

EXPLANATORY STATEMENT

Higher Education (Maximum Amount for Special Purpose Advances) Specification 2012

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

Subject: *Higher Education Support Act 2003*
 Higher Education (Maximum Amount for Special Purpose Advances)
 Specification 2012

Authority

Subsection 33-40(3A) of the *Higher Education Support Act 2003* (the Act) allows the Minister to specify, by legislative instrument, the total amount of special purpose advances that may be made in respect of a year.

Purpose and operation

The purpose of the Determination is to set the total amount of special purpose advances that may be made by the Minister in a calendar year at \$25 million.

Consultation

In order to pay a special purpose advance to a higher education provider the Minister must set an amount for the purposes of 33-40(3A). As this determination is technical in nature consultation was not considered necessary and was not undertaken.

Commencement and Application

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and will commence on the day after registration on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

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

HIGHER EDUCATION (MAXIMUM AMOUNT FOR SPECIAL PURPOSE ADVANCES) SPECIFICATION 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 Higher Education (Maximum Amount for Special Purpose Advances) Specification 2012 specifies sets the total amount of special purpose advances that may be made by the Minister in a calendar year at \$25 million

Human rights implications

The Instrument engages the following human rights:

Right to education

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

The Minister may determine, under section 33-40 of the *Higher Education Support Act 2003* (the Act) that an advance is payable to a provider under the Commonwealth Grant Scheme (CGS). This allows providers to “borrow” from expected future payments in one year and make repayments by receiving reduced grant amounts in subsequent years.

Special purpose advances are payable for the following purposes:

- a) to assist providers with the cash-flow implications of restructuring;
- b) to implement adjustment arising from the specific effects on grants of Commonwealth policy change;
- c) to rationalise staffing levels, courses and infrastructure both within and between providers;
- d) to help secure genuine productivity improvements in the area of workplace reform;
- e) to implement explicit decisions to restructure the educational profile of a provider; and
- f) to achieve such other purposes as the Minister may determine.

Under subsection 33-40(1) of the Act, an instrument that determines the total of the advances in respect of a year must be made before the Minister may determine special purpose advances. By allowing for the provision of financial assistance to providers, this instrument promotes the right to education.

This instrument also limits the total amount of special purpose advances that the Minister can advance in any calendar year to \$25 million. This instrument does not change current policy as this amount has always been specified in the CGS Guidelines.

Conclusion

This 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