

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Indigenous Student Assistance Scholarships - Excluded Amounts) Instrument 2016

Purpose

Section 8 of the *Social Security Act 1991* (the Social Security Act) provides income test definitions. Subsection 8(8) of the Social Security Act provides for excluded amounts which are not income for the purposes of the Social Security Act.

Subparagraph 8(8)(zja)(ia) of the Social Security Act provides that the amount or value of a scholarship provided for under Part 2-2A of the *Higher Education Support Act 2003* (Higher Education Support Act) and specified by the Secretary under subsection 8(8AAA), is not income for the purposes of the Social Security Act.

Similarly, paragraph 5H(8)(hac) of the *Veterans' Entitlements Act 1986* (Veterans' Entitlements Act) provides that the amount or value of a scholarship provided under Part 2-2A of the Higher Education Support Act and specified under subsection 8(8AAA) of the Social Security Act is not income for the purposes of the Veterans' Entitlements Act.

This instrument specifies a scholarship provided for by a grant under Part 2-2A of the Higher Education Support Act for the purposes of subparagraph 8(8)(zja)(ia) of the Social Security Act (and therefore also for paragraph 5H(8)(hac) of the Veterans' Entitlements Act). The effect is that the amount or value of such scholarships would not count as income for social security or Veterans' Entitlements purposes.

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* (Higher Education Support Legislation Amendment Act), provides for grants to higher education providers to assist Indigenous students.

The Higher Education Support Legislation Amendment Act inserted subparagraph 8(8)(zja)(ia) and subsection 8(8AAA) into the Social Security Act to provide a mechanism to ensure that the amount or value of a scholarship provided for under Part 2-2A of the Higher Education Support Act is not treated as income for the purposes of the Social Security Act.

The Higher Education Support Legislation Amendment Act also inserted paragraph 5H(8)(hac) into the Veterans' Entitlements Act to ensure that the amount or value of a scholarship provided for under Part 2-2A of the Higher Education Support Act and specified by the Secretary under subsection 8(8AAA) of the Social Security Act is not income for the purposes of the Veterans' Entitlements Act.

Linking paragraph 5H(8)(hac) of the Veterans' Entitlements Act to the specification under subsection 8(8AAA) of the Social Security Act ensures that the amount or value of scholarships provided for under Part 2-2A of the Higher Education Support Act is treated consistently across both laws.

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 Act.

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. Otherwise, this instrument is beneficial as it exempts specified scholarship payments from income.

Explanation of provisions

Item 1 sets out the name of the instrument, being the *Social Security (Indigenous Student Assistance Scholarships - Excluded Amounts) 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 instrument commences at the same time as Schedule 1, Part 1 of the Higher Education Support Legislation Amendment Act. 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 8(8AAA) of the Social Security Act.

Item 4 defines key terms contained in this instrument.

Item 5 specifies the following scholarships provided for under Part 2-2A of the Higher Education Support Act for the purposes of subparagraph 8(8)(zja)(ia) of the Act:

- the Indigenous Commonwealth Accommodation Scholarship;
- the Indigenous Commonwealth Education Costs Scholarship; and
- the Indigenous Commonwealth Reward Scholarship.

Scholarships under Part 2-2A of the Higher Education Support Act may include:

- (i) scholarships dealt with in Indigenous Student Assistance Grants Guidelines, which are made by the Minister for Indigenous Affairs under section 238-10 of the Higher Education Support Act; and
- (ii) scholarships provided for by a grant by the Minister for Indigenous Affairs under section 38-20 of the Higher Education Support Act.

Specifying these scholarships ensures that the amount or value of a scholarship provided for under Part 2-2A of the Higher Education Support Act is not income for the purposes of the Social Security Act. By virtue of paragraph 5H(8)(hac) of the Veterans' Entitlements Act, it also ensures the amount or value of these scholarships is not income for the purposes of the Veterans' Entitlements Act.

These arrangements are consistent with arrangements in relation to the amount or value of Commonwealth Education Costs Scholarships and Commonwealth Accommodation Scholarships provided for 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 – EXCLUDED AMOUNTS) 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 scholarships provided for by a grant under Part 2-2A of the *Higher Education Support Act 2003* (Higher Education Support Act). The effect is that the amount or value of a scholarship provided for by a grant under Part 2-2A of the Higher Education Support Act is not income for the purposes of the *Social Security Act 1991* (Social Security Act) or the *Veterans' Entitlements Act 1986* (Veterans' Entitlements 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.

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.

The effect of this instrument is that a scholarship provided for by a grant under Part 2-2A of the Higher Education Support Act is not treated as income for the purposes of the Social Security Act or the Veterans' Entitlements Act.

This ensures that if a person receives a scholarship provided for by a grant under Part 2-2A of the Higher Education Support Act, the amount or value of that scholarship does not count for the purposes of assessing whether the scholarship recipient satisfies the income test for a payment or benefit under the Social Security Act. It also ensures that the amount or value of that scholarship does not count for the purposes of calculating the income of the scholarship recipient for the purposes of determining entitlements under the Veterans' Entitlements Act.

These arrangements are 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.

These measures protect a person's entitlement to social security payments.

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

Right to equality and non-discrimination

The right to equality and non-discrimination under the ICCPR, the ICESCR, and 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 Indigenous recipients of a scholarship under Part 2-2A of the Higher Education Support Act are able to receive any payments or benefits that they are entitled to receive under the Social Security Act or the Veterans' Entitlements Act the same as non-Indigenous recipients of scholarships provided for under Part 2-4 of the Higher Education Support Act.

This instrument, therefore, advances the right to equality and non-discrimination.

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