

EXPLANATORY STATEMENT

Social Security Act 1991

Social Security (Approved Scholarship Courses) Amendment Determination 2023

Purpose

The *Social Security (Approved Scholarship Courses) Amendment Determination 2023* (the Amendment Determination) amends the *Social Security (Approved Scholarship Courses) Determination 2020* (the Determination) to ensure new startup year courses (or accelerator program courses) are approved scholarship courses, in accordance with the startup year initiative. The determination of these courses for the purposes of the *Social Security Act 1991* (the Act) allows students undertaking these courses to qualify for relocation scholarship payments and student start-up loans, subject to other relevant criteria being met.

Background

To qualify for relocation scholarship payments under Part 2.11B of the Act, and student start-up loans under Chapter 2AA of the Act, students must be undertaking an “approved scholarship course”.

Further, ABSTUDY students must be undertaking an “approved scholarship course” to qualify for relocation scholarship payments under Chapter 102 of the ABSTUDY Policy Manual, and student start-up loans under Part 2 of the *Student Assistance Act 1973*. In both cases, the term “approved scholarship course” is defined by reference to the ABSTUDY Policy Manual, which relies on the definition in section 592M of the Act.

Paragraph 592M(a) of the Act provides that in the Act, “approved scholarship course” means a course of study or instruction approved by the Minister under a determination made for the purposes of section 592N. Subsection 592N(1) provides that the Minister may, by legislative instrument, determine that a course of study or instruction is an “approved scholarship course” for the purposes of the Act.

The Determination, which has been made under subsection 592N(1) of the Act, specifies approved scholarship courses determined by the Minister for the purposes of the Act, including qualification for relocation scholarship payments and student start-up loans.

Startup year courses

The amendments made by the Amendment Determination 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.

The Amendment Determination amends the approved scholarship courses in the Determination to provide that new startup year courses are “approved scholarship courses”. In the Amendment Determination, startup year courses are referred to as “accelerator program courses”, consistent with amendments to primary legislation. Combined courses that include a startup year course (or accelerator program course) are also new approved scholarship courses under these changes. This means that students undertaking these new courses may qualify for relocation scholarship payments and student start-up loans under the Act, the *Student Assistance Act 1973* and the ABSTUDY Policy Manual as applicable, subject to meeting all relevant criteria.

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. Similarly, information about a student collected for the purposes of ABSTUDY will have the character of protected information under the *Student Assistance Act 1973*.

The *Social Security (Administration) Act 1999* (Administration Act) and the *Student Assistance Act 1973* have protections in place that limit the way in which protected information is handled. Under Division 3 of Part 5 of the Administration Act, and Division 3 of Part 10 of the *Student Assistance Act 1973*, 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 or the *Student Assistance Act 1973*, 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 or the *Student Assistance Act 1973* 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. Decisions made under the ABSTUDY Policy Manual relating to ABSTUDY eligibility or entitlement are subject to internal merits review and judicial review. ABSTUDY debt recovery decisions are subject to internal and external merits review under Part 9 of the Act. Such decisions will include those based on the approved scholarship courses in the Determination.

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 592N(1) of the Act. Subsection 592N(1) provides that a determination under this provision is a legislative instrument. The Amendment Determination is 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 Determination.

Impact Analysis

The Amendment Determination does not require an Impact Analysis, as it is unlikely to have a more than minor regulatory impact (OIA23-04995).

Explanation of the Provisions

Section 1 provides that the name of the instrument is the *Social Security (Approved Scholarship 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 592N(1) 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 in subsection 592N(1) of the Act.

Section 4 provides that the *Social Security (Approved Scholarship Courses) Determination 2020* 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 – *Social Security (Approved Scholarship Courses) Determination 2020*

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

Item 1 omits the definition of “Act” from section 4 of the Determination as it was incorrectly placed, and inserts a new definition at the beginning of section 4. 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 Determination.

Item 2 reinserts the definition of “Act”, after the definition of “accredited higher education course”, to ensure it is placed in the correct alphabetical order in section 4 of the Determination. The definition of “Act” is not changed, and continues to mean the *Social Security Act 1991*.

The remaining amendments in **items 2 and 3** insert new definitions into section 4 of the Determination. These are required because the terms are used in new table item 4 in section 6, as inserted by **item 4** below.

Item 2 inserts a new definition of “bridging study for overseas-trained professionals” in section 4. This term means the occupation-related subjects, course, tuition or training program that is necessary for an overseas-trained professional to complete in order to meet the requirements for entry into their profession in Australia. This definition is similar to that used in the *Student Assistance (Education Institutions and Courses) Determination 2019*, which relates to approved tertiary courses for student payment purposes.

