EXPLANATORY STATEMENT

Determination made under section 46-40 of the Higher Education Support Act 2003

Issued by the authority of the Minister for Education and Training and the Minister for Indigenous Affairs

Subject: Higher Education Support Act 2003
Higher Education Support (Maximum Payments for Commonwealth Scholarships) Amendment Determination 2015 (No.1)

Authority
Subsections 46-40(2), (3) and (4) of the Higher Education Support Act 2003 (the Act) provide that the Minister may, by legislative instrument, determine the total payments made under Part 2-4 in respect of a year starting on or after 1 January 2013 but before 1 January 2017 and the Minister must determine, by legislative instrument, the total payments made under that Part in respect of a year starting on or after 1 January 2017 before the start of that year.

The Higher Education Support (Maximum Payments for Commonwealth Scholarships) Amendment Determination 2015 (No.1) varies the previous determination, the Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2015 (F2015L00057). Subsection 46-40(5) of the Act provides that the Minister may, in writing, vary a determination under subsection (2) or (3) for a year at any time before the end of that year. 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.

Purpose
The determination:
• updates the maximum amounts of all payments for Commonwealth Scholarships for the 2015 to 2018 calendar years; and
• sets out the maximum amount of all payments for Commonwealth Scholarships for the 2019 calendar year.

The amounts determined for 2016 to 2019 are expressed with the 2016 indexation factor applied. The indexation factors for 2017 to 2019 are yet to be determined. The amount for 2015 includes an efficiency dividend of 1.25 per cent.

Consultation
In accordance with paragraph 18(2)(c) of the Legislative Instruments Act 2003 (LIA), consultation was not undertaken as the determination gives effect to the Government’s decisions in the 2015-16 Budget.

Commencement
The determination is a Legislative Instrument under the LIA. The instrument takes effect the day after it is registered on the Federal Register of Legislative Instruments.
Amendment
Statement of Compatibility with Human Rights

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

Higher Education Support (Maximum Payments for Commonwealth Scholarships) Amendment Determination 2015 (No.1)

This Legislative Instrument is compatible with 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

Subsections 46-40(2), (3) and (4) of the Higher Education Support Act 2003 (the Act) provides that, the Minister may, by legislative instrument, determine the total payments made under Part 2-4 in respect of a year starting on or after 1 January 2013 but before 1 January 2017 and the Minister must determine, by legislative instrument, the total payments made under that Part in respect of a year starting on or after 1 January 2017 before the start of that year. Subsection 46-40(5) of the Act provides that the Minister may, in writing, vary a determination under subsection (2) or (3) for a year at any time before the end of that year.

The Higher Education Support (Maximum Payments for Commonwealth Scholarships) Amendment Determination 2015 (No.1) (the determination) varies the Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2015 to set out revised maximum amounts of all grants for Commonwealth Scholarships for the 2015 to 2016 calendar years, and set out the maximum amount of all payments for Commonwealth Scholarships for the 2019 calendar year.

Human Rights implications

Right to Education

The determination engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

The Minister has the power to determine maximum amounts payable for Commonwealth Scholarships for the 2015 to 2016 calendar years that differ from those already prescribed in the table in subsection 46-40(1) of the Act. The Minister is required to determine the maximum amounts payable for the 2017 to 2019 calendar years. By doing so, the determination will support the payment of the Commonwealth Scholarships in accordance with the table in subsection 46-40(1) of the Act. As the purposes of the Commonwealth Scholarships include the payment of scholarships to students either directly, indirectly or for post graduate research scholarships, the determination enables access to education and therefore is compatible with human rights. The maximum amounts are capped having regard to reasonable, necessary and proportionate constraints on spending.

To the extent that the right to education is engaged, this right is promoted by the determination as the determination aims to improve the integrity of the higher education sector.
Conclusion

This Legislative Instrument enables access to education and is compatible with human rights.

The Hon Christopher Pyne MP, Minister for Education and Training
Senator the Hon Nigel Scullion, Minister for Indigenous Affairs