

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Social Security Act 1991

Social Security (Approved Scholarship Courses) Determination 2020

Purpose

The purpose of the *Social Security (Approved Scholarship Courses) Determination 2020* (the **instrument**) is to outline the courses that a student must be studying in order to qualify for a relocation scholarship under Part 2.11B of the *Social Security Act 1991* (the **Act**) or a student start-up loan under Chapter 2AA of the Act.

A relocation scholarship is a lump sum payment provided to qualifying recipients of certain income support payments that move to or from a regional or remote area for higher education study. A student start-up loan is a voluntary income contingent loan that is available to certain recipients of Youth Allowance, Austudy or ABSTUDY.

Background

This instrument is made by the Minister for Families and Social Services (the **Minister**) under subsection 592N(1) of the Act. Subsection 592N(1) of the Act allows the Minister to determine that a course of study or instruction is an approved scholarship course for the purposes of the Act.

This instrument repeals and replaces the *Social Security (Approved Scholarship Courses) Determination 2010 (No.1) (2010 Instrument)* which sunsets on 1 April 2020.

Relocation scholarship and student start-up loans

Part 2.11B of the Act outlines scholarship payments available to students. At the time of the 2010 Instrument, scholarship payments included the relocation scholarship and the student start-up scholarship. From 1 July 2017, the student start-up scholarship was replaced by the student start-up loan. Part 2AA.2 of Chapter 2AA provides that student start-up loans are available to certain full-time students in receipt of Youth Allowance, Austudy or ABSTUDY. Eligible students may receive up to two loans each calendar year. Division 2 of Part 2.11B outlines that a relocation scholarship can be provided to certain income support payment recipients who move to or from a regional or remote area for higher education study. Qualifying students are able to receive a lump sum payment on commencement of their course and a further lump sum each year thereafter while the student continues to qualify by undertaking the course.

Approved scholarship course

In order to qualify for a relocation scholarship or a student start-up loan, students must be undertaking an approved scholarship course. Section 592M of the Act

defines an approved scholarship course as a course of study or instruction approved by the Minister under a determination for the purposes of section 592N of the Act. This instrument, made under subsection 592N(1) of the Act, specifies the type of course that has been determined by the Minister to be an approved scholarship course for section 592M of the Act.

Defined terms in the instrument

The instrument is in substantially the same terms as the 2010 Instrument. However, the definition of *accredited higher education course* has been amended to reflect the definition in the *Student Assistance (Education Institutions and Courses) Determination 2019* and similar instruments made under sections 3 and 5D of the *Student Assistance Act 1973* (**Student Assistance Act**), that specify courses for which student income support payments are payable.

The 2010 Instrument previously defined an *accredited higher education course* as a course that is:

- (a) accredited as a higher education course by an authority responsible for the accreditation of higher education courses in a State or Territory; or
- (b) a course conducted and accredited as a higher education course by a higher education institution that is authorised by a law of the Commonwealth, a State or a Territory to accredit its own higher education courses.

This instrument retains the criteria in paragraph (b), however substitutes paragraph (a) with the criteria that a course be accredited as a higher education course by the Tertiary Education Quality Standards Agency (**TEQSA**) for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011* (**TEQSA Act**). TEQSA was established by the TEQSA Act to provide nationally consistent regulation of the higher education industry, including accrediting courses of study in accordance with the TEQSA Act. As TEQSA has replaced and consolidated the function of separate State and Territory authorities to accredit higher education courses, the new definition of *accredited higher education course* does not change the scope of this term or adversely affect any individual student.

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 is 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.

Any decision made under the relevant provisions of the Act, having regard to the matters set out in this instrument, may be reviewed under Parts 4 and 4A of the *Social Security (Administration) Act 1999* (the **Administration Act**). Further, any information collected under the instrument is protected by the information gathering and confidentiality provisions in Part 5 of the Administration Act.

Commencement

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

Consultation

Services Australia and the Department of Education were consulted in the preparation of this instrument.

Regulation Impact Statement (RIS)

The instrument does not require a Regulatory Impact Statement. The instrument is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: 25865).

Explanation of the provisions

Section 1 provides that the name of the instrument is the *Social Security (Approved Scholarship Courses) Determination 2020*.

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 instrument is made under subsection 592N(1) of the Act.

Section 4 provides definitions for the purposes of the instrument.

There is a note in this section that indicates the expression *higher education institution*, as used in this instrument, is defined in the Act. Section 23 of the Act defines *higher education institution* as an institution that is a higher education institution for the purposes of the Student Assistance Act.

