

EXPLANATORY STATEMENT

Social Security Act 1991

Youth Allowance (Satisfactory Study Progress) Amendment Guidelines 2023

Purpose

The *Youth Allowance (Satisfactory Study Progress) Amendment Guidelines 2023* (the Amendment Guidelines) amend the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* (the Guidelines) to provide progress guidelines for youth allowance students undertaking a combined course that includes a new startup year course (or accelerator program course), in accordance with the startup year initiative. These guidelines must be considered by the Secretary in forming an opinion about whether a student is making satisfactory progress towards completing such a course, for the purposes of qualifying for youth allowance under the *Social Security Act 1991* (the Act) on the basis of undertaking full-time study.

Background

To qualify for youth allowance on the basis of undertaking full-time study, the student must, in the Secretary's opinion, be making satisfactory progress towards completing their course (paragraph 541B(1)(d) of the Act). Subsection 541B(3A) of the Act provides that in forming an opinion about whether a person is making satisfactory progress towards completing their course, for the purposes of paragraph 541B(1)(d), the Secretary is to have regard to the guidelines. Subsection 541B(3B) of the Act provides that the Minister, by legislative instrument, is to set guidelines for the exercise of the Secretary's discretion under subsection 541B(3A), and may revoke or vary those guidelines.

The Guidelines have been made under subsection 541B(3B) of the Act, and are to be taken into account by the Secretary in exercising their discretion about whether a student is making satisfactory progress towards completing their course, to determine whether the student is qualified for youth allowance under the Act on the basis of undertaking full-time study.

Startup year courses

The amendments made by the Amendment Guidelines are intended to support amendments to primary legislation, including the *Higher Education Support Act 2003* and the Act, to give effect to the startup year measure. These are contained in the *Education Legislation Amendment (Startup Year and Other Measures) Act 2023*, which commenced on 28 June 2023.

The startup year measure is intended to provide a new income contingent loan to support student participation in startup year courses at Australian higher education providers. It is intended that from early 2024, startup year courses will be available at Australian universities and university colleges for final year undergraduate students, current post-graduate students and recent graduates. As part of this initiative, it is intended that students undertaking startup year courses, who are entitled to STARTUP-HELP assistance under the *Higher Education Support Act 2003*, may be able to qualify for student payments, including youth allowance (student).

The Amendment Guidelines amend the Guidelines to provide youth allowance (student) satisfactory study progress guidelines relevant to combined courses that include a startup year course (or accelerator program course), which are to be taken into account in determining whether the student is making satisfactory progress in the course. These progress guidelines are consistent with existing guidelines for youth allowance students undertaking other combined courses in the Guidelines, and the progress rules for students receiving other payment types, such as austudy payment, in the Act.

It is not necessary to include progress guidelines for students undertaking a standalone accelerator program course. This is because in accordance with amendments to the Act and the *Higher Education Support Act 2003*, these students will only qualify for youth allowance (student) when they are entitled to STARTUP-HELP assistance, and this can only occur for a maximum of two accelerator program courses. Accordingly, specific progress guidelines for these students are not required.

Information sharing

Information about a student that is collected by an officer for the purposes of social security payments 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 satisfactory study progress guidance in the Guidelines.

Commencement

The Amendment Guidelines commence on the day after they are registered on the Federal Register of Legislation.

Disallowable instrument

The Amendment Guidelines are made under subsection 541B(3B) of the Act. This subsection provides that the guidelines made under this provision are a legislative instrument. The Amendment Guidelines are a disallowable instrument for the purposes of the *Legislation Act 2003*.

Consultation

The Department of Social Services consulted with Services Australia and the Department of Education on the text of the Amendment Guidelines.

Impact Analysis

The Amendment Guidelines do not require an Impact Analysis, as they are unlikely to have a more than minor regulatory impact (OIA23-04995).

Explanation of the Provisions

Section 1 provides that the name of the instrument is the *Youth Allowance (Satisfactory Study Progress) Amendment Guidelines 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 541B(3B) of the *Social Security Act 1991*.

