

## **EXPLANATORY STATEMENT**

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

Other Grants Guidelines (Education) 2012

Issued by the authority of the Minister for Tertiary Education, Skills, Science and Research

Subject: *Higher Education Support Act 2003*  
Other Grants Guidelines (Education) 2012

### **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 necessary or convenient to be provided in order to carry out or give effect to the Act. In particular item 8 of the table in section 238-10 specifies that the Minister may make Other Grants Guidelines to give effect to matters set out in Part 2-3 of the Act.

Section 41-15 of the Act provides that the Other Grants Guidelines may specify one or more programs under which grants for particular purposes specified in the table in subsection 41-10(1) are to be paid.

### **Purpose and operation**

The purpose of this instrument is to revoke the *Other Grants Guidelines (Education)* dated 22 April 2010 (the Former Guidelines) and all subsequent amendments and makes the *Other Grants Guidelines (Education) 2012* (the Guidelines).

The Guidelines provides for matters in order to make grants under Part 2-3 of the Act

Two programs have been added to the Guidelines to assure and enhance the quality of Australia's higher education sector:

1. the Performance Funding (Reward Funding) program; and
2. the Promotion of Excellence in Learning and Teaching in Higher Education (PELTHE) program.

The Improving the Practical Component of Teacher Education (IPCT) program has been removed from the Guidelines as the program ceased in 2010.

### **Overview of the Other Grants Guidelines (Education) 2010**

#### **Chapter i**

Chapter i sets out the purpose of, and the defined terms used within, the Guidelines. Chapter i provides information on the *Freedom of Information Act 1982*, which may

apply to documents created by the Department of Industry, Innovation, Science, Research and Tertiary Education ('the Department') in relation to the Guidelines.

## **Chapter 1 Grants to promote equality of opportunity in higher education**

Subsection 41-10(1) of the Act provides that Table A providers are eligible for grants to promote equality of opportunity in higher education, specified in item 1 of the table.

Chapter 1 sets out the programs that will assist with overcoming barriers to *access* and *participation* by domestic undergraduate students in higher education, in particular those students who are Indigenous, from a low socio-economic status background, or who have a disability.

### *Indigenous Support Program (ISP)*

- 1.15 Sets out the objective of the Indigenous Support Program, which is to provide funding to eligible higher education providers to assist them to meet the special needs of Indigenous Australian students and to advance the goals of the National Aboriginal and Torres Strait Islander Education Policy.
- 1.20 Sets out additional conditions of eligibility relating to strategies for improving access, participation, retention and success and participation of Indigenous people in providers' decision making processes and Indigenous employment.
- 1.25 Provides that the grant amount will be indexed in accordance with Part 5-6 of the Act.
- 1.30.1 Provides the method by which a payment is made under the program.
- 1.35.1 Sets out the grant conditions which include providing a report on the expenditure of the grant amount.
- 1.35.5 Sets out essential requirements of the expenditure report.
- 1.35.10 Clarifies that the Department will provide higher education providers with a special format for the providers reporting purposes and that this report must be submitted to the Department by 31 May each year.

### *Higher Education Participation and Partnerships Program (HEPPP)*

- 1.40.1 Sets out the objectives and structure of the HEPPP, It specifies that the HEPPP provides funding to eligible higher education providers to undertake activities and implement strategies that improve access to undergraduate courses for people from low SES backgrounds and improve their retention and completion rates.
- 1.40.5 Sets out the two components of the HEPPP being Component A – the "Participation Component" and Component B – the "Partnership Component".

