

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Determination 2019

Purpose

The *Student Assistance (Education Institutions and Courses) Determination 2019* (the **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 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 students studying these courses to be eligible to receive student payments, subject to other relevant criteria being met.

The Determination repeals and replaces the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (the **2009 Determination**), which was due to sunset on 1 April 2020.

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.

Subsection 5D(2A) of the Act provides that a determination under subsection 5D(1) may make provision for and in relation to a specified course, that ceases to be a secondary course or a tertiary course, continuing to be a secondary course or a tertiary course in relation to specified persons in specified circumstances.

The Determination has been remade in substantially the same terms as the 2009 Determination. However, minor beneficial changes have been made to the transitional provisions to enable students who are studying an approved tertiary course at Masters level to continue receiving their student payment in respect of the course after the course has ceased to be a tertiary course. This reflects an existing transitional provision for certain vocational education and training courses.

The definitions section has also been updated to remove references to various obsolete definitions previously used in the 2009 Determination.

The list of approved Masters courses in Schedule 3 has been updated in response to new submissions from tertiary providers in the most recent Masters courses assessment round, and a departmental review of approved Masters courses listed in the 2009 Determination. Courses have only been removed where a higher education provider has informed the Department that the course is no longer open to new enrolments.

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.

Any decision made under, or in accordance with, the Determination is subject to the review provisions outlined in Part 9 of the Act or, where the review relates to a person's qualification under the social security law, Parts 4 and 4A of the *Social Security (Administration) Act 1999*. Further, any information collected under the Determination is protected by the information gathering and confidentiality provisions in Part 10 of the Act.

Commencement

The 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 Determination are available on the Department's web site at: www.dss.gov.au/masters.

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

Regulation Impact Statement (RIS)

The Determination does not require a Regulatory Impact Statement. The 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 Determination is the *Student Assistance (Education Institutions and Courses) Determination 2019*.

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

Section 3 states that the authority for making the Determination is subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*.

Section 4 defines the terms that are used in the Determination.

Section 5 provides that each instrument that is specified in Schedule 4 to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 6 provides that, for the purposes of the definition of *education institution* in paragraph 3(1)(a) of the Act, a higher education institution is an institution that is established by a law of the Commonwealth, a State or a Territory as a higher education institution, or an institution registered or taken to be registered by the Tertiary Education Quality and Standards Agency as a higher education provider.

Section 7 provides that, for the purposes of the definition of *education institution* in paragraph 3(1)(c) of the Act, a secondary school is an institution located in Australia that is a government secondary school, or is an institution located in Australia that is recognised as a secondary school under the law of the State or Territory in which the institution is located.

Section 8 provides that, for the purposes of the definition of *education institution* in paragraph 3(1)(b) of the Act, registered training organisations are to be regarded as technical and further education institutions.

Section 9 provides that, for the purposes of the definition of *education institution* in paragraph 3(1)(d) of the Act, special schools are to be regarded as educational institutions.

Section 10 sets out the meaning of *secondary course* for the purposes of paragraph 5D(1)(a) of the Act.

Paragraph 10(a) provides that a course specified in Column 1 of the table in Schedule 1 to this instrument that is provided by an education institution specified for that course in Column 2 of that table is a secondary course.

Paragraph 10(b) provides that a course provided by a secondary school, a registered training organisation or a higher education institution that leads to an accredited secondary course qualification, involving either accredited secondary course subjects or a VET course, is a secondary course.

Section 11 sets out the meaning of *tertiary course* for the purposes of paragraph 5D(1)(a) of the Act.

Paragraph 11(1)(a) provides that a full-time course that is specified in Column 1 of the table in Schedule 2 to this instrument and provided by an education institution specified for that course in Column 2 of that table, is a tertiary course. If a course is specified in item 5 or 8 of that table, an approved course within the meaning of the *VET Student Loans Act 2016* will be a tertiary course. If a course is specified in item 10 of that table, to the extent that the course consists of study in a VET course, an approved course within the meaning of the *VET Student Loans Act 2016* will be a tertiary course.

