

## **EXPLANATORY STATEMENT**

### *Student Assistance Act 1973*

#### Student Assistance (Education Institutions and Courses) Amendment Determination 2020

#### **Purpose**

The purpose of the Student Assistance (Education Institutions and Courses) Amendment Determination 2020 (this instrument) is to amend the Student Assistance (Education Institutions and Courses) Determination 2019 (the Principal Instrument) to add new approved tertiary Masters level courses, update the names of existing approved tertiary Masters level courses, and remove obsolete tertiary Masters level courses listed in the table in Schedule 3 to the Principal Instrument. The determination of these courses for the purposes of the *Student Assistance Act 1973* (the Act) allows students studying these courses to qualify for student payments under the social security law, subject to the relevant criteria being met.

#### **Background**

Subsection 5D(1) of the Act provides that the Minister may, for the purposes of the Act, determine in writing that:

- a course of study or instruction is a secondary course, or a tertiary course; or
- a part of a course of study or instruction is a part of a secondary course or part of a tertiary course.

The Principal Instrument broadly outlines the institutions and courses for the purposes of subsection 5D(1) of the Act. The Principal Instrument also specifies multiple levels of study, including for the purposes of the definition of 'registered training organisation' under section 4 and 'secondary school' and 'higher education institution' under subsection 3(1) of the Act.

This instrument will amend the table in Schedule 3 to the Principal Instrument to update the list of approved tertiary Masters level courses. This list of approved tertiary Masters level courses is updated in response to new submissions from higher education providers in the most recent Masters courses assessment round conducted by the Department of Social Services (the department). Further information on the assessment process can be found on the department's website at <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/student-payments/approved-institutions-and-courses-for-student-payments>.

This instrument is beneficial as it will enable students studying the new approved tertiary Masters level courses to be eligible for Youth Allowance (Student), Austudy and the Pensioner Education Supplement. Amendments to certain course names will ensure that students, who are currently studying these courses, will continue to be eligible for their student payment in respect of that course. Courses have only been removed where a higher education provider has informed the department that the course is no longer open to new enrolments and students are no longer enrolled in the course.

### **Authority**

This instrument is made under subsection 5D(1) of the Act. Subsection 5D(1) of the Act provides that the Minister may determine secondary and tertiary courses for the purposes of certain student payments under the Act. Subsection 5D(3) provides that a determination under subsection 5D(1) is a legislative instrument and is, accordingly, subject to the requirements of the *Legislation Act 2003*. This instrument is disallowable.

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**

This instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Consultation**

The department notified higher education providers on 1 August 2020 that it was accepting applications to include their approved tertiary Masters level courses in the list of Masters courses that are “tertiary courses” for the purposes of the Act. Guidelines for the approval of Masters by coursework courses for inclusion in the Principal Instrument are available on the Department’s website at: <https://www.dss.gov.au/our-responsibilities/families-and-children/benefits-payments/student-payments/guidelines-for-the-approval-of-masters-courses-for-student-payments>.

The department undertook consultations with the higher education providers that sought inclusion of their Masters courses in the Principal Instrument.

### **Regulation Impact Statement (RIS)**

This instrument does not require a RIS. It is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: 43316).

## **Explanation of the Provisions**

**Section 1** provides that the name of this instrument is the Student Assistance (Education Institutions and Courses) Amendment Determination 2020.

**Section 2** provides that this instrument commences on the day after this instrument is registered on the Federal Register of Legislation.

**Section 3** provides that this instrument is made under subsection 5D(1) of the Act.

**Section 4** provides that the Student Assistance (Education Institutions and Courses) Determination 2019 is amended as set out in the applicable items in Schedule 1, and any other item in Schedule 1 to this instrument has effect according to its terms.

### **Schedule 1 – Student Assistance (Education Institutions and Courses) Determination 2019**

**Schedule 1** to this instrument sets out the amendments to the Principal Instrument. The table in Schedule 3 to the Principal Instrument prescribes approved tertiary Masters level courses for the purposes of paragraph 11(1)(b), and subsections 11(2) and 12(2) of the Principal Instrument. These provisions set out what is considered a tertiary course for the purposes of subsection 5D(1) of the Act.

Paragraph 11(1)(b) of the Principal Instrument provides that for paragraph 5D(1)(a) of the Act, a tertiary course is a full-time course that is:

- accredited at Masters level; and
- specified in Column 2 of the table in Schedule 3 to this instrument; and
- provided by the education institution specified for that course in Column 1 of that table.

Alternatively, paragraph 11(1)(c) provides that a tertiary course is a full-time course if section 12 of the Principal instrument applies.

Section 12 provides transitional arrangements for certain Schedule 2 and Schedule 3 courses. Subsection 12(2) provides that a course is a tertiary course if:

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

Finally, subsection 11(2) provides that, without limiting subsection 11(1), a course that meets the requirements of paragraph 11(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* (SS Act). Section 1061PC of that Act defines an approved course of education or study for the purposes of the Pensioner Education Supplement.

The SS Act incorporates these requirements for an approved course of education or study in the activity tests required to be satisfied for the purposes of qualification for Youth Allowance (Student) (see subsection 541B(5) of the SS Act), Austudy (see section 569B of the SS Act) and the Pensioner Education Supplement (see section 1061PC of the SS Act).

**Item 1** inserts “Master of Professional Psychology” as a new course for the Australian College of Applied Psychology in Item 3 of the table in Schedule 3.

**Item 2** inserts “Master of Professional Psychology” as a new course at the Australian National University in Item 5 of the table in Schedule 3.