- 1.45 Sets out the terminology used for funding available under the HEPPP program. It also sets out the total amount of funding available for allocation under the HEPPP, for each year, from 2010 to 2013 as well as the total funding available for each component part under the HEPPP, providing that allocation amounts are subject to indexation adjustment in accordance with Division 198 in Part 5-6 of the Act.
- 1.50.1 Specifies that the allocation will be available for: meeting existing commitments consistent with the program objectives; meeting, but not extending, existing grant commitments made under the previous Higher Education Equity Support Program; grants made in response to proposals invited by the Minister; and distribution to eligible providers under the formula for Component A (the Participation component) and Component B (the Partnership component).
- 1.50.5 Specifies that providers may use Participation funding to supplement Partnership activities.
- 1.50.10 Specifies that funds are to be expended on initiatives which target current and prospective domestic undergraduate students from low SES backgrounds, following the priorities for the two components of the Program. Also provides that programs should be tailored to the demographics of current and prospective students.
- 1.50.15 Provides that funding may not be spent on infrastructure or general services.
- 1.50.25 Specifies that grants will be subject to the Minister's approval and determination in writing of the amount of the grant and conditions on which the grant is made.
- 1.50.30 Specifies that funding for grants may be made in relation to the total cost of a project or on a yearly basis, reviewed annually.
- 1.50.35 Specifies that funding will be distributed each calendar year.
- 1.55.1 Specifies that the objective of the Participation component of the HEPPP is increase the participation of current and prospective domestic students from low socio-economic status backgrounds in accredited undergraduate qualifications.
- 1.55.5 Specifies that eligible providers receive funds based on their respective share of the indicator of domestic undergraduate students from low socio-economic status backgrounds.
- 1.60.1 Sets out the formula for deriving the measure of domestic undergraduate students from low socio-economic status backgrounds.
- 1.60.5 Stipulates that the measure of low SES in Component A and the mix of eligible payments listed in Component B in subsection 1.60.1 may be changed at the discretion of the Minister.

- 1.60.10 Sets out the formula for distribution of Participation funds to eligible providers.
- 1.65.1 Sets out examples of acceptable Participation activities that providers may undertake.
- 1.70.1 Sets out the objectives of the Partnerships component which are to increase the total number of people from low SES backgrounds who access and participate in higher education through effective outreach and related activities with appropriate stakeholders. It also sets out potential student outcomes of implementing Partnership activities.
- 1.70.5 Sets out the intentions of the Partnership activities for providers.
- 1.75 Sets out the formula for distribution of Partnership funds to eligible providers, specifying that the funds remaining in any given year will be distributed through a competitive grant process to be determined by with Department with proposals being accepted from 2010.
- 1.80.1 Stipulates that Partnership programs must meet the objectives outlined at 1.70.1 and the principles outlined at 1.80.5 to be eligible for funding.
- 1.80.5 Sets out the principles that Partnership activities will need to reflect: collaboration; early intervention and continuing engagement; awareness; integrated and multi-layered; participation focus; and evidence based.
- 1.80.10 Stipulates that, taking budgetary constraints into consideration, priority for approval will be given to proposals which the Minister considers best fulfil the objectives of the Partnership Component.
- 1.80.15 Stipulates that the Department may attach conditions, benchmarks and reporting requirements to approved proposals.
- 1.85.1 States that providers will be required to assist the Department in evaluating the HEPPP.
- 1.85.5 Sets out the reporting date for outcomes achieved in the 2010 calendar year, stipulating that the report must be in a format specified by the Department.
- 1.85.10 Sets out the reporting requirements for providers in relation to student outcomes.
- 1.85.15 Stipulates that, for Component A, providers will be required to report on program activities undertaken including engagement and support strategies and alternative pathways to university for students, consistent with the objectives at section 1.55.1 and the activities at section 1.65.1.

Sets out the reporting requirements for baseline funding under Component B.

- 1.85.25 Sets out the reporting requirements for Component B for 2011-2013 in relation to the submission based funding allocation.

