**EXPLANATORY STATEMENT**

*Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 2)*

**General outline**

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (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 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 payment 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:

1. a course of study or instruction is a secondary course, or a tertiary course; or
2. 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 payment 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 the day after it is registered.

**Consultation**

The Department of Social Services (the Department) invited higher education providers to apply for the inclusion of their Masters courses in the list of Masters courses that are “tertiary courses” for the purposes of the Act. Guidelines for the approval of Masters courses for inclusion in the Principal Determination are available on the Department’s web site at:

<https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/student-payments/approved-institutions-and-courses-for-student-payments>

The Department undertook consultations with the higher education providers that sought inclusion of their Masters courses in 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. 2)*.

Section 2

This section provides that the Amendment Determination commences on the day after it is registered.

Section 3

This section 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:

1. accredited at Masters level; and
2. specified in Column 2 of the table in Schedule 3 to the Principal Determination; and
3. 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 and renamed Masters courses that were not previously contained in that Schedule:

|  |  |
| --- | --- |
| **Education Institution** | **Course** |
| Australian National University  | Master of Forestry (Advanced) |
| Edith Cowan University | Master of Finance and BankingMaster of Screen Studies |
| Carnegie Mellon University Australia | Master of Science in Information Technology (MSIT)Master of Science in Public Policy and Management (MSPPM) |
| Central Queensland University  | Master of Clinical Chiropractic  |
| Charles Sturt University  | Master of Inclusive Education  |
| Curtin University of Technology | Master of Commerce (Professional Accounting)Master of Dietetics |
| Deakin University  | Juris Doctor  |
| Griffith University  | Master of Human ServicesMaster of Teaching Primary Master of Rehabilitation CounsellingMaster of Special Needs and Intervention Education |
| Holmesglen Institute of TAFE | Master of Professional Accounting  |
| La Trobe University | Master of Clinical AudiologyMaster of Financial Analysis and Master of Business AdministrationMaster of Financial Analysis and Master of International BusinessMaster of Financial Analysis and Master of Professional AccountingMaster of Teaching (Primary)Master of Teaching (Secondary) |
| Monash University  | Master of Information Technology (3348)Master of Occupational Therapy PracticeMaster of Teaching Specialising in Early Years EducationMaster of Teaching Specialising in Primary EducationMaster of Teaching Specialising in Secondary Education |
| Morling College  | Master of Teaching (Secondary) |
| Murdoch University  | Master of Development StudiesMaster of Protected Area ManagementMaster of Teaching (Primary) |
| Navitas Professional Institute Pty Ltd  | Master of Counselling and Psychotherapy Master of Social Work (Qualifying) |
| Perth Bible College  | Master of Theological Ministry |
| Queensland University of Technology | Master of Information Science (Information Management)Master of Information Science (Library and Information Practice) |
| RMIT University | Master of Engineering (International Automotive Engineering) Master of Engineering (Manufacturing) Master of Teaching Practice (Primary Education)Master of Teaching Practice (Secondary Education) |
| Southern Cross University | Master of Forest Science and Management |
| Swinburne University of Technology | Master of Information Technology |
| Tabor Adelaide  | Master of Teaching (Primary)Master of Teaching (Secondary) |
| University of Melbourne  | Master of Teaching (Early Childhood) Master of Food and Packaging Innovation |
| University of New England | Master of Nursing Practice |
| University of New South Wales | Master of InterpretingMaster of TranslationMaster of Translation and Interpreting |
| University of Queensland | Doctor of Medicine (MD) Masters of Animal ScienceMaster of BioinformaticsMaster of Educational StudiesMaster of Arts in Chinese Translation and Interpreting (advanced) |
| University of Sydney  | Doctor of Veterinary MedicineMaster of Clinical Psychology  |
| University of Technology, Sydney  | Master of Clinical PsychologyMaster of Orthoptics Master of Teaching in Secondary Education |
| University of the Sunshine Coast | Master of Professional Psychology |
| University of Western Australia | Master of Clinical PathologyMaster of Landscape Architecture  |
| University of Wollongong | Master of Applied Finance Master of BusinessMaster of Business (Financial Management)Master of Information TechnologyMaster of Nutrition and DieteticsMaster of Work, Health and Safety |
| Victoria University  | Master of Teaching (Primary)Master of Teaching (Secondary) |

Where a course has been renamed, the previously named course has been retained in the Schedule. This will ensure that a person who commenced studying the previously named course continues to be undertaking a tertiary course for the purpose of the Act.

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.

|  |  |
| --- | --- |
| **Education Institution** | **Course** |
| Australian Catholic University | Master of AccountingMaster of Business Administration (Accounting)Master of Counselling |
| Griffith University | Master of Adult and Vocational Education |
| La Trobe University | Master of Teaching (Mathematics Education)Master of Tourism |
| RMIT University | Master of Computing |
| Swinburne University of Technology | Master of Accounting |
| University of Notre Dame | Master of Teaching (K-7), Broome Campus |
| University of New South Wales | Chinese-English Translation and Interpreting |

*Other amendments to Schedule 3 to the Principal Determination*

New Schedule 3 renames the Melbourne College of Divinity as the University of Divinity to accurately reflect the current title of that institution. The reference to the Federation University of Australia being a merged institution between the University of Ballarat and the Gippsland campus of Monash University has been removed as that reference is no longer necessary.

**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. 2)*

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 2)* 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. 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 legislative instrument*.*

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

1. a course of study or instruction is a secondary course, or a tertiary course; or
2. a part of a course of study or instruction is a part of a secondary course or part of a tertiary course.

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 Amendment Determination amends the list of Masters courses in Schedule 3 to the Principal Determination by adding new courses, replacing the names of existing courses and removing existing courses. Courses have been removed only where there are no longer any students enrolled in those courses.

The Masters courses listed in Schedule 3 are the Masters courses provided by higher education providers 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 eligibility 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 determining that certain Masters courses are “tertiary courses”, which in turn assists people studying those courses to qualify for certain income support payments under social security law, the Amendment Determination may enable students to access education and therefore will be compatible with human rights.

*Right to Social Security*

The Amendment Determination engages the right to social security contained in Article 9 of the ICESCR. A student undertaking courses specified in Schedule 3 may qualify for certain income support payments under social security law, such as austudy payment and youth allowance (provided they meet the other eligibility criteria for those payments).

**Conclusion**

The Amendment Determination is compatible with human rights as it enables students to access education and social security payments.

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