

EXPLANATORY STATEMENT

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment (No. 2) Determination 2021

Purpose

The purpose of the *Student Assistance (Education Institutions and Courses) Amendment (No. 2) Determination 2021* (the 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) 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 Instrument broadly outlines the institutions and courses for the purposes of subsection 5D(1) of the Act.

The instrument will amend the table in Schedule 3 to the Principal Instrument to update the list of approved tertiary Masters level courses. At least once a year, the Department of Social Services (the department) invites higher education providers to submit applications for their professionally orientated Masters by coursework programs to be considered for approval for student payments. 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>.

The instrument is beneficial, as it will enable students studying the new approved tertiary Masters level courses to be eligible for student payments including Youth Allowance (student), Austudy payment and 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. Students that are still enrolled in courses that are being removed will

continue to receive student payments until they complete their course or there is a break in their eligibility status.

Information sharing

Information about a student that is collected by an officer for the purposes of student payments such as youth allowance (student), Austudy payment and pensioner education supplement, will have the character of protected information under the social security law.

The *Social Security (Administration) Act 1999* (Administration Act) has protections in place that limit the way in which protected information is handled. Under Division 3 of Part 5 of the Administration Act, a person will be authorised to record, disclose or use protected information, for example, where this is for the purposes of the social security law, with consent or in accordance with a public interest certificate. If the recording, disclosure or use of protected information is not authorised under the Administration Act and the person knows or ought reasonably to know that the information is protected information, the person may commit an offence that is punishable on conviction by imprisonment for a term not exceeding two years.

Availability of independent review

Decisions made under the social security law in relation to student payments are subject to internal and external merits review under Parts 4 and 4A of the Administration Act (unless specified as a decision that is not reviewable under sections 127 and 144 of the Administration Act). Such decisions will include those based on the approved courses in the Principal Instrument.

If a higher education provider disagrees with the outcome of their application for approval of a course, they may appeal the decision by writing to the Minister, and provide any additional information to support their appeal. Higher education providers may resubmit courses currently undergoing the accreditation process for assessment in a future round, once accreditation has been granted.

Commencement

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

Disallowable instrument

The instrument is made under subsection 5D(1) of the Act. Subsection 5D(3) provides that a determination under subsection 5D(1) is a legislative instrument. The instrument is a disallowable instrument for the purposes of the *Legislation Act 2003*.

Consultation

On 1 August 2021, the department invited higher education providers, referred by the Department of Education, Skills and Employment, to submit their courses for assessment. 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)

The instrument does not require a Regulatory Impact Statement (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: 21-01039).

Explanation of the Provisions

Section 1 provides that the name of the instrument is the *Student Assistance (Education Institutions and Courses) Amendment (No. 2) Determination 2021*.

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

Section 3 provides that the authority for making the instrument is subsection 5D(1) of the Act.

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. In making the instrument, the Minister is relying on this subsection in conjunction with the instrument-making power in 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 the 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 instrument.

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.

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 pensioner education supplement.

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

- (a) 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

- (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.

Item 1 substitutes “Master of Social Work” for the renamed course “Master of Social Work (Qualifying)” at the Australian Catholic University in item 2 of the table in Schedule 3.

Item 2 inserts “Master of Teaching (Early Childhood and Primary) / Graduate Certificate in Religious Education” at the Australian Catholic University in item 2 of the table in Schedule 3.

Item 3 substitutes “Master of Teaching (Secondary) including Master of Teaching (Secondary) / Professional Practice” for the renamed course “Master of Teaching (Secondary) (Internship)” at the Australian Catholic University in item 2 of the table in Schedule 3.

Item 4 adds new table item 4A to the table in Schedule 3. New table item 4A inserts “Master of Professional Accounting” as a course at the Australian National Institute of Management and Commerce.

Item 5 removes “Master of Legal Practice” as a course at the Australian National University in item 5 of the table in Schedule 3.

Item 6 substitutes “Master of Engineering (Civil Systems)” for the renamed course “Master of Engineering (Civil)” at Charles Sturt University in item 12 of the table in Schedule 3.

Item 7 removes “Master of Education (Special Education Needs)” and “Master of International Accounting – ACCA” as courses at Deakin University in item 15 of the table in Schedule 3.

Item 8 substitutes “Master of Teaching (Primary R – 7)” for the renamed course “Master of Teaching (Primary)” at Flinders University in item 20 of the table in Schedule 3.

Item 9 removes “Master of Accounting”, “Master of Organisational Psychology” and “Master of Teaching (Primary)” as courses at Griffith University in item 22 of the table in Schedule 3.

Item 10 repeals item 24A of the table in Schedule 3. The courses previously offered by the Institute of Social Neuroscience are being offered by ISN Psychology Pty Ltd, and are being inserted by items 10 and 11. There are no longer any approved courses at the Institute of Social Neuroscience for inclusion in the Principal Instrument.

