

## **EXPLANATORY STATEMENT**

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

*Other Grants Guidelines (Education) Amendment (No. 1) 2020*

### **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 *Other Grants Guidelines (Education) Amendment (No.1) 2020* (Amendment Instrument) amends the *Other Grants Guidelines (Education) 2012* (Principal Instrument) to:

- establish the University and Industry Collaboration Program
- replace references to the Regional Study Hubs program with references to the Regional University Centres
- make editorial and other minor amendments.

The University and Industry Collaboration Program will provide grants to Table A providers to foster collaboration and reform in higher education, and, in particular to enhance collaboration between universities and industry.

### **Commencement**

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

### **Availability of merits review**

Decisions by the Minister in relation to the provision of grants under the University and Industry Collaboration Program will not be subject to merits review for the following reasons.

Funding for the University and Industry Collaboration Program will be provided under Part 2-3 of the Act. Under Part 2-3 of the Act, the Minister has the discretion to:

- approve grants made under Part 2-3 (section 41-20)
- determine the amount of those grants (where the Other Grants Guidelines do not specify an amount) (section 41-30), and
- determine the conditions that attach to the grant (where the Other Grants Guidelines do not determine the conditions) (section 41-25).

Section 206-1 of the Act specifies the types of decisions made under the Act that are reviewable decisions. Funding decisions made under Part 2-3 of the Act (including decisions pertaining to competitive discretionary grants) are not specified at section 206-1 as decisions that are reviewable.

Furthermore, a finite amount of funding is available for the University and Industry Collaboration Program. Providing for merits review where a finite amount of funding is available over a specified period would mean any decision for one applicant will necessarily adversely impact other applicants. Merits review would also delay delivery of funding to successful applicants and potentially alter the amount of that funding.

The allocation of finite resources between competing applicants reflects an established ground for excluding merits review (Attorney-General's Department, *Administrative Review Council, What decisions should be subject to merit review?* (1999), [4.11]-[4.19]).

While independent merits review by the AAT will not be available, the Commonwealth Ombudsman is able to investigate any complaints made in relation to the administration of the funding program, and make recommendations to the Department.

## **Consultation**

### University and Industry Collaboration Program

Consultation on this amendment was not considered necessary as the purpose of the amendment is to implement a decision from the 2019-20 Mid-Year Economic and Fiscal Outlook (MYEFO).

### Replace references to the Regional Study Hubs program with references to the Regional University Centres

Following the Minister's announcement of the change in program name on 28 August 2019, the department consulted with all current Regional University Centres.

### 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 and as such, were not distributed for consultation.

## **Regulatory impact statement**

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Amendment Instrument. OBPR concluded that a Regulation Impact statement was not required (OBPR ID: 25850).

## **Explanation of provisions**

**Section 1** provides that the name of the Amendment Instrument is the *Other Grants Guidelines (Education) Amendment (No. 1) 2020*.

**Section 2** provides for the commencement of the Amendment Instrument. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

**Section 3** states that the Amendment Instrument is made under section 238-10 of the Act.

**Section 4** provides that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the Schedule.

## **Schedule 1 – Amendments**

Parts 1, 2 and 3 of Schedule 1 to the Amendment Instrument amend the Principal Instrument.

### **Part 1 – University and Industry Collaboration Program**

**Item 1** of Part 1 of Schedule 1 to the Amendment Instrument inserts new Chapter 4A (titled ‘Grants to Foster Collaboration and Reform in Higher Education’) into the Principal Instrument.

Section 4A.1 in Part 1 of Chapter 4A states that the purpose of the Chapter is to specify programs to foster collaboration and reform in higher education under subsection 41- 10(1) of the Act, and to specify other matters for the purposes of Part 2-3 of the Act.

Section 4A.5 in Part 2 of Chapter 4A specifies the University and Industry Collaboration Program (UIC Program) and states that the objective of the UIC Program is to foster collaboration and reform in higher education, in particular to enhance collaboration between universities and industry.

Note 1 to section 4A.5 states that, in accordance with item 9 of the table in subsection 41-10(1) of the Act, Table A providers will be eligible to receive grants under the UIC Program. Note 2 to section 4A.5 states that, in accordance with paragraph 41-25(b) of the Act, grants made under the UIC Program will be subject to such conditions (if any) as the Minister determines in writing.

### **Part 2 – Regional University Centres Program**

The purpose of Part 2 of Schedule 1 to the Amendment Instrument is to give effect to the renaming of the Regional Study Hubs program by replacing references to the program in the Principal Instrument with references to the Regional University Centres Program. No changes are being made to the purpose and scope of the program.

**Item 2** repeals the definition of ‘RSHP’ in section i.ii of Chapter i of the Principal Instrument.

**Item 3** repeals the heading of Part 1 of Chapter 7C (which currently refers to the Regional Study Hubs Program) and replaces it with a heading referring to the Regional University Centres Program.