Section 3 of the Student Assistance Act defines a higher education institution in Australia that, in accordance with a determination by the Minister, is to be regarded as a higher education institution for the purposes of the Student Assistance Act. The relevant determination is the *Student Assistance (Education Institutions and Courses) Determination 2019*, which provides in Section 6:

“higher education institution means:

- (a) an institution that is established by a law of the Commonwealth, a State or a Territory as a higher education institution; or
- (b) an institution registered, or taken to be registered, by TEQSA as a higher education provider.”

Act means the *Social Security Act 1991*.

accredited higher education course is defined as a course that is:

- (a) accredited as a higher education course by TEQSA, or taken to be a course accredited by TEQSA, in relation to the provider for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011*. A

provider, for the purposes of Part 2.11B of the Act, will be a higher education institution; or

- (b) a course conducted and accredited as a higher education course by an institution that is authorised by a law of the Commonwealth, or a State or Territory to accredit its own higher education courses.

preparatory course is defined as a course offered by a higher education institution designed to assist people to gain entry into higher education level courses (including enabling and bridging courses).

This definition references the defined term *higher education institution* and therefore includes courses undertaken at any university, private college or TAFE that is considered a higher education institution.

TEQSA means the Tertiary Education Quality and Standards Agency.

Section 5, in conjunction with **Schedule 1**, operates to repeal the *Social Security (Approved Scholarship Courses) Determination 2010 (No.1)*.

Section 6 sets out that an approved scholarship course, for the purposes of subsection 592N(1) of the Act, is an accredited higher education course or a preparatory course that is undertaken at a higher education institution.

Senator the Hon Anne Ruston, Minister for Families and Social Services

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) Determination 2020

This instrument 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 *Social Security (Approved Scholarship Courses) Determination 2020* (the **instrument**) is made by the Minister for Families and Social Services (the **Minister**) under subsection 592N(1) of the *Social Security Act 1991* (the **Act**). Subsection 592N(1) of the Act allows the Minister to determine that a course of study or instruction is an approved scholarship course for the purposes of the Act.

The purpose of the instrument is to outline the courses that a student must be studying in order to qualify for a relocation scholarship under Part 2.11B of the Act or a student start-up loan under Chapter 2AA of the Act.

Human rights implications

The instrument is compatible with the right to social security and the right to education.

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* recognises the right of everyone to social security.

The right to social security 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 as 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.

A relocation scholarship is a lump sum payment provided to qualifying recipients of certain student income support payments that move to or from a regional or remote area for higher education study. A student start-up loan is a voluntary income contingent loan that is available to certain recipients of Youth Allowance, Austudy or ABSTUDY undertaking higher education. The student start-up loan is intended to assist with the costs of study, including the purchase of text books, computers and internet access. Both of these payments engage the right to social

security as they provide financial assistance to students in addition to their primary income support payments, to assist them with the cost of relocating for study or purchasing study materials.

In order to qualify for either payment, a student must be undertaking an approved scholarship course. An approved scholarship course is determined by this instrument to be an accredited higher education course or preparatory course that is undertaken at a higher education institution. Although this limits eligibility for the payments to tertiary level students, this limitation is reasonable and proportionate to the policy objective of assisting individuals to access tertiary level study.

Students that qualify for the relocation scholarship will typically have higher costs associated with travelling a substantial distance to relocate to or from a regional or remote locality, and establishing themselves away from their family home. Students that opt to receive a student start-up loan will typically put those payments towards preparing for study, such as purchasing study materials. As relocation scholarships and student start-up loans do not operate as primary income support payments (unlike Youth Allowance, Austudy or ABSTUDY), limiting eligibility to certain tertiary level students is reasonable.

Right to education

Article 13 of the ICESCR recognises the right of everyone to education. It provides that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms, and that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means.

Relocation scholarships and student start-up loans engage the right to education, as these payments recognise that certain students on primary income support payments may require additional financial assistance to access higher education. This instrument facilitates the administration of these payments, by specifying the types of courses a student must be studying to be eligible for either payment, to ensure the payments are appropriately targeted to students in need of these payments.

Conclusion

The instrument is compatible with human rights as it facilitates the administration of payments that engage the right to social security and the right to education. Relocation scholarships and student start-up loans are targeted to students that are likely to require financial assistance to access higher education in addition to their primary income support payments. To the extent the right to social security is limited, as this financial assistance is only accessible to certain tertiary level students, the impact is for a legitimate objective, and is reasonable, necessary and proportionate.

Senator the Hon Anne Ruston, Minister for Families and Social Services