

EXPLANATORY STATEMENT

Issued by the authority of the acting Minister for Social Services

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment (Tertiary Course Requirements and Masters by Coursework) Determination 2024

Purpose

The *Student Assistance (Education Institutions and Courses) Amendment (Tertiary Course Requirements and Masters by Coursework) Determination 2024* (the Amendment Determination) amends the *Student Assistance (Education Institutions and Courses) Determination 2019* (the Determination) to remove the requirement that a tertiary course must be a full-time course. It also amends the Determination to update the list of approved Masters courses in the table in Schedule 3 to the Determination, and enable combined courses, that include a course accredited at Masters level and specified in Schedule 3 to the Determination, to be approved tertiary courses. These tertiary course requirements are determined for the purposes of the *Student Assistance Act 1973* (the Act) and are relevant to a student's qualification for student payments.

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 payment and section 1061PC for pensioner education supplement).

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 specifies the courses and parts of courses determined by the Minister for these purposes.

Part 1 – Tertiary course requirements

The “full-time” requirement

The Amendment Determination amends subsection 11(1) of the Determination to remove the requirement that a tertiary course be “full-time”.

To qualify for youth allowance or austudy payment under the *Social Security Act 1991*, a student must satisfy the Secretary that, throughout that period, they are undertaking “full-time study” (for youth allowance – subparagraph 540(1)(a)(i)) or “qualifying study” (for austudy – paragraph 568(a) and subsection 569(1)) (unless an exception applies). For both of these requirements, the student must be undertaking his or her study at a specified rate. For example, unless an exception applies a recipient of youth allowance must undertake (or intend to undertake) in the particular study period at least three-quarters of the normal amount of full-time study in respect of the course for that period (subsection 541B(1)).

There are courses that education institutions label “part-time”, “self-paced” or “flexible” but can be completed at an accelerated or full-time basis. Subsection 11(1) of the Determination requiring that a tertiary course be “full-time” prevents students who are enrolled in a course which has been described in another way, such as “part-time” or “flexible”, but are completing the course at a rate which satisfies the relevant study load requirements, from being eligible for student payments. This creates an inequitable outcome, even if these students are completing their studies at the same rate as students enrolled in full-time courses.

Further, some students receiving student payments may not be required to undertake at least three-quarters of the normal amount of full-time study to qualify. For example, a recipient of youth allowance may undertake at least a two-thirds study load in certain circumstances (subsection 541B(1A) of the *Social Security Act 1991*). Further, austudy recipients may meet the criteria in section 569D of that Act to undertake a concessional study-load of either 25% or 66% of the normal amount of full-time study. However, even where a recipient of youth allowance or austudy is not required to undertake a full-time study load, the effect of subsection 11(1) of the Determination is that their course must still be a “full-time” course.

The Amendment Determination also repeals subsection 11(2) of the Determination. This subsection provides an exception to the requirement that a tertiary course be a full-time course for the purposes of pensioner education supplement. This subsection is no longer required as subsection 11(1) is amended to exclude the requirement that a course be “full-time”. This ensures the tertiary course requirements in the Determination are consistent for youth allowance, austudy payment and pensioner education supplement.

Masters level qualifications and combined courses

Section 11 of the Determination specifies the criteria for tertiary courses. This section provides that for the purpose of paragraph 5D(1)(a) of the Act, a tertiary course is a full-time course that is one of three alternative types of courses specified in subsection 11(1). Broadly, these three types are tertiary courses specified in Schedule 2, courses accredited at Masters level and specified in Schedule 3, and courses to which the transitional arrangements in section 12 of the Determination apply.

Items 6 and 9 of Schedule 2 to the Determination provide a list of courses that are approved tertiary courses for the purpose of section 11 of the Determination (where all other relevant criteria are met). Item 6(h) of Schedule 2 allows for the combination of two of the undergraduate or postgraduate accredited higher education courses listed in the preceding paragraphs to be a tertiary course. Item 9(h) of Schedule 2 relates to open learning, and also allows the combination of two of the courses listed in the preceding paragraphs to be an approved tertiary course.

