

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment (Masters by Coursework) Determination 2024

Purpose

The *Student Assistance (Education Institutions and Courses) Amendment (Masters by Coursework) Determination 2024* (the Amendment Determination) amends the *Student Assistance (Education Institutions and Courses) Determination 2019* (the Determination) to update the list of approved Masters courses in the table in Schedule 3 to the Determination. These tertiary course requirements are determined for the purposes of the *Student Assistance Act 1973* (the Act) and are relevant to a student's qualification for student payments.

Background

To qualify for student payments under the *Social Security Act 1991*, students must be undertaking an approved course of education or study. The *Social Security Act 1991* provides that a course is an approved course of education or study if it is a course determined under section 5D of the Act to be a secondary course or a tertiary course for the purposes of the Act (subsection 541B(5) for youth allowance, section 569B for Austudy payment and section 1061PC for pensioner education supplement).

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 Determination specifies the courses and parts of courses determined by the Minister for these purposes.

Masters by coursework

The Amendment Determination amends the table in Schedule 3 to the Determination to update the list of approved tertiary Masters level courses by adding new Masters courses and removing some existing Masters courses.

Twice a year, the Department of Social Services (the department) invites higher education providers to submit applications for their professionally orientated Masters by coursework programs to be considered for approval for student payments. The amendments made by the Amendment Determination reflect the outcome of the second round of applications considered in 2024. Further information on the assessment process can be found on the department's website at:

<https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/student-payments/approved-institutions-and-courses-for-student-payments>.

These amendments will enable students studying the new approved Masters level courses to qualify for student payments under the social security law, that is, youth allowance (student), austudy payment and pensioner education supplement, provided they meet the other eligibility criteria for those payments.

Masters level courses are removed at the request of the higher education provider or through a reassessment of the course at the request of the higher education provider. In these cases, higher education providers have advised the department that there are no students enrolled in these courses.

Commencement

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

Authority

The Amendment Determination is made under subsection 5D(1) of the Act.

Disallowable instrument

Subsection 5D(3) of the Act provides that a determination under subsection 5D(1) is a legislative instrument.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Consultation

On 1 August 2024, the department invited higher education providers, referred by the Department of Education, to submit their courses for assessment. Guidelines for the approval of Masters by coursework courses for inclusion in the Determination are available on the department's website at: <https://www.dss.gov.au/families-and-children-benefits-payments-student-payments/guidelines-for-approval-of-masters-courses-for-student-payments>.

Where a higher education provider sought inclusion of their Masters course in the Determination, the department will advise the provider of the outcome of the assessment process.

The department consulted with Services Australia on the intention to make the Amendment Determination, given the impact on student payment recipients. Services Australia did not raise any concerns.

The department did not consult with student payment recipients on the intention to make the Amendment Determination, as it is beneficial to students with more Masters courses being included, and no students adversely affected by courses being removed.

Impact Analysis

The Amendment Determination does not require an Impact Analysis. The Office of Impact Analysis has reviewed the legislative impact of amendments made through the Masters by Coursework program and has provided a standing exemption for this program as regulatory changes are minor and likely to occur on a regular basis (Ref: OIA23-05989).

Availability of 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 *Social Security (Administration) Act 1999* (Administration Act). Such decisions will include those based on the approved courses in the Determination.

If a higher education provider disagrees with the outcome of their application for approval of a course, they may appeal the decision by writing to the Minister, and provide any additional information to support their appeal. Higher education providers may resubmit courses currently undergoing the accreditation process for assessment in a future round, once accreditation has been granted.

Information sharing

Information about a student that is collected by an officer for the purposes of youth allowance (student), austudy payment and pensioner education supplement, will have the character of protected information under the social security law.

The 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.

Explanation of the provisions

Section 1 provides that the name of the Amendment Determination is the *Student Assistance (Education Institutions and Courses) Amendment (Masters by Coursework) Determination 2024*.

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

Section 3 provides that the Amendment Determination is made under subsection 5D(1) of the Act.

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 Amendment Determination, the Minister is relying on this subsection in conjunction with the instrument-making power in 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 to the Amendment Determination sets out the amendments to the Determination.

Item 1 inserts “Master of Dietetic Practice” as a new course at the Australian Catholic University in item 2 of the table in Schedule 3, after “Master of Clinical Exercise Physiology”.