### *Higher Education Disability Support Program*

- 1.90.1 Identifies the three components of the Higher Education Disability Support Program: Additional Support for Students with Disabilities; Australian Disability Clearinghouse on Education and Training and Performance-based Disability Support funding.
- 1.95.1 Sets out the total grant available under the program in 2009 and provides that this amount will be indexed for subsequent years in accordance with Division 198 in Part 5-6 of the Act.
- 1.100.1.1 Specifies the objectives of the Additional Support for Students with Disabilities component, which are to assist higher education providers to meet the costs of students with disabilities with high cost needs, and to encourage efficient use of specialised resources to support students with disabilities.
- 1.100.5.5 Specifies how grant amounts are to be determined for the Additional Support for Students with Disabilities component.
- 1.100.5.10 Indicates that funding is allocated annually on application by eligible higher education providers using a claim form.
- 1.100.5.20 Sets out that eligible providers meet at least the first \$500 of each student's needs with respect to educational support. For equipment items, the proportion of actual cost to be paid is determined by the Department after all claims have been received and analysed.
- 1.100.10 Specifies extra conditions of grant for the Additional Support for Students with Disabilities component, including the need for eligible providers to obtain evidence of a student's disability and support needs, and to maintain records of the evidence and assessment process used to verify disability and support needs.
- 1.105 Specifies the objective of the Australian Disability Clearinghouse on Education and Training is to facilitate equitable access to education and training for people with a disability. Funds will be provided to the higher education provider hosting the Australian Disability Clearinghouse on Education and Training as determined by the Minister.
- 1.110 Specifies that the objective of the Performance-based Disability Support funding component of the program is to encourage the participation of people with a disability in higher education, and outlines the funding allocation formula. The performance-based component of funding comprises that amount of funding which remains after allocations are made to eligible providers based on the number of domestic students with a disability enrolled at each higher education provider, weighted for the retention and success of these students. Total pool funding is less the amount allocated to the Additional Support for Students with a Disability and the Australian Disability Clearinghouse on Education and Training components.

- 1.110.10 Specifies extra conditions of grant for the Australian Disability Clearinghouse on Education and Training component.

## **Chapter 2 Grants to support national institutes specified in the Other Grants Guidelines for purposes of this item**

2.1 Outlines the purpose of the chapter.

- 2.5 Specifies the higher education providers that may be supported by grants under item 4 of the table in subsection 41-10(1) of the Act, which are:
- The Australian National University;
  - The University of Tasmania in respect of the Australian Maritime College;
  - Batchelor Institute of Indigenous Tertiary Education; and
  - Victorian College of the Arts at the University of Melbourne.

## **Chapter 3 Grants to support the capital development projects of higher education providers (CDP)**

Chapter 3 specifies the Capital Development Pool (CDP) Program as a program for which grants to support capital development projects of higher education providers may be paid, in accordance with item 5 of the table in subsection 41-15(1) of the Act. It also specifies the areas of capital development for which grants may be paid under the Program.

3.1 Outlines the purpose of the chapter.

- 3.5 Provides that CDP Program funding may be provided to eligible higher education providers to encourage:
- (i) new campus developments in suburban growth corridors and regional centres;
  - (ii) projects aimed at establishing or expanding courses identified by the government as discipline areas of national importance;
  - (iii) information and communication technology infrastructure projects which improve the cost effectiveness and quality of educational delivery;
  - (iv) the building or major refurbishment of capital infrastructure for student amenities;
  - (v) projects to rebuild or the restore campus facilities which are in the Minister's view extraordinary and special; and
  - (vi) capital developments that the Minister considers are priorities for particular higher education providers.

The Department invites annually eligible higher education providers to submit applications for funding on a competitive basis. All proposals received are assessed by the Department against uniform assessment criteria. Higher education providers are advised in writing on the outcome of their applications.

In addition to the current objectives of the program, 3.5.1 (iv) has been added to encourage and support the building or major refurbishment of capital infrastructure for student amenities (see Consultation).

## **Chapter 4 Grants to assist with the cost of higher education providers' superannuation liabilities**

The purpose of Chapter 4 is to establish the Higher Education Superannuation Program (the HES Program) as a program for the purposes of section 41-15 of the Act. The objective of the HES Program is to provide Commonwealth assistance to Table A providers under the Act to assist with the cost of higher education providers' superannuation liabilities. Chapter 4 specifies the payment arrangements for grants under item 6 of the table in subsection 41-10(1) of the Act.

4.1 and 4.5 set out the HES Program's purpose and objectives.

4.10 Provides that the grants under the HES Program may be either of two types:

- supplementation payments, to cover ongoing expenses incurred by providers in relation to unfunded superannuation costs; or
- paying out of determined liabilities.

