

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Student Assistance Act 1973

*Student Start-up Loan Debts and ABSTUDY Student Start-up Loan Overpayments
Determination 2016*

Purpose

The purpose of this Determination is to set out circumstances in which:

- an amount of a student start-up loan is a debt due to the Commonwealth; and
- an amount of an ABSTUDY student start-up loan is an ABSTUDY student start-up loan overpayment.

Background

Schedule 1 to the *Labor 2013-14 Budget Savings (Measures No. 2) Act 2015* amended the *Social Security Act 1991* (Social Security Act) and the *Student Assistance Act 1973* (Student Assistance Act) to provide for a student start-up loan and ABSTUDY student start-up loan. Student start-up loans will be income-contingent loans to assist with the up-front costs of study. The loans will be repayable under similar arrangements to debts under the Higher Education Loan Programme.

Section 1061ZVDA of the Social Security Act and section 8B of the Student Assistance Act provide for student start-up loan debts. Broadly, a student start-up loan is treated as an income-contingent loan only if the person remains in their course for 35 days after being qualified for the loan or after the commencement of their course, whichever is later.

Section 1223ABF of the Social Security Act and section 38A of the Student Assistance Act provide for when an amount of a student start up loan is a debt due to the Commonwealth or an ABSTUDY student start-up loan overpayment. Such a debt or overpayment will arise if, among other things, the circumstances determined by the Minister in a legislative instrument apply to the person (see paragraph 1223ABF(1)(b) and subsection 1223ABF(2) of the Social Security Act and paragraph 38A(1)(b) and subsection 38A(2) of the Student Assistance Act). This Determination determines those circumstances.

Commencement

This Determination commences on 1 July 2016.

Consultation

The Department consulted with the Department of Human Services (DHS) in drafting this Determination. DHS will be administering the student start-up loan and ABSTUDY student start-up loan and will be raising and collecting debts to the Commonwealth and overpayments. This consultation consisted of discussions with DHS about the operation of the Determination.

No other consultation was considered necessary.

Regulation Impact Statement (RIS)

This Determination does not require a RIS. The Determination is not regulatory in nature and will not have a regulatory impact. A RIS was not required for the student start-up loan measure contained in the *Labor 2013-14 Budget Savings (Measures No. 2) Act 2015*.

Explanation of the provisions

Section 1

This section provides how the Determination is to be cited, that is, as the *Student Start-up Loan Debts and ABSTUDY Student Start-up Loan Overpayments Determination 2016*.

Section 2

This section provides that the Determination commences on 1 July 2016.

Section 3

Section 3 defines terms that are used in this Determination.

Section 4

Section 4 provides that the purpose of the Determination is to provide for circumstances in which an amount of a student start-up loan is a debt due to the Commonwealth and an amount of an ABSTUDY student start-up loan is an ABSTUDY student start-up loan overpayment.

Section 5

Section 5 sets out circumstances for subsection 1223ABF(1) of the Social Security Act. Section 1223ABF provides for debts in respect of student start-up loans. If a person is paid a student start-up loan for a qualification period and the circumstances set out in section 5 of this Determination apply to the person, then the amount of the loan is a debt due to the Commonwealth and the debt is taken to have arisen when the person was paid the loan.

Subsection 5(1) provides that subsection 1223ABF(1) of the Social Security Act applies to a person if the person is not enrolled in an approved scholarship course at the end of 35 days after the later of:

- the person's qualification test day for a qualification period; and
- the person's course start day in a qualification period.

A person may be qualified for a student start-up loan if the person is enrolled in an approved scholarship course in a qualification period. **Approved scholarship course** is defined in section 592M of the Social Security Act. A **qualification period** is the 6 months that starts on either 1 January or 1 July in any year (see section 19AA of the Social Security Act).

Subsection 1061ZVBB(3) of the Social Security Act provides that a person's qualification test day for a qualification period is the earliest of the following:

- the day the Secretary determines the person's claim for a student start-up loan for the qualification period;
- if the approved scholarship course ends in the qualification period – the last day of the approved scholarship course;
- the last day of the qualification period.

If a person's course starts in a qualification period (for example, the first semester of the first year of a three year course), then the person's course start day for the purpose of subsection 5(1) of this Determination will be the first day of the course. If a person continues a course in a qualification period (for example, the second semester of the second year of a three year course), then the course start day for the purpose of subsection 5(1) of this Determination will be the day the course continues in that semester.

The effect of subsection 5(1) is that if a person's claim for student start-up loan is granted *before* the person's course start day for the relevant semester, then the person must remain in their course for 35 days after that course start day, otherwise the person will owe a debt to the Commonwealth for the amount of the student start-up loan. However, if a person's claim for a student start-up loan was determined *after* the person's course start day for the relevant semester, then the person must remain in their course for 35 days after the day the claim was determined, otherwise the person will owe a debt to the Commonwealth for the amount of the student start-up loan.