Neither items 6(a) to (g) nor items 9(a) to (g) of Schedule 2 lists any Masters level courses and as such it is not possible for a Masters course and a course listed in one of those items (for example, a Bachelor degree) to be combined to be an approved tertiary course for the purpose of section 11 of the Determination.

The Amendment Determination amends the course lists in both item 6 and item 9 of Schedule 2 to include combined courses that include a course accredited at Masters level and specified in Schedule 3 to the Determination. This will enable students who are completing such a tertiary course at Masters level, that is combined with another course specified in items 6(a) to (g) or 9(a) to (g) of Schedule 2, to be eligible for student payments (subject to meeting all applicable criteria).

Part 2 - Masters by coursework

Part 2 of the Amendment Determination amends the table in Schedule 3 to the Determination to update the list of approved tertiary Masters level courses by adding new Masters courses, replacing the names of existing Masters courses, and removing some existing Masters 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. The amendments made by the Amendment Determination reflect the outcome of the first round of applications considered in 2024. Further information on the assessment process can be found 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 payment 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 course names.

Masters level courses are removed at the request of the higher education provider or through a reassessment of the course at the request of the higher education provider. In these cases, higher education providers have advised the department that there are no students enrolled in these courses.

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) of the Act provides that a determination under subsection 5D(1) is a legislative instrument.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Authority

Section 34AAB of the *Acts Interpretation Act 1901* enables a Minister who administers an Act, or a provision of an Act, to authorise another Minister to act on behalf of the authorising Minister in the performance of functions or duties, or the exercise of powers, that the authorising Minister may perform or exercise under the Act or provision.

On 3 July 2024, the Hon Amanda Rishworth, Minister for Social Services, acting in accordance with section 34AAB of the Acts Interpretation Act, authorised the Hon Julie Collins MP, Minister for Housing and Minister for Homelessness, and Minister for Small Business, to exercise on her behalf all her powers and functions, including powers and functions conferred by any law of the Commonwealth, for the period 14 July to 20 July 2024. This authorisation can be found on the Federal Register of Legislation at: <https://www.legislation.gov.au/F2024N00611>.

This authorisation enables the Hon Julie Collins MP to make the Amendment Determination under subsection 5D(1) of the Act as the acting Minister for Social Services.

Consultation

Consultation on the text of the Amendment Determination was undertaken with the VET Student Loans Branch within the Department of Education who confirmed they do not consider there to be any concerns that would impact VET Student Loans.

On 19 February 2024, 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. The Office of Impact Analysis has reviewed the legislative impact of amendments made through the Masters by Coursework program and has provided a standing exemption for this program as regulatory changes are minor and likely to occur on a regular basis (Ref: OIA23-05989).

The Office of Impact Analysis has formally assessed all other amendments as “no more than minor” as the changes are unlikely to have any impact on students and realigns the Determination to the original policy intent (Ref: OIA24-6918).

The Amendment Determination is not regulatory in nature, will not impact business activity and will have no, or minimal, compliance cost or competition impact.

Availability of 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 *Social Security (Administration) Act 1999* (Administration Act) (unless specified as a decision that is not reviewable under sections 127 and 144 of the same 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.

Information sharing

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

The 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.

Explanation of the provisions

Section 1 provides that the name of the Amendment Determination is the *Student Assistance (Education Institutions and Courses) Amendment (Tertiary Course Requirements and Masters by Coursework) Determination 2024*.

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

Section 3 provides that the Amendment Determination is made under 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 Amendment Determination, the acting 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 to the Amendment Determination sets out the amendments to the Determination.

Part 1 – Tertiary course requirements

Item 1 omits the reference to “full-time” at subsection 11(1) of the Determination, to ensure that courses do not necessarily have to be described as “full-time” to be an approved tertiary course under the Determination. This provides greater flexibility and more equitable outcomes for students undertaking study in different ways. However, students are still required to satisfy relevant study load requirements, and all other applicable criteria.

Item 2 repeals subsection 11(2) of the Determination. This subsection provides an exception to the requirement that a course be a full-time course for the purposes of pensioner education supplement. This subsection is no longer required where subsection 11(1) has been amended to exclude the requirement that a course be “full time” (see item 1 above).

