

EXPLANATORY STATEMENT

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment Determination 2021

Purpose

The purpose of the Student Assistance (Education Institutions and Courses) Amendment Determination 2021 (the instrument) is to amend the Student Assistance (Education Institutions and Courses) Determination 2019 (the Principal Instrument) to add new approved tertiary Masters level courses, update the names of existing approved tertiary Masters level courses, and remove obsolete tertiary Masters level courses listed in the table in Schedule 3 to the Principal Instrument. The determination of these courses for the purposes of the *Student Assistance Act 1973* (the Act) allows students studying these courses to qualify for student payments under the social security law, subject to the relevant criteria being met.

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 Instrument broadly outlines the institutions and courses for the purposes of subsection 5D(1) of the Act. The Principal Instrument also specifies multiple levels of study, including for the purposes of the definition of 'registered training organisation' under section 4 and 'secondary school' and 'higher education institution' under subsection 3(1) of the Act.

The instrument will amend the table in Schedule 3 to the Principal Instrument to update the list of approved tertiary Masters level courses. This list of approved tertiary Masters level courses is being amended in response to a one-off supplementary Masters by coursework assessment round, undertaken to support higher education providers who have restructured their course offerings due to reforms in the education sector and the COVID-19 pandemic. Further information on the assessment process can be found on the Department of Social Services (the department) website at <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/student-payments/approved-institutions-and-courses-for-student-payments>.

The instrument is beneficial, as it will enable students studying the new approved tertiary Masters level courses to be eligible for student payments that include Youth Allowance Student, Austudy and the Pensioner Education Supplement. Amendments to certain course names will ensure that students, who are currently studying these courses, will continue to be eligible for their student payment in respect of that course. Courses have only been removed where a higher education provider has informed the department that the course is no longer open to new enrolments and students are no longer enrolled in the course.

Authority

The instrument is made under subsection 5D(1) of the Act. Subsection 5D(1) of the Act provides that the Minister may determine secondary and tertiary courses for the purposes of certain student payments under the Act. Subsection 5D(3) provides that a determination under subsection 5D(1) is a legislative instrument.

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.

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. This instrument is disallowable.

Commencement

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

Consultation

On 29 March 2021, the department invited higher education providers, referred by the Department of Education, Skills and Employment, to submit their courses to the supplementary assessment round. Guidelines for the approval of Masters by coursework courses for inclusion in the Principal Instrument 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 Principal Instrument.

Regulation Impact Statement (RIS)

The instrument does not require a Regulatory Impact Statement (RIS). It is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: 44051).

Explanation of the Provisions

Section 1 provides that the name of the instrument is the Student Assistance (Education Institutions and Courses) Amendment Determination 2021.

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

Section 3 provides that the instrument is made under 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 – Student Assistance (Education Institutions and Courses) Determination 2019

Schedule 1 to the instrument sets out the amendments to the Principal Instrument.

The table in Schedule 3 to the Principal Instrument prescribes approved tertiary Masters level courses for the purposes of paragraph 11(1)(b), and subsections 11(2) and 12(2) of the instrument.

Paragraph 11(1)(b) of the Principal Instrument provides that for paragraph 5D(1)(a) of the Act, a tertiary course is a full-time course that is:

- accredited at Masters level; and
- specified in Column 2 of the table in Schedule 3 to this instrument; and
- provided by the education institution specified for that course in Column 1 of that table.

Subsection 11(2) provides that, without limiting subsection 11(1), a course that meets the requirements of paragraph (1)(a), (b) or (c) and is not a full-time course is a tertiary course for the purposes of section 1061PC of the *Social Security Act 1991*. Section 1061PC of that Act defines an approved course of education or study for the purposes of the pensioner education supplement payment.

Subsection 12(2) provides that for the purposes of paragraph 11(1)(c) of the Principal Instrument, a course is a tertiary course if:

- (a) the course is or was specified in Column 2 of the table in Schedule 3 to either the Principal Instrument, or the *Student Assistance (Education Institutions and Courses) Determination 2009 (No. 2)*; and
- (b) it was a tertiary course under an instrument made under subsection 5D(1) of the Act; and
- (c) the course is not a tertiary course under paragraph 11(1)(b) of this instrument.