Item 2 also inserts a new definition of “Masters qualifying course” in section 4. The new definition of “Masters qualifying course” provides that this term means an intermediate course that is required to be completed before a person begins studying for a Masters degree. Such a course enables students to gain the qualifications necessary to enter into a Masters degree course, but does not form part of a Masters degree. This new definition is the same as that used in the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014*.

Item 3 inserts two new definitions into section 4 of the Determination, after the definition of “TEQSA”. Firstly, the new definition of “VET” provides that this term refers to vocational education and training.

Secondly, the new definition of “VET course” provides that this term has the same meaning as in section 3 of the *National Vocational Education and Training Regulator Act 2011*. These definitions are the same as those used in the *Student Assistance (Education Institutions and Courses) Determination 2019*, which relates to approved tertiary courses for student payment purposes.

Item 4 repeals section 6 of the Determination, which provides for approved scholarship courses, and substitutes a new section, including a table. The new table format is intended to improve the readability of the provision, given the additions made to provide for startup year courses (or accelerator program courses) as approved scholarship courses. There are no substantive changes to the previously approved scholarship courses (that is, accredited higher education courses and preparatory courses provided by higher education institutions).

New section 6 provides that for the purposes of subsection 592N(1) of the Act, an “approved scholarship course” is a course specified in column 1 of the table, and provided by an education institution specified in column 2 of the table. Where a student is undertaking an approved scholarship course specified in this table, they may qualify for relocation scholarship payments under Part 2.11B of the Act and Chapter 102 of the ABSTUDY Policy Manual, and student start-up loans under Chapter 2AA of the Act and Part 2 of the *Student Assistance Act 1973*, subject to satisfying all other applicable criteria.

In the new table in section 6, items 1 and 2 respectively provide that a “accredited higher education course” and a “preparatory course” provided by higher education institutions are approved scholarship courses. These courses were previously approved in the Determination, and this is not changed by the Amendment Determination. Both “accredited higher education course” and “preparatory course” continue to be defined in section 4 of the Determination.

New table item 3 provides that an “accelerator program course”, provided by a higher education provider (within the meaning of the *Higher Education Support Act 2003*), is an approved scholarship course. This is a new startup year course.

Similarly, new table item 4 is intended to apply to combined courses that include an accelerator program course, that are provided by a higher education provider within the meaning of the *Higher Education Support Act 2003*. For such a course to be an approved scholarship course, it must meet the requirements specified in paragraphs (a) to (d) of table item 4. These are that the course must:

- include an accelerator program course (this is defined in section 4 of the Determination, inserted by **item 1** above); and
- include an undergraduate or postgraduate accredited higher education course at the level of:
 - associate degree;
 - associate diploma;
 - Bachelor degree;
 - bridging study for overseas-trained professionals (this is defined in section 4 of the Determination, as inserted by **item 2** above);
 - postgraduate bachelor degree;
 - Masters qualifying course (this is defined in section 4 of the Determination, as inserted by **item 2** above); or
 - any of the following that is not a VET course (the terms “VET” and “VET course” are defined in section 4 of the Determination, as inserted by **item 3** above):
 - diploma;
 - advanced diploma;
 - graduate certificate;
 - graduate diploma; and
- be identified in the institution’s handbooks as a combined course; and

- not include a course accredited at Masters level, other than a course specified in the legislative instrument made under section 5D of the *Student Assistance Act 1973*. (This is currently the *Student Assistance (Education Institutions and Courses) Determination 2019*).

These requirements are similar to those for current approved tertiary courses that are combined courses in paragraph (h) of table item 6 of the *Student Assistance (Education Institutions and Courses) Determination 2019*, which are relevant to qualification for student payments under the Act, such as youth allowance (student). This includes that the relevant institution providing the combined course must recognise and publish the course as a combined course in their handbooks.

In the case of accelerator program courses and combined courses that include an accelerator program course, the course must be provided by a higher education provider within the meaning of the *Higher Education Support Act 2003*. This is also consistent with current approved tertiary courses specified in table item 6 of 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

Social Security (Approved Scholarship Courses) Amendment Determination 2023

The *Social Security (Approved Scholarship 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 *Social Security (Approved Scholarship Courses) Determination 2020* (the Determination) to ensure new startup year courses (or accelerator program courses) are approved scholarship courses, in accordance with the startup year initiative. The determination of these courses for the purposes of the *Social Security Act 1991* (the Act) allows students undertaking these courses to qualify for relocation scholarship payments and student start-up loans, subject to other relevant criteria being met.

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 new startup year courses are “approved scholarship 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, and the ABSTUDY Policy Manual provides access to ABSTUDY, 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 relocation scholarship payments and student start-up loans under the Act, the *Student Assistance Act 1973* and the ABSTUDY Policy Manual as applicable, provided they meet the other eligibility criteria for those payments.

By determining that new startup year courses are “approved scholarship 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