

EXPLANATORY STATEMENT

Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 2)

General outline

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 2)* (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 inserts a new reference to the Master of Clinical Psychology offered by RMIT University as a course type eligible for student payments, including youth allowance (student), austudy payment and the pensioner education supplement (provided that other qualification criteria for those payments are met).

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.

Commencement

The Amendment Determination commences on 1 May 2017.

Consultation

The Department has consulted with the Department of Human Services on the drafting of this instrument and with RMIT University regarding the course details.

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 provides that the name of the Amendment Determination is the *Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 2)*.

Section 2 provides that the Amendment Determination commences on 1 May 2017.

As the Amendment Determination is beneficial in operation, the *Legislation Act 2003* does not prevent retrospective commencement.

The instrument will be repealed on the day after its commencement by section 48A of the *Legislation Act 2003*, as the only effect of the instrument is to amend another legislative instrument.

Section 3 provides that Schedule 1 amends the Principal Determination.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make any 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 (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Schedule 1 to the Amendment Determination sets out the amendment to the Principal Determination.

Item [1] inserts “Master of Clinical Psychology” after “Master of Clinical Chiropractic” in column 2, in the cell of the table item dealing with RMIT University. This amendment is necessary to include the Master of Clinical Psychology offered by RMIT University as a tertiary course for the purpose of the Act.

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 2017 (No. 2)*

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 2)* 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 2017 (No. 2)* (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 including the Master of Clinical Psychology offered by RMIT University.

The 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 (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 the Master of Clinical Psychology offered by RMIT University is a tertiary course, which in turn assists people studying that course to qualify for certain student payments, the Amendment Determination may enable more 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 and the pensioner education supplement (provided they meet the other eligibility criteria for those payments).

By determining that the Master of Clinical Psychology offered by RMIT University is a tertiary course, which in turn assists people studying that course to qualify for certain student payments, the Amendment Determination may enable more students to access social security payments and therefore will be compatible with human rights.

Conclusion

The Amendment Determination is compatible with human rights as it enables students to access education and social security payments.