Item 1 removes the existing course “Master of Applied Finance” and inserts a new course “Doctor of Medicine” at Charles Sturt University in Item 12 of the table in Schedule 3.

Item 2 removes “Master of Psychology” as a course at Curtin University in Item 14 of the table in Schedule 3.

Item 3 inserts “Master of Counselling” as a new course at Edith Cowan University in Item 17 of the table in Schedule 3.

Item 4 removes “Master of Information Technology” as a course at Edith Cowan University in Item 17 of the table in Schedule 3.

Item 5 inserts “Master of Professional Psychology” as a new course at Edith Cowan University in Item 17 of the table in Schedule 3.

Item 6 inserts “Master of Clinical Exercise Physiology” as a new course at Federation University Australia in Item 19 of the table in Schedule 3.

Item 7 inserts “Master of Cognitive Behaviour Therapy” as a new course at Flinders University in Item 20 of the table in Schedule 3.

Item 8 adds new table item 24A to the table in Schedule 3. New table Item 24A inserts “Master of Professional Psychology” and “Master of Psychology (Sport and Exercise)” as courses at the Institute for Social Neuroscience.

Item 9 removes “Master of Rehabilitation (Occupational Therapy)”, “Master of Rehabilitation (Physiotherapy)” and “Master of Rehabilitation (Speech Pathology)” as courses at James Cook University in Item 26 of the table in Schedule 3.

Items 10 and 11 respectively removes the existing course “Master of Special Education” and inserts “Master of Inclusive and Special Education” as a new course at Macquarie University in Item 30 of the table in Schedule 3.

Item 12 removes “Master of Psychology (Counselling)” as a course at Monash University in Item 34 of the table in Schedule 3.

Item 13 substitutes the course “Master of Teaching Early Childhood Education” for the existing course “Master of Teaching in Early Years Education” at Monash University in Item 34 of the table in Schedule 3.

Item 14 substitutes the course “Master of Teaching Early Childhood and Primary Education” for the existing course “Master of Teaching in Early Years and Primary Education” at Monash University in Item 34 of the table in Schedule 3.

Item 15 removes “Master of Psychology” as a course at University of Melbourne in Item 48 of the table in Schedule 3.

Item 16 substitutes “Master of Translation and Interpreting” for the existing course “Master of Translation” at University of Melbourne in Item 48 of the table in Schedule 3.

Items 17 and 18 respectively removes the existing course “Master of Computing Technology” and inserts “Master of Information Technology” as a new course at University of Southern Queensland in Item 55 of the table in Schedule 3.

Item 19 removes “Master of Counselling” and “Master of Rehabilitation Counselling” as courses at University of Tasmania in Item 57 of the table in Schedule 3.

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

Student Assistance (Educational Institutions and Courses) Amendment Determination 2021

The *Student Assistance (Education Institutions and Courses) Amendment Determination 2021* 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 *Student Assistance (Education Institutions and Courses) Amendment Determination 2021* (the instrument) 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.

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 instrument amends the *Student Assistance (Education Institutions and Courses) Determination 2019* (the Principal Instrument). The Principal Instrument 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 instrument amends the list of Masters by coursework courses in Schedule 3 to the Principal Instrument by adding new courses, updating the names of existing courses and removing courses that are no longer offered.

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 Student, Austudy payment and the Pensioner Education Supplement (provided they meet the other eligibility criteria for those payments).

Human rights implications

The instrument engages the following human rights:

Right to Education

The instrument 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 instrument may enable students to access education and therefore will be compatible with human rights.

Right to Social Security

The instrument engages the right to social security contained in Article 9 of the ICESCR. A student undertaking courses specified in Schedule 3 may be able to qualify for certain student payments under social security law, such as Youth Allowance Student, Austudy payment and the Pensioner Education Supplement (provided they meet the other eligibility criteria for those payments).

By determining that certain Masters courses are "tertiary courses", which in turn assists people studying those courses to qualify for certain student payments, the instrument may enable more students to access social security payments and therefore is compatible with human rights.

Conclusion

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

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