beyond their control.

Subsection 4(3) provides for the circumstances that must be met in order for the reduced two-thirds study load (described in paragraph 4(1)(b)) to apply. Subsection 4(3) applies to an individual if the individual cannot undertake the defined amount of full-time study because of:

- (a) the usual requirements of the foreign educational institution in respect of the course;
- (b) a specific written direction to the individual from the academic registrar; or
- (c) a written recommendation that the individual undertake at least two-thirds study load (described in paragraph 4(1)(b)) for specified academic or vocational reasons.

Subsection 4(3) may apply, for example, where there are timetable clashes, subject prerequisites are not satisfied, or a subject is cancelled or over-enrolled.

Subsection 4(4) provides that paragraph 4(3) can only apply to an individual because of paragraph 4(3)(c) for a maximum period of half of the academic year.

Subsection 4(5) provides for the meaning of the term 'defined amount of full-time study', which is used in this section. Paragraph 4(5)(a) provides that if the Secretary has determined the normal amount of full-time study for the individual under section 17B(3) of the Act, the defined amount of full-time study is that amount as determined. This is intended to provide some flexibility, where an individual's circumstances warrant, for the Secretary to determine a number of hours of study per week for an individual, averaged over the period that the individual is enrolled in the course, which would then become that individual's defined amount of full-time study.

Paragraph 4(5)(b) provides that if the Secretary has not made such a determination, the defined amount of full-time study is, either:

- if the foreign educational institution specifies an amount of full-time study that should typically be undertaken in respect of the course, that amount;
- otherwise, an amount of study equivalent to the average amount of study that an individual would have to undertake for the duration of the course, in order to complete the course in the minimum amount of time needed.

**Section 5 in Part 2** provides the meaning of studying overseas full-time for the purposes of section 3C of the Act. An individual is studying overseas full-time if the following three matters are satisfied.

First, the individual must be either:

- currently enrolled in an approved foreign course of education or study (see subsection 3(2)); or
- previously enrolled in an approved foreign course of education or study and has (since no longer being enrolled) always intended to re-enrol in the course when re-enrolments in the course are next accepted; or
- previously enrolled in an approved foreign course of education or study and has (since no longer being enrolled) always intended to enrol in another approved foreign course of education or study when enrolments in the other course are next accepted. The other course may be at the same or a different foreign educational institution.

Second, the individual must be either:

- currently undertaking the required amount of study (see section 4) in the course, in the study period in which the individual is enrolled in the course; or
- intending to undertake the required amount of study in the course, in the study period in which the individual intends to be enrolled in the course.

Third, the individual must be making satisfactory progress towards completing the course.

## **Consultation**

This Determination gives meaning to the term 'studying overseas full-time' by specifying matters such as the level of the course of study that an individual must be enrolled in, and the minimum amount of study that an individual must be undertaking. As the policy intent is to rectify the disparity between the eligibility for family tax benefit in respect of young people who are studying in Australia and those who are studying overseas, the definition of 'studying overseas full-time' is closely modelled on the definition of 'undertaking full-time study' in section 541B of the *Social Security Act 1991*, and related definitions in the *Student Assistance Act 1973* and the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*, which apply to eligibility for family tax benefit in respect of young people who are studying in Australia.

Consultation on this Determination was not considered necessary because the choice of words to give meaning to the term 'studying overseas full-time' so as to achieve parity with the meaning of 'undertaking full-time study' is minor and technical in nature. The Determination does not substantially alter the existing policy to provide family assistance to families with children participating in full-time education, other than giving effect to the removal of the unintended restriction that the study must be undertaken in Australia. Removing this restriction will have a beneficial effect for families with children who are studying overseas and who may, as a result of this change, become eligible for family tax benefit.

## **Regulatory Impact Analysis**

A Regulatory Impact Statement or a Business Cost Calculator Figure is not required. The measure in this Determination affects individuals' entitlements to government payments. They are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact on businesses.