

EXPLANATORY STATEMENT

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

Other Grants Guidelines (Education) Amendment (Eligibility of Table B Providers) 2020

Authority

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines providing for matters required or permitted by the Act. In particular item 8 of the table in subsection 238-10(1) specifies the Minister may make Other Grants Guidelines to give effect to matters under Part 2-3 of the Act in relation to making “other grants”.

Purpose and background

The purpose of the *Other Grants Guidelines (Education) Amendment (Eligibility of Table B Providers) 2020* (the Amendment Instrument) is to specify Table B providers (as set out in section 16-20 of the Act) for the purposes of receiving grants to promote equality of opportunity in higher education under Part 2-3 of the Act (noting Table A providers can already receive grants for that purpose).

Part 2-3 of the Act allows for Grants to be paid to higher education providers and eligible bodies corporate for a variety of purposes listed in the table in subsection 41-10(1) of the Act. The *Higher Education Support Amendment (Job- Ready Graduates and Supporting Regional and Remote Students) Act 2020* made an amendment (item 6 in Part 2 of Schedule 3 to that Act) to ensure that Table A providers and bodies corporate that are specified in the Other Grants Guidelines are able to receive grants for the specific purpose of promoting equality of opportunity in higher education, including to ensure the equality of opportunity for students in rural and remote areas.

The amendment is intended, in particular, to ensure that Table B providers can receive grants related to the Tertiary Access Payment initiative (see <https://www.dese.gov.au/tertiary-access-payment>). The amendment, by specifying Table B providers as eligible for grants for the purposes described in item 1 of the table in section 41-10 of the Act, will also ensure that Table B providers can receive grants under Part 2-3 of the Act for the purposes of other initiatives that promote equality of opportunity in education in the future.

Commencement

The Amendment Instrument takes effect from 1 January 2021, which is the same day that Schedule 3, Part 2 of the *Higher Education Support Amendment (Job- Ready Graduates and Supporting Regional and Remote Students) Act 2020* commences.

Consultation

The Tertiary Access Payment (see <https://www.dese.gov.au/tertiary-access-payment>) is part of the Job-ready Graduates package and the Government response to the *National Regional, Rural and Remote Tertiary Education Strategy* (Naphthine Review), aimed at helping students with the costs of relocating to undertake tertiary study.

The consultation that was undertaken as part of the Job-ready Graduates package was described in the Explanatory Memorandum to the Higher Education Support Amendment (Job- Ready Graduates and Supporting Regional and Remote Students) Bill 2020 (available here: <https://www.legislation.gov.au/Details/C2020B00096/Explanatory%20Memorandum/Text>). The Tertiary Access Payment was also discussed in *the Job-ready Graduates Discussion Paper*, which was released by the Department of Education, Skills and Employment for public consultation (available here: <https://www.dese.gov.au/job-ready/resources/job-ready-graduated-discussion-paper>).

Explanation of provisions

Section 1 sets out the name of the Amendment Instrument as the *Other Grants Guidelines (Education) Amendment (Eligibility of Table B Providers) 2020*.

Section 2 provides that the Amendment Instrument will commence on 1 January 2021 to align with the commencement of Schedule 3, Part 2 of the *Higher Education Support Amendment (Job- Ready Graduates and Supporting Regional and Remote Students) Act 2020*.

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

Section 4 clarifies that the amendments in the Schedule are effective to amend the *Other Grants Guidelines (Education) 2012* according to the terms set out in the Schedule.

Schedule 1 – Amendments

Item 1 in Schedule 1 amends the description of the purpose of Chapter 1 of the *Other Grants Guidelines (Education) 2012* so that the purpose will now refer to listing bodies corporate as eligible to receive grants for the purpose of promoting equality of opportunity in higher education (which is the purpose for which grants may be made in line with item 1 of the table in subsection 41-10(1) of the Act).

Item 2 specifies Table B providers that are bodies corporate for the purposes of item 1 of the table in subsection 41-10(1) of the Act, to enable such providers to receive grants for the purpose of promoting equality of opportunity in higher education (including in relation to the Tertiary Access Payment initiative). New paragraph 1.10.2, as inserted by Item 2, is not intended to limit the application of existing paragraph 1.10.1.

Statement of Compatibility with Human Rights

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

Other Grants Guidelines (Education) Amendment (Eligibility of Table B Providers) 2020

The *Other Grants Guidelines (Education) Amendment (Eligibility of Table B Providers) 2020* (Amendment Instrument) is compatible with the 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

The Amendment Instrument amends the *Other Grants Guidelines (Education) 2012* to ensure that Table B providers (within the meaning of section 16-20 of the *Higher Education Support Act 2003*) can receive grants for the purpose of promoting equality of opportunity in higher education (which is the purpose for which grants may be made in line with item 1 of the table in subsection 41-10(1) of the Act).

Human rights implications

Right to education

The Amendment Instrument positively engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR). In its General Comment on Article 13, the UN Committee on Economic Social and Cultural Rights stated that the right to education requires that functioning educational institutions and programs have to be available in sufficient quantity within a country. The Amendment Instrument will directly contribute to this requirement by ensuring that Table B providers can receive grants for the purpose of promoting equality of opportunity in higher education (noting Table A providers can already receive grants for that purpose).

Conclusion

This Amendment Instrument is compatible with human rights because it promotes the right to education.

Hon Dan Tehan MP, Minister for Education