

EXPLANATORY STATEMENT

Guidelines issued under section 238-10 of the Higher Education Support Act 2003

Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020

Authority

The Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003* (Act). The Amendment Instrument amends the Commonwealth Scholarships Guidelines (Research) 2017 that was made for the purposes of section 46-20 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01602) (Commonwealth Scholarships Guidelines).

Section 238-10 of the Act provides that the Minister may make guidelines providing for matters required or permitted by the Act or necessary or convenient to be provided in order to carry out or give effect to the Act. Item 3 of the table in subsection 238-10(1) of the Act provides that the Minister may make Commonwealth Scholarships Guidelines permitted under Part 2-4 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.

Purpose

The purpose of this legislative instrument is to: amend the Commonwealth Scholarships Guidelines to:

- extend the current Research Training Program (RTP) funding allocation transitional arrangements for higher education providers (HEPs) by 12 months to 31 December 2021 and;
- provide for extensions of up to six months in the maximum period of support for RTP scholarships for higher degree by research (HDR) students materially adversely impacted by COVID-19.

Commencement

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

Availability of merits review

Merits review is unnecessary, as the purpose of this instrument is to extending transitional arrangements HEPs and provide greater flexibility for HEPs to support RTP students. The basis, specified in new paragraph 1.6.6, on which a HEP may approve an extension to the

period of support for RTP scholarships for HDR students specified in paragraph 1.6.5 of the Guideline involves a fair and transparent deliberative process and the criteria for the extension are clearly stipulated, readily ascertainable and capable of objective determination.

Consultation

Changes made through this Amendment Instrument were requested by a range of higher education stakeholders to support HEPs and HDR students during the COVID-19 pandemic. This includes Universities Australia, the Australian Council of Graduate Research and the Council of Australian Postgraduate Associations.

Regulatory Impact Statement

Due to the urgent and unforeseen events related to the spread of COVID-19, the Prime Minister, the Hon Scott Morrison MP, has granted an exemption from the need to complete regulatory impact analysis in the form of Regulation Impact Statements for all urgent and unforeseen Australian Government measures made in response to COVID-19.

Explanation of the provisions

Section 1 provides that the name of the Amendment Instrument is the *Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020*.

Section 2 provides for the commencement of the Amendment Instrument. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 states that the Amendment Instrument is made under section 238-10 of the Act.

Section 4 provides that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the Schedule.

Schedule 1 – Amendments

Item 1:

Amends the following definitions in section i.v (Interpretation) of Chapter i (Introduction):

- The definition for ‘the department’ has been updated to mean the Commonwealth department responsible for administering part 2-3 of the Act; and
- The definition for ‘the Minister’ has been updated to mean the Minister responsible for administering part 2-3 of the Act.

Item 2:

Amends paragraph 1.4.15 to specify that the formula determining each HEP’s RTP grant amount for the years 2017 – 2020 will also be applied to calculate each HEP’s RTP grant amount for 2021. This will provide HEPs with greater certainty in their RTP allocations as they seek to recover from the impacts of COVID-19.

Item 3:

Repeals the existing paragraph 1.4.20 and replaces it with a new paragraph 1.4.20, which specifies that, subject to any adjustment that may be made under paragraph 1.4.30, for the 2022 and future grant years each HEP's research support program grant amount is calculated in accordance with paragraph 1.4.5. This will delay the commencement of RTP funding allocations without transition arrangements for HEP's by 12 months..

Item 4:

Inserts a new paragraph 1.6.6, which specifies that a HEP may approve an extension of up to six months to the Period of Support specified in paragraph 1.6.5 in certain circumstances. This will ensure that students that have been delayed in their research by COVID-19 restrictions can receive additional time to complete their course.

Item 5:

Inserts a new subparagraph 1.6.45(12), to specify that each HEP's RTP scholarship policy must specifically identify, amongst the items specified in subparagraphs (1) to (11), provisions that identify the circumstances and procedures in which a HEP will grant a COVID-19 extension in relation to paragraph 1.6.6. This will ensure HEPs have transparent guidance and processes in place for students and administrators.

Statement of Compatibility with Human Rights

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

Commonwealth Scholarships Guidelines (Research) Amendment (No.1) 2020

This Amendment 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 Amendment Instrument

The Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003 (Act)*.

The Amendment Instrument amends the *Commonwealth Scholarships Guidelines (Research) 2017* that was made for the purposes of section 46-20 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01602) (Commonwealth Scholarships Guidelines).

The Commonwealth Scholarships Guidelines provide for the classes of Commonwealth scholarships described under section 46-10 of the Act. This includes the Research Training Program (RTP). Grants are made for these Commonwealth scholarships to eligible Australian higher education providers (HEP) which allocate the scholarships to students.

Human Rights implications

The Amendment Instrument engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the right to enjoy the benefits of scientific progress and its applications – Article 15 of the ICESCR

Right to education

The Amendment Instrument engages the right to education contained in Article 13 of the ICESCR. The right to education recognises the important personal, societal, economic and intellectual benefits of education.

Article 13(2) of the ICESCR requires that higher education should be equally accessible on the basis of merit, and should be made generally accessible to all. Guaranteeing equal access to education requires states parties, amongst other initiatives, to remove economic barriers to education, including the establishment of an adequate fellowship system at all levels.

Fellowship or scholarship schemes are integral to the furtherance of the economic accessibility inherent to the progression of the right to education. By providing for RTP funding allocation transitional arrangements and extensions to the RTP scholarships for HDR students in light of the COVID-19 pandemic, the Amendment Instrument ensures that HEPs can effectively support existing research and training programs and adequately support the needs and interests of HDR students receiving scholarships.

More broadly, the Amendment Instrument promotes the right to pursue, develop and transmit knowledge and ideas through research, teaching and discussion. Further, the Commonwealth Scholarships program under the *Higher Education Support Act 2003*, which this Amendment Instrument supports and underpins, promotes the right to education by extending the reach and operation of the program by transitionally extending RTP funding allocation arrangements for HEPs and support for RTP scholarships for HDR students adversely impacted by COVID-19.

The Amendment Instrument supports a high quality research training environment by providing research students with support to undertake research training without paying tuition fees. In addition, the Amendment Instrument provides access on a competitive basis to living allowance stipends which further enhance the capacity of students to engage effectively with their research training.

The Amendment Instrument is compatible with the right to education.

Right to enjoy the benefits of scientific progress and its applications

The Amendment Instrument engages the right to enjoy the benefits of scientific progress and its applications contained in Article 15 of the ICESCR. In the progressive realisation of this right, states parties must engage in positive measures to ensure access to the benefits of science and its application, including the development and promotion of scientific and research knowledge, enhance opportunities to contribute to, and participate in, the scientific enterprise and scientific research and support an enabling research environment which fosters the development and diffusion of science and its applications.

By supporting the research endeavours of HDR students, the Amendment Instrument promotes improving access to scientific research facilities and its applications as an important step towards ensuring this right can be enjoyed by all Australians.

The Amendment Instrument supports the continuation of a high quality research training environment for Australia's higher education sector. This environment allows research students to strengthen Australia's knowledge base, and enhances the contribution of Australia's research capabilities to national economic development, international competitiveness and the attainment of social goals.

Conclusion

This Amendment Instrument is compatible with human rights because it advances the protection of human rights.

Dan Tehan

Minister for Education