Items 3, 4 and 7 are technical amendments which remove the references to subsection 11(2) from subsection 11(3), the subheading to Schedule 2 and the subheading to Schedule 3 respectively. These references to subsection 11(2) are no longer required as this provision is repealed by item 2 above.

Item 5 inserts a new paragraph (ha) into Schedule 2, item 6, column 1. Item 6 identifies the undergraduate or postgraduate accredited higher education courses capable of meeting the definition of a “tertiary course” for the purpose of section 11 of the Determination.

New paragraph (ha) amends the list of courses in item 6 to include combined courses that include a course accredited at Masters level and specified in Schedule 3 to the Determination. Such a Masters course must be combined with a course that leads to one of the qualifications already specified in items 6(a) to (g) (for example, a Bachelor degree). This does not include a Doctorate level course. The combined course must also be identified as such by the institution in their handbooks. This is consistent with existing requirements for approved combined courses in items 6(h) and (j).

Item 6 inserts a new paragraph (i) into Schedule 2, item 9, column 1. Item 9 identifies the open learning courses capable of meeting the definition of a “tertiary course” for the purpose of section 11 of the Determination.

New paragraph (i) amends the list of courses in item 9 to include combined courses that include a course accredited at Masters level and specified in Schedule 3 to the Determination. Such a Masters course must be combined with a course that leads to one of the qualifications already specified in items 9(a) to (g) (for example, a Bachelor degree). This does not include a Doctorate level course. The combined course must also be identified as such by the institution in their handbooks.

Part 2 – Masters by coursework

Item 8 inserts “Master of Counselling” as a new course at Alphacrucis University College in item 1 of the table in Schedule 3, after “Master of Arts”.

Item 9 inserts “Master of Pharmacy” as a new course at Charles Darwin University in item 11 of the table in Schedule 3, after “Master of Occupational Therapy”.

Item 10 inserts “Master of Speech and Language Therapy” as a new course at Charles Darwin University in item 11 of the table in Schedule 3, after “Master of Social Work (Qualifying)”.

Item 11 removes the reference to “Master of Teaching Birth to Five Years Old” as a course at Charles Darwin University at item 11 of the table in Schedule 3 and replaces it with the new name for this course, “Master of Teaching Birth to Five Years”.

Item 12 inserts “Master of Counselling” as a new course at Deakin University in item 15 of the table in Schedule 3, after “Master of Construction Management (Professional)”.

Item 13 removes “Master of Languages Teaching” as a course at Deakin University in item 15 of the table in Schedule 3.

Item 14 inserts “Master of Social Work (Qualifying) (Children and Families)” and “Master of Speech Pathology” as new courses at Federation University Australia at item 19 of the table in Schedule 3, after “Master of Social Work (Qualifying)”.

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

Item 16 removes “Master of Physiotherapy” as a course at Griffith University in item 22 of the table in Schedule 3.

Item 17 inserts “Master of Midwifery Practice” as a new course at La Trobe University in item 29 of the table in Schedule 3, after “Master of Marketing”.

Item 18 inserts “Master of Social Work (Child and Family Practice)” as a new course at La Trobe University in item 29 of the table in Schedule 3, after “Master of Social Work”.

Item 19 inserts “Doctor of Podiatric Medicine” as a new course at Monash University in item 34 of the table in Schedule 3, after “Doctor of Physiotherapy”.

Item 20 inserts “Master of Clinical Psychology” as a new course at Monash University in item 34 of the table in Schedule 3, after “Master of Clinical Embryology”.

Item 21 removes “Master of Financial Planning” as a course at RMIT University in item 39 of the table in Schedule 3.

Item 22 inserts “Master of Physiotherapy” as a new course at RMIT University in item 39 of the table in Schedule 3, after “Master of Medical Physics”.

Item 23 inserts “Master of Social Work (Qualifying)” as a new course at the University of Canberra in item 46 of the table in Schedule 3, after “Master of Secondary Teaching”.

