

EXPLANATORY STATEMENT

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment Determination 2022

Purpose

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2022* (the Amendment Determination) amends the *Student Assistance (Education Institutions and Courses) Determination 2019* (the Determination) 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 Determination. The determination of these courses for the purposes of the *Student Assistance Act 1973* (the Act) allows students undertaking these courses to qualify for student payments under the social security law, subject to other 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 Determination broadly outlines the institutions and courses for the purposes of subsection 5D(1) of the Act.

The Amendment Determination amends the table in Schedule 3 to the Determination 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 Amendment Determination is beneficial, as it will enable students studying the new approved tertiary Masters level courses to qualify for student payments under the social security law, that is, youth allowance (student), austudy payment and pensioner education supplement (provided they meet the other eligibility criteria for those payments).

Amendments to certain course names will ensure that students who are currently studying those courses will continue to be eligible for their student payment in respect of that course under the current course name. In cases where a course name has changed but some students are still completing the course under the former name, that name has been retained in the Determination to ensure those students are not adversely affected.

Courses have only been removed where a higher education provider has informed the department that the course has been discontinued and has no ongoing students.

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 Determination.

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 Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Disallowable instrument

The Amendment Determination 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 Amendment Determination is a disallowable instrument for the purposes of the *Legislation Act 2003*.

Consultation

On 1 August 2022, the department invited higher education providers, referred by the Department of Education, to submit their courses for assessment. Guidelines for the approval of Masters by coursework courses for inclusion in the Determination 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 Determination.

Regulation Impact Statement (RIS)

The Amendment Determination does not require a Regulation Impact Statement (RIS). It is unlikely to have a more than minor regulatory impact, as it will not impact on business activity nor adversely affect the eligibility of current and future students (OBPR ID: 22-03573).

Explanation of the Provisions

Section 1 provides that the name of the instrument is the *Student Assistance (Education Institutions and Courses) Amendment Determination 2022*.

Section 2 provides that the instrument commences on the day after it 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 Amendment Determination sets out the amendments to the Determination.

The table in Schedule 3 to the Determination prescribes approved tertiary Masters level courses for the purposes of paragraph 11(1)(b), and subsections 11(2) and 12(2) of the Determination.

Paragraph 11(1)(b) of the Determination 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 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 either the Determination, 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 inserts “Master of Teaching (Secondary) (Leading Learning)” as a new course at the Australian Catholic University in item 2 of the table in Schedule 3.

Item 2 substitutes “Australian College of Applied Psychology”, for the renamed institution “Australian College of Applied Professions (formerly known as Australian College of Applied Psychology)” in item 3 of the table in Schedule 3.

Item 3 inserts “Master of Professional Psychology” as a new course at Bond University in item 7 of the table in Schedule 3.

Item 4 removes “Master of Sustainable Environments and Planning” as a course at Bond University in item 7 of the table in Schedule 3.

Item 5 removes “Master of Podiatry Practice” as a course at Central Queensland University in item 10 of the table in Schedule 3.

Item 6 inserts “Master of Dietetics” as a new course at Charles Darwin University in item 11 of the table in Schedule 3.

Item 7 inserts “Master of Occupational Therapy” as a new course at Charles Darwin University in item 11 of the table in Schedule 3.

Item 8 inserts “Master of Architecture (OpenUnis)” as a new course at Curtin University in item 14 of the table in Schedule 3.

Item 9 inserts “Master of Geoscience (Geophysics)” as a course at Curtin University in item 14 of the table in Schedule 3.

Item 10 removes “Master of Media and Communication” and “Master of Petroleum Engineering” as courses at Curtin University in item 14 of the table in Schedule 3.

Item 11 inserts “Master of Professional Accounting” as a new course at Curtin University in item 14 of the table in Schedule 3.

Item 12 inserts “Master of Professional Accounting” as a new course at Excelsia College in item 18 of the table in Schedule 3.

Item 13 inserts “Master of Clinical Exercise Physiology” as a new course at Flinders University in item 20 of the table in Schedule 3.

Item 14 inserts “Master of Professional Psychology” as a new course at Flinders University in item 20 of the table in Schedule 3.

Item 15 inserts “Master of Professional Psychology” as a new course at Griffith University in item 22 of the table in Schedule 3.

Item 16 substitutes “Master of Social Work (Gold Coast Campus, Logan Campus or Open Universities Australia)” for the renamed course “Master of Social Work” at Griffith University in item 22 of the table in Schedule 3.

Item 17 removes “Master of Special Needs and Intervention Education” as a course at Griffith University in item 22 of the table in Schedule 3.

Item 18 substitutes “Master of Development Practice” for the renamed course “Master of Global Development” at James Cook University in item 26 of the table in Schedule 3.

Item 19 removes “Master of Nursing (Nurse Practitioner)” as a course at James Cook University in item 26 of the table in Schedule 3.

Item 20 repeals item 27 of the table in Schedule 3. There are no longer any approved courses at the Kaplan Business School for inclusion in the Determination.

Item 21 removes “Master of Chemical Sciences”, “Master of Clinical Prosthetics and Orthotics”, “Master of Information Technology (Computer Networks)”, “Master of Orthotics” and “Master of Podiatric Practice” as courses at La Trobe University in item 29 of the table in Schedule 3.

Item 22 inserts “Master of Dietetics” as a course at La Trobe University in item 29 of the table in Schedule 3.