Example 1

Zara enrolls in a Bachelor of Arts course as a first year student in 2017. Zara is granted a student start-up loan on 21 February 2017. Zara's course start day is 1 March 2017. Zara decides she no longer wishes to continue with her Bachelor of Arts course and ceases to be enrolled in that course on 30 March 2017. Zara does not enrol in another approved scholarship course. Zara owes a debt to the Commonwealth for the amount of the student start-up loan because she is not enrolled in an approved scholarship course at the end of 35 days after her course start day.

Example 2

Jacinta is a second year student of a Bachelor of Science course. Her course start day for the second semester of the second year of that course is 28 July 2016. Jacinta is granted a student start-up loan on 10 August 2016. Jacinta decides she no longer wishes to continue with a Bachelor of Science course and ceases to be enrolled in that course on 22 August 2016. Jacinta does not enrol in another approved scholarship course. Jacinta owes a debt to the Commonwealth for the amount of the student start-up loan because she is not enrolled in an approved scholarship course at the end of 35 days after her qualification test day. Jacinta's qualification test day is the day her student start-up loan was granted (10 August 2016).

Subsection 5(2) of this Determination provides for circumstances in which subsection (1) does not apply. The first circumstance is where the person's qualification test day is the day the Secretary determines the person's claim for a student start-up loan and the person completes the relevant approved scholarship course less than 35 days after that qualification test day. The second circumstance is where the person's qualification test day is the last day of the approved scholarship course.

The effect of subsection 5(2) is that such a person will not owe a debt to the Commonwealth under section 1223ABF of the Social Security Act for the amount of the student start-up loan if the person completes the course in the qualification period before they are granted a loan for the qualification period. Instead, such a person would incur an income contingent student start-up loan for the amount of the loan received in respect of that last semester of study.

Subsection 5(3) of this Determination sets out a further circumstance in which subsection 1223ABF(1) of the Social Security Act applies to a person. The circumstance is where:

- the person's qualification test day is the day the Secretary determines the person's claim for a student start-up loan; and
- that qualification test day is less than 35 days before the person is expected to complete the relevant approved scholarship course; and
- the person does not complete the course.

Subsection 5(3) ensures that a person will owe a debt to the Commonwealth under section 1223ABF of the Social Security Act for an amount of a student start-up loan

granted towards the end of a last semester of study if the person does not complete the course.

Example 3

Alexander applies for a student start-up loan in his last semester of study. His claim is determined on 9 November 2016, 10 days before his course is due to end on 19 November 2016. On 13 November 2016, Alexander ceases to be enrolled in his course. As Alexander did not remain enrolled in his course until the course end day, he owes a debt to the Commonwealth for the amount of the student start-up loan.

Section 6

Section 6 mirrors the operation of section 5 but with respect to the circumstances that an amount of an amount of ABSTUDY student start-up is an ABSTUDY student start-loan overpayment for the purposes of section 38A of the Student Assistance Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Student Start-up Loan Debts and ABSTUDY Student Start-up Loan Overpayments
Determination 2016*

Overview of the Determination

This Determination outlines the circumstances in which an amount of a student start-up loan is a debt due to the Commonwealth and an amount of an ABSTUDY student start-up loan is an ABSTUDY student start-up loan overpayment.

A person will incur a debt to the Commonwealth or overpayment when:

- they are not enrolled in an approved scholarship course 35 days after their qualification test day or course start date for a qualification period, whichever is later, or
- their qualification test day is within 35 days of the course end date and they are not enrolled in the approved scholarship course on the course end date.

People whose claim for a student start-up loan is determined after their course end date will not be subject to these provisions.

Human rights implications

Right to social security

This Determination engages the 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 recognises the right of everyone to social security, including social insurance.

The extent to which this Determination impacts a person's right to social security is limited. This Determination will only have effect where a person is granted a student start-up loan or ABSTUDY student start-up loan when they do not meet the specified study timeframes. The purpose of these requirements is to ensure that the loans are targeted to people who have a genuine commitment to continuing their study. Where students do not continue to study an approved scholarship course, a debt to the Commonwealth or overpayment will be raised for the amount of the student start-up loan and the person will be required to repay the amount. This Determination ensures the sustainability of the welfare system.

Right to education

This Determination engages the right to education, as recognised in Article 13 of the ICESCR, however the extent to which the Determination impacts on a person's right to education is limited.

The Determination requires people to remain in study, either for:

- 35 days after the day they qualify for the loan or course start date, whichever is later, or
- where their qualification test day is within 35 days of the course end date, until the course end date.

As the purpose of the student start-up loan is to assist people with the up-front costs of study, such as text books, equipment and stationary, this Determination helps to ensure that people remain in study. Where they do not remain in an approved scholarship course for the required timeframe, a debt to the Commonwealth or overpayment will be raised.

Conclusion

This Determination is compatible with human rights. The extent to which a person's rights to social security and education will be impacted is limited as the Determination will only take effect where a person does not remain in study for the specified periods of time.

The Hon Christian Porter MP, Minister for Social Services