

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Social Security Act 1991

Social Security (Youth Allowance – Satisfactory Study Progress) Guidelines 2024

Purpose

The *Social Security (Youth Allowance – Satisfactory Study Progress) Guidelines 2024* (the Guidelines) set out the guidelines for the purposes of subsection 541B(3A) of the *Social Security Act 1991* (the Act). Under subsection 541B(3A), the Secretary is to have regard to the guidelines in forming an opinion about whether or not a student is making satisfactory progress towards completing a course of education for the purposes of qualifying and remaining eligible for youth allowance.

The Guidelines repeal and replace the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014* (the 2014 Guidelines) which sunset on 1 October 2024. Subject to some minor formatting and wording changes, the substance of the 2014 Guidelines has been reproduced in the Guidelines.

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 of education (paragraph 541B(1)(d) of the Act). This requirement applies to combined courses and courses other than accelerator program courses.

To remain eligible for youth allowance a student must be making satisfactory progress in their course which is determined by completing the course within the time period set out in the Guidelines.

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.

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

Disallowable instrument

The 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 Guidelines are a disallowable instrument for the purposes of the *Legislation Act 2003*.

Consultation

The Department of Social Services consulted with Services Australia on the intention to remake the Guidelines. Services Australia did not raise any concerns.

Consultation with students in receipt of youth allowance was not considered necessary as the Guidelines are remade in substantially the same terms as the 2014 Guidelines.

Impact Analysis

The Office of Impact Analysis has reviewed the impact and determined that detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework due to the Guidelines being remade with no substantial amendments (Ref: OIA24-07828).

Explanation of the provisions

Part 1—Preliminary

Section 1 provides that the name of the Guidelines is the *Social Security (Youth Allowance - Satisfactory Study Progress) Guidelines 2024*.

Section 2 provides that the Guidelines commence on the day after the Guidelines are registered on the Federal Register of Legislation.

Section 3 provides that the authority for making the instrument is subsection 541B(3B) of the Act.

Subsection 541B(1) provides for when a person is undertaking full-time study for the purposes of the Act. This includes the requirement that, in the Secretary's opinion, the

person is making satisfactory progress towards completing their course of education (paragraph 541B(1)(d)).

Subsection 541B(3A) provides that in forming an opinion about whether a person is making satisfactory progress towards completing a course, the Secretary is to have regard to the guidelines. Subsection 541B(3B) 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.

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 541B(3B) of the Act.

Section 4 defines various terms that are used throughout these Guidelines.

Section 5 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Section 6 provides for the circumstances to which the Secretary may have regard when considering whether a person is affected by circumstances beyond the person's control. Many of the sections in Part 2 of these Guidelines provide that despite specific rules for when a person is taken to be making satisfactory progress in a particular course, the Secretary could form the view that the person is nevertheless making satisfactory progress towards completing the course if the person is, or has been, affected by circumstances beyond the person's control.

Example – relocation of residence – paragraph 6(d)

A student who was studying a course at an institution in Melbourne, is required to relocate their residence from Melbourne to Albury. The relocation occurs in the middle of semester during course of study. The student may have been required to relocate because of the ending of a lease, housing affordability, or because their partner or children, with whom they live, have relocated. The relevant educational institution has a campus in Albury, but will not allow the student to transfer mid-semester from one campus to another. In order to study the same course in Albury, the educational institution requires that the student restarts the same course of study in the following semester.

Section 7 sets out the effect of undertaking part-time study for part of an otherwise full-time course for the purposes of forming of an opinion about whether a person is making satisfactory progress in a course under Part 2 of these Guidelines.

Part 2–Guidelines

Division 1–Kinds of full-time study

Section 8 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing a long course. A long course is defined in section 4 as a course of education (including an articulated course) that has a standard minimum length of longer than 1 year, but does not include an honours course or a Masters course.

In forming an opinion the Secretary may consider whether a person is affected by circumstances beyond the person’s control.

Section 9 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing a short course. A short course is defined in section 4 as a course of education (including an articulated course) that has a standard minimum length of less than 1 year, but does not include an honours course, a Masters qualifying course or a Masters course.

