

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Indigenous Student Assistance Scholarships - Disqualifying Scholarships) Instrument 2016

Purpose

Subsection 23(1) of the *Social Security Act 1991* (the Act) provides definitions for ‘disqualifying accommodation scholarship’ and ‘disqualifying education costs scholarship’.

Under paragraph (a) of the relevant definition, a scholarship will be a ‘disqualifying accommodation scholarship’ or a ‘disqualifying education costs scholarship’ if it is:

- (i) provided for under Part 2-2A of the *Higher Education Support Act 2003* (Higher Education Support Act); and
- (ii) is specified by the Secretary under subsection 23(24) of the Act.

Subsection 3(1) of the *Student Assistance Act 1973* defines ‘disqualifying education costs scholarship’ by reference to the definition of ‘disqualifying education costs scholarship’ in subsection 23(1) of the Act. Paragraph 1.2.1 of both the *Veterans’ Children Education Scheme* and the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* adopts the definitions of ‘disqualifying accommodation scholarship’ and ‘disqualifying education costs scholarship’ in subsection 23(1) of the Act.

Paragraph 23(24)(a) of the Act provides that the Secretary may, by legislative instrument, specify a scholarship for the purposes of subparagraph (a)(ii) of the definition of ‘disqualifying accommodation scholarship’ in subsection 23(1). Paragraph 23(24)(b) of the Act provides that the Secretary may, by legislative instrument, specify a scholarship for the purposes of subparagraph (a)(ii) of the definition of ‘disqualifying education costs scholarship’ in subsection 23(1).

This instrument specifies scholarships provided for under Part 2-2A of the Higher Education Support Act for the purposes of the definition of ‘disqualifying accommodation scholarship’, and the definition of ‘disqualifying education costs scholarship’ in subsection 23(1) of the Act. The effect is that a person who receives a specified scholarship will not be able to also access certain comparable forms of student assistance.

Providing for these scholarships to be specified by the Secretary in a legislative instrument, rather than prescribing scholarships in primary legislation, gives the Secretary scope to specify other scholarships that may become available in the future as appropriate.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make an instrument of a legislative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument.

Background

Part 2-2A of the Higher Education Support Act, as inserted by Schedule 1 of the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016*, provides for grants to higher education providers to assist Indigenous students.

The *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016* inserted subsection 23(24) of the Act and the definitions of ‘disqualifying accommodation costs scholarship’ and ‘disqualifying education costs scholarship’ to provide a mechanism to ensure that a person in receipt of a scholarship provided for under Part 2-2A of the Higher Education Support Act does not qualify for other forms of student assistance. When utilised, this mechanism ensures that student assistance qualification rules are the same for scholarships under Part 2-2A as for scholarships under Part 2-4 of the Higher Education Support Act.

This instrument is one of a suite of instruments implementing the Indigenous Student Success in Higher Education 2016 Budget measure. This measure consolidates existing funding for Indigenous higher education under Part 2-2A of the Higher Education Support Act.

Regulatory Impact Statement

The Office of Best Practice Regulation has advised that the proposal appears machinery in nature and is not likely to have a regulatory impact on individuals, businesses or community organisations. As these matters will not be considered by Cabinet, a Regulation Impact Statement (RIS) is not required to be prepared. (OBPR reference: 21570)

Commencement

The instrument commences at the same time as Schedule 1, Part 1 of the *Higher Education Support Legislation Amendment (2016 Measures No. 1) Act 2016*.

Consultation

Consultation was undertaken with the Department of the Prime Minister and Cabinet, which administers Part 2-2A of the Higher Education Support Act and with the Department of Veterans’ Affairs, given their interest in this instrument.

Explanation of provisions

Item 1 sets out the name of the instrument, being the *Social Security (Indigenous Student Assistance Scholarships - Disqualifying Scholarships) Instrument 2016*.

Subitem 2(1) provides for a 3 column table setting out commencement information for this instrument. Each provision of the instrument specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing that the whole of the instrument commences at the same time as Schedule 1, Part 1 of the *Higher Education Support Legislation Amendment*

(2016 Measures No. 1) Act 2016 commences. However, this instrument does not commence at all if Schedule 1, Part 1 of that Act does not commence.

The note provides that the commencement information only relates to the provisions of the instrument as originally made. It will not be amended to deal with any later amendments to this instrument.

Subitem 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the instrument but that information is not part of the instrument.

Item 3 specifies that the instrument is made under the authority of subsection 23(24) of the Act.

Item 4 defines key terms contained in this instrument.

Item 5 specifies that the Indigenous Commonwealth Accommodation Scholarship is a ‘disqualifying accommodation scholarship’, for the purposes of subparagraph (a)(ii) of the definition of *disqualifying accommodation scholarship* in subsection 23(1) of the Act.

