

EXPLANATORY STATEMENT

Social Security (Waiver of Debts — University of New South Wales approved course of education or study) Specification 2014

Background

Subsection 1237AB(1) of the *Social Security Act 1991* (the Act) provides that the Secretary may decide to waive the Commonwealth's right to recover debts arising under the Act that are included as a class of debts specified by the Minister by legislative instrument.

The purpose of this instrument is to specify a class of debt, in relation to which decisions to actually waive those debts remains a matter for the Secretary's discretion. Having identified that a debt falls in a specified class, the Secretary is then able to make a decision based on the circumstances of a particular case.

The class of debts specified by this instrument relates to overpayments of youth allowance and austudy payment that may have occurred during the second semester of 2013 (15 July 2013 – 13 December 2013), as a result of the University of New South Wales transferring students who had been enrolled in an undergraduate Bachelor of Medicine degree (MBSS) into a six year, combined undergraduate/postgraduate degree known as Bachelor of Medical Studies (BMed)/Doctor of Medicine (MD). As a result of the transfer, students who had been enrolled in an approved course of education or study (and therefore passed the activity test for youth allowance or austudy payment under sections 541B or 569B of the Act) were no longer enrolled in an "approved course of education or study", may not have passed the activity test and may have incurred overpayments.

Not meeting the activity test for youth allowance or austudy payment may also have had flow-on effects in relation to qualification for other payments, such as student start-up scholarship payment (which requires a person to be in receipt of youth allowance or austudy payment under section 592F of the Act). As such, the instrument also deals with possible flow-on debts in relation to other social security payments.

It is the intention of this instrument to ensure that any debts arising, through no fault of the students involved and as a result of any overpayments that may have occurred in these circumstances, are able to be waived by the Secretary.

Explanation of this instrument

Section 1 sets out the name of the instrument, which is how the instrument should be cited, as the *Social Security (Waiver of Debts — University of New South Wales approved course of education or study) Specification 2014*.

Section 2 provides that the instrument commences on the day after it is registered. The instrument, however, cannot be effective until the period described in subsection 1237AB(3) of the *Social Security Act 1991* has expired.

Section 3 contains definitions of terms used in the instrument and is self-explanatory.

Section 4 specifies the class of debt that may be waived. A debt is in a specified class if:

- it was incurred as an overpayment of youth allowance by a person in relation to a day or days in the “relevant period” (between 15 July 2013 and 13 December 2013) in circumstances where the person was enrolled in a degree known as a Bachelor of Medical Studies (BMed)/Doctor of Medicine (MD) at the University of New South Wales and as a result of not being enrolled in an approved course of education or study; or
- it was incurred as an overpayment of austudy payment by a person in relation to a day or days in the “relevant period” (between 15 July 2013 and 13 December 2013) in circumstances where the person was enrolled in a degree known as a Bachelor of Medical Studies (BMed)/Doctor of Medicine (MD) at the University of New South Wales and as a result of not being enrolled in an approved course of education or study; or
- it was incurred as an overpayment of another social security payment, including student start-up scholarship payment, in relation to a day or days in the “relevant period” (between 15 July 2013 and 13 December 2013) in circumstances where the only reason the overpayment arose was due to the person not meeting the activity test for youth allowance or austudy payment by reason of the degree known as a Bachelor of Medical Studies (BMed)/Doctor of Medicine (MD) not being an approved course of education or study.

Section 5 is intended to ensure that the instrument does not allow for the waiver of debts that are incurred through the debtor making a false statement or representation (rather than through the University of New South Wales transferring them between degrees as described above). This would apply to debts where, for example, notwithstanding a person’s transfer between degrees, they also accrued a debt by providing incorrect information to Centrelink leading to an overpayment unrelated to whether or not they were enrolled in an approved course of education or study.

Consultation

The University of New South Wales was consulted prior to the preparation of this instrument. The Department of Social Services received representations from the University regarding the class of debts covered by this instrument. The Department subsequently discussed the circumstances and the persons affected with the University.

The Department of Human Services was also consulted prior to the preparation of this instrument regarding its operation and implementation.

Statement of compliance with Human Rights

This instrument engages the right to social security as contained in a number of international instruments, including article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This instrument is consistent with the right to social security as it will allow for debts incurred by social security recipients, through no fault of their own, to be waived on a class basis, which will ensure affected persons continue to have the full benefit of payments that have already been made to them.

Regulatory Impact Statement

A Regulatory Impact Statement and a Business Costs Calculator are not required as the waiver of the Commonwealth's right to recovery social security debts will have no regulatory or competition impacts, and will not impose compliance costs on businesses.