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

Item 25 inserts “Master of Clinical Exercise Physiology” as a new course at the University of New South Wales in item 50 of the table in Schedule 3, after “Master of City Planning”.

Item 26 inserts “Master of Dietetics and Food Innovation” as a new course at the University of New South Wales in item 50 of the table in Schedule 3, after “Master of Commerce (Human Resource Management)”.

Item 27 inserts “Master of Pharmacy” and “Master of Physiotherapy and Exercise Physiology” as new courses at the University of New South Wales in item 50 of the table in Schedule 3, after “Master of Landscape Architecture”.

Item 28 inserts “Master of Exercise Physiology” as a new course at the University of Newcastle in item 51 of the table in Schedule 3, after “Master of Clinical Psychology”.

Item 29 removes “Master of Nursing” as a course at the University of Newcastle in item 51 of the table in Schedule 3.

Item 30 removes “Master of Public Health” as a course at the University of Newcastle in item 51 of the table in Schedule 3.

Item 31 inserts “Master of Physiotherapy” as a new course at the University of Notre Dame in item 52 of the table in Schedule 3, after “Master of Counselling”.

Item 32 inserts “Master of Professional Psychology” as a new course at the University of Notre Dame in item 52 of the table in Schedule 3, after “Master of Primary Teaching, Sydney Campus”.

Item 33 inserts “Doctor of Dental Medicine” as a new course at the University of Queensland in item 53 of the table in Schedule 3, before “Doctor of Medicine (MD)”.

Item 34 inserts “Master of Clinical Neuropsychology and Clinical Psychology” as a new course at the University of Queensland in item 53 of the table in Schedule 3, after “Master of Bioinformatics Research Extensive”.

Item 35 inserts “Master of Occupational Hygiene” as a new course at the University of Queensland in item 53 of the table in Schedule 3, after “Master of Occupational Health and Safety Science”.

Item 36 removes the reference to “Master of Social Work Studies” as a course at the University of Queensland in item 53 of the table in Schedule 3 and replaces it with the new name for this course “Master of Social Work (Qualifying)”.

Item 37 inserts “Master of Social Work (Qualifying)” as a new course at the University of Southern Queensland in item 55 of the table in Schedule 3, after “Master of Professional Psychology”.

Item 38 inserts “Doctor of Physiotherapy” as a new course at the University of Sydney in item 56 of the table in Schedule 3, after “Doctor of Medicine”.

Item 39 inserts “Master of Speech Pathology” as a new course at the University of Tasmania in item 57 of the table in Schedule 3, after “Master of Social Work (Qualifying) R70”.

Item 40 removes “Master of Applied Science (Microbiology)” as a course at the University of Tasmania in item 57 of the table in Schedule 3.

Item 41 removes “Master of Health Science” as a course at the University of Western Australia in item 60 of the table in Schedule 3.

Item 42 removes “Master of Teaching” as a course at the University of Western Australia in item 60 of the table in Schedule 3.

Item 43 inserts “Master of Nursing (Pre-Registration)” as a new course at the University of Wollongong in item 61 of the table in Schedule 3, after “Master of Nursing (Mental Health)”.

Statement of Compatibility with Human Rights

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

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment (Tertiary Course Requirements and Masters by Coursework) Determination 2024

The *Student Assistance (Education Institutions and Courses) Amendment (Tertiary Course Requirements and Masters by Coursework) Determination 2024* (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) to remove the requirement that a tertiary course must be a full-time course. It also amends the Determination to update the list of approved Masters courses in the table in Schedule 3 to the Determination, and to enable combined courses, that include a course accredited at Masters level and specified in Schedule 3 to the Determination, to be approved tertiary courses. These tertiary course requirements are determined for the purposes of the *Student Assistance Act 1973* (the Act) and are relevant to a student's qualification for student payments.

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 tertiary courses do not have to be “full-time” and that certain Masters and combined 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 *Social Security Act 1991* 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 payment and pensioner education supplement, provided they meet the other eligibility criteria for those payments.

By determining that tertiary courses do not have to be “full-time” and that certain Masters and combined 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 Julie Collins MP, acting Minister for Social Services