Item 6 specifies that the Indigenous Commonwealth Education Costs Scholarship is a ‘disqualifying education costs scholarship’, for the purposes of subparagraph (a)(ii) of the definition of *disqualifying education costs scholarship* in subsection 23(1) of the Act.

The Indigenous Commonwealth Accommodation Scholarship and the Indigenous Commonwealth Education Costs Scholarship are provided for in the Indigenous Student Assistance Grants Guidelines. These Guidelines are made by the Minister for Indigenous Affairs under section 238-10 of the Higher Education Support Act.

Specifying a scholarship as a ‘disqualifying accommodation scholarship’ will mean that a person in receipt of one of these scholarships will not qualify for certain assistance. At the time of commencement of this instrument, a student in receipt of a ‘disqualifying accommodation scholarship’ will not qualify for:

- a ‘relocation scholarship payment’ under sections 592J and 592K of the Act;
- a ‘relocation scholarship payment’ under paragraphs 7.5.3(d) and 7.5.4(e) of the *Veterans’ Children Education Scheme*; or
- a ‘relocation scholarship payment’ under paragraphs 7.3.3(d) and 7.3.4(e) of the *Military Rehabilitation and Compensation Act Education and Training Scheme*.

Specifying a scholarship as a ‘disqualifying education costs scholarship’ will mean that a person in receipt of one of these scholarships will not qualify for certain assistance. At the time of commencement of this instrument, a student in receipt of a ‘disqualifying education costs scholarship’ will not qualify for:

- a ‘student start-up scholarship payment’ under sections 592F and 592G of the Act;
- a ‘student start-up loan’ under section 1061ZVBB of the Act;
- an ABSTUDY start-up loan under sections 7C and 7D of the *Student Assistance Act 1973*;
- a ‘student start-up scholarship payment’ under paragraphs 7.4.3(d) and 7.4.4(e) of the *Veterans’ Children Education Scheme*; or
- a ‘student start-up scholarship payment’ under paragraphs 7.2.3(d) and 7.2.4(e) of the *Military Rehabilitation and Compensation Act Education and Training Scheme*.

These arrangements are consistent with existing rules in relation to a person in receipt of a scholarship under Part 2-4 of the Higher Education Support Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

SOCIAL SECURITY (INDIGENOUS STUDENT ASSISTANCE SCHOLARSHIPS – DISQUALIFYING SCHOLARSHIPS) INSTRUMENT 2016

This legislative instrument 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

This legislative instrument specifies that certain scholarships provided for by grants under Part 2-2A of the *Higher Education Support Act 2003* (Higher Education Support Act) are either a ‘disqualifying accommodation scholarship’ or a ‘disqualifying education costs scholarship’. The effect is that a person in receipt of a specified scholarship will not qualify for other forms of student assistance.

This instrument is one of a suite of instruments implementing the Indigenous Student Success in Higher Education 2016 Budget measure. This measure consolidates existing funding for Indigenous higher education under Part 2-2A of the Higher Education Support Act.

Human rights implications

This instrument advances the right to social security under Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR) and the right to equality and non-discrimination under Articles 2, 16, and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 2 of the ICESCR, and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Right to social security

The right to social security is contained in Article 9 of the ICESCR, which recognises ‘the right of everyone to social security, including social insurance’. This could also include support for students to access tertiary education.

This instrument specifies certain scholarships that are provided for under Part 2-2A of the Higher Education Support Act. This ensures that a person in receipt of a specified scholarship does not qualify for certain similar payments or benefits under the *Social Security Act 1991*, the *Student Assistance Act 1973*, the *Veterans’ Children Education Scheme* or the *Military Rehabilitation and Compensation Act Education and Training Scheme*. This is consistent with existing rules in relation to a person in receipt of scholarships provided for under Part 2-4 of the Higher Education Support Act.

This measure seeks to ensure the integrity of the social security payments system by preventing a person from receiving payments from multiple sources for the same activity.

This instrument, therefore, advances the right to social security.

Right to equality and non-discrimination

The right to equality and non-discrimination under Articles 2, 16, and 26 of the ICCPR, Article 2 of the ICESCR, and Article 5 of the ICERD, recognises that all human beings have the right to be treated equally and to not be discriminated against.

This instrument promotes the right to equality and non-discrimination by ensuring that qualification rules for social security payments are the same for Indigenous persons in receipt of scholarships under Part 2-2A of the Higher Education Support Act as they are for non-Indigenous persons in receipt of scholarships under Part 2-4 of the Higher Education Support Act.

Conclusion

The instrument is compatible with human rights. The instrument advances human rights, particularly the right to social security under Article 9 of the ICESCR and the right to equality and non-discrimination under Articles 2, 16, and 26 of ICCPR, Article 2 of the ICESCR, and Article 5 of ICERD.

Cath Halbert, Group Manager, Payments Policy Group, as delegate of the Secretary of the Department of Social Services