

EXPLANATORY STATEMENT

Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 1)

General outline

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 1)* (the Amendment Determination) is made under subsection 5D(1) of the *Student Assistance Act 1973* (the Act). Subsection 5D(3) of the Act provides that a determination under subsection 5D(1) is a legislative instrument.

The Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (the Principal Determination). The Amendment Determination makes technical amendments to the Principal Determination, particularly clarifying course types eligible for student payments, including youth allowance (student), austudy payment, the pensioner education supplement and ABSTUDY (provided they meet the other qualification criteria for those payments).

Background

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 Principal Determination broadly outlines the institutions and courses for the purpose of subsections 3(1) and 5D(1) of the Act, specifying multiple levels of study at higher education institutions and registered training organisations. The determination of these courses for the purposes of the Act allows for students studying these courses to be eligible to receive student payments, subject to other relevant criteria being met.

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.

Commencement

The Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Consultation

The Department of Social Services (the Department) notified higher education providers that it was accepting applications to include their Masters courses in the list of Masters courses that are “tertiary courses” for the purposes of the Act. Guidelines for the approval of Masters courses for inclusion in the Principal Determination are available on the Department’s web site at: www.dss.gov.au/masters.

The Department undertook consultations with the higher education providers that sought inclusion of their Masters courses in the Amendment Determination.

Regulation Impact Statement

The Amendment Determination does not require a Regulatory Impact Statement. The Amendment Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1

This section provides that the name of the Determination is the *Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 1)*.

Section 2

This section provides that the Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3

This section repeals Schedule 3 to the Principal Determination and substitutes a new Schedule 3.

Paragraph 10(1)(b) of the Principal Determination provides that for paragraph 5D(1)(a) of the Act, a tertiary course is a full-time course that is:

- (i) accredited at Masters level; and
- (ii) specified in Column 2 of the table in Schedule 3 to the Principal Determination; and
- (iii) provided by the education institution specified for that course in Column 1 of that table.

Paragraph 10(2) provides that without limiting subsection 10(1), a course that meets the requirements of paragraphs 10(1)(a) and (b) and is not a full-time course is a tertiary course for the purposes of paragraph 1061PC of the *Social Security Act 1991*.

New Masters courses in Schedule 3 to the Principal Determination

New Schedule 3 to the Principal Determination provides for the following new Masters courses that were not previously contained in that Schedule:

Education Institution	Course
Bond University	Master of Occupational Therapy
Cairnmillar Institute School of Counselling and Psychotherapy	Master of Professional Psychology
Deakin University	Master of Accounting and International Finance Master of International Accounting
Edith Cowan University	Master of Nursing (Graduate Entry)
King's Own Institute	Master of Accounting Master of Professional Accounting
La Trobe University	Master of Professional Accounting (Business Analytics) Master of Professional Accounting (Information Systems Management)
Murdoch University	Doctor of Veterinary Medicine
Queensland University of Technology	Master of Nurse Practitioner Master of Teaching (Secondary)
University of Adelaide	Master of Teaching
University of New England	Doctor of Medicine
University of Newcastle	Doctor of Medicine
University of Technology, Sydney	Master of Physiotherapy
University of Wollongong	Doctor of Medicine

Removal of Masters courses in Schedule 3 to the Principal Determination

New Schedule 3 to the Principal Determination omits the Masters courses in the following table that were previously contained in Schedule 3 to the Principal Determination. These courses have been removed as students are no longer enrolled in them.

Education Institution	Course
Bond University	Master of Property Valuation
Curtin University	Master of Commerce (Information Systems and Technology Major) Master of Information Technology Master of Logistics
James Cook University	Master of Applied Science (Tropical Urban and Regional Planning) Master of Information Technology (Extended)
Murdoch University	Master of Pharmacy
University of Canberra	Master of Business Administration in Strategic Procurement
University of South Australia	Master of Business Information Systems Master of Psychology (Work and Organisational)
University of Southern Queensland	Master of Informational Technology (Professional) (MITP) Master of Informational Technology (Professional) (MT16)
University of the Sunshine Coast	Master of Mental Health Nursing

Courses that have changed names

New Schedule 3 renames a number of courses. The old courses that have new course names are shown in the following table:

Education Institution	Old course name	New course name
Charles Sturt University	Master of Clinical Exercise Physiology (Rehabilitation)	Master of Clinical Exercise Physiology

	Master of Information Technology	Master of Information Technology (with Specialisations)
	Master of Teaching (Primary)	Master of Teaching (Primary)
	Master of Teaching English as a Second or Other Language (TESOL)	Master of Teaching English to Speakers of Other Languages
La Trobe University	Master of Marketing Management	Master of Marketing
Murdoch University	Master of International Affairs	Master of International Affairs and Security
Queensland University of Technology	Master of Social Work	Master of Social Work (Qualifying)
RMIT University	Master of Applied Science (Geospatial Information)	Master of Geospatial Science
University of Melbourne	Master of Science (Geography)	Master of Geography
University of Notre Dame	Master of Teaching (Primary)	Master of Teaching (Primary Education)
University of South Australia	Master of Information Communication and Technology Management (Enterprise Systems)	Master of Information Technology (Enterprise Management)
Victoria University	Master of Psychology (Clinical Psychology)	Master of Applied Psychology (Clinical Psychology)
	Master of Teaching (Primary)	Master of Teaching (Primary Education)
	Master of Teaching (Secondary)	Master of Teaching (Secondary Education)

Where a course has been renamed, the previously named course has been retained in the Schedule. This will ensure that a person who commenced studying the previously named course continues to be undertaking a tertiary course for the purpose of the Act.

Charles Sturt University's Master of Teaching (Primary) is being reinstated after the course was removed from the Determination in error in 2015.

Statement of Compatibility with Human Rights

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

Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 1)

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2017 (No. 1)* 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

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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 Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)* (Principal Determination). The Principal Determination broadly outlines the institutions and courses for the purpose of subsections 3(1) and 5D(1) of the Act, specifying multiple levels of study at higher education institutions and registered training organisations.

The Amendment Determination amends the list of Masters courses in Schedule 3 to the Principal Determination by adding new courses, replacing the names of existing courses and removing existing courses. Courses have been removed only where there are no longer any students enrolled in those courses.

The Masters courses listed in Schedule 3 are the Masters courses provided by higher education providers that are “tertiary courses” for the purposes of the Act. In turn, the determination of these courses as tertiary courses for the purposes of the Act allows people studying those courses to qualify for certain student payments under social security law, such as youth allowance, austudy payment and the pensioner education supplement and also ABSTUDY (provided they meet the other eligibility criteria for those payments).

Human rights implications

The Amendment Determination engages the following human rights:

Student Assistance (Education Institutions and Courses) Amendment Determination 2016 (No. 1)

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).

By determining that certain Masters courses are “tertiary courses”, which in turn assists people studying those courses to qualify for certain student payments, the Amendment Determination may enable students to access education and therefore will be compatible with human rights.

Right to Social Security

The Amendment Determination engages the right to social security contained in Article 9 of the ICESCR. A student undertaking courses specified in Schedule 3 may qualify for certain student payments under social security law, such as youth allowance, austudy payment, the pensioner education supplement and also ABSTUDY (provided they meet the other eligibility criteria for those payments).

Conclusion

The Amendment Determination is compatible with human rights as it enables students to access education and social security payments.

Minister for Social Services, the Hon Christian Porter MP