

## **EXPLANATORY STATEMENT**

### *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 1)*

#### **General outline**

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 1)* (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 legislative instrument.

The Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (the Principal Determination). The Amendment Determination makes technical amendments to the Principal Determination, particularly clarifying course types eligible for student payments, including youth allowance, austudy and pensioner education supplement (provided they meet the other qualification criteria for those payments).

#### **Background**

Subsection 5D(1) of the Act provides that the Minister may, for the purposes of the Act, determine in writing that:

- (a) a course of study or instruction is a secondary course, or a tertiary course; or
- (b) a part of a course of study or instruction is a part of a secondary course or part of a tertiary course.

The Principal Determination broadly outlines the institutions and courses for the purpose of subsections 3(1) and 5D(1) of the Act, specifying multiple levels of study at higher education institutions and registered training organisations. The determination of these courses for the purposes of the Act allows for students studying these courses to be eligible to receive student payments (youth allowance, austudy and pensioner education supplement), subject to other relevant criteria being met.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### **Commencement**

The Amendment Determination commences on 1 July 2014.

#### **Consultation**

The Department of Social Services has consulted with the Department of Human Services on the making of the Amendment Determination.

## **Regulation Impact Statement**

The Amendment Determination does not require a Regulatory Impact Statement. 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.

## **Explanation of the provisions**

### Section 1

This section provides that the name of the Determination is the *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 1)*.

### Section 2

This section provides that the Amendment Determination commences on 1 July 2014.

### Section 3

This section provides that Schedule 1 to the Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2009 (No.2)* which is referred to as ‘the Principal Determination’ in this Determination.

### Schedule 1

#### Item 1

This is a technical amendment that corrects a typographical omission in the definition of “accredited higher education course” in section 4 of the Principal Determination.

#### Item 2

This item repeals the definition of “Australian Apprenticeships Access Programme” in section 4 of the Principal Determination and substitutes a new definition. The new definition recognises that the Department of Industry is now responsible for the funding of the programme following changes to administrative arrangements.

#### Item 3

This item repeals the definition of “Integrated undergraduate/postgraduate course” in section 4 of the Principal Determination. Following the amendments made by item 7 of the Amendment Determination, an ‘Integrated undergraduate/postgraduate course’ is no longer a tertiary course specified in Schedule 2 to the Principal Determination. As such, the definition in section 4 can also be repealed.

#### Item 4

This item corrects a typographical omission in the reference to the *National Vocational Education and Training Regulator Act 2011* in the definition of “VET course” in section 4 of the Principal Determination.

#### Item 5

This is a technical amendment that corrects an incorrect reference to a provision in subsection 10(2) of the Principal Determination.

#### Item 6

This is a technical amendment to ensure 'ESL course' is referenced consistently throughout the Principal Determination by referring to 'course' using lower case.

#### Item 7

This item repeals Schedule 2 to the Principal Determination and substitutes a new Schedule 2.

Paragraph 10(1)(a) of the Principal Determination provides that a tertiary course is a full-time course for the purpose of paragraph 5D(1)(a) of the Act if it is specified in Column 1 of the table in Schedule 2 to the Principal Determination that is provided by an education institution specified for that course in Column 2 of that table.

Under new Schedule 2, an integrated undergraduate/postgraduate course is no longer a tertiary course for the purpose of paragraph 5D(1)(a) of the Act as it is a redundant course type.

This item also amends the wording of the reference in Column 1 of the table to an Open Learning course to align that wording more closely with the wording of 'undergraduate or postgraduate accredited higher education course' which is also referenced in column 1 of the table.

#### Item 8

This item repeals Schedule 3 to the Principal Determination and substitutes a new Schedule 3.

Paragraph 10(1)(b) of the Principal Determination provides that for paragraph 5D(1)(a) of the Act, a tertiary course is a full-time course that is:

- (i) accredited at Masters level; and
- (ii) specified in Column 2 of the table in Schedule 3 to the Principal Determination;  
and
- (iii) provided by the education institution specified for that course in Column 1 of that table.

#### *New Masters courses in Schedule 3 to the Principal Determination*

New Schedule 3 to the Principal Determination provides for the following new Masters courses that were not previously contained in that Schedule:

<b>Education Institution</b>	<b>Course</b>
Avondale College	Master of Teaching (Primary)
Avondale College	Master of Teaching (Secondary)
Bond University	Master of Psychology (Forensic)
Charles Darwin University	Master of Professional Accounting (MPA1)
Kaplan Business School (formerly known as Bradford College Pty Limited)	Master of Accounting
Sydney College of Divinity	Master of Divinity (Korean)
Sydney College of Divinity	Master of Theology (Korean)
University of Southern Queensland	Master of Education (MED1 or MED3)
University of Sunshine Coast	Master of Professional Accounting MPA
University of Sunshine Coast	Master of Regional and Urban Planning
University of Sydney	Master of Nursing (Nurse Practitioner)
University of Western Sydney	Master of Teaching (Birth – 5 years, Birth – 12 years)
Victoria University	Master of Clinical Exercise Science and Rehabilitation

*Removal of Masters courses in Schedule 3 to the Principal Determination*

New Schedule 3 to the Principal Determination omits the Masters courses in the following table that were previously contained in Schedule 3 to the Principal Determination. These courses have been removed as students are no longer enrolled in them.

<b>Education Institution</b>	<b>Course</b>
Central Queensland University	Master of Professional Accounting (CG27)
Southern Cross University	Master of Forest Management
Southern Cross University	Master of Midwifery
University of Melbourne	Master of Spatial Information Systems

University of Western Sydney	Master of Teaching (Special Education)
Wesley Institute	Master of Theological Studies

*Other amendments to Schedule 3 to the Principal Determination*

This item also makes other technical amendments to Schedule 3 to improve the table's clarity and functionality.

## Statement of Compatibility with Human Rights

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

*Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 1)*

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 1)* 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 Legislative Instrument

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 1)* (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 legislative instrument.

Subsection 5D(1) of the Act provides that the Minister may, for the purposes of the Act, determine in writing that:

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The Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (Principal Determination). The Principal Determination broadly outlines the institutions and courses for the purpose of subsections 3(1) and 5D(1) of the Act, specifying multiple levels of study at higher education institutions and registered training organisations. The determination of these courses for the purposes of the Act will ensure that students studying these courses are eligible to receive student payments (youth allowance, austudy and pensioner education supplement).

The Amendment Determination makes technical amendments to the Principal Determination, particularly clarifying course types eligible for payments, including youth allowance, austudy and pensioner education supplement (provided they meet the other qualification criteria for those payments).

### Human rights implications

The Amendment Determination engages the following human rights:

#### *Right to Education*

The Amendment Determination engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

By making technical amendments to the course types eligible for student payments (amending the open learning courses available for student payments, removing ‘integrated undergraduate/postgraduate courses’ and updating the course names of a number of approved

tertiary courses at Masters level listed in Schedule 3 to the Principal Determination), the Instrument does not limit a student's right to seek these forms of education and it continues to provide support for people, especially those from low socioeconomic backgrounds, to access education.

### *Right to Social Security*

The Amendment Determination engages the right to social security contained in Article 9 of the ICESCR.

The Amendment Determination will have a very limited impact on the right to social security. The amendments are technical in nature and will ensure that student payments are administered consistently and effectively and will continue to provide payments to eligible students thus ensuring their access to education.

### **Conclusion**

The Amendment Determination is compatible with human rights as it does not limit a student's ability to access education and social security.

**Minister for Social Services, the Hon Kevin Andrews MP**