EXPLANATORY STATEMENT

Student Assistance (Education Institutions and Courses)
Determination 2008 (No. 1)

Summary

The Student Assistance (Education Institution and Courses) Determination 2008 (No.1) (‘the Determination’) is made by the Minister for Education under subsections 3(1) and 5D(1) of the Student Assistance Act 1973 (‘the Act’). The Determination determines, for the purposes of the Act, what is to be regarded as a:

- Higher education institution;
- Secondary school;
- Technical and further education institution; and
- Other educational institution.

These terms are defined for the purposes of the definition of education institution in subsection 3(1) which includes the above four kinds of educational institutions.

Subsection 5D(1) of the Act provides that the Minister may, for the purposes of the Act, determine in writing that a course of study or instruction is a secondary course or a tertiary course. Sections 9 and 10 of the Determination provide that each course identified in Schedule 1 is a secondary course and each course identified in Schedule 2 and Schedule 3 is a tertiary course for the purposes of the Act.

The original purpose of determinations under subsections 3(1) and 5D(1) of the Act was to determine the education institutions and courses for which a student may be eligible for financial assistance under the Act. From 1998 most income support payments for students were moved from the Act to the Social Security Act 1991. However, the determination of education institutions and courses attended, for establishing eligibility for these payments, continued under the Act.

Apart from social security payments to full-time students, eligibility for ABSTUDY and the Assistance for Isolated Children (AIC) schemes require attendance at education institutions and enrolment in courses determined under the Act.

See also “Other Legislation affected by the Determination”, below.

The Determination retains the broad coverage of education institutions and courses provided by the repealed Determination No. 2007/1 – Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the Student Assistance Act 1973 as amended by Amendment No 1 to Determination No 2007/1 – Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the Student Assistance Act 1973.

The major change to the Determination is the inclusion of additional courses in Schedule 3, which lists approved Masters by coursework programs to provide eligibility for income support payments to full-time students on youth allowance and Austudy. The inclusion of additional courses to Schedule 3 is a result of the
Department’s invitation to higher education sector providers to submit additional courses for approval by the Minister for Education for the second round of approvals for masters courses. The Minister has regard to the *Guidelines for the approval of Masters Courses for Student Income Support Payments 2008* in assessing applications for approval of courses from the higher education sector providers. These Guidelines can been found at the following link:


In addition, the format of the instrument has been changed to reflect current legislative drafting style. The definition of course of combined study and the description of accredited undergraduate and postgraduate higher education courses in Schedule 2 have been amended to clarify their scope. These are further described in the “Explanation of Provisions”, below.

**Other Legislation affected by the Determination**

The *Social Security Act 1991* provides that for students to qualify for youth allowance, Austudy or the pensioner education supplement (PES), a person must be enrolled in and undertaking study at an education institution and in a course determined by the Minister under the *Student Assistance Act 1973*.

The *A New Tax System (Goods and Services Tax) Act 1999* (‘the GST Act’) provides that a supply that is the assessment or issue of qualifications for the purposes prescribed in subsection 38.110(1) of that Act is GST-free where it is carried out by, among other things, an education institution as defined in subsection 3(1) of the *Student Assistance Act 1973*.

**Explanation of Provisions**

**Section 1** provides the name of the Determination is *Student Assistance (Education Institutions and Courses) Determination 2008 (No. 1)*.

**Section 2** states that the determination commences on the day after it is registered.

**Section 3** revokes *Determination No. 2007/1 – Determination of Education Institutions and Courses under subsections 3(1) and 5D(1)*, including any amendments made to that instrument, for example, the *Amendment No 1 to Determination No 2007/1 – Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the Student Assistance Act 1973*.

**Section 4** provides definitions for the purposes of the Determination and of particular note:

*AQF* means the Australian Qualifications Framework guidelines. More information about the AQF can be found at [www.aqf.edu.au](http://www.aqf.edu.au).

