

## **EXPLANATORY STATEMENT**

### ***Youth Allowance (Satisfactory Study Progress) Guidelines 2014***

#### **General outline**

The *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* (the Guidelines) set out the guidelines for the exercise of the Secretary's discretion, under subsection 541B(3A) of the *Social Security Act 1991* (the Act), to form an opinion about whether a person is making satisfactory progress for paragraph 541B(1)(d) of the Act.

The Guidelines revoke and replace the *Youth Allowance (Satisfactory Study Progress Guidelines) Determination 1998* (the 1998 Determination). Subject to some minor changes to improve clarity, the substance of the 1998 Determination has been reproduced in the Guidelines. In addition, the Guidelines contain new provisions that were not in the 1998 Determination. In summary, these new provisions:

- define "Youth Allowance Activity Agreement";
- provide guidelines for when a person is making satisfactory progress towards completing a masters course;
- provide guidelines for when a person is making satisfactory progress towards completing a secondary course, particularly where the student has been absent from school on a number of days in a school term without a reasonable excuse; and
- clarify existing arrangements regarding satisfactory study progress for students who study following withdrawal from a previous course.

#### **Commencement**

The Guidelines commence on the day after they are registered.

#### **Consultation**

No consultation was required as the Guidelines consolidate existing arrangements and provide minor updates as outlined above.

#### **Regulation Impact Statement**

The Guidelines do not require a Regulation Impact Statement. The Guidelines are not regulatory in nature and will have no regulatory impact on individuals, business activity or competition.

## **Explanation of the provisions**

### Part 1 - Preliminary

#### Section 1

This section provides that the name of the Guidelines is the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014*.

#### Section 2

This section provides that the Guidelines commence on the day after they are registered.

#### Section 3

Section 3 revokes the *Youth Allowance (Satisfactory Study Progress Guidelines) Determination 1998*.

#### Section 4

This section sets out the purpose of the Guidelines. The purpose is to set out guidelines for the exercise of the Secretary's discretion under subsection 541B(3A) of the Act to form an opinion about whether a person is making satisfactory progress towards completing a course for paragraph 541B(1)(d) of the Act.

Subsection 541B(1) provides for when a person is undertaking full-time study for the purpose of the Act. A person will be undertaking full-time study only if, in the Secretary's opinion, the person is making satisfactory progress towards completing the course of education in which they are enrolled (paragraph 541B(1)(d)). Subsection 541B(3A) provides that in forming an opinion about whether a person is making satisfactory progress towards completing a course, the Secretary is to have regard to the guidelines. Subsection 541B(3B) provides that the Minister, by legislative instrument, is to set guidelines for the exercise of the Secretary's discretion under subsection (3A) and may revoke or vary those guidelines.

#### Section 5

Section 5 defines various terms that are used throughout these Guidelines. With the exception of "Youth Allowance Activity Agreement", section 5 defines the same terms that were defined in section 1.4 of the 1998 Determination.

"Youth Allowance Activity Agreement" is an administrative agreement between the Secretary and a person outlining how the person will meet satisfactory progress requirements. Such an agreement does not have a legislative basis.

Subject to the minor changes described below, the defined terms in section 5 have the same meaning as they had in section 1.4 of the 1998 Determination.

The definition of "level" now refers to subsection 569H(8A) of the Act, in addition to referring to subsections (9), (10), (11) and (12). Subsection 569H(8A) was inserted into the Act by the *Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007* as part of amendments that allowed persons undertaking certain masters courses to be

qualified for Youth Allowance. Subsection 569H(8A) provides that a ‘course for a degree of Master (or equivalent) is a Level M course’.

The definition of “long course” now expressly states that a long course does not include an honours course or a masters course. Sections 10 and 12 of these Guidelines provide for when a person may be making satisfactory progress in an honours course and a masters course. However, some honours courses and masters courses may have a standard minimum length of longer than 1 year. There are guidelines for when a person is making satisfactory progress in a long course in section 8 of these Guidelines. Expressly stating that “long course” does not include an honours course or a masters course will ensure that students of these courses are assessed against the guidelines in section 10 or 12, whichever is appropriate, and not against the guidelines in section 8.

