

**Commonwealth of Australia**

***Student Assistance Act 1973***

**DETERMINATION OF EDUCATION INSTITUTIONS AND COURSES**

**UNDER SUBSECTIONS 3(1) AND 5D(1)**

**OF THE *STUDENT ASSISTANCE ACT 1973***

**Determination No. 2002/1**

I, BRENDAN NELSON, Minister for Education, Science and Training make the following Determination under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*.

**Dated 17 October 2002**

(Signed)

**BRENDAN NELSON**

Minister for Education, Science and Training

**Citation**

1. This Determination may be cited as Determination No. 2002/1 - Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*.

**Commencement**

2. This Determination shall commence on January 1 2003.

**Repeal**

3. The *Student Assistance Act 1973* Determination No 1999/2, entitled "Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*" and made on 26 November 1999, is repealed.

## Interpretation

4. In this Determination, unless the contrary intention appears:

**“accredited higher education course”** means a course that is:

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

**“accredited secondary course”** means a course accredited as a secondary course by the State or Territory authority responsible for the accreditation of secondary courses in the State or Territory in which the course is conducted;

**“accredited vocational education and training course”** means a course accredited as a vocational education and training course by:

- (a) the authority responsible for the accreditation of vocational education and training courses in the State or Territory in which the course is conducted; or
- (b) if the State or Territory in which the course is conducted recognises the accreditation of vocational education and training courses in another State or Territory – the authority responsible for the accreditation of vocational education and training courses in that other State or Territory;

**“Act”** means the *Student Assistance Act 1973*;

**“AQF”** means the Australian Qualifications Framework guidelines;

**“AQTF”** means the Australian Quality Training Framework;

**“education institution”** has the same meaning as in paragraph 5 of this Determination;

**“endorsed training package”** means a training package listed on the National Training Information Service of the Australian National Training Authority;

**“ESL course”** means a course of instruction in English as a second language;

**“higher education institution”** has the same meaning as in paragraph 5 of this Determination;

**“Masters qualifying course”** means a bridging course which gives participants the qualifications necessary for entry into a Masters degree course, but does not include any course which forms part of a Masters degree course;

**“NBCOTP”** means the National Office of Overseas Skills Recognition Bridging Course for the Overseas Trained Programme;

**“New Apprenticeships Access programme”** means a vocational education and training programme funded by the Department of Education, Science and Training under the New Apprenticeships Access Programme;

**“preparatory course”** means

- (a) an accredited vocational education and training course that provides remedial education or involves preparatory activities to enable participation in subsequent education or social settings, and is of a type that aims to achieve basic skills and standards or to prepare students for further education (including courses previously known as Stream 2000 courses); or
- (b) a preparatory course for higher education that is a programme offered by a higher education institution that is designed to assist people to gain entry to higher education level courses (including enabling and bridging courses);

**“pre-vocational course”** means a programme designed to assist people to gain entry to a specific related accredited vocational education and training programme or a New Apprenticeship, and includes a New Apprenticeships Access Programme;

**“registered training organisation”** has the same meaning as in paragraph 5 of this Determination;

**“secondary school”** has the same meaning as in paragraph 5 of this Determination;

**“special school”** has the same meaning as in paragraph 5 of this Determination;

**“vocational education and training programme”** means:

- (a) an accredited vocational education and training course; or
- (b) a sequence of training consisting of one or more subjects or modules where each subject or module is from an accredited vocational education and training course. or
- (c) a structured approach to the development and attainment of competencies for a particular AQF qualification specified in an endorsed training package.

4.

### **Education institutions**

5. (1) For the purposes of the Act, the following are regarded as education institutions:
- (a) a “**higher education institution**”, being an institution that is established under Commonwealth or State or Territory government legislation as a higher education institution or is registered by the relevant State or Territory higher education recognition authority;
  - (b) a “**secondary school**”, being an institution located in Australia that is:
    - (i) a government secondary school; or
    - (ii) a non-government secondary school that is recognised as a secondary school under the law of a State or Territory in which the school is located.
- (2) For the purposes of the Act, the following institutions, authorities or bodies are to be regarded as education institutions:
- (a) a “**registered training organisation**”, being an organisation that is registered by the relevant State or Territory training recognition authority in accordance with the Australian Quality Training Framework to provide one or more vocational education and training programmes;
  - (b) a “**special school**”, being an institution located in Australia that is conducted primarily for students with a disability and is:
    - (i) a government school; or
    - (ii) a non-government school that is recognised as a school under the law of a State or Territory in which the school is located.

### **Secondary Courses**

6. (1) For the purposes of the Act, a course specified in Column 1 of Schedule 1 and conducted by an education institution specified for that course in Column 2 of Schedule 1 is a secondary course.

### **Tertiary Courses**

7. (1) For the purposes of the Act, a course specified in Column 1 of Schedule 2 and conducted by an education institution specified for that course in Column 2 of Schedule 2 is a tertiary course.

(2) For the purposes of the Act, no course accredited at Masters or Doctoral level offered by a higher education institution is a tertiary course unless expressly specified in Schedule 2.

