

EXPLANATORY STATEMENT

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

Other Grants Guidelines (Education) Amendment (No. 1) 2019

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 or is 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 subsection 238-10(1) specifies the Minister may make Other Grants Guidelines to give effect to matters under 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

The purpose of this instrument is to amend the *Other Grants Guidelines (Education) 2012* (the Guidelines) which were registered on the Federal Register of Legislative Instruments on 13 February 2012 (see F2012L00281).

The main purpose of this instrument is to delete and substitute the Higher Education Disability Support Program (DSP) provisions of Chapter 1 of the Guidelines with new Higher Education DSP provisions. These amendments will give effect to the Australian Government's response to the Higher Education Disability Support Program 2015 evaluation.

The amendments also make some technical amendments to the Introduction (Chapter i), including updating definitions.

Commencement

This legislative instrument takes effect on 1 January 2020.

Consultation

In June 2014, the department engaged KPMG to conduct an evaluation of the DSP. The evaluation identified a number of options for improving the program's efficiency and appropriateness. The program evaluation report and executive summary were published on the department's website in 2015.

In October 2016, the department published a consultation paper on its website outlining the Government's proposed response to the issues raised in the program evaluation report. The department also wrote to universities and stakeholders inviting feedback on the ideas presented in the consultation paper, or any other proposals to improve the DSP and outcomes for students with disability. The department received 24 submissions through this process, and feedback received was used to inform these amendments to the Guidelines.

Transitional arrangements

A decision or payment made under the Guidelines as in effect immediately before this instrument commences will continue to have effect as if the amendments had not occurred.

Regulatory impact statement

The Office of Best Practice Regulation was consulted in the preparation of the Amendment Instrument. The Office concluded that a Regulation Impact statement was not required (OBPR ID: 20990).

Explanation of provisions

Item 1 – Chapter 1 Paragraphs 1.90 to 1.150.15 - Higher Education Disability Support Program (DSP)

This item repeals paragraphs 1.90 to 1.110.10.10 of Chapter 1 relating to the DSP and substitutes new paragraphs 1.90 to 1.150.15. The substituted provisions give effect to the Government's response to the 2015 DSP evaluation.

- 1.90.1 Sets out the objective of the DSP, which is to promote equality of opportunity in higher education, by providing support to students with disability to access, participate and succeed in higher education.
- 1.90.5 Sets out the two components of the DSP. These are the Disability Support Fund (DSF), and the Australian Disability Clearinghouse on Education and Training (ADCET).
- 1.90.15 Specifies that Table A providers only are eligible to receive grant payments under the DSP.
- 1.95.1 Specifies the total amount of funding available to providers under the DSP in 2020. This amount will be indexed for subsequent years in accordance with the method specified in part 5-6 of the Act.
- 1.95.5 Specifies that grants made under the DSP are grants made in respect of a calendar year.
- 1.100.1 Specifies the objectives of the DSF, which is to promote equality of opportunity in higher education. The DSF achieves this by granting supplementary funding to providers to assist them to attract domestic students with disability to participate in higher education and to assist providers to deliver appropriate support for them to succeed.
- 1.105.1 Specifies that the amount payable to a provider for a year under the DSF is calculated by adding the enrolments-based grant amount and the amount for students with disability with high cost needs.
- 1.105.5 Specifies that the amount payable to a provider under the DSF will be calculated based on disability data available to the Commonwealth in the Higher Education Information Management System during the second half of each calendar year.

- 1.110.1 Specifies that the total annual grant amount available for the DSF is calculated by subtracting the amount allocated to ADCET at 1.150.10 from the total annual grants amount available for the DSP set out at 1.95.1.
- 1.110.5 Stipulates that the Minister may determine what proportion of the total annual amount available for the DSF in a calendar year will be available for each of the enrolments-based grant amount and the amount for students with disability with high cost needs.
- 1.110.10 Specifies that unless the Minister makes a determination in accordance with 1.110.5, the total annual enrolments-based amount is 55 per cent of the total annual grant amount for the DSF and the total annual amount for students with disability with high cost needs is 45 per cent of the total annual grant amount for the DSF.
- 1.115.1 Sets out the formula used to calculate the enrolments-based grant amount for a provider.
- 1.120.1 Describes that a student with disability with high cost needs means a student enrolled with a provider, who has been assessed by the provider as having disability, and has received from the provider educational support and equipment related to that disability in a calendar year for an amount that exceeds the threshold specified at 1.120.5.
- 1.120.5 Specifies the student with disability with high cost needs threshold in 2020. This amount will be indexed for subsequent years in accordance with the method specified in Part 5-6 of the Act.
- 1.120.10 Sets out the formula used to calculate the students with disability with high cost needs amount payable to a provider.
- 1.120.15 Specifies that if the sum total of claims from all providers for students with disability with high cost needs is less than the annual amount available for students with disability with high cost needs the balance will be distributed according to the formula at 1.115.1.
- 1.125.1 Specifies that providers will receive their allocation of DSF enrolments-based funds for each calendar year prior to the end of that calendar year.
- 1.125.5 Specifies that providers may claim for educational support provided to students with disability with high cost needs in the preceding calendar year. Claims for funding must be in a form specified by the department.

