

## **EXPLANATORY STATEMENT**

### *Student Assistance (Education Institutions and Courses) Amendment Determination 2016 (No. 1)*

#### **General outline**

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2016 (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, the pensioner education supplement and ABSTUDY (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, 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 on the Federal Register of Legislation.

## **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:

[www.dss.gov.au/our-responsibilities/families-and-children/programs-services/student-payments/approved-institutions-and-courses-for-student-payments](http://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 2016 (No. 1)*.

### Section 2

This section provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

### 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 Masters courses that were not previously contained in that Schedule:

Education Institution	Course
Charles Sturt University	Master of Engineering (Civil Systems)
Curtin University of Technology	Master of Media and Communication Master of Psychology (Professional)
Eastern College Australia	Master of Community Counselling Master of Practical Theology Master of Transformational Development
Flinders University	Juris Doctor (JD)
Griffith University	Master of Information Technology
Macquarie University	Master of Geoscience Master of Public Health
Monash University	Master of Environment and Sustainability Master of TESOL (Teaching English to Speakers of Other Languages)
Moore Theological College	Master of Arts (Theology)
RMIT University	Master of Medical Physics
Swinburne University of Technology	Master of Occupational Therapy
University of Melbourne	Master of Translation
University of Notre Dame	Doctor of Medicine, Fremantle Campus Doctor of Medicine, Sydney Campus
University of Southern Queensland	Master of Professional Psychology
University of Tasmania	Master of Applied Science (Agricultural Science) Master of Applied Science (Microbiology)
University of Technology, Sydney	Juris Doctor Graduate Certificate in Professional Legal Practice

University of Western Australia	Master of Clinical Exercise Physiology Master of Geographic Information Science Master of Hydrogeology
Western Sydney University	Master of Professional Psychology

*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>
Australian Catholic University	Master of Teaching Early Childhood (Birth to Five Years)
Edith Cowan University	Master of Nursing (Nursing Practitioner)
La Trobe University	Master of Biomedical Engineering Master of Nursing Science in Child, Family and Community Master of Teaching English as a Second or Other Language (TESOL)
Monash University	Master of Information Management and Systems Master of Teaching (Early Childhood)
University of Melbourne	Master of Science (Environmental Science) Master of Science (Nanotechnology)
University of South Australia	Master of Psychology (Forensic) Master of Teaching (Junior Primary and Primary) Master of Teaching (Middle and Secondary)
University of Tasmania	Master of Applied Science (Living Marine Resources)

University of Western Australia	Master of Psychology and Graduate Diploma in Education Master of Psychology (Educational and Developmental)
University of Wollongong	Master of Finance Master of Science (Midwifery) Master of Science (Nutrition, Dietetics and Exercise Rehabilitation)
Western Sydney University	Master of Psychology (Forensic Psychology) Master of Teaching (Birth – 12 Years) Master of Teaching (Early Childhood) Master of Teaching (Primary) – Advanced Master of Teaching (Secondary) – Advanced Master of Traditional Chinese Medicine Master of Vocational Accounting

### *Courses that have changed names*

New Schedule 3 renames a number of courses. The old courses that have new course names are shown in the following table:

<b>Education Institution</b>	<b>Old course name</b>	<b>New course name</b>
Charles Darwin University	Master of Professional Accounting (MPA1, MPACC or MPAE)	Master of Professional Accounting (Professional Practice)
Curtin University of Technology	Master of Urban and Regional Planning	Master of Urban and Regional Planning (OpenUnis)
Deakin University	Master of Education Teaching Languages other than English (M Ed TLOTE)	Master of Languages Teaching

Deakin University	Master of Psychology (Industrial and Organisational)	Master of Psychology (Organisational)
La Trobe University	Master of Teaching English to Speakers of Other Languages	Master of Teaching English to Speakers of Other Languages (TESOL)
Monash University	Master of Social Work (Qualifying)	Master of Social Work
University of Melbourne	Master of Engineering	<p>Master of Engineering (Biochemical)</p> <p>Master of Engineering (Biomedical)</p> <p>Master of Engineering (Chemical)</p> <p>Master of Engineering (Civil)</p> <p>Master of Engineering (Electrical)</p> <p>Master of Engineering (Environmental)</p> <p>Master of Engineering (Mechanical)</p> <p>Master of Engineering (Mechatronics)</p> <p>Master of Engineering (Software)</p> <p>Master of Engineering (Structural)</p>
University of Melbourne	Master of Science	<p>Master of Science (Bioinformatics)</p> <p>Master of Science (Botany)</p> <p>Master of Science (Chemistry)</p> <p>Master of Science (Earth Sciences)</p>

		Master of Science (Epidemiology) Master of Science (Genetics) Master of Science (Geography) Master of Science (Information Science) Master of Science (Math and Stats) Master of Science (Physics) Master of Science (Vision Science) Master of Science (Zoology)
University of Southern Queensland	Master of Computing Technology (Extended)	Master of Computing Technology
University of Southern Queensland	Master of Information Systems (Extended)	Master of Information Systems
University of Southern Queensland	Master of Professional Accounting (Extended)	Master of Professional Accounting

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.

The University of Melbourne's Master of Science and the Master of Engineering and the associated specialisations were approved in 2009, however at that time the specialisations were not listed. Listing the approved specialisations is consistent with the approach taken with other approved 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 2016 (No. 1)*

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2016 (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 2016 (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 student payments under social security law, such as youth allowance, austudy payment and the pensioner education supplement and also ABSTUDY (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 student payments, 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 student payments under social security law, such as youth allowance, austudy payment, the pensioner education supplement and also ABSTUDY (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 Christian Porter MP**