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, and variation power, in subsection 541B(3B) of the Act.

Section 4 provides that the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* are 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 – Youth Allowance (Satisfactory Study Progress) Guidelines 2014

Schedule 1 to the Amendment Guidelines sets out the amendments to the Guidelines.

Item 1 inserts a new definition of “accelerator program course” at the beginning of section 5 of the Guidelines, before the definition of “Act”. The new definition of “accelerator program course” provides that this term has the same meaning as it does in the *Higher Education Support Act 2003*. Startup year courses are referred to in that Act as “accelerator program courses”, and this term is used in the Amendment Guidelines.

Item 2 contains a technical amendment which inserts additional wording at the beginning of section 13 of the Guidelines, so that existing section 13 operates subject to new section 13A (inserted by **item 3** below). This will ensure that section 13, which applies in determining satisfactory progress for combined courses, will not apply where new section 13A, which applies to combined courses that include an accelerator program course, applies. That is, in considering satisfactory progress for youth allowance (student), it is intended that new section 13A will apply to combined courses that include an accelerator program course, and existing section 13 will apply to all other combined courses as applicable.

Item 3 inserts a new section 13A into the Guidelines after section 13. New subsection 13A(1) provides that new section 13A applies to combined courses that combine an accelerator program course with another course.

The note following new subsection 13A(1) provides that for combined courses that include an accelerator program course, readers are directed to the legislative instrument made under section 5D of the *Student Assistance Act 1973*. Currently, this is the *Student Assistance (Education Institutions and Courses) Determination 2019*. This provides for combined courses that include an accelerator program course to be approved courses, for the purposes of youth allowance (student) qualification under the Act, where they meet the criteria in that instrument.

New subsection 13A(2) provides for a person’s satisfactory progress in the combined course, that is, the accelerator program course and other course components together. Under new subsection 13A(2), satisfactory progress for such a combined course consists of completing the combined course within the period of time that is:

- the usual minimum length of the combined course, plus
- an extra period to complete one uncompleted subject or unit that is part of the combined course.

For example, if the standard minimum length of a combined course is four years, and it would take an additional semester to complete a further subject or unit in that combined course, a student may be considered to be making satisfactory progress in that combined course if they complete the course in 4.5 years or less.

However, new subsection 13A(3) provides an exception to this. Under new subsection 13A(3), despite the satisfactory progress guidance in subsection 13A(2), it is open to the Secretary to form the opinion that a person is making satisfactory progress towards completing the combined course if the person is or was affected by circumstances beyond his or her control. An example of such circumstances may be if the student were to suffer from a

significant medical condition which delayed their studies and affected their ability to complete the combined course in accordance with the relevant time in subsection 13A(2).

Items 4 and 5 insert new subsections 16(4) and 17(3) into the Guidelines respectively, to apply to situations involving combined courses that include an accelerator program course. Section 16 applies in considering satisfactory progress in another course, following the student having failed to successfully complete a course at the same level previously. Section 17 applies in considering satisfactory progress in another course, following the student having withdrawn from a course at the same level.

The term “level”, in respect of a course, is defined in section 5 of the Guidelines as having the same meaning as it has in relation to the course, or a course of that kind, as specified in subsection 569H(8A), (9), (10), (11) or (12) of the Act, as applicable. These relate to the progress rules for austudy payment in the Act. However, as accelerator program courses do not have a “level” as specified in these provisions, amendments to sections 16 and 17 in the Guidelines are required to ensure that satisfactory progress can be considered in situations where one or more of the courses referred to in those sections is a combined course that includes an accelerator program course.

Item 4 inserts new subsection 16(4) following subsection 16(3). New subsection 16(4) provides that where a course is a combined course that combines an accelerator program course with another course at a particular level, the references to other courses at the same level, in section 16, should be read as referring to other courses at that particular level. This means that where an accelerator program course is being undertaken as part of a combined course (such as together with an undergraduate Bachelor degree under one course code), the progress guidance in section 16 should be applied as if this whole course were at the same level as the course that does have a particular level under subsection 569H(8A), (9), (10), (11) or (12) of the Act. That is, the accelerator program course should not be separated out. The whole course, including the accelerator program course component, should be assessed under the existing progress guidance in section 16 of the Guidelines, at the applicable level relating to the other (non-accelerator) part of the combined course.