4.15, 4.20 and 4.25 provide that the Minister:

- will approve the grants;
- will determine the grant amounts; and
- may determine conditions that apply to grants.

4.30 Sets out the extra condition of eligibility for grants which is that a provider must have staff who are members of a particular emerging cost scheme and lists those schemes.

4.35 Provides that the funds for the program will be indexed in accordance with Division 198 of Part 5-6 of the Act.

## **Chapter 5 Grants to support diversity and structural reform**

Chapter 5 sets out the requirements relevant for two programs under which grants may be paid to support diversity and structural reform, in accordance with item 9A of the table in subsection 41-15(1) of the Act.

The Chapter sets out the purpose, program objectives, total program funds, allocation of the grant, the organisations eligible for grants and the application process for the Diversity and Structural Adjustment Fund (Diversity Fund).

### **Diversity and Structural Adjustment Fund**

5.5 Sets out the program's objective. The objective of the Diversity Fund is to promote structural reform by eligible higher education providers that supports greater specialisation among providers, more diversity in the higher education sector and better responsiveness to labour markets operating in the local or national interest.

5.10 Specifies the total program fund and allocation. The total funds to be allocated under the Diversity Fund will be \$206 million over 4 years 2008-2011. The yearly provision will be indexed in accordance with Division 198 of Part 5-6 of the Act, as in force from time to time.

5.15 Specifies the allocation of grants. Grants are:

- allocated to meet existing funding commitments under the Diversity Fund, including those made under the Collaboration and Structural Reform Fund which it subsumed;
- allocated in response to proposals invited by the Department as part of the annual funding round;
- allocated in response to proposals outside the submission-based rounds that address specific priorities set by the Minister. There will be a link to these priorities on the Department's website; and
- allocated subject to the Minister's approval and determination in writing, specifying the amount of the grant as well as any conditions.

5.20 Specifies organisations that are eligible for grants under the Diversity Fund. The fund is open to all Table A providers, and Table B providers that are universities (as defined in section 16-15 of the Act). Funds are also available to meeting existing commitments to certain other bodies corporate that are listed at 9.20.2.

5.25 Provides that applications must be submitted on the specified application form.

#### Clinical outreach program

The Chapter sets out the Clinical Outreach Program from which grants to support clinical training for dentistry students at James Cook University may be paid. As part of the 2008-09 Budget, the Australian Government announced funding for this purpose.

5.30 Sets out the program's objective.

5.35 Specifies that James Cook University is eligible to receive a grant under the program.

5.45 Specifies that the Program will commence in 2009 and end in 2013 and that it will provide the University with a grant of \$2 million in 2009. This amount will be indexed in accordance with the method set out in Part 5-6 of the Act for each of the years 2010, 2011, 2012 and 2013.

5.50 Specifies that the grant will be made in respect of a year and that it will be subject to the Minister's approval and determination in writing of the grant amount and any conditions on which the grant is made.

### **Chapter 6 Grants to support structural adjustment**

6.1 Sets out the purpose of the chapter.

6.5 Sets out the objectives and outcomes of the Program. The Program objectives and outcomes are intended to provide additional guidance and clarity on the nature of projects which will be regarded as coming within the ambit of the purpose of the Fund, as announced in the Government's publication, Transforming Australia's Higher Education System.



- 6.10 Specifies that grants may be made on the basis of a competitive process open to all eligible higher education providers. However, if the competitive round does not result in the allocation of the entirety of the funds available for that round, the Minister may direct the Department to initiate negotiations with particular institutions aimed at developing projects which better meet the objective of the Program.

Apart from funds that may be allocated through the competitive round or through direct negotiation as provided for in subsections 6.10.1 - 6.10.15 of the instrument, up to \$20 million of the funds available under the HESA component of the Program may be allocated for structural adjustment projects that the Minister considers are priorities for particular eligible higher education providers. Subsection 6.10.15 makes provision for support of such activities outside the principal funding mechanisms. The provision of any such grant remains subject to it being in accordance with the objective of the Program and contributing to the specified outcomes.