**Item 3** inserts “Master of Nursing Practice (Pre-Registration)” as a new course at Charles Darwin University in Item 11 of the table in Schedule 3.

**Item 4** removes “Master of Child and Adolescent Welfare”, “Master of Clinical Nursing (Nurse Practitioner)” and “Master of Communication (Journalism)” as courses from Charles Sturt University from Item 12 of the table in Schedule 3.

**Items 5 and 6** insert “Master of Clinical Psychology” and “Master of Midwifery” respectively as new courses at Curtin University in Item 14 of the table in Schedule 3.

**Item 7** removes “Master of Professional Accounting and Finance” as a course at Deakin University from Item 15 of the table in Schedule 3.

**Item 8** removes “Master of Primary Teaching” as a course from Federation University Australia in Item 19 of the table in Schedule 3.

**Item 9** substitutes the course “Master of Nurse Practitioner” for the existing course “Master of Nursing (Nursing Practitioner)” at Flinders University in Item 20 of the table in Schedule 3. This is a change to name of the course.

**Item 10** inserts “Master of Applied Behaviour Analysis” as a new course at Griffith University in item 22 of the table in Schedule 3.

**Item 11** removes “Master of Financial Planning (5665)” and “Master of Financial Planning (5686/5687/5685)” as courses at Griffith University from Item 22 of the table in Schedule 3.

**Item 12** inserts “Master of Professional Psychology” as a new course at La Trobe University in Item 29 of the table in Schedule 3.

**Item 13** inserts “Master of Teaching (Primary)” and “Master of Teaching (Secondary)” as new courses at Macquarie University in Item 30 of the table in Schedule 3.

**Item 14** inserts “Master of Applied Behaviour Analysis” as a new course at Monash University in Item 34 of the table in Schedule 3.

**Item 15** inserts “Master of Professional Engineering” as a new course at Monash University in Item 34 of the table in Schedule 3.

**Item 16** inserts “Master of Teaching (Secondary)” as a new course at Murdoch University in Item 37 of the table in Schedule 3.

**Item 17** inserts “Master of Financial Planning” as a new course at RMIT University in Item 39 of the table in Schedule 3.

**Item 18** removes “Master of Forest Science and Management” as a course at Southern Cross University in Item 40 of the table in Schedule 3.

**Items 19 and 20** insert “Master of Optometry” and “Master of Speech Pathology” respectively as new courses at the University of Canberra in Item 46 of the table in Schedule 3.

**Item 21** inserts “Master of Global Health” and “Master of Health Leadership and Management” as new courses at the University of New South Wales in Item 50 of the table in Schedule 3. These are name changes for the courses that have been removed under item 22.

**Item 22** removes “Master of Health Management” and “Master of International Public Health” as courses at the University of New South Wales in Item 50 of the table in Schedule 3.

**Item 23** removes “Master of Information Technology (Business Intelligence)” as a course at the University of South Australia in Item 54 of the table in Schedule 3.

**Item 24** inserts “Master of Learning and Teaching (Early Years)”, “Master of Learning and Teaching (Primary)” and “Master of Learning and Teaching (Secondary)” as new courses at the University of Southern Queensland in Item 55 of the table in Schedule 3.

**Item 25** substitutes the course “Master of Global Health” for the existing course “Master of International Public Health” as a course at the University of Sydney in Item 56 of the table in Schedule 3. This is a change to the name of the course.

**Item 26** inserts “Doctor of Optometry” as a new course at the University of Western Australia in Item 60 of the table in Schedule 3.

**Item 27** substitutes the course “Master of Applied Finance (Financial Services and Investing)” for the existing course “Master of Applied Finance (Banking/Investing/Managing)” as a course at the University of Wollongong in Item 61 of the table in Schedule 3. This is a change to the name of the course.

**Item 28** removes “Master of Business (Financial Management)” as a course at the University of Wollongong in Item 61 of the table in Schedule 3.

**Items 29 and 30** respectively insert “Master of Financial Management” and “Master of Social Work (Qualifying)” as courses at the University of Wollongong in item 61 of the table in Schedule 3. Item 29 is a name change for the course that has been removed under item 28. Item 30 is a new course.

**Item 31** removes “Master of Occupational Therapy”, “Master of Physiotherapy” and “Master of Podiatric Medicine” as courses at the Western Sydney University in Item 63 of the table in Schedule 3.

**Senator the Hon Anne Ruston, Minister for Families and Social Services**

## **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) Amendment Determination 2020**

The Student Assistance (Education Institutions and Courses) Amendment Determination 2020 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 2020 (the Amendment Instrument) 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 course of study or instruction is a secondary course, or a tertiary course, or
- a part of a course of study or instruction is a part of a secondary course or part of a tertiary course.

The Amendment Instrument amends the Student Assistance (Education Institutions and Courses) Determination 2019 (the Principal Instrument). The Principal Instrument 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 Instrument amends the list of Masters by coursework courses in Schedule 3 to the Principal Instrument by adding new courses, updating 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 Youth Allowance (Student), Austudy payment and the Pensioner Education Supplement (provided they meet the other eligibility criteria for those payments).

#### **Human rights implications**

The Amendment Instrument engages the following human rights:

### *Right to Education*

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

### *Right to Social Security*

The Amendment Instrument engages the right to social security contained in Article 9 of the ICESCR. A student undertaking courses specified in Schedule 3 may be able to qualify for Youth Allowance (Student), Austudy payment and the Pensioner Education Supplement (provided they meet the other eligibility criteria for those payments).

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 Instrument may enable more students to access social security payments and therefore is compatible with human rights.

### **Conclusion**

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

**Senator the Hon Anne Ruston, Minister for Families and Social Services**