

EXPLANATORY STATEMENT

Student Assistance (Education Institutions and Courses) Amendment Determination 2015 (No.1)

General outline

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2015 (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 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:

- (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 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 18 December 2014. This is the day on which the *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No. 2)* (2014 Determination) commenced.

The Amendment Determination commences retrospectively on the same day as the 2014 Determination because:

- the 2014 Determination inadvertently omitted courses from Schedule 3 to the Principal Determination that were intended to continue to be courses of study for the purpose of subsection 5D(1) of the Act; and
- there are a number of courses that were intended to be determined as courses for the purpose of subsection 5D(1) of the Act in time for the 2015 academic year.

The inclusion of the new courses in Schedule 3 to the Principal Determination, with a retrospective commencement date, will apply to the benefit of students. This is because students may be eligible to receive student payments (youth allowance, austudy payment and pensioner education supplement), subject to other relevant criteria being met, on the basis of studying the new courses. This means that the retrospective amendment of Schedule 3 to the Principal Determination to include new courses will not affect the rights of a person (other than the Commonwealth) so as to disadvantage the person, nor impose liabilities on a person (other than the Commonwealth).

The Amendment Determination also omits four courses that were previously included in the Principal Determination as a result of a clerical error. The particular courses have never been offered by the relevant institutions and consequently, no students have been enrolled in the courses. This means that the retrospective amendment of Schedule 3 to the Principal Determination to omit the four courses will not affect the rights of a person so as to disadvantage that person, nor impose liabilities on a person.

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 2015 (No.1)*.

Section 2

This section provides that the Amendment Determination commences on 18 December 2014.

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:

- (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 and renamed Masters courses that were not previously contained in that Schedule:

Education Institution	Course
Alphacrucis College	Master of Arts
Australian National University	Master of Applied Statistics or Master of Statistics
Australian College of Applied Psychology (formerly listed as Navitas Professional Institute Pty Ltd)	Master of Counselling and Psychotherapy
Australian College of Applied Psychology (formerly listed as Navitas Professional Institute Pty Ltd)	Master of Social Work (Qualifying)
Charles Sturt University	Master of Teaching (Secondary)
Central Queensland University	Master of Teaching
Curtin University of Technology	Master of Commerce (Information Systems and Technology Major)
Deakin University	Master of Applied Learning and Teaching

Monash University	Master of Teaching in Early Years Education
Monash University	Master of Teaching in Early Years and Primary Education
Monash University	Master of Teaching in Primary Education
Monash University	Master of Teaching in Secondary Education
Monash University	Master of Teaching in Primary and Secondary Education
Murdoch University	Master of Applied Psychology (Professional)
Queensland University of Technology	Master of Information Technology (Information Management)
RMIT University	Master of Environmental Science and Technology
RMIT University	Master of Information Technology
Southern Cross University	Master of Teaching
University of Canberra	Master of Information Technology and Systems
University of Queensland	Master of Bioinformatics Research Extensive
University of Western Sydney	Master of Inclusive Education
University of Western Sydney	Master of Teaching (Birth-5 years)
University of Western Sydney	Master of Traditional Chinese Medicine or Master of Chinese Medicine
University of Wollongong	Master of Professional Psychology
University of Wollongong	Master of Teaching (Primary)
University of Wollongong	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.

Courses previously inadvertently omitted

New Schedule 3 to the Principal Determination provides for the following courses that were inadvertently omitted by the *Student Assistance (Education Institutions and Courses) Amendment Determination 2014 (No.2)*.

Education Institution	Course
University of Melbourne	Doctor of Dental Surgery
University of Melbourne	Doctor of Medicine
University of New South Wales	Master of Arts (Extension) Interpreting and Translation

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 were previously included in the Principal Determination due to a clerical error. The particular courses have never been offered by the relevant institutions and consequently, no students have been enrolled in the courses.

Education Institution	Course
Federation University Australia	Master of Screen Studies
University of Melbourne	Master of Divinity
University of Melbourne	Master of Theological Studies
University of Sydney	Master of Veterinary Medicine

Other amendments to Schedule 3 to the Principal Determination

New Schedule 3 renames Navitas Professional Institute Pty Ltd as the Australian College of Applied Psychology to accurately reflect the trading name of that institution. The two courses that were previously listed for Navitas Professional Institute Pty Ltd, Master of Counselling and Psychotherapy and Master of Social Work (Qualifying), have been moved to the listing for Australian College of Applied Psychology.

New Schedule 3 does not contain the following courses that were previously listed in Schedule 3 as being provided by Monash University:

- Master of Teaching Specialising in Early Years Education;
- Master of Teaching Specialising in Primary Education; and
- Master of Teaching Specialising in Secondary Education.

These course names are incorrect. The correct names for these courses are:

- Master of Teaching in Early Years Education;
- Master of Teaching in Primary Education; and
- Master of Teaching in Secondary Education.

New Schedule 3 to the Principal Determination includes these three courses.

Schedule 3 also removes a number of course codes which are no longer necessary in order to accurately reflect the correct name of relevant courses.

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 2015 (No. 1)

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2015 (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 2015 (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:

- (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 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 Scott Morrison MP