Paragraph 11(1)(b) provides that a full-time course accredited at Masters level and specified in Column 2 of the table in Schedule 3 to this instrument, and is provided by the education institution specified for that course in Column 1 of that table, is a tertiary course.

Paragraph 11(1)(c) provides that a full-time course to which section 12 of this Determination applies is a tertiary course.

Subsection 11(2) provides that, without limiting subsection 11(1), a course that meets the requirements of paragraph (1)(a), (b) or (c) and is not a full-time course is a tertiary course for the purposes of section 1061PC of the *Social Security Act 1991*. Section 1061PC of that Act defines an approved course of education or study for the purposes of the pensioner education supplement payment.

Section 12 provides for transitional arrangements so that where a student receives a student payment for:

- a VET course and the course ceases to be approved for VET Student Loans (under the *VET Student Loans Act 2016*); or
- a higher education course and the course provider loses its approval under HELP (under the *Higher Education Support Act 2003*); or
- an approved tertiary course at Masters level, as listed in Column 2 of the table in Schedule 3 to the Determination, that ceases to be an approved tertiary course;

the student will continue to receive their student payment for the remainder of the course provided that, after the course ceases to be approved, they continue to receive the relevant student payment without a break.

Subsection 12(1) provides that for the purposes of paragraph 11(1)(c) of the Determination, a course is a tertiary course if:

- (a) the course is specified in Column 1 of item 5, 6, 8, 9, 10 or 11 of the table in Schedule 2 to this instrument; and
- (b) it was a tertiary course under an instrument made under subsection 5D(1) of the Act; and
- (c) the course is not a tertiary course under paragraph 11(1)(a) of this instrument.

Subsection 12(2) provides that for the purposes of paragraph 11(1)(c) of the Determination, a course is a tertiary course if:

- (a) the course is or was specified in Column 2 of the table in Schedule 3 to:
 - (i) this instrument; or
 - (ii) the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*; and
- (b) it was a tertiary course under an instrument made under subsection 5D(1) of the Act; and
- (c) the course is not a tertiary course under paragraph 11(1)(b) of this instrument.

Subsection 12(3) provides that paragraph 11(1)(c) of the Determination does not apply to the course in relation to a student if:

- (a) the course was not a tertiary course, under an instrument issued under subsection 5D(1) of the Act, at the time when the student commenced the course; or

- (b) immediately before the course ceased to be a tertiary course under paragraphs 11(1)(a) or (b) of this instrument, the student was not receiving a student payment for the course; or
- (c) at or after the time the course ceased to be a tertiary course under paragraphs 11(1)(a) or (b) of this instrument, but before the student completes the course, the student ceases to be receiving a student payment for the course.

Subsection 12(4) provides that, for the purposes of this section, a student is receiving a student payment for the course if the student is receiving any of the following because the student is undertaking the course:

- (a) austudy payment under the *Social Security Act 1991*;
- (b) assistance under the ABSTUDY scheme;
- (c) youth allowance under the *Social Security Act 1991* because the student is undertaking full time study;
- (d) pensioner education supplement under the *Social Security Act 1991*.

Schedule 1 lists secondary courses for the purposes of section 10 of the Determination.

Schedule 2 lists tertiary courses for the purposes of sections 11 and 12 of the Determination.

Schedule 3 lists the approved tertiary courses at Masters level for the purpose of section 11 of the Determination.

Schedule 4 provides for the repeal of the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*.

Statement of Compatibility with Human Rights

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

Student Assistance (Educational Institutions and Courses) Determination 2019

The *Student Assistance (Education Institutions and Courses) Determination 2019* 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) Determination 2019* (the Determination) is made under 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 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 amends the list of Masters courses in Schedule 3 by adding new courses, replacing the names of existing courses and removing courses that are no longer offered.

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 Determination engages the following human rights:

Right to Education

The 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 Determination may enable students to access education and therefore will be compatible with human rights.

Right to Social Security

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

The Hon Paul Fletcher MP, Minister for Families and Social Services