**Item 4** replaces references to ‘Regional Study Hubs program’, ‘RSHP’, and ‘regional study hubs’ in various provisions of the Principal Instrument with references to the ‘Regional University Centres Program’, the ‘Program’, and ‘Regional University Centres’.

### **Part 3 – Other Amendments**

The purpose of Part 3 of Schedule 1 to the Amendment Instrument is to make editorial and other minor amendments to the Principal Instrument.

**Item 5** repeals sections i.iii and i.iv of Chapter i of the Principal Instrument. These provisions provide information about the application of the *Freedom of Information Act 1982* and the *Privacy Act 1988* in relation to grants made under the Principal Instrument. This information is not required to be contained in the Principal Instrument and will be relocated to policy documentation.

**Items 6-11** insert Part and Division numbers into the headings preceding each of sections 1.1, 1.15, 1.40, 1.90, 1.100, and 1.155 (first occurring) of the Principal Instrument to improve the readability of the Principal Instrument.

**Items 12 and 13** remove duplicate provisions in the Principal Instrument. Specifically, these items repeal the second recurrences of sections 1.115, 1.120, 1.125, 1.130, 1.135, 1.140, 1.145, 1.150 and 1.155, and the second recurrences of subsections 1.160.5, 1.160.10, and 1.160.15, in the Principal Instrument.

**Items 14, 15, and 16** insert Part numbers into the headings preceding each of sections 2.1, 3.1 and 4.1 of the Principal Instrument to improve the readability of the Principal Instrument.

**Item 17** inserts a Part heading before section 5.1 of the Principal Instrument to improve the readability of the Principal Instrument.

**Items 18-20** insert Part numbers into the headings preceding sections 5.5, 5.30 and 6.1 of the Principal Instrument to improve the readability of the Principal Instrument.

**Item 21** inserts a Part number into the heading preceding section 7.1 of the Principal Instrument, and inserts a new Division heading immediately following the Part heading, to improve the readability of the Principal Instrument.

**Items 22-24** repeal the headings of sections 7.20 (first and second occurring), 7.45 (first and second occurring) and 7.60 (first and second occurring) of the Principal Instrument and substitute appropriate headings (including Division numbers) to improve the readability of the Principal Instrument.

**Items 25-28** insert Part numbers into the headings preceding sections 7.75, 7.101, 7.110 and 7B.1 of the Principal Instrument to improve the readability of the Principal Instrument.

**Item 29** inserts a new Part heading before section 8.1 of the Principal Instrument to improve the readability of the Principal Instrument.

## 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) 2020

The *Other Grants Guidelines (Education) Amendment (No. 1) 2020* (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 the Principal Instrument by inserting a new chapter that permits the allocation of grants that foster collaboration and reform in higher education. The Amendment Instrument establishes one program under this chapter, the University and Industry Collaboration Program.

#### Human rights implications

##### *Right to education*

The Amendment Instrument positively engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR). In its General Comment on Article 13, the UN Committee on Economic Social and Cultural Rights stated that the right to education requires that functioning educational institutions and programs have to be available in sufficient quantity within a country. The Amendment Instrument will directly contribute to this requirement by assisting more people to undertake higher education.

Further, in relation to article 13 (2) (c)-(d), States Parties have an immediate obligation "to take steps" (article 2 (1)) towards the full realisation of higher and fundamental education for all those within its jurisdiction. At a minimum, States Parties are required to adopt and implement strategies which include the provision of higher education in accordance with the ICESCR. The allocation of grants in furtherance of improvements and reforms to the higher education sector constitutes a concrete and targeted step towards the progressive realisation of the right to education in accordance with article 13 (2) (c)-(d) of the ICESCR which relevantly includes the availability and accessibility of education in all its forms.

##### *Right to work*

The Amendment Instrument positively engages the right to work contained in Article 6 of the ICESCR. The right to work, as guaranteed under ICESCR, affirms the obligation of States Parties to assure individuals their right to freely chosen or accepted work, including in recognition of the importance of work for personal development and social and economic

inclusion. International Labour Organization Convention No. 122 concerning Employment Policy (1964) speaks of “full, productive and freely chosen employment”, linking the obligation of States Parties to create the conditions for full employment, which include supporting and fostering higher education, technical and vocational education plans to facilitate access to employment.

The ICESCR provides that steps to be taken by a States Party to achieve the full realisation of the right to work includes technical guidance and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental and economic freedoms to the individual. The Amendment Instrument specifies the University and Industry Collaboration Program for the purposes of subsection 41- 10(1) of the Act, and specifies other matters for the purposes of Part 2-3 of the Act. The objective of this program is to permit the allocation of grants to support recipient university providers to develop and deliver courses relating to future skills, with an emphasis on work integrated learning experiences and assessments to promote and support access to employment opportunities. This program will contribute to steps expected to be taken by Australia, as a State Party to ICESCR, to achieve the full realisation of the right to work as contained in Article 6 of the ICESCR.

## **Conclusion**

This Amendment Instrument is compatible with human rights because it advances the protection of human rights, including the right to education and the right to work.

**Hon Dan Tehan MP, Minister for Education**