### Section 6

Section 6 provides for the circumstances to which the Secretary may have regard when considering whether a person is affected by circumstances beyond his or her control. Many of the sections in Part 2 of these Guidelines provide that despite specific rules for when a person is taken to be making satisfactory progress in a particular course, the Secretary could form the view that the person is nevertheless making satisfactory progress towards completing the course if the person is, or has been, affected by circumstances beyond his or her control.

Subject to some minor wording changes to paragraph (d), the circumstances to which the Secretary may have regard in considering whether the person is affected by circumstances beyond his or her control, are the same as the circumstances specified in section 1.6 of the 1998 Determination.

### Section 7

Section 7 sets out the effect of part-time study on the forming of an opinion about whether a person is making satisfactory progress in a course under Part 2 of these Guidelines. Section 7 is in identical terms to section 1.7 of the 1998 Determination.

## Part 2 – Guidelines

### Division 1 Kinds of full-time study

#### Section 8

Section 8 provides for when a person may be making satisfactory progress in a long course. A long course is a course of education that has a standard minimum length of longer than 1 year, but does not include an honours course or a masters course. Subject to some minor wording changes to improve clarity, the terms of section 8 are the same in substance as the terms of section 2.1 of the 1998 Determination.

#### Section 9

Section 9 provides for when a person may be making satisfactory progress in a short course. A short course is a course of education that has a standard minimum length of less than 1 year, but does not include an honours course or a masters course. Subject to some minor

wording changes to improve clarity, the terms of section 9 are the same in substance as the terms of section 2.2 of the 1998 Determination.

### Section 10

Section 10 provides for when a person may be making satisfactory progress in an honours course. With the exception of new subsection 10(3), section 10 is in identical terms to section 2.3 of the 1998 Determination. Subsection 10(3) provides that the Secretary could form the opinion that a person is making satisfactory progress towards completing an honours course if the person is, or has been, affected by circumstances beyond his or her control.

### Section 11

Section 11 provides for when a person may be making satisfactory progress in a masters qualifying course. With the exception of new subsection 11(3), section 11 is in identical terms to section 2.4 of the 1998 Determination. Subsection 11(3) provides that the Secretary could form the opinion that a person is making satisfactory progress towards completing a masters qualifying course if the person is, or has been, affected by circumstances beyond his or her control.

### Section 12

Section 12 provides for when a person may be making satisfactory progress in a masters course. Section 12 is a new provision that does not have an equivalent in the 1998 Determination.

Following the amendments made by the *Social Security Legislation Amendment (2007 Budget Measures for Students) Act 2007*, a person undertaking certain masters courses may be qualified for youth allowance under the Act. It is therefore appropriate to include guidelines for when a person undertaking a masters course may be making satisfactory progress in that course.

Under subsection 12(1), satisfactory progress in a masters course is completion of the course within the period of time comprising the standard minimum length of the course and an additional period for completion of 1 uncompleted subject or unit that is part of the course. These guidelines are the same as for long courses under section 8 of these Guidelines.

Subsection 12(2) provides that despite subsection (1), the Secretary could form the opinion that a person is making satisfactory progress towards completing a masters course if the person is, or has been, affected by circumstances beyond his or her control. Section 6 of these Guidelines provides for the circumstances to which the Secretary may have regard when considering whether a person is affected by circumstances beyond his or her control.

### Section 13

Section 13 provides for when a person may be making satisfactory progress in a combined course. Subject to some minor wording changes to improve clarity, the terms of section 13 are the same in substance as the terms of section 2.5 of the 1998 Determination.

## Section 14

Section 14 provides for when a person may be making satisfactory progress in competency-based training and self-paced study. Section 14 is in identical terms to section 2.6 of the 1998 Determination.

## Section 15

Section 15 provides for when the Secretary could form the opinion that a person enrolled in a secondary course is, or is not, making satisfactory progress towards completing that course. Section 15 is a new provision that did not have an equivalent in the 1998 Determination.

Assuming all the qualification requirements are met, certain secondary school students may be qualified for youth allowance under the Act. However, it is not currently a requirement that such secondary students have a certain level of attendance at school in order to remain qualified for youth allowance.

Subsection 15(1) provides that the Secretary could form the opinion that a person enrolled in a secondary course is not making satisfactory progress towards completing that course if the person has been absent from school on five or more days in a school term without a reasonable excuse.

