

EXPLANATORY STATEMENT

Student Assistance (Education Institutions and Courses) Amendment Determination 2011 (No. 2)

Summary

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2011 (No. 2)* (the Amendment Determination) is made under subsection 5D (1) of the *Student Assistance Act 1973* (the Act). Subsection 5D (3) of the Act provides that a determination under subsection 5D (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

The Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (Principal Determination). The Amendment Determination amends definitions provided in the Primary Determination, and inserts new definitions to reflect current policy as well as other portfolio legislation. The Amendment Determination also makes changes to the list of Masters courses in Schedule 3 to the Principal Determination by adding new courses, replacing existing courses, and removing existing courses.

The Masters courses listed in Schedule 3 are the Masters courses at Australian tertiary institutions that are “tertiary courses” for the purposes of the Act. In turn, the determination of these courses as tertiary courses for the purposes of the Act allows people studying those courses to qualify for certain income support payments under social security law, such as Austudy payment and Youth Allowance (provided they meet the other qualification criteria for those payments).

The Amendment Determination also updates various terminology used in the Principal Determination.

Notes on Clauses

Sections 1 and 2 of the Amendment Determination are mechanical provisions that provide for the name of the instrument and its commencement, respectively.

Section 3

This clause provides that Schedule 1 of the Amendment Determination amends the Principal Determination.

Items 1 and 2 of Schedule 1

These items amend the definition of **accredited higher education provider** in the Principle Determination for consistency with the *Tertiary Education Quality Standards Agency Act 2011*.

Items 3 -7, 10 – 13, 15 – 18, and 21-22 of Schedule 1

These items make amendments to update terminology used in the Principal Determination, to better reflect terminology currently used in relation to the regulation of the vocational education and training sector in light of the *National Vocational Education and Training Regulator Act 2011*. The main change is to insert a new definition of ‘VET course’ in place of terms used in the Principal Determination such as ‘accredited vocational and education training course’ and ‘vocational education and training program’. These changes are reflected in the amended Schedule 2 inserted by the Amendment Determination are not intended to be substantive in nature.

Item 8 of Schedule 1

This item repeals the definition of ***integrated undergraduate/postgraduate course*** and substitutes a new definition as follows:

Integrated undergraduate/postgraduate course means an accredited higher education course where:

- (a) an accredited tertiary qualification other than a Masters degree or a Doctorate degree is an available outcome for students undertaking the course; and
- (b) the course is not described as a Masters course but it is integrated with a Masters level qualification or contain unit components of a Masters course.

Some educational institutions structure their programmes with multiple entry and exit points, e.g. Diploma, Bachelor degree, Graduate Certificate, Graduate Diploma, graduate entry Bachelor degree, or Masters. If these courses are approved under the Principal Determination, a student is eligible to receive income support (if otherwise qualified). However, at the point where the course leads to an outcome that is not approved under the Determination, the student ceases to be eligible for Austudy, Youth Allowance (student) or Pensioner Education Supplement.

For example, if a student is undertaking a Graduate Certificate or Graduate Diploma that is structured so that it may lead to either of these qualifications or to an unapproved Masters qualification, the student may be eligible for Austudy, Youth Allowance (student) or Pensioner Education Supplement while undertaking the Graduate Certificate or Graduate Diploma component of the course but they cease to be eligible for student income support once they commence the Masters component of the course. That is, at the point where the Masters qualification is the only outcome arising from continuation with the course of study, the student ceases to be entitled to income support payments. The exception to this rule is where the Masters component itself is a Masters course specified in Schedule 3 to the Determination.

Item 9 of Schedule 1

This item omits the definition of ***articulated course*** from the Principle Determination.

Item 14 of Schedule 1

This item inserts a definition of ***TEQSA*** as used in the definitions of accredited higher education course and higher education institution.

Items 19 and 20 of Schedule 1

These items amend the institutions which are taken to be higher education institutions for the purpose of the Act to achieve consistency with the *Tertiary Education and Quality Standards Agency Act 2011*.

Item 23 of Schedule 1

This item substitutes Schedule 3 of the Principle Determination for a new Schedule 3. The Masters courses listed in the new Schedule 3 include 56 Masters courses that were not listed in the old Schedule 3. Nine Masters courses have been removed from the new Schedule 3 at the request of the education provider as they are either replaced by new courses or are no longer eligible for approval. Two courses have been removed as they were duplicate entries.

Seven courses have been removed and replaced by newly approved courses:

- the Master of Urban Development & Sustainability (Construction & Quantity Surveying) at Bond University has been replaced by the Master of Construction Practice;

- the Master of Psychotherapy at Cairnmillar Institute School of Counselling & Psychotherapy has been replaced by the Master of Counselling and Psychotherapy;
- the Master of Information Systems Management at Curtin University of Technology has been replaced by the Master of Information Systems;
- the Master of Business (Marketing) at RMIT University has been replaced by the Master of Marketing;
- the Master of Business (Professional Accounting) the University of South Australia has been replaced by the Master of Professional Accounting;
- the Master of Professional Accounting (MP16) at the University of Southern Queensland Australia has been replaced by the Master of Professional Accounting Extended; and
- the Master of Regional and Urban Planning at the University of the Sunshine Coast has been replaced by the Master of Urban and Regional Planning.

Two courses have been removed at the request of the education provider as the courses are no longer eligible for approval:

- the Master of Professional Accounting at Monash University; and
- the Master of Nursing (Nurse Practitioner) at the University of Newcastle.

Four courses have been added as an alternative course name for an approved course.

Consultation

The Department of Education, Employment and Workplace Relations invited tertiary institutions to apply for the inclusion of Masters courses in the list of Masters courses for which student welfare payments are payable. Guidelines for the approval of Masters courses for inclusion in the Principal Determination are available on the Department's web site at:

www.deewr.gov.au/student_income_support.

The Department undertook consultations with the tertiary institutions that sought inclusion of their courses in the determination, but did not consider that further consultation was necessary.

Regulatory Impact Analysis

The Amendment Determination does not require a Regulatory Impact Statement nor a Business Cost Calculator Figure. The Amendment Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

No special statutory conditions needed to be fulfilled prior to the making of the Amendment Determination.

Statement of Compatibility with Human Rights

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

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This Determination 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 Determination

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The Amendment Determination also updates various terminology used in the Principal Determination.

Human rights implications

The primary purpose of the Principal Determination is to determine which courses are approved courses for the purposes of qualification criteria for Austudy payment and Youth Allowance – persons who are studying approved courses may be eligible to receive those payments if other qualification requirements are met.

Under the Amendment Determination the range and number of courses which are approved courses for this purpose will be very similar to the range and number of approved courses prior to the Amendment Determination. To the extent that the amendments engage the right to social security, the overall effect of the amendments is to promote the right in that there will be an increased number of approved courses under the instrument, as outlined in relation to item 23 of Schedule 1 of the Amendment Determination above. There is therefore potential for overall increased access to social security. A small number of courses have been removed from the list of approved courses at the request of the education provider as those courses are either no longer offered or they no longer satisfy the criteria for approval.

Similarly, the Amendment Determination engages the right to education, and that right will be promoted as a result of increased access to education to the extent that persons who apply for Austudy payment or Youth Allowance and who may be assisted to engage in education through those payments would be able to access those payments if studying one of a larger range courses than applied before the Amendment Determination, and if meeting other qualification requirements.

The updates to terminology made by the Amendment Determination do not engage human rights.

Conclusion

The instrument is compatible with human rights because it advances human rights and, to the extent that it may also have an adverse impact on human rights, that impact is reasonable and for legitimate reasons.