EXPLANATORY STATEMENT

Variation of a determination under subsection 41-45(1D) of the Higher Education Support Act 2003

Issued by the authority of the Minister for Education and Training

Subject: Higher Education Support Act 2003 (Act)

Higher Education Support (Maximum Payments for Other Grants) Determination (Amendment) 2017

Authority

Subsection 41-45(1D) of the Act provides that the Minister may, in writing, vary a determination made under subsections 41-45(1A) or (1B) of the Act, for a year, at any time before the end of that year.

Subsection 33(3) of the Acts Interpretation Act 1901, provides that 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 Higher Education Support (Maximum Payments for Other Grants) Determination (Amendment) 2017 (Amendment Determination):

- varies the Higher Education Support (Maximum Payments for Other Grants) Determination 2016 (2016 Determination);
- increases the maximum total payments for Other Grants by bringing forward grant payment amounts allocated in the 2017-2018 budget for 2018 calendar year to the 2017 calendar year. The funds are required earlier to provide the Australian Mathematical Sciences Institute (AMSI) with sufficient funds to achieve the target of 1400 new industry based PhD internships over 4 years and greater engagement between universities and industry at a national scale; and
- sets out the maximum total payment to be made under Part 2-3 for Other Grants for the 2017 calendar year.

Under subsection 41-45(1B) of the Act, the Minister must, by legislative instrument, determine the total payments made under Part 2-3 of the Act, in respect of a year starting on or after 1 January 2017. The 2016 Determination specifies, for the purposes of subsection 41-45(1B) of the Act, an amount in respect of the year 2017.

Subsection 41-45(1D) of the Act allows the Minister, in writing, to vary a determination made under subsections 41-45(1A) and (1B) of the Act for a year, at any time before the end of that year.

The Amendment Determination varies the 2016 Determination made under subsection 41-45(1B) of the Act for the year 2017 by increasing that amount.

Consultation

No consultation was undertaken on the Amendment Determination as it does not create new commitments, but implements Government decisions announced in the 2016–17 Budget.

Commencement

The Amendment Determination takes effect the day after it is registered on the Federal Register of Legislation.
**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 Other Grants) Determination (Amendment) 2017**

This _Higher Education Support (Maximum Payments for Other Grants) Determination (Amendment) 2017_ (Amendment Determination) 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 Determination**

Under subsection 41-45(1B) of the Act, the Minister must, by legislative instrument, determine the total payments made under Part 2-3 of the Act, in respect of a year starting on or after 1 January 2017. The _Higher Education Support (Maximum Payments for Other Grants) Determination 2016_ (2016 Determination) specifies, for the purposes of subsection 41-45(1B) of the Act, an amount in respect of the year 2017.

Subsection 41-45(1D) of the Act allows the Minister, in writing, to vary a determination made under subsections 41-45(1A) and (1B) of the Act for a year, at any time before the end of that year.

The Amendment Determination varies the determination made under subsection 41-45(1B) of the Act for the year 2017 by increasing that amount. The Amendment Determination:

- varies the 2016 Determination, and
- sets out the maximum total payments to be made under Part 2-3 for Other Grants for the 2017 calendar year.

Subsection 33(3) of the _Acts Interpretation Act 1901_, provides that 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.

**Human rights implications**

**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. By varying the 2016 Determination for the year 2017, the Amendment Determination will support the payments of the Other Grants for the purposes specified in the table in section 41-10 of the Act. As the purposes of the Other Grants include the promotion of equality of opportunity in higher education, the support of diversity and structural reform and the support of the training of research students (amongst other purposes) the Amendment Determination enables access to education and therefore is compatible with human rights and the right to education.

**Conclusion**

The Amendment Determination is compatible with human rights because it provides clarity of funding for programs that support access and equality in higher education.

_Senator the Hon Simon Birmingham, Minister for Education and Training_