Australian Apprenticeships Access Programme means the program of that name funded by the Department of Education, Employment and Workplace Relations under the Australian Apprenticeships Access Programme.

course of combined studies means a vocational education and training course consisting of modules from two or more separate vocational education and training programs. The combined course itself must lead to an award of an AQF qualification or Statement of Attainment. The Australian Qualifications Framework identifies in the AQF Implementation Handbook at paragraph 3.1 three sectors responsible for the issue of qualifications. A Statement of Attainment is issued by a Registered Training Organisation when an individual has completed one or more units of competency from nationally recognised qualification/s or course/s. More information on courses of combined study can be found at www.aqf.edu.au/pdf/handbook07.pdf.

Section 5 determines what is to be regarded as a higher education institution for the purposes of the Act. An institution determined to be a higher education institution in the determination is also to be considered an education institution for the purposes of the Act, see paragraph (a) of the definition of education institution in the Act.

Section 6 determines what is to be regarded as a secondary school for the purposes of the Act. An institution determined to be a secondary school in the determination is also to be considered an education institution for the purposes of the Act, see paragraph (c) of the definition of education institution in the Act.

Section 7 determines what is to be regarded as a technical and further education institution for the purposes of the Act. An institution determined to be a technical and further education institution in the determination is also to be considered an education institution for the purposes of the Act, see paragraph (b) of the definition of education institution in the Act.

Section 8 provides that special schools are to be regarded as education institutions for the purposes of the Act, see paragraph (d) of the definition of education institution in the Act.

Section 9 provides that for paragraph 5D(1)(a) of the Act, a secondary course is a course:

- specified in Column 1 of Schedule 1 to the Determination provided by an education institution specified for that course in Column 2 of Schedule 1; or
- that is provided by a secondary school, registered training organisation or a higher education institution that leads to an accredited secondary course qualification which involves:
  - accredited secondary course subjects; and
  - accredited vocational education and training course subjects.
This provision includes those courses that are school-based but where a technical subject might be provided through a registered training organisation, commonly referred to as VET-in-schools.

**Subsection 10(1)** provides for paragraph 5D(1)(a) of the Act, a tertiary course is a course specified in Column 1 of Schedule 2 to the Determination provided by an education institution specified for that course in Column 2 of Schedule 2.

**Subsection 10(2)** provides that, despite subsection (1), no course accredited at Masters or Doctorate level offered by a higher education institution is a tertiary course, whether it forms a part or the whole of an integrated undergraduate or postgraduate course, unless the course is expressly specified in Schedule 3 to the Determination.

This means that where a person undertakes an integrated undergraduate or postgraduate course that leads to that person receiving both a tertiary qualification other than a Masters degree or PhD and a Masters qualification, that Masters qualification is not considered a tertiary course for the purposes of the Act. The exception to this is where the Masters component of the integrated undergraduate or postgraduate course is a Masters course specified in Schedule 3 to the Determination.

This provision aims to exclude courses which provide a Masters level qualification unless these are explicitly specified in Schedule 3 to the Determination.

Some educational institutions structure their programmes with multiple entry and exit points, e.g. diploma, Bachelor degree, graduate Certificate, graduate Diploma, graduate entry Bachelor degree, or Masters. If these courses are approved under the Determination, a student is eligible to receive income support. However, at the point where the course leads to an outcome that is not approved under the Determination, the student ceases to be eligible for income support payments. For example, if they are enrolled in a Graduate Certificate or Graduate Diploma that is structured so that it may lead to either of these qualifications or to a Masters qualification, the student is eligible for payment while undertaking the Graduate Certificate or Graduate Diploma component of the course but they cease to be eligible for further income support once they commence the Masters component of the course. That is, at the point where the Masters qualification is the only outcome arising from continuation with the course of study, the student ceases to be entitled to income support payments. The exception to this rule is where the Masters component itself is a Masters course specified in Schedule 3 to the Determination.

**Schedule 2**

Graduate entry Bachelor degrees are offered by a few higher education institutions under the name of “Postgraduate Bachelor Degrees” and require entrants to have already graduated.

**Regulatory Impact Statement and Consultation**

This determination does not require a Regulatory Impact Statement (RIS) nor a Business Cost Calculator Figure. The determination is not regulatory in nature, will
not impact on business activity and will have no, or minimal, compliance costs or competition impact. It is not expected that any compliance costs will be incurred by business as a result of this exemption. The determination is beneficial and has no impact on business and therefore public consultation was therefore seen as unnecessary.