## **Chapter 7 Grants for activities that assure and enhance the quality of Australia's higher education sector**

### **Performance Funding - Reward Funding**

- 7.1 Outlines that the purpose of the chapter is to specify programs in accordance with subsection 41-15(1) of the *Higher Education Support Act 2003*.
- 7.5 Describes the programs in the chapter, that is, programs that aim to assure and enhance the quality of teaching and learning in the Australian higher education sector.
- 7.10 Explains that the program is intended to improve outcomes for students and achieve national quality, equity and attainment objectives. It also explains that the Reward Funding program has three components: Components A, B and C. Component A is the Reward Funding for Table A providers meeting performance targets; Component B is the unallocated Reward Funding from Component A; and Component C is for quality initiatives.
- 7.15 Outlines the total monetary value allocated for Reward Funding and each of the Components in the program in 2012.

#### **Component A**

- 7.20 Explains that the purpose of Component A is to provide Reward Funding for Table A providers that meet the performance targets outlined in the university's Compact. It also explains that Compacts are an agreement outlining how the university's mission contributes to the Government's higher education goals and detailing the university's performance targets.
- 7.25 Sets out the eligibility criteria for Component A of Reward Funding. A higher education provider is eligible for Reward Funding in a year if the provider:
- is a Table A provider;

- has received an allocation of Commonwealth Supported Places for that year from the Minister under section 30-10 of the Act; and
- has entered into a funding agreement with the Commonwealth.

It also outlines the requirements that eligible Table A providers must achieve in order to receive Reward Funding for an indicator in 2012 and 2013 for Component A.

- 7.30 Explains that Reward Funding payments under Component A will be made in accordance with the schedules to the Compact, and outlines the requirement for universities to report on performance targets in section 4.14 of the Compact as a reporting requirement for Component A.
- 7.35 Explains that Reward Funding for Component A will be calculated based on the Table A provider's Basic Grant Amount share of the previous grant year, as at 31 December of that year.
- 7.40 Sets out formula for calculating the amount of Reward Funding available to an eligible Table A provider in a given year for Component A for achieving their targets against performance indicators 1A and 1 B. Reward Funding is only payable for Performance Category 1 for participation and social inclusion.

### Component B

- 7.45 Explains that the purpose of Component B is to disperse any unallocated, Reward Funding from Component A.
- 7.50 Sets out the eligible organisations for grants under Component B, that is, Table A providers and other organisations as determined by the Minister.
- 7.55 States that, if an organisation is to be paid Reward Funding under Component B, the Minister will determine the conditions of grant by Ministerial determination in accordance with the *Higher Education Support Act 2003*. It explains that Reward Funding payments under Component B will be either one-off payments or payments over a project period, and outlines the requirement for organisations granted Reward Funding under Component B to report on performance, as specified in the Conditions of Grant.

### Component C

- 7.60 Explains that the purpose of Component C is to provide funding for quality initiatives in 2012 and 2013 to ensure that the growth in university enrolments is underpinned by a focus on quality.
- 7.65 Sets out the organisations eligible for grants under Component C, that is:
- Table A higher education providers;
  - Graduate Careers Australia (GCA);
  - The Australian Council for Educational Research Limited (ACER);
  - The Council for Aid to Education (CAE); and
  - Other organisations as determined by the Minister.

7.70 States that, if an organisation is paid Reward Funding under Component C, the Minister will determine the conditions of grant by Ministerial determination in accordance with the *Higher Education Support Act 2003*. It also explains that Reward Funding payments made under Component C will be either one-off payments or payments over a project period, and outlines the requirement for organisations granted Reward Funding under Component C to report on performance, as specified in Conditions of Grant.

### **Promoting Excellence in Learning and Teaching in Higher Education (PELTHE)**

Chapter 7 establishes the PELTHE program as a program for the purposes of subsection 41-15(1) of the Act. The item sets out the objectives of PELTHE and the amount to be spent on the program, details which institutions are eligible and explains the allocation and payment processes to higher education providers, in accordance with item 11(a) of the table in subsection 41-10(1) of the Act.

7.75 Sets out the purpose of the section.

7.80 Outlines the objectives of the PELTHE program.

7.85 Provides that Table A, Table B and higher education providers that receive a grant under Part 2-2 of the Act are eligible for funding under the program.