- 1.130.1 Stipulates that if a provider earns interest on DSF funds, that interest must be spent on eligible DSF activities.
- 1.135.1 Stipulates eligible activities that may be undertaken with DSF funding, which are:
- activities aimed at attracting and supporting students with disability to participate in higher education;
 - providing educational support and equipment for students with disability;
 - modifications to course content, teaching materials and delivery methods to better meet the needs of students with disability; or
 - training of provider staff to support students with disability.
- 1.135.5 Sets out the obligations that providers must satisfy when using DSP funding for the purposes of providing educational support and equipment for students with disability.
- 1.135.10 Stipulates that providers must maintain records of evidence and assessment processes in verifying disability and support needs for a period of no less than 7 years.
- 1.135.15 Stipulates that providers must publish their needs assessment procedure on their website in a format that is readily available and accessible to the public.
- 1.140.1 Sets out ineligible activities that must not be undertaken with DSF funding.
- 1.145.1 Stipulates that if a provider does not spend any part of DSF funds by the end of the grant period, the provider must return the unspent grant amount to the Commonwealth in accordance with instructions given by the department.
- 1.150.1 Stipulates that a provider must report annually to the department on the progress and outcomes of any DSP activities in the form specified by the department.
- 1.155.1 Specifies that the objective of the ADCET is to provide information, advice, and online resources through a website to disability practitioners, teachers and students to promote inclusive teaching and learning practices for students with disability.
- 1.160.5 Specifies the provider to host the ADCET is appointed by the Minister.
- 1.160.10 Specifies that conditions of the grant to the provider hosting the ADCET will be determined by the Minister under paragraph 41-25(b) of the Act.
- 1.160.15 Specifies that funds to be provided to the provider hosting the ADCET will be determined by the Minister under paragraph 41-30(b) of the Act.

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 (No. 1) 2019

The Other Grants Guidelines (Education) Amendment (No. 1) 2019 (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 *Other Grants Guidelines (Education) 2012* (Principal Instrument) sets out a number of programs under which grants may be provided in accordance with Part 2-3 of the *Higher Education Support Act 2003* (Act). The Principal Instrument also sets out some conditions on grants made under the programs specified in the instrument.

The Amendment Instrument amends an existing program in the Principal Instrument, the Disability Support Program (DSP). The DSP will provide grants to Table A providers to assist Table A universities to meet their obligations under the *Disability Discrimination Act 1992* and the Disability Standards for Education (2005) to ensure that all students with disability have the same or similar choices and opportunities regarding enrolment, participation, curriculum and support services as students without disability. The Amendment Instrument gives effect to the Australian Government's response to the Department of Education and Training evaluation of the Disability Support Program published in June 2015.

Human rights implications

Right to education

People with disabilities are recognised under international law as rights-holders, with a right to education without discrimination and on the basis of equal opportunities. This right is guaranteed by the *International Covenant on Economic, Social and Cultural Rights* (1966) (ICESCR). The Amendment Instrument engages the right to education, contained in Article 13 of ICESCR in that it supports access to education of particular classes of persons who may face barriers to it, namely people with disabilities.

The Amendment Instrument forms part of the DSP framework objective of addressing the specific barriers people with disabilities face in enjoyment of their right to education, through systematic supports and accommodations, and by ensuring their effective access to education and fulfilment of their individual potential on equal terms to other students within a participatory learning environment.

The measures in the Amendment Instrument collectively promote the right to education by strengthening the capacity of the education system to accommodate all learners to maximise full and effective participation, accessibility, attendance and achievement of all students and overcome barriers to learning and participation for all by focusing on well-being and success of students with disabilities. The measures underpin and support the broader right to inclusive education to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility.

In particular, the Amendment Instrument promotes the right to education in that it supports and underpins equality of opportunity in education, by providing grants to eligible higher education providers to provide educational support to people with disability. By removing barriers to education for people with disabilities, the Amendment Instrument will improve access to, and increase participation in, higher education, by ensuring comparable access, services and facilities, and improving the ability for students with disabilities to participate in education and training without discrimination. This is achieved by providing funding to foster inclusion of students with disabilities to support and enhance their equality throughout their education.

Rights of people with disabilities

The rights of people with disabilities are contained in the *Convention on the Rights of Persons with Disabilities 2006 (CRPD)*. CRPD sets out the right to education as applied to people with disabilities in Article 24.

Article 24(1) of CRPD provides States Parties must ensure the realisation of the right of persons with disabilities to education through an inclusive education system at all levels, including tertiary education, for all students, including persons with disabilities, without discrimination and on equal terms with others.

Article 24(1) also sets out the aims of an inclusive education system as being to promote the full development of human potential and sense of dignity and self-worth, by strengthening respect for human rights, fundamental freedoms, and diversity, to foster the personality, talents and creativity of people with disabilities, as well as their mental and physical abilities, to their fullest potential and to enable persons with disabilities to participate effectively in society.

The Amendment Instrument engages and promotes the rights of people with disabilities by providing 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 encouraging efficient and effective use of equipment and resources to support students with a disability. The DSP, as bolstered by the measures in the Amendment Instrument, promotes the rights of people with disabilities 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.

Hon Dan Tehan MP, Minister for Education