Subsection 15(2) provides for when the Secretary could form the opinion that a secondary student is making satisfactory progress towards completing that course despite being absent from school on five or more days in a school term. The Secretary could form such an opinion if the person enters into, and complies with the terms of, a Youth Allowance Activity Agreement, which has as a term that the student will not be absent from school on five or more days in school term without a reasonable excuse.

The effect of the Secretary forming an opinion, in accordance with this section, that a secondary student is not making satisfactory progress towards completing the course, is that the student would be taken not to be undertaking full-time study for the purpose of section 541B of the Act. A student who is not undertaking full-time study may no longer satisfy the activity test for youth allowance in section 541 of the Act. A person who does not satisfy the activity test may not be qualified for youth allowance under section 540 of the Act.

It is reasonable to expect that a student who is qualified for youth allowance on the basis that they are enrolled in a secondary course, has satisfactory attendance at school. In practice, a delegate of the Secretary acting in accordance with this section would contact a secondary student who has had five or more absences in a school term and require them to sign a Youth Allowance Activity Agreement, a condition of which is that they will not have more than five unauthorised absences per term without reasonable excuse for the life of the agreement. If a student complies with this agreement, they will continue to remain qualified for, and receive, youth allowance.

## Division 2

### Section 16

Section 16 applies to a person who, having once failed to successfully complete a course, undertakes study in another course ('the second course') at the same level. This section sets out when a person is making satisfactory progress in the second course.

Subject to some minor wording changes to improve clarity, the terms of section 16 are the same in substance as the terms of section 2.7 of the 1998 Determination.

### Section 17

Section 17 applies to a person who, having once withdrawn from a course, undertakes study in another course at the same level. Subsection 17(2) provides for when the Secretary could form the opinion that the person, in undertaking the further course, is making satisfactory progress towards completing a course if any of the circumstances in paragraphs (a), (b) or (c) applies to the person.

Subject to some minor wording changes to improve clarity, the terms of paragraphs (a) and (b) are the same in substance as the terms of paragraphs 2.8(2)(a) and (b) of the 1998 Determination. However, paragraph 17(2)(c) is in different terms to paragraph 2.8(2)(c) of the 1998 Determination.

A circumstance under paragraph 2.8(2)(c) is that the person enters into a Youth Allowance Activity Agreement, a term of which is that the person will continue the later course until the completion of the course within the time that is regarded as satisfactory progress in that course. New paragraph 17(2)(c) also deals with the circumstance of entering into a Youth Allowance Activity Agreement but also provides that the person must, at all times throughout the further course, satisfy the Secretary that they are taking reasonable steps to comply with the terms of such an agreement. Further, the person must agree to comply with the terms of the Youth Allowance Activity Agreement until the earlier of, either, the completion of the further course, or the day on which the person is no longer qualified for youth allowance.

New paragraph 17(2)(c) seeks to ensure that a person cannot be taken to be making satisfactory progress towards completing a further course merely by entering into a Youth Allowance Activity Agreement. The person must also be taking reasonable steps to comply with the terms of such an agreement.

## Statement of Compatibility with Human Rights

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

### **Youth Allowance (Satisfactory Study Progress) Guidelines 2014**

The *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* are 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 *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* (the Guidelines) set out the guidelines for the exercise of the Secretary's discretion, under subsection 541B(3A) of the *Social Security Act 1991* (the Act), to form an opinion about whether a person is making satisfactory progress for paragraph 541B(1)(d) of the Act.

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- define "Youth Allowance Activity Agreement";
- provide guidelines for when a person is making satisfactory progress towards completing a masters course;
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- clarify existing arrangements regarding satisfactory study progress for students who study following withdrawal from a previous course.

#### **Human rights implications**

The Guidelines engage the human right to social security as recognised in Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The Guidelines are consistent with the right to social security as they clarify existing arrangements, thereby improving the administration of the social security system. In updating the Guidelines to deal with specific rules for masters courses, the Guidelines ensure that the established system will continue to be administered in line with recent amendments to the Act. In setting out what constitutes satisfactory progress towards meeting a course, the Guidelines ensure transparency around decision making for when a person meets the activity test for youth allowance through undertaking full-time study.

## **Conclusion**

The Guidelines are compatible with human rights because they promote effective administration of the social security system. The Guidelines therefore promote the right to social security and to an adequate standard of living.

**The Hon Kevin Andrews MP**