

## **EXPLANATORY STATEMENT**

*Determination made under section 46-40 of the Higher Education Support Act 2003*

*Higher Education Support (Maximum Payments for Commonwealth Scholarships)  
Determination 2020*

### **Authority**

Subsection 46-40(3) of *Higher Education Support Act 2003* (the Act) provides that the Minister for Education (the Minister) must, by legislative instrument, determine the total payments made under Part 2-4 (Commonwealth scholarships) of the Act in respect of a year starting on or after 1 January 2017. A determination made under this subsection for a year must be made before the start of the relevant year.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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. The repeal of the *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2019* by the Schedule to this instrument relies on that provision.

### **Purpose**

The *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2020* (the Determination):

- repeals the *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2019*; and
- sets out the maximum total payments that can be made under Part 2-4 of the Act for the 2020 to 2024 calendar years. The total amount of grants for Commonwealth Scholarships each year must not exceed the amount specified for each year.

Compared to the *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2019*, this instrument increases the maximum total payments to be made under Part 2-4 for Commonwealth Scholarships, retaining the maximum amount for 2020, increasing the maximum amount for 2021 to 2023, and providing a maximum amount for 2024.

The maximum amount of payments for Commonwealth Scholarships for 2020 and 2021 reflect the current program arrangements under the Act.

The amounts determined for 2021 to 2024 are expressed with the 2021 indexation factor applied. The indexation factors for 2022 to 2024 are yet to be determined.

### **Commencement**

The Determination is a Legislative Instrument under the *Legislation Act 2003*. The instrument takes effect the day after it is registered on the Federal Register of Legislation.

## **Availability of merits review**

The Commonwealth makes grants to eligible providers under Part 2-4 (Commonwealth scholarships) of the Act. These decisions are not made under the Determination but are made taking into account the maximum amounts set out in the Determination.

Section 206-1 of the Act specifies the types of decisions made under the Act that are reviewable decisions. This is an exhaustive list. Funding decisions made under Part 2-4 of the Act are not specified at section 206-1 as decisions that are reviewable. The Determination does not create new decision making powers, or provide the Minister with the power to establish a new review mechanism in addition to the review process available under the Act.

## **Consultation**

Consultation was not undertaken on the Determination as it does not create any new rights or liabilities or make any grants under Part 2-4 of the Act. Rather, the Determination is a technical step that must be taken by the Minister before any grants can be made to eligible bodies corporate. As such, it was not appropriate for consultation to be undertaken on the Determination.

## **Explanation of provisions**

**Section 1** provides the name of the Determination.

**Section 2** provides for the commencement of the Determination the day after it is registered on the Federal Register of Legislation.

**Section 3** states that the Determination is made under subsection 46-40(3) of the Act.

**Section 4** provides definitions for certain expressions used in the Determination.

**Section 5** provides that the instrument specified in the Schedule to the Determination is repealed.

**Section 6** sets out the amounts which the total payments made under Part 2-4 of the Act must not exceed for the years 2020 to 2024.

### *Schedule 1*

**Section 1** repeals the *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2019*.

## 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 Commonwealth Scholarships) Determination 2020**

This *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2020* (Determination) 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 Determination**

Subsection 46-40(3) of the *Higher Education Support Act 2003* (the Act) provides that, the Minister for Education (the Minister) must, by legislative instrument, determine the total payments made under Part 2-4 (Commonwealth scholarships) of the Act in respect of a year starting on or after 1 January 2017. A determination made under this subsection for a year must be made before the start of the relevant year.

The Determination:

- repeals the *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2019*; and
- sets out the maximum total payments that can be made under Part 2-4 of the Act for the 2020 to 2024 calendar years. The total amount of grants for Commonwealth Scholarships each year must not exceed the amount specified for each year.

#### **Human Rights implications**

##### *Right to Education*

The Determination engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 13(2)(c) of the ICESCR provides that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.’

The Determination will support the payment of grants to providers for Commonwealth Scholarships in accordance with Division 46 of the Act. Commonwealth Scholarships can be paid to students either directly, indirectly or for post graduate research scholarships, and these scholarships support students accessing higher education. The Determination supports the payment of these scholarships to students and the maximum amounts are capped having regard to reasonable, necessary and proportionate constraints on spending. The Determination is therefore compatible with, and does not impermissibly limit, the right to education.

#### **Conclusion**

This Determination is compatible with human rights because it supports the payment of scholarships to students, thus supporting those students to access higher education.

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