

EXPLANATORY STATEMENT

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment Determination 2023

Purpose

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2023* (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, subject to other relevant criteria being met.

Background

To qualify for student payments under the *Social Security Act 1991*, students must be undertaking an approved course of education or study. The *Social Security Act 1991* provides that a course is an approved course of education or study if it is a course determined under section 5D of the Act to be a secondary course or a tertiary course for the purposes of the Act (subsection 541B(5) for youth allowance, section 569B for austudy and section 1061PC for pensioner education supplement).

Subsection 5D(1) of the Act provides that the Minister for Social Services (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 specifies the courses and parts of courses determined by the Minister for these purposes.

Masters level courses

The Amendment Determination amends the table in Schedule 3 to the Determination to update the list of approved tertiary Masters level courses. Twice 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>.

These amendments will enable students studying the new approved Masters level courses to qualify for student payments under the social security law, that is, youth allowance (student),

austudy and pensioner education supplement, provided they meet the other eligibility criteria for those payments.

Amendments to certain Masters course names will ensure that courses with the amended names will continue to be approved courses for student payment purposes. In these cases, higher education providers have advised the department that there are no students enrolled under the previous names and so there are no impacts on students.

Masters level 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 youth allowance (student), austudy 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 generally subject to internal and external merits review under Parts 4 and 4A 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 February 2023, 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.

Impact Analysis

The Amendment Determination does not require an Impact Analysis, as it is unlikely to have a more than minor regulatory impact (OIA23-04964).

Explanation of the Provisions

Section 1 provides that the name of the instrument is the *Student Assistance (Education Institutions and Courses) Amendment Determination 2023*.

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 *Student Assistance Act 1973*.

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. The amendments made by this Part insert, amend and remove Masters level courses from the table for the purposes of these provisions.

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 12(2) provides that for the purposes of paragraph 11(1)(c) of the Determination, 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 Determination, 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.

Item 1 substitutes “Master of Teaching (Early Childhood)” for the renamed course “Master of Teaching” at Central Queensland University in item 10 of the table in Schedule 3.

Item 2 inserts “Master of Engineering (SENGG1)” as a new course at Charles Darwin University in item 11 of the table in Schedule 3, after “Master of Dietetics”. This is the three-year Master of Engineering course, which is identified by the course code “SENGG1”. This is intended to ensure the new course included in table item 11 is clearly distinguished from the two-year Master of Engineering course at Charles Darwin University, which is not referred to in table item 11.

Item 3 inserts “Master of Teaching Early Childhood”, “Master of Teaching Primary” and “Master of Teaching Secondary” as new courses at Charles Darwin University in item 11 of the table in Schedule 3, after “Master of Teaching”.

Item 4 inserts “Master of Clinical Psychology” as a course at Edith Cowan University in item 17 of the table in Schedule 3, after “Master of Clinical Nursing”. This is a renamed course, which was formerly “Master of Psychology” (see **item 5** below).

Item 5 removes “Master of Psychology” as a course at Edith Cowan University in item 17 of the table in Schedule 3. This course has been renamed as “Master of Clinical Psychology”, and this new name is inserted into table item 17 by **item 4** above.

Item 6 substitutes “Master of Counselling (Behavioural Health)” for the renamed course “Master of Cognitive Behaviour Therapy” at Flinders University in item 20 of the table in Schedule 3.

Item 7 removes “Master of Forest Ecosystem Science” as a course at the University of Melbourne in item 48 of the table in Schedule 3.

Item 8 inserts “Master of Commerce (Accounting)” as a course at the University of New South Wales in item 50 of the table in Schedule 3, after “Master of Clinical Optometry”. This is a renamed course, which was formerly “Master of Commerce (Management Accounting)” (see **item 9** below).

Item 9 removes “Master of Commerce (Management Accounting)” as a course at the University of New South Wales in item 50 of the table in Schedule 3. This course has been renamed as “Master of Commerce (Accounting)”, and this new name is inserted into table item 50 by **item 8** above.

Item 10 inserts “Master of Counselling” as a new course at the University of Southern Queensland in item 55 of the table in Schedule 3, after “Master of Clinical Psychology”.

Item 11 removes “Master of Chinese Medicine” as a course at Western Sydney University in item 63 of the table in Schedule 3.

Item 12 removes “Master of Nurse Practitioner (Mental Health)” as a course at Western Sydney University in item 63 of the table in Schedule 3. This item also adds “Master of Nursing Practice (Preregistration)” as a new course at Western Sydney University in item 63 of the table.

Item 13 removes “Master of Psychology (Clinical Psychology)” as a course at Western Sydney University in item 63 of the table in Schedule 3. This course has been renamed as “Master of Clinical Psychology”, which is already included in table item 63.

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 2023

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2023* (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 tertiary courses specified in Schedule 2 and the Masters courses listed in Schedule 3 to the Determination are approved “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, that is, youth allowance (student), austudy and pensioner education supplement under the *Social Security Act 1991*, 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). Article 13 recognises the important personal, societal, economic and intellectual benefits of education. Article 13 also provides the secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

By determining that certain Masters courses are approved 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. Article 9 requires that a system be established under domestic law and that public authorities must take responsibility for the effective administration of the system. The

social security system must provide a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs.

Article 4 of the ICESCR provides that countries may limit the right to social security in a way determined by law only in so far as this may be compatible with the nature of the rights contained within the ICESCR and solely for the purpose of promoting the general welfare in a democratic society. Such a limitation must be proportionate to the objective to be achieved.

The Act provides access to social security for students through equity measures that provide financial assistance to help meet the costs associated with study. To qualify for student payments, a student must meet specified criteria, including in relation to their course of study, study load and study progress.

A student undertaking a course specified in the Determination may be able to qualify for student payments under the social security law, that is, youth allowance (student), austudy and pensioner education supplement, provided they meet the other eligibility criteria for those payments.

By determining that certain Masters courses are approved 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 promotes and supports the right to education and the right to social security. To the extent a human rights obligation is engaged or limited, the impact is for a legitimate objective and is reasonable, necessary and proportionate.

The Hon Amanda Rishworth MP, Minister for Social Services