Item 2 inserts “Master of Clinical Audiology” as a new course at Charles Darwin University in item 11 of the table in Schedule 3, before “Master of Dietetics”.

Item 3 inserts “Master of Psychological Practice (with specialisations)” as a new course at Charles Sturt University in item 12 of the table in Schedule 3, after “Master of Professional Psychology”.

Item 4 removes the reference to “Master of Teaching English to Speakers of Other Languages” as a course at Charles Sturt University at item 12 of the table in Schedule 3.

Item 5 inserts “Master of Social Work (Qualifying)” as a new course at Edith Cowan University in item 17 of the table in Schedule 3, after “Master of Screen Studies”.

Item 6 removes “Master of Dentistry” as a course at La Trobe University in item 29 of the table in Schedule 3.

Item 7 inserts a new item 29A in the table in Schedule 3, following item 29. New item 29A provides that “Master of Professional Accounting” is an approved course at Le Cordon Bleu Australia.

Item 8 removes the references to “Master of Biotechnology and Business”, “Master of Geoscience”, “Master of Information Technology” and “Master of Radiopharmaceutical Science” as courses at Macquarie University at item 30 of the table in Schedule 3.

Item 9 inserts “Master of Paramedicine” as a course at the University of Notre Dame in item 52 of the table in Schedule 3, after “Master of Counselling”.

Item 10 inserts “Master of Social Work (Qualifying)” as a new course at the University of Notre Dame in item 52 of the table in Schedule 3, after “Master of Secondary Teaching”.

Item 11 inserts “Master of Occupational Therapy” as a new course at the University of Tasmania in item 57 of the table in Schedule 3, after “Master of Marine and Antarctic Science”.

Item 12 inserts “Master of Clinical Exercise Physiology” as a new course at the University of Technology, Sydney in item 58 of the table in Schedule 3, after “Master of Architecture”.

Item 13 removes the reference to “Master of Nurse Practitioner” as a course at the University of Technology, Sydney in item 58 of the table in Schedule 3.

Item 14 inserts “Master of Teaching in Primary Education” as a course at the University of Technology, Sydney in item 58 of the table in Schedule 3, after “Master of Strategic Supply Chain Management”.

Item 15 inserts “Master of Clinical Neuropsychology” as a new course at the University of Western Australia in item 60 of the table in Schedule 3, after “Master of Clinical Exercise Psychology”.

Item 16 inserts “Master of Clinical Psychology” as a new course at the University of Western Australia in item 60 of the table in Schedule 3, after “Master of Clinical Pathology”.

Item 17 inserts “Master of Dietetics” as a course at Victoria University in item 62 of the table in Schedule 3, after “Master of Counselling”.

Item 18 inserts “Master of Speech Pathology” as a new course at Victoria University in item 62 of the table in Schedule 3, after “Master of Professional Psychology”.

Item 19 inserts “Master of Architecture (Urban Transformation)” as a new course at Western Sydney University in item 63 of the table in Schedule 3, after “Master of Accountancy”.

Item 20 inserts “Master of Teaching Early Childhood and Primary” as a new course at Western Sydney University in item 63 of the table in Schedule 3, after “Master of Teaching (Birth – 5 years, Birth – 12 years)”.

Statement of Compatibility with Human Rights

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

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The *Student Assistance (Education Institutions and Courses) Amendment (Masters by Coursework) Determination 2024* (the Amendment Determination) 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 Amendment Determination amends the *Student Assistance (Education Institutions and Courses) Determination 2019* (the Determination) to update the list of approved Masters courses in the table in Schedule 3 to the Determination. These tertiary course requirements are determined for the purposes of the *Student Assistance Act 1973* (the Act) and are relevant to a student's qualification for student payments.

Human rights implications

The Amendment Determination engages the following human rights:

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). Article 13 recognises the important personal, societal, economic and intellectual benefits of education. Article 13 also provides the secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

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

Right to Social Security

The Amendment Determination engages 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 *Social Security Act 1991* 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 student payments, a student must meet specified criteria, including in relation to their course of study, study load and study progress.

A student undertaking a course specified in the Determination may be able to qualify for student payments under the social security law, that is, youth allowance (student), austudy payment and pensioner education supplement, provided they meet the other eligibility criteria for those payments.

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

Conclusion

The Amendment Determination is compatible with human rights as it promotes and supports 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