

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Indigenous Australians

*Higher Education Support Act 2003*

*Higher Education Support*

*(Maximum Payments for Indigenous Student Assistance Grants)*

*Amendment Determination 2019*

### **Purpose**

This instrument varies the *Higher Education Support (Maximum Payments for Indigenous Student Assistance Grants) Determination 2016* (the 2016 Determination) to revise the total maximum payment amounts under Part 2-2A of the *Higher Education Support Act 2003* (the Act) in respect of the years 2020 to 2021. This instrument also amends the 2016 Determination to determine a new total maximum payment amount in respect of the year 2022.

### **Background**

Part 2-2A of the *Higher Education Support Act 2003* (the Act) provides for grants to higher education providers to assist Indigenous students. Grants under Part 2-2A are payable to higher education providers in respect of a year.

Subsection 38-45(1) provides that the total payments made under Part 2-2A in respect of a year must not exceed the amount determined by the Minister in respect of the year.

Subsection 38-45(2) provides that the Minister may, by legislative instrument, determine the total payments made under Part 2-2A in respect of a year. A single legislative instrument may determine amounts for multiple years. Subsection 38-45(4) provides that the Minister may, by legislative instrument, at any time before the end of a year, vary a determination made under subsection 38-45(2) for the year.

### **Regulatory Impact Statement**

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required for this instrument (OBPR reference: 24565).

### **Commencement**

The instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

## Consultation

Consultation was undertaken with the Department of Education, which also administers the *Higher Education Support Act 2003*. As this instrument is machinery in nature, no further consultation was undertaken.

## Explanation of provisions

**Section 1** sets out the name of the instrument, being the *Higher Education Support (Maximum Payments for Indigenous Student Assistance Grants) Amendment Determination 2019*.

**Section 2** provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3** specifies that the instrument is made under the authority of subsections 38-45(2) of the Act with respect to inserting a new determination and 38-45(4) of the Act with respect to varying existing determinations.

**Section 4** provides that each instrument that is specified in the Schedule to this instrument is amended as set out in the applicable items of the Schedule.

**Schedule 1** provides for amendments to the *Higher Education Support (Maximum Payments for Indigenous Student Assistance Grants) Determination 2016*.

**Item 1** of Schedule 1 amends the amount specified in column 3 of the table in section 5 of the *Higher Education Support (Maximum Payments for Indigenous Student Assistance Grants) Determination 2016* for items 4 to 5 of the table and inserts a new item 6 for 2022. The effect is to vary the existing maximum payments that may be made under Part 2-2A of the Act for the years 2020 and 2021, and to determine a new maximum for payments that may be made in respect of the year 2022.

The revised amounts determined for each of the years 2020 to 2022 reflects an indexation rate of 1.018 per cent. This rate is consistent with the rate used for other grants under the Act.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **HIGHER EDUCATION SUPPORT (MAXIMUM PAYMENTS FOR INDIGENOUS STUDENT ASSISTANCE GRANTS) AMENDMENT DETERMINATION 2019**

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***

This instrument amends the *Higher Education Support (Maximum Payments for Indigenous Student Assistance Grants) Determination 2016* to revise the maximum total payments that may be made under Part 2-2A of the *Higher Education Support Act 2003* (the Act) in respect of the years 2020 to 2022.

#### ***Human rights implications***

This instrument is mechanical in nature as it determines the maximum total payments that may be made under Part 2-2A of the Act. As such, this instrument does not engage any human rights.

However, this instrument does enable grants under Part 2-2A of the Act to be made to higher education providers. In this respect, the instrument facilitates the promotion of the right to education under Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right of equality and non-discrimination under Articles 2, 16, and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 2 of the ICESCR, and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

#### ***Right to education***

Article 13 of the ICESCR, recognises the ‘right of everyone to education.’

This instrument facilitates the promotion of the right to education as it enables grants to be made to higher education providers. The purposes of the grants are to assist Indigenous students to undertake higher education and to increase the number of Indigenous students enrolling in, progressing in, and completing courses leading to higher education awards.

The instrument also updates the maximum total payments that may be made to higher education providers under Part 2-2A of the Act for 2020 to 2022. This gives higher education providers an indication of the funding that is expected to be available and will allow them to plan ahead for the provision of activities to assist Indigenous students.

### *Right of equality and non-discrimination*

The right of equality and non-discrimination is contained in Articles 2, 16 and 26 of the ICCPR, Article 2 of the ICESCR and Article 5 of the CERD.

The right of equality and non-discrimination recognises that all human beings have the right to be treated equally and to not be discriminated against.

To the extent that measures in relation to Indigenous Student Assistance under Part 2-2A of the *Higher Education Support Act 2003* mean Indigenous persons are provided with a different level of assistance to access higher education than other persons, Part 2-2A is intended to be a ‘special measure’ within the meaning of Article 1(4) of the CERD and subsection 8(1) of the *Racial Discrimination Act 1975*.

While this instrument itself is not a special measure, the instrument facilitates the provision of a special measure. The instrument facilitates the provision of grants to higher education providers to enable them to provide targeted assistance to Indigenous students and allow them to better access, progress in and complete higher education awards in order to address the disparity in access to, and completion of, higher education as exists between Indigenous persons and other persons.

The requirement for the Minister to determine maximum payments for grants under Part 2-2A by legislative instrument is also consistent with arrangements under section 41-45 of the *Higher Education Support Act 2003* for Other Grants under Part 2-3 and under section 46-40 of the *Higher Education Support Act 2003* for Commonwealth Scholarships under Part 2-4. This ensures that grants for Indigenous student assistance are dealt with in the same way as grants for non-Indigenous student assistance.

### ***Conclusion***

The instrument is compatible with human rights.

### **Minister for Indigenous Australians**