7.90 Sets out the amount of funding available in 2012.

7.95 Sets out the process for allocation of grants under the program.

7.100 Provides that amounts will be paid in such a way as the Minister determines and at such times as the Secretary determines.

### **Bodies corporate eligible for grants**

This section specifies that Table A providers and bodies corporate that are specified in the Guidelines are eligible for grants for the purpose of that item.

7.101 States that certain bodies corporate are eligible for grants under this section.

7.105 Lists the bodies that are eligible for grants and provides that the Minister will determine the conditions of grants to the bodies listed at 7.105 by Ministerial determination under paragraph 41-25(b)(i) of the Act.

### **Chapter 8 Grants to assist with the transitional costs of changes to maximum student contribution amounts**

8.1 Specifies that the Transitional Costs Program is a program under which grants can be paid for the purposes of assisting with the costs of changes to maximum student contribution amounts announced in the 2007-08 Budget, in accordance with item 12 of the table in subsection 41-15(1) of the Act.

- 8.5 Sets out the program objectives. As part of the 2007-08 Budget, the funding arrangements for Commonwealth supported places in accounting, administration, economics and commerce were aligned with those for law. The Commonwealth Grant Scheme (CGS) funding rate for accounting and related disciplines is \$1,674 for each equivalent full-time student load in 2008 and the maximum student contribution providers can charge is \$8,499.

Any changes to student contributions affect students who commenced studying at higher education providers on or after 1 January 2008. Commonwealth supported students studying before this date are able to continue under existing arrangements until the end of 2012.

To assist higher education providers with the transitional costs associated with these changed funding arrangements for accounting and related disciplines, the Transitional Costs Program compensates providers for receiving a lower Commonwealth contribution amount under the CGS for accounting and related disciplines and not being able to charge continuing students a higher student contribution amount to make up the difference between the new and old CGS amounts.

- 8.10 Specifies which higher education providers will be eligible for the Transitional Costs Program.
- 8.15 Specifies how the amount of the grant will be determined for each eligible higher education provider. It also clarifies that Commonwealth supported places at the Batchelor Institute of Indigenous Tertiary Education (BIITE) will be considered to be Commonwealth supported places at Charles Darwin University (CDU), for the purposes of calculating the enabling loading in 2012 and in subsequent years.

## **Consultation**

### **Demand driven funding system**

The amendments to the Act made by the Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Act 2011 gave effect to 2009-10 Budget measures and reflect the Government's response to the Review of Australian Higher Education. As part of the Review, extensive consultation was undertaken with the higher education sector, including higher education providers, peak bodies, state and territory governments and other key stakeholders.

The provisions of the legislative instrument are intended to ensure the Other Grants Guidelines reflect the legislative changes to the Act. On this basis consultation was not considered necessary and was not undertaken.

### **Performance Funding – Reward Funding**

In *Transforming Australia's Higher Education System* the Government announced it would be introducing Performance Funding in response to a recommendation contained in the *Bradley Review of Australian Higher Education*.

In 2009, the Government established an expert group drawn from the higher education sector, the Indicator Development Group, to assist in the development of a framework of indicators that could be used to negotiate targets with providers for the purposes of Performance Funding. Building on advice from the Indicator Development Group, the Government released a Discussion Paper, *An Indicator Framework for Higher Education Performance Funding* in late 2009, to elicit the views of providers and other stakeholders. Feedback from 61 responses to the draft indicator framework was used to inform the development of draft Performance Funding Guidelines.

The Government released the draft Performance Funding Guidelines in October 2010 for consultation. The Department also held face-to-face information sessions in early November 2010. The Government received 44 written responses to the draft guidelines. This feedback, informed the development of an exposure draft of the Performance Funding - Reward Funding Guidelines.

In the 2011-12 Budget, the Government announced its *Advancing Quality in Higher Education* Initiative. This initiative included some Reward Funding to be used for Quality Initiatives. These decisions are also reflected in the exposure draft of the Performance Funding - Reward Funding Guidelines.

