

EXPLANATORY STATEMENT

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

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

Issued by the authority of the Minister for Education

Subject: *Higher Education Support Act 2003*
 Amendment No.1 to the Other Grants Guidelines (Research) 2017

Authority

The Other Grants Guidelines (Research) Amendment (No. 1) 2019 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003* (Act). The Amendment Instrument amends the *Other Grants Guidelines (Research) 2017* that was made for the purposes of section 41-15 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01603) (Other Grants 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 Other Grants Guidelines permitted under Part 2-3 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.

Background

Section 41-5 of the Act provides that the Other Grants Guidelines may provide for other grants. The purpose of the Other Grants Guidelines is to specify one or more programs under which grants for particular purposes specified in the table in subsection 41-10(1) are to be paid. This includes the Research Support Program (RSP), which provides grants to support the systemic costs of research.

Grants are made to eligible Australian higher education providers (HEPs). Eligible HEPs are Table A providers listed in section 16-15 of the Act and Table B providers listed in section 16-20 of the Act.

Purpose and operation

The purpose of this legislative instrument is to amend the Other Grants Guidelines to clarify processes for the provision of incorrect data.

Commencement

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

Consultation

Consultation was not undertaken because the amendments to the Other Grants Guidelines are either minor or technical (such as definitional changes), or are machinery in nature (such as the clarification of the adjustment process).

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) was consulted and determined that a Regulation Impact Statement is not required (OBPR ref 25077) as the amendments are likely to have no more than minor regulatory impacts on business, community organisations or individuals.

Explanation of the provisions

Part 1 - Preliminary

This contains preliminary matters relating to the name of the instrument, commencement and authority.

Schedule 1 - Amendments

Item 1 inserts or amends the following definitions into section i.v (Interpretation) of Chapter i (Introduction):

- The definition for Categories 1 to 4 have been updated.
- The definition for the department has been updated.
- The term 'R&D' has been added to the existing defined term 'research', with 'R&D' to more appropriately reflect the underlying definition of Research and Experimental Development. The definition of Research and Experimental Development contained in the Frascati Manual 2015 (Manual) is incorporated by reference as existing at the commencement of this section. The Manual is published by the Organisation for Economic Cooperation and Development (OECD) and is used by national statistical agencies to collect research and development data. The Manual is publicly available on the OECD website at <http://www.oecd.org/sti/inno/Frascati-Manual.htm>.

Chapter 1 - Grants to support research by, and the research capability of, higher education providers

Items 2, 3 and 4

These items repeal and substitute paragraphs 1.4.5 and 1.4.20 to incorporate the newly created paragraph 1.4.26 (adjustments) in the allocation process.

Paragraph 1.4.26 is added to specify an adjustment process in relation to the provision of incorrect Higher Education Research Data Collection (HERDC) data:

- Subparagraph 1.4.26 (1) sets out that a HEP must provide the Commonwealth Department of Education (department) with corrected HERDC data if it is determined that incorrect data has previously been provided.
- Subparagraph 1.4.26(2) sets out that if corrected data is provided by 1 October in the year the data was first provided then the corrected data will be used in the annual process of calculating RSP grant amounts and replaces the incorrect data. For example, if a HEP provided incorrect 2017 HERDC data on 30 June 2018 and corrected 2017 HERDC data on 30 September 2018 then the corrected data would be included in the annual process of calculating RSP grant amounts.

- Subparagraph 1.4.26(3) sets out that if corrected data is provided after 1 October in the year the data was first provided then the corrected data will not be used in the annual process of calculating RSP grant amounts. For example, if a HEP provided incorrect 2017 HERDC data on 30 June 2018 and corrected 2017 HERDC data on 30 October 2018 then the corrected data would not be included in the annual process of calculating RSP grant amounts.
- Subparagraph 1.4.26(4) sets out that if the provision of incorrect data has resulted in an overpayment to the HEP then the HEP must repay the overpayment to the department. For example, if a HEP provided incorrect 2017 HERDC data on 30 June 2018 and corrected 2017 HERDC data on 30 October 2018 and the corrected data resulted in an overpayment in the HEPs RSP grant amount, then the HEP would have to repay the overpayment to the department.

Statement of Compatibility with Human Rights

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

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

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 Other Grants Guidelines (Research) Amendment (No. 1) 2019 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003* (Act).

The Amendment Instrument amends the *Other Grants Guidelines (Research) 2017* that was made for the purposes of section 41-15 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01603) (Other Grants Guidelines).

The Other Grants 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 Other Grants Guidelines also set out the purpose and programs under which grants may be made for research. These include grants to support research by, and the research capability of, higher education providers.

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.

The Amendment Instrument engages the right to education by supporting a high quality research environment, which provides academics employed in higher education institutions with the necessary systems and resources to deliver high quality research training to students.

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.

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 a high quality research environment for Australia's higher education sector. This environment allows for academics to strengthen Australia's knowledge

base, and enhance the contribution of Australia's research capabilities to national economic development, international competitiveness and the attainment of social goals.

The Amendment Instrument is compatible with the right to enjoy the benefits of scientific progress and its applications.

Conclusion

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

Dan Tehan

Minister for Education