Item 11 inserts “Master of Professional Psychology” as a new course at ISN Psychology Pty Ltd in item 25 of the table in Schedule 3.

Item 12 inserts “Master of Psychology (Sport and Exercise)” as a new course at ISN Psychology Pty Ltd in item 25 of the table in Schedule 3.

Item 13 substitutes “Master of Business Information Management and Systems” for the renamed course “Master of Business Information Systems” at La Trobe University in item 29 of the table in Schedule 3.

Item 14 inserts “Master of Extended Professional Accounting” as a new course at La Trobe University in item 29 of the table in Schedule 3.

Item 15 substitutes “Master of Community Planning and Development” for the renamed course “Master of Planning” at La Trobe University in item 29 of the table in Schedule 3.

Item 16 removes “Master of Financial Analysis (Financial Risk Management)”, “Master of Financial Analysis and Master of Business Administration”, “Master of Financial Analysis and Master of Professional Accounting”, “Master of Management (Corporate Governance and Risk)”, “Master of Management (Human Resource Management)”, “Master of Management (Project Management)”, “Master of Professional Accounting (Business Analytics)”, “Master of Professional Accounting (CPA Australia Extension)”, “Master of Professional Accounting (Information Systems Management)”, and “Master of Teaching English to Speakers of Other Languages (TESOL)” at La Trobe University in item 29 of the table in Schedule 3.

Item 17 inserts “Master of Nursing – Entry to Practice” as a new course at Queensland University of Technology in item 38 of the table in Schedule 3.

Item 18 inserts “Master of Architecture” and “Master of Architecture and Urban Design” as new courses at Swinburne University of Technology in item 41 of the table in Schedule 3.

Item 19 inserts “Doctor of Medicine” as a new course at the University of Adelaide in item 45 of the table in Schedule 3.

Item 20 removes “Master of Arts (Studies in Art History)” as a course at the University of Adelaide in item 45 of the table in Schedule 3.

Item 21 inserts “Master of Biomedical Engineering” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 22 inserts “Master of Chemical Engineering” and “Master of Civil Engineering” as courses at the University of Melbourne in item 48 of the table in Schedule 3.

Item 23 substitutes “Master of Creative Art Therapies” for the renamed course “Master of Creative Arts Therapy” at the University of Melbourne in item 48 of the table in Schedule 3.

Item 24 inserts “Master of Electrical Engineering” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 25 removes “Master of Engineering”, “Master of Engineering (Biochemical)”, “Master of Engineering (Biomedical)”, “Master of Engineering (Chemical)”, “Master of Engineering (Civil)”, “Master of Engineering (Electrical)”, “Master of Engineering (Environmental)”, “Master of Engineering (Mechanical)”, “Master of Engineering (Mechatronics)”, “Master of Engineering (Software)”, “Master of Engineering (Spatial)” and “Master of Engineering (Structural)” as courses at the University of Melbourne in item 48 of the table in Schedule 3.

Item 26 inserts “Master of Environmental Engineering” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 27 inserts “Master of Mechanical Engineering” and “Master of Mechatronics Engineering” as courses at the University of Melbourne in item 48 of the table in Schedule 3.

Item 28 inserts “Master of Professional Psychology” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 29 inserts “Master of Software Engineering” and “Master of Spatial Engineering” as courses at the University of Melbourne in item 48 of the table in Schedule 3.

Item 30 substitutes “Master of Education (Special Education)” for the renamed course “Master of Education (Special and Inclusive Education)” at the University of New England in item 49 of the table in Schedule 3.

Item 31 inserts “Master of Architecture” as a course at the University of Notre Dame in item 52 of the table in Schedule 3.

Item 32 inserts “Bachelor of Arts / Master of Teaching” as a course at the University of Tasmania in item 57 of the table in Schedule 3.

Item 33 removes “Master of Marketing” as a course from the University of Technology, Sydney in item 58 of the table in Schedule 3.

Item 34 adds new table item 62A to the table in Schedule 3. New table item 62A inserts “Master of Professional Accounting” as a course at the Wentworth Institute of Higher Education.

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 (No. 2) Determination 2021

The *Student Assistance (Education Institutions and Courses) Amendment (No. 2) Determination 2021* 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 (No. 2) Determination 2021* (the 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) 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 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 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 certain student payments under the social security law, such as youth allowance (student), austudy payment and pensioner education supplement (provided they meet the other eligibility criteria for those payments).

Human rights implications

The instrument engages the following human rights:

Right to Education

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

Right to Social Security

The 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 certain student payments under social security law, such as youth allowance (student), Austudy payment and 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 instrument may enable more students to access social security payments and therefore is compatible with human rights.

Conclusion

The 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