The Government consulted on the exposure draft of the Reward Funding Guidelines in September 2011. Sector feedback was incorporated in the final Performance Funding - Reward Funding Guidelines.

### PELTHE

Consultation on this amendment was not considered necessary as the purpose of the amendment is to implement a Budget decision.

### BIITE /CDU partnership

The Department has spoken to the BIITE and CDU about the funding arrangements for the transitional costs program in 2012. The Department also wrote to the BIITE and CDU on 21 November 2011 to formally advise each institution of the funding arrangements for 2012.

### Other amendments

A few other minor amendments have been made, these are technical in nature and do not substantially alter existing arrangements for the higher education sector. Therefore no other parts of the guidelines were distributed for consultation.

### Commencement

This legislative instrument shall take effect on the day after it is registered on the Federal Register of Legislative Instruments.

### **Transitional arrangements**

The revocation of the Former Guidelines does not affect the validity of a payment or decision made under those guidelines. A decision made under the Former Guidelines is taken to continue to have effect as if it were made under the *Other Grants Guidelines (Education) 2012*.

## **Statement of Compatibility with Human Rights**

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

### **OTHER GRANTS GUIDELINES (EDUCATION) 2012**

This Legislative 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 Other Grants Guidelines (Education) 2012 are made by the Minister under section 238-10 of the *Higher Education Support Act 2003* (the Act).

The Other Grants Guidelines (Education) 2012 (the guidelines) identify programs under which grants for purposes specified in the Act are to be paid to higher education providers and other eligible bodies.

The Guidelines may specify the program's objectives, extra conditions of eligibility, amount of funding available, indexation, method by which grants will be determined and conditions that apply to grants under the program.

#### **Human rights implications**

##### *Right to privacy*

The guidelines engage the right to privacy contained in Article 17 of the International Covenant on Economic, Social and Cultural Rights.

The instrument promotes the right to privacy by specifying that where personal information is obtained by a provider, they are required under the Act to comply with the information privacy principles set out in the *Privacy Act 1988*.

##### *Right to education*

The guidelines engage the right to education, contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights. In particular, the guidelines provide for educational programs under which grants for specified purposes can be paid to higher education providers and other eligible bodies. These purposes include: promoting equality of opportunity in higher education, access to higher education, supporting diversity and structural reform, assuring and enhancing the quality of Australia's higher education sector among other things. To the extent that the right to education is engaged, this is promoted as it increases access to and improves the quality of education.

##### *Right to self-determination*

The right to self-determination is contained in Article 1 of the International Covenant on Civil and Political Rights and Article 1 of the International Covenant on Economic, Social and

Cultural Rights. This right is also contained in Article 3 of the Declaration on the Rights of Indigenous Peoples which informs the way governments engage with and protect the rights of Indigenous people.

Under these Articles the right to self-determination promotes the rights of all peoples to freely pursue their economic, social and cultural development without outside interference. Self-determination is a right that pertains to groups of people, not individuals. In Australia, it is particularly relevant to Aboriginal and Torres Strait Islander Peoples.

The legislative instrument engages the right to self-determination as it specifies the Indigenous Support Program which provides funding to eligible higher education providers and aims to assist eligible higher education providers to meet the special needs of Indigenous Australian students and to advance the goals of the National Aboriginal and Torres Strait Islander Education Policy. To the extent that the right is engaged, it promotes the right to self-determination as higher education providers are provided with funding which will assist them to meet the special needs of Indigenous Australians.

#### *Rights of people with disability*

The rights of people with disability are contained in the Convention on the Rights of Persons with Disabilities (CRPD) which recognises the barriers that people with a disability may face in realising their rights. The CRPD promotes the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of their disability.

The legislative instrument specifies the Higher Education Disability Support Program which provides funding support to eligible higher education providers to assist with high costs incurred in providing educational support and/or equipment to domestic students with a disability with high cost needs, and to encourage efficient and effective use of equipment and resources to support students with a disability. This program promotes the rights of people with disability consistent with the CRPD by providing funding to providers to support students with disability.

#### **Conclusion**

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

**Senator Chris Evans, Minister for Tertiary Education, Skills, Science and Research**