Item 23 removes “Master of Engineering” and “Master of Surgery” as courses at Macquarie University in item 30 of the table in Schedule 3.

Item 24 removes “Master of Medical Radiations” as a course at Monash University in item 34 of the table in Schedule 3.

Item 25 inserts “Master of Nutrition and Dietetics” as a course at Monash University in item 34 of the table in Schedule 3.

Item 26 removes “Master of Teaching (Secondary)” as a course at Morling College Ltd in item 36 of the table in Schedule 3.

Item 27 removes “Master of Divinity” and “Master of Theological Studies” as courses at Murdoch University in item 37 of the table in Schedule 3.

Item 28 inserts a new table item 37A to the table in Schedule 3 after table item 37. New table item 37A inserts “Master of Professional Accounting” as a course at the Ozford Institute of Higher Education.

Item 29 inserts “Master of Professional Psychology” as a new course at Southern Cross University in item 40 of the table in Schedule 3.

Item 30 inserts “Doctor of Clinical Dentistry” as a new course at the University of Adelaide in item 45 of the table in Schedule 3.

Item 31 inserts “Master of Teaching (Secondary)” as a course at the University of Adelaide in item 45 of the table in Schedule 3.

Item 32 inserts “Juris Doctor” as a course at the University of Canberra in item 46 of the table in Schedule 3.

Item 33 substitutes “Master of Theology (Coursework)” for the renamed course “Master of Theology” at the University of Divinity in item 47 of the table in Schedule 3.

Item 34 inserts “Master of Engineering” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 35 substitutes “Master of Music Therapy (by course-work)” for the renamed course “Master of Music Therapy” at the University of Melbourne in item 48 of the table in Schedule 3.

Item 36 removes “Master of Urban Analytics” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 37 inserts “Master of Social Work (Qualifying)” as a new course at the University of New England in item 49 of the table in Schedule 3.

Item 38 removes “Master of Commerce (Banking)” as a course at the University of New South Wales in item 50 of the table in Schedule 3.

Item 39 inserts “Master of Midwifery (Graduate Entry)” as a new course at the University of Newcastle in item 51 of the table in Schedule 3.

Item 40 removes “Master of Arts (Theology)” as a course at the University of Notre Dame in item 52 of the table in Schedule 3.

Item 41 inserts “Master of Agricultural Science” as a course at the University of Queensland in item 53 of the table in Schedule 3.

Item 42 inserts “Master of Arts in Translation and Interpreting” as a course at the University of Queensland in item 53 of the table in Schedule 3.

Item 43 removes “Master of Clinical Exercise Physiology” and “Master of Dietetics” as courses at the University of Queensland in item 53 of the table in Schedule 3.

Item 44 substitutes “Master of Educational Studies (Guidance and Counselling)” for the renamed course “Master of Educational Studies (Guidance, Counselling and Careers)” at the University of Queensland in item 53 of the table in Schedule 3.

Item 45 substitutes “Master of Nurse Practitioner Studies” for the renamed course “Master of Nurse Practitioner” at the University of Queensland in item 53 of the table in Schedule 3.

Item 46 inserts “Master of Public Health” as a course at the University of Queensland in item 53 of the table in Schedule 3.

Item 47 removes “Master of Genetic Counselling” and “Master of Medicine (Psychotherapy)” as courses at the University of Sydney in item 56 of the table in Schedule 3.

Item 48 inserts “Master of Professional Accounting and Business Performance” as a course at the University of Sydney in item 56 of the table in Schedule 3.

Item 49 inserts “Doctor of Medicine” as a new course at the University of Tasmania in item 57 of the table in Schedule 3.

Item 50 removes “Master of Business Administration (Professional Accounting)” and “Master of Social Work (MSW or R7N)” as courses at the University of Tasmania in item 57 of the table in Schedule 3.

Item 51 inserts “Master of Physiotherapy” as a new course at the University of Tasmania in item 57 of the table in Schedule 3.

Item 52 inserts “Master of Landscape Architecture” as a new course at the University of Technology, Sydney in item 58 of the table in Schedule 3.

Item 53 removes “Master of Geographic Information Science”, “Master of Psychology (Clinical Psychology)”, “Master of Psychology (Industrial and Organisational Psychology)” and “Master of Teaching (Early Childhood)” as courses at the University of Western Australia in item 60 of the table in Schedule 3.

Item 54 inserts “Master of Professional Accounting” as a new course at Victoria University in item 62 of the table in Schedule 3.

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 2022

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2022* (the Amendment Determination) 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 Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2019* (the Determination). The Masters courses listed in Schedule 3 to the Determination are the Masters courses provided by higher education providers that are “tertiary courses” for the purposes of the *Student Assistance Act 1973*. The determination of these courses as tertiary courses allows people studying those courses to qualify for student payments under the social security law, that is, youth allowance (student), austudy payment and pensioner education supplement (provided they meet the other eligibility criteria for those payments).

The Amendment Determination amends the list of Masters by coursework courses in Schedule 3 to the Determination by adding new courses, updating the names of existing courses and removing courses that are no longer offered.

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 student payments, the Amendment Determination may enable students to access education and is therefore 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 a course specified in Schedule 3 to the Determination may be able to qualify for student payments under the social security law, that is, 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 student payments, the Amendment Determination may enable more students to access social security payments and is therefore compatible with human rights.

Conclusion

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

The Hon Amanda Rishworth MP, Minister for Social Services