

## EXPLANATORY STATEMENT

*Student Assistance Act 1973*  
*Student Assistance Amendment (Education Institutions and Courses) Amendment*  
*Determination 2018*

### **Purpose**

The *Student Assistance Amendment (Education Institutions and Courses) Amendment Determination 2018* (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 makes technical amendments to the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (the Principal Determination), updating the list of Masters courses in Schedule 3 to the Principal Determination by adding new courses, replacing the names of existing courses and removing some existing 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 subsection 5D(1) 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 (provided students meet the other eligibility 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 outlines the education institutions and courses for which a student may be eligible for financial supplement under the Act. 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) notified higher education providers that it was accepting applications to include 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/masters](http://www.dss.gov.au/masters).

The Department undertook consultations with the higher education providers that sought inclusion of their Masters courses in the Amendment Determination.

## Regulatory 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 Provisions

**Section 1** provides that the name of the Amendment Determination is the *Student Assistance (Education Institutions and Courses) Amendment Determination 2018*.

**Section 2** provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

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** 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:

Higher Education Provider (HEP)	Course Name
Central Queensland University	Master of Teaching (Secondary)
Curtin University	Master of Teaching

Curtin University	Master of Teaching (Open Universities Australia)
Deakin University	Doctor of Medicine
Deakin University	Master of Construction Management
Deakin University	Master of Professional Psychology
Eastern College Australia	Master of Teaching (Primary)
Eastern College Australia	Master of Teaching (Secondary)
Griffith University	Master of Dentistry
Griffith University	Master of Secondary Teaching
James Cook University	Master of Teaching and Learning (Secondary)
Macquarie University	Doctor of Medicine
Macquarie University	Master of Accounting
Macquarie University	Master of Planning
Melbourne Polytechnic	Master of Professional and Practicing Accounting
Monash University	Doctor of Medicine
RMIT University	Master of Professional Accounting (CPA Australia Extension)
Swinburne University of Technology	Master of Dietetics
University of Adelaide	Master of Construction Management
University of Melbourne	Master of Teaching (Early Childhood and Primary)
University of New England	Master of Professional Psychology
University of New South Wales	Master of Clinical Optometry
University of New South Wales	Master of Teaching (Primary)
University of Queensland	Master of Psychology
University of Queensland	Master of Teaching (Secondary)
University of Technology Sydney	Master of Nurse Practitioner
University of the Sunshine Coast	Master of Teaching (Primary)
University of the Sunshine Coast	Master of Teaching (Secondary)
University of Western Australia	Master of Teaching (Secondary)
University of Western Australia	Master of Information Technology
Western Sydney University	Master of Psychotherapy and Counselling
Western Sydney University	Master of Teaching (Secondary) STEM

*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>Higher Education Provider</b>	<b>Course Name</b>
Curtin University	Master of Engineering Science and Renewable Energy Electrical Power Systems
Curtin University	Master of Engineering Science in Electrical Utility Engineering
Curtin University	Master of Medical Imaging Science

Curtin University	Master of Medical Sonography
Curtin University	Master of Radiation Therapy
Deakin University	Master of Psychology (Industrial and Organisational)
La Trobe University	Master of Counselling
La Trobe University	Master of Counselling Psychology
La Trobe University	Master of Financial Analysis and Master of International Business
La Trobe University	Master of Islamic Banking and Finance
La Trobe University	Master of Paramedic Practice
La Trobe University	Master of Spatial Planning, Management and Design
Monash University	Master of Applied Information Technology
Monash University	Master of Psychology (Educational and Developmental)
Monash University	Master of Teaching (Early Years)
Monash University	Master of Teaching (Primary)
Monash University	Master of Teaching (Secondary)
RMIT University	Master of Landscaping Architecture
University of Western Australia	Master of Manual Therapy
University of Western Australia	Master of Public Health (Nursing)
Western Sydney University	Master of Occupational Therapy
Western Sydney University	Master of Physiotherapy
Western Sydney University	Master of Podiatric Medicine

Where a course has been removed it is because that course has been discontinued, except RMIT University's Master of Landscaping Architecture. RMIT University's Master of Landscaping Architecture was incorrectly named on previous Determinations. The correct name has always been Master of Landscape Architecture. Accordingly, no students have ever been enrolled under this name.

*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:

Higher Education Provider	New course name	Old course name
Australian Catholic University	Master of Teaching (Early Childhood and Primary)	Master of Teaching (Early Years)
Central Queensland University	Master of Teaching (Primary)	Master of Teaching
Curtin University	Master of Arts	Master of Media and Communication
Deakin University	Master of Architecture (Design Management)	Master of Architecture (Design)
Griffith University	Master of Primary Teaching	Master of Teaching (Primary)

James Cook University	Master of Planning and Urban Development	Master of Tropical Urban and Regional Planning
Monash University	Juris Doctor	Master of Laws (Juris Doctor)
RMIT University	Master of Landscape Architecture	Master of Landscaping Architecture
University of Divinity	Master of Theological Studies	Master of Arts (Theology)
University of Divinity	Master of Theology (Coursework)	Master of Theological Studies
University of Melbourne	Master of Psychology (Clinical Neuropsychology)	Master of Psychology
University of Melbourne	Master of Psychology (Clinical Psychology)	Master of Psychology
Western Sydney University	Master of Nurse Practitioner (Mental Health)	Master of Mental Health Nursing (Nurse Practitioner)

*University that has changed name*

New Schedule 3 renames Curtin University of Technology to Curtin University to reflect their change of name.

## **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 2018***

The *Student Assistance Amendment (Education Institutions and Courses) Amendment Determination 2018* 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 Amendment (Education Institutions and Courses) Amendment Determination 2018* (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)* (the 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 is compatible with human rights.

### *Right to Social Security*

The Amendment Determination engages the right to social security contained in Article 9 of the 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 more students to access social security payments and therefore is compatible with human rights.

### **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 Dan Tehan MP**