EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education and the Minister for Innovation, Industry, Science and Research

Specification of Higher Education Institutions, Research Institutions and Vocational Education and Training Providers No. 2 of 2009

Authority

Section 4 of the Nation-building Funds Act 2008 (the Act) provides that the definitions of higher education institution and research institution means an institution specified in a legislative instrument made by the EIF designated Ministers for the purposes of these respective definitions.

Section 4 of the Act provides that the definition of vocational education and training provider means a person or body specified in a legislative instrument made by the EIF designated Ministers for the purposes of this definition.

Section 4 of the Act defines the EIF designated Ministers to mean the Education Minister and the Research Minister. Section 4 of the Act defines Education Minister as the Minister who administers Part 2-2 of the Higher Education Support Act 2003 and Research Minister as the Minister who administers the Australian Research Council Act 2001.

The Administrative Arrangements Order made by the Governor-General on 1 May 2008 provides that the Minister for Education is responsible for administering the Higher Education Support Act 2003 (HESA), and that the Minister for Innovation, Industry, Science and Research is responsible for administering the Australian Research Council Act 2001. As such, this Determination is jointly issued by both Ministers.

This instrument has been issued jointly by the Education Minister and the Research Minister because the definitions of higher education institution, research institution and vocational education and training provider in section 4 of the Act require that the EIF designated Ministers specify these definitions.

Pursuant to section 4 of the Act, such definitions are to be specified in a legislative instrument.

Purpose

Pursuant to the definitions of the terms higher education institutions, research institutions and vocational education and training providers under section 4 of the Act, the purpose of this Instrument is to:

1. revoke the definitions made by the Specification of Higher Education Institutions, Research Institutions and Vocational Education and Training Providers No. 1 of 2009, dated 13 February 2009 (the Former Instrument); and
2. specify new definitions for these terms.
Background

To be eligible for funding under the Act, an applicant must satisfy one of the definitions of either a higher education institution, research institution or a vocational education and training provider under section 4 of the Act. The Former Instrument specified these definitions.

This Instrument makes some minor amendments to some of the definitions specified in the Former Instrument.

In particular, the new definition of research institution seeks to clarify the potential eligibility of state and territory government agencies and departments and to remove the automatic eligibility for self-accrediting and non self-accrediting higher education providers. There are around 200 listed organisations covering a very wide range of bodies, none of which have applied for EIF research infrastructure funding to date. This change will not make these organisations ineligible to apply. It will, however, require them to demonstrate that they satisfy one of the remaining definitions of eligible applicants: namely, universities, publicly funded research agencies or Australian organisations primarily involved in undertaking research or research related activities where a significant public benefit can be demonstrated.

This Instrument does not amend the definitions of higher education institution and vocational education and training provider made by the Former Instrument.

Explanation of provisions

Higher Education Institutions

Section 1.1.1 defines the term higher education institution to mean all Table A, Table B and Table C providers under the Higher Education Support Act 2003 (HESA) and all self-accrediting and non self-accrediting entities under the HESA.

Research Institutions

Section 1.1.2 defines the term research institution to mean all:
1. Table A, Table B and Table C providers under the HESA;
2. Publicly-Funded Research Agencies established by a Commonwealth Act of Parliament; and
3. Australian organisations primarily involved in undertaking research or research related activities where a significant Australian public benefit can be demonstrated. State or territory government agencies whose primary function is research may be eligible to apply. State or territory government departments would not be considered to be organisations whose primary function is research.

Vocational Education and Training Providers

Section 1.1.3 defines the term vocational education and training provider to mean all Registered Training Organisations (RTO) as defined in section 3 of the Skilling Australia’s Workforce Act 2005, excluding any school in a State that provides a level of secondary education, where the terms ‘school’, 'State' and 'secondary education' are as defined in section 4 of the Schools Assistance Act 2008.

Consultation
As this Instrument does not make changes to the definitions of higher education institution and vocational education provider the eligibility requirements for these applicants remain unchanged. Therefore specific consultation was not considered appropriate. Over the course of more general information sessions with stakeholders, no issues relating to higher education institution or vocational education and training provider eligibility requirements were raised.

The changes to the definition of research institution have been made following consultation undertaken by the Department of Innovation, Industry, Science and Research with the states and territories as well as research institutions.

**Commencement**

This Instrument takes effect on the day after the day on which it is registered on the Federal Register of Legislative Instruments.