For example, a youth allowance student may be undertaking an accelerator program course as part of a recognised combined course with an undergraduate Bachelor degree. The Bachelor degree is a Level B course under subsection 569H(10) of the Act. This means the whole combined course, including the accelerator program course component, should be treated as a Level B course in considering satisfactory progress under section 16 of the Guidelines.

The note following new subsection 16(4) provides that for combined courses that include an accelerator program course, readers are directed to the legislative instrument made under section 5D of the *Student Assistance Act 1973*. Currently, this is the *Student Assistance (Education Institutions and Courses) Determination 2019*.

Item 5 inserts a new subsection 17(3) into the Guidelines, following subsection 17(2). New subsection 17(3) provides that where a course is a combined course that combines an accelerator program course with another course at a particular level, the references to other courses at the same level, in section 17, should be read as referring to other courses at that particular level. This means that where an accelerator program course is being undertaken as part of a combined course (such as together with an undergraduate Bachelor degree under one

course code), the progress guidance in section 17 should be applied as if this whole course were at the same level as the course that does have a particular level under subsection 569H(8A), (9), (10), (11) or (12) of the Act. That is, the accelerator program course should not be separated out. The whole course, including the accelerator program course component, should be assessed under the existing progress guidance in section 17 of the Guidelines, at the applicable level relating to the other (non-accelerator) part of the combined course.

For example, a youth allowance student may be undertaking an accelerator program course as part of a recognised combined course with an undergraduate Bachelor degree. The Bachelor degree is a Level B course under subsection 569H(10) of the Act. This means the whole combined course, including the accelerator program course component, should be treated as a Level B course in considering satisfactory progress under section 17 of the Guidelines.

The note following new subsection 17(3) provides that for combined courses that include an accelerator program course, readers are directed to the legislative instrument made under section 5D of the *Student Assistance Act 1973*. Currently, this is the *Student Assistance (Education Institutions and Courses) Determination 2019*.

Statement of Compatibility with Human Rights

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

Youth Allowance (Satisfactory Study Progress) Amendment Guidelines 2023

The *Youth Allowance (Satisfactory Study Progress) Amendment Guidelines 2023* (the Amendment Guidelines) are 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 Guidelines amend the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* (the Guidelines) to provide progress guidelines for youth allowance students undertaking a combined course that includes a new startup year course (or accelerator program course), in accordance with the startup year initiative. These guidelines must be considered by the Secretary in forming an opinion about whether a student is making satisfactory progress towards completing such a course, for the purposes of qualifying for youth allowance under the *Social Security Act 1991* (the Act) on the basis of undertaking full-time study.

Human rights implications

The Amendment Guidelines engage the following human rights:

Right to Education

The Amendment Guidelines engage 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.

The Amendment Guidelines support determinations relating to youth allowance (student) qualification for students undertaking combined courses that include new startup year courses. In turn, this may enable students to access education and the Amendment Guidelines are therefore compatible with human rights.

Right to Social Security

The Amendment Guidelines engage 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 youth allowance, a student must meet specified criteria, including in relation to their course of study, study load and study progress.

In setting out what constitutes satisfactory study progress for youth allowance students undertaking accelerator program courses as part of a combined course, the Amendment Guidelines ensure transparency around decision-making for when a student qualifies for youth allowance through undertaking full-time study. These progress guidelines are consistent with existing guidelines for youth allowance students undertaking other combined courses in the Guidelines, and the progress rules for students receiving other payment types, such as austudy payment, in the Act, and therefore promote the effective administration of the social security system. The startup year initiative is ultimately beneficial in that it enables more students to access social security payments, to assist in meeting educational expenses with undertaking accelerator program courses, and is therefore compatible with human rights.

Conclusion

The Amendment Guidelines are 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