**SCHEDULE 1 - SECONDARY COURSES**

| <b>Column 1 – Course</b>   | <b>Column 2 - Education institution</b>  |
|--|--|
| Accredited secondary course  | Secondary school<br>Registered training organisation<br>Higher education institution<br>Special school |
| ESL course   | Secondary school<br>Special school   |
| Preparatory course   | Secondary school<br>Registered training organisation<br>Higher education institution<br>Special school |
| A course leading to an accredited secondary course qualification involving accredited secondary and accredited vocational education and training course subjects | Secondary school<br>Registered training organisation<br>Higher education institution                   |
| School-based apprenticeship or traineeship   | Secondary school   |

**SCHEDULE 2 - TERTIARY COURSES**

| <b>Column 1 - Course</b>  | <b>Column 2 - Education institution</b>  |
|---|--|
| Pre -vocational course  | Registered training organisation   |
| ESL course  | Registered training organisation<br><br>Higher education institution<br><br>Any other body approved by the relevant State or Territory authority to conduct the course |
| A vocational education and training programme that is not a secondary course specified in Schedule 1.   | Higher education institution<br><br>Registered training organisation   |
| Combined course – Vocational education and training, consisting of two or more separate vocational education and training programmes undertaken concurrently and each of which leads to the award of a qualification or statement of attainment   | Higher education institution<br><br>Registered training organisation   |
| Undergraduate or postgraduate accredited higher education course which is at the level of: <ul style="list-style-type: none"> <li>• associate degree;</li> <li>• associate diploma;</li> <li>• diploma;</li> <li>• advanced diploma;</li> <li>• Bachelor degree;</li> <li>• graduate degree;</li> <li>• graduate certificate;</li> <li>• graduate diploma;</li> <li>• NBCOTP funded course;</li> <li>• Master’s qualifying course; or</li> <li>• a combined course which leads to two of these awards,</li> <li>• and is classified as such in the institution’s handbook and is <u>not</u>: a secondary course specified in Schedule 1; or</li> <li>• a course at the level of a Masters or Doctoral degree unless otherwise specified in Schedule 2.</li> </ul> | Higher education institution<br><br>Registered training organisation   |

**SCHEDULE 2 - TERTIARY COURSES (continued)**

| <b>Column 1 - Course</b>   | <b>Column 2 - Education institution</b>  |
|--|--|
| Open Learning - a programme of assessment based study provided through the Open Learning Agency, Melbourne   | Higher education institution participating in the Open Learning programme<br><br>Registered training organisation participating in the Open Learning programme |
| Combined course – Higher education and vocational education and training, consisting of concurrent study in an accredited higher education course and a vocational education and training programme leading to the award of a separate qualification at each institution and that is classified in each institution's handbook as a combined course  | Higher education institution<br><br>Registered training organisation   |
| Integrated undergraduate/postgraduate course leading to a Masters degree, excluding that year or years of the integrated course in excess of the normal full-time duration of the related undergraduate accredited higher education course or related undergraduate and postgraduate accredited higher education courses that are not at the Masters level. (That is, excluding the year or years relating to study at the Masters level). | Higher education institution   |

## **EXPLANATORY STATEMENT**

Subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*

### **Determination of Education Institutions and Courses under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973***

#### **Determination No. 2002/1**

Issued by the authority of the Minister for Education, Science and Training

#### **Reason for the Determination**

Subsections 3(1) and 5D(1) of the *Student Assistance Act 1973* have the effect of providing that the Minister may determine what is an approved education institution and an approved course for the purposes of the Act.

Since 1 July 1998 the *Social Security Act 1991* has required that, to qualify for Youth Allowance payments to students, Austudy payments or the Pensioner Education Supplement, 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*.

Since 1 July 2000, the *A New Tax System (Goods and Services Tax) Act 1999* has provided that a supply of secondary and tertiary courses, as determined by the Minister under the *Student Assistance Act 1973*, will be GST-free.

This Determination does not change the coverage of education institutions or courses provided by Determination 1999/2. Some wording has been amended to clarify this coverage and to address changes in terminology in the education sectors since the last review in 1999 (Determination 1999/2).

It has been necessary to clarify the definition of "vocational education and training programme". The definition in the 1999/2 Determination was open to an interpretation which was not intended by the underlying legislative policy. As a result payments had been made to persons undertaking "vocational education and training programmes" that included subjects or modules that were not from an accredited vocational education and training course.

In light of that it is necessary to amend the definition to ensure that payments are made to persons undertaking vocational education and training programmes that included all subjects and modules from an accredited vocational education and training course. Any students who were receiving Youth Allowance or Austudy based on an unintended interpretation of the 1999/2 Determination will no longer be eligible.

However, as unaccredited vocational education and training courses are typically of short duration, it is expected that these students will have completed their courses by 1 January 2003 when the new Determination takes effect.

## **Reason for Tabling the Determination of Education Institutions and Courses**

Subsections 3(2A) and 5D(3) of the *Student Assistance Act 1973* provide that Ministerial Determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901* and therefore must be gazetted and tabled in the Parliament.

## **The Determination of Education Institutions and Courses**

Determination 2002/1 will revoke Determination 1999/2 made on 26 November 1999, will commence on 1 January 2003 and shall remain in force until revoked.

Determination 2002/1 describes the types of education institutions, and secondary and tertiary courses provided by these institutions, that are approved for the purposes of the *Student Assistance Act 1973*. Through reference to the Determination, the *Social Security Act 1991* identifies these courses as secondary and tertiary courses approved for the purposes of payments to students. Also through reference to the Determination, the *A New Tax System (Goods and Services Tax) Act 1999* identifies these courses as secondary and tertiary courses, the provision of which is GST-free.

NOTE: This Determination was gazetted on Wednesday, 6 November 2002 in Government Notices No. GN 44, pages 2966 to 2974.