In forming an opinion the Secretary may consider whether a person is affected by circumstances beyond the person’s control.

Section 10 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing an honours course.

In forming an opinion the Secretary may consider whether a person is affected by circumstances beyond the person’s control.

Section 11 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing a Masters qualifying course. A Masters qualifying course is defined in section 4 as an intermediate course that a person is required to complete before commencing study for a Masters degree.

In forming an opinion the Secretary may consider whether a person is affected by circumstances beyond the person’s control.

Section 12 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing a Masters course.

In forming an opinion the Secretary may consider whether a person is affected by circumstances beyond the person’s control.

Section 13 provides, subject to section 14 (which applies to combined courses that include an accelerator program course) the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing a combined course.

In forming an opinion the Secretary may consider whether a person is affected by circumstances beyond the person’s control.

Section 14 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing a combined course that is a course combining an accelerator program course with another course.

In forming an opinion the Secretary may consider whether the person is affected by circumstances beyond the person's control.

Section 15 provides the criteria for the Secretary to use in forming an opinion about whether a person is making satisfactory progress towards completing competency-based training or self-paced study.

Section 16 provides the criteria for the Secretary to use in forming an opinion about whether a person enrolled in a secondary course is making satisfactory progress towards completing that course.

Division 2—Additional study at same level

Section 17 applies to a person who, having once failed to successfully complete a course, undertakes study in another course ('the second course') at the same level. The term 'level' is defined in section 4.

For the purposes of forming an opinion about whether a person is making satisfactory progress towards completing the second course, subsection 17(2) requires the Secretary to refer to the relevant provisions in Division 1 for study in a course of that type.

In the event that the person fails to complete the second course because they were affected by circumstances beyond the person's control, and undertakes a third course at the same level, subsection 17(3) provides that the Secretary could form the opinion that the person is making satisfactory progress in completing the third course.

In relation to a combined course that combines an accelerator program course with a course at a particular level, subsection 17(4) requires the whole combined course to be considered as if it were a course at the same level as the non-accelerator part of the combined course.

Section 18 applies to a person who, having once withdrawn from a course, undertakes study in another course at the same level. Subsection 18(2) provides the criteria for the Secretary to consider in forming an opinion about whether the person, in undertaking the further course, is making satisfactory progress towards completing that course.

In relation to a combined course that combines an accelerator program course with a course at a particular level, subsection 18(3) requires the whole combined course to be considered as if it were a course at the same level as the non-accelerator part of the combined course.

Schedule 1 - Repeals

Item 1 repeals the *Youth Allowance (Satisfactory Study Progress) Guidelines 2014*. The Guidelines remake this instrument in substantially the same terms, and no policy changes are intended.

Statement of Compatibility with Human Rights

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

Social Security Act 1991

Social Security (Youth Allowance - Satisfactory Study Progress) Guidelines 2024

The *Social Security (Youth Allowance - Satisfactory Study Progress) Guidelines 2024* (the 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 Guidelines set out the guidelines for the purposes of subsection 541B(3A) of the *Social Security Act 1991* (the Act). Under subsection 541B(3A) of the Act, the Secretary is to have regard to the guidelines in forming an opinion about whether or not a student is making satisfactory progress towards completing a course of education for the purposes of qualifying and remaining eligible for youth allowance.

The Guidelines repeal and replace the *Youth Allowance (Satisfactory Study Progress) Guidelines) 2014* (the 2014 Guidelines) which sunset on 1 October 2024. Subject to some minor formatting and wording changes, the substance of the 2014 Guidelines has been reproduced in the Guidelines.

Human rights implications

The Guidelines engage the following human rights:

Right to Education

The 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 that secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

The Guidelines support determinations relating to youth allowance qualification for full-time students on the basis that the student is making satisfactory progress in their studies. This may enable and support students in accessing education, and the Guidelines are therefore compatible with human rights.

Right to Social Security

The 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 the Guidelines ensure transparency around decision-making for when a student qualifies for youth allowance through undertaking full-time study. The Guidelines are consistent with 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.

Conclusion

The Guidelines are compatible with human rights as they promote and support 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