

EXPLANATORY STATEMENT

Issued by the authority of Minister for Education and Youth

Higher Education Support Act 2003

Other Grants Guidelines (Education) Amendment (Total Funding Amounts) 2021

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. 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 in relation to making “other grants”.

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. The amendments to the *Other Grants Guidelines (Education) 2012* (the Principal Instrument) made by the *Other Grants Guidelines (Education) Amendment (Total Funding Amounts) 2021* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The University of Notre Dame Australia (UNDA) became listed as a Table A provider under section 16-15 of the Act on 28 May 2021. As a Table A provider, UNDA is now eligible to receive grants for a range of additional purposes and programs under Part 2-3 of the Act, which deals with other grants. In particular, UNDA is now eligible to receive grants under the Higher Education Participation and Partnerships Program (HEPPP) and the National Priorities and Industry Linkage Fund (NPILF).

The objectives of the HEPPP are to promote equality of opportunity in higher education by improving:

- a) outreach to widen aspiration and promote higher education to persons from a low socioeconomic (SES) background, persons from regional areas and remote areas, and Indigenous persons; and
- b) the extent to which persons from a low SES background, persons from regional areas and remote areas, and Indigenous persons access, participate, remain and succeed in higher education, and obtain higher education awards.

Grants under the HEPPP program are made to Table A providers in respect of a year. Amounts paid are calculated by a formula based on the proportion of students from a low

SES background, Indigenous students, and regional and remote students enrolled with the provider.

The NPILF is a program under which grants can be made to eligible providers for the purpose specified in item 13 of the table in subsection 41-10(1) of the Act—grants to encourage higher education providers to engage with industry. Grants made under the NPILF are aimed at encouraging universities to engage with industry to increase the amount of work integrated learning across disciplines and the number of STEM-skilled graduates, as well as improving employment outcomes for graduates.

The Amendment Instrument increases the maximum grant amounts for HEPPP and the NPILF to reflect the additional grant amounts expected to be paid to UNDA now that they are a Table A provider. This increase ensures that these grant amounts can be paid to UNDA without decreasing the amounts which would have been provided to other eligible providers.

REGULATORY IMPACT

The Office of Best Practice Regulation has advised that no Regulatory Impact Statement is required as the instrument is unlikely to have a more than minor regulatory impact (OBPR ID: 44745).

COMMENCEMENT

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

CONSULTATION

UNDA has been consulted regarding their inclusion in both the HEPPP and NPILF.

The proposed amendments relating to the NPILF program were informed by feedback from university representatives, which suggested there was potential to further clarify the method for determining their annual grant amount for future years under the NPILF.

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 (Total Funding Amounts) 2021

The *Other Grants Guidelines (Education) Amendment (Total Funding Amounts) 2021* (the 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 University of Notre Dame Australia (UNDA) became listed as a Table A provider under section 16-15 of the Act on 28 May 2021. As a Table A provider, UNDA is now eligible to receive grants for a range of additional purposes and programs under Part 2-3 of the Act, which deals with other grants. In particular, UNDA is now eligible to receive grants under the Higher Education Participation and Partnerships Program (HEPPP) and the National Priorities and Industry Linkage Fund (NPILF).

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- a) outreach to widen aspiration and promote higher education to persons from a low socioeconomic (SES) background, persons from regional areas and remote areas, and Indigenous persons; and
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Grants under the HEPPP program are made to Table A providers in respect of a year. Amounts paid are calculated by a formula based on the proportion of students from a low SES background, Indigenous students, and regional and remote students enrolled with the provider.

The NPILF is a program under which grants can be made to eligible providers for the purpose specified in item 13 of the table in subsection 41-10(1) of the Act—grants to encourage higher education providers to engage with industry. Grants made under the NPILF are aimed at encouraging universities to engage with industry to increase the amount of work integrated learning across disciplines and the number of STEM-skilled graduates, as well as improving employment outcomes for graduates.

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Human rights implications

The Amendment Instrument engages the following rights:

- the right to education; and
- the right to work.

Right to education

The Amendment Instrument promotes 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 Amendment Instrument increases the maximum grant amounts for HEPPP, the objectives of which are to promote equality of opportunity in higher education. Therefore, the Amendment Instrument promotes the right to education by enabling UNDA to receive grant payments under HEPPP, without decreasing the grant amounts that may be paid to other eligible providers.

Right to work

The Amendment Instrument promotes the right to work contained in Article 6(1) of the ICESCR, which recognises the “the right of everyone to the opportunity to gain [their] living by work” and that the State will “take appropriate steps to safeguard this right”. Article 6(2) cites “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual” as steps to be taken by a State Party to achieve the full realisation of the right contained in Article 6(1).

The Amendment Instrument increases the maximum grant amounts under the NPILF, which is aimed at encouraging providers to engage with industry to produce job-ready graduates. The specific objectives of this program include increasing the number of internships, practicums and other innovative approaches to work integrated learning across all disciplines, and improving the employment outcomes of STEM-skilled graduates. These activities are all aimed at assisting students to obtain qualifications that assist them to get jobs, thus supporting the right of these students to work.

Therefore, the Amendment Instrument promotes the right to work by enabling UNDA to receive grant payments under the NPILF, without decreasing the grant amounts that may be paid to other eligible providers.

Conclusion

The Amendment Instrument is compatible with human rights because it promotes the right to education and the right to work.

Minister for Education and Youth

**OTHER GRANTS GUIDELINES (EDUCATION) AMENDMENT
(TOTAL FUNDING AMOUNTS) 2021**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Other Grants Guidelines (Education) Amendment (Total Funding Amounts) 2021* (the Amendment Instrument).

Section 2: Commencement

2. This section specifies that the Amendment Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3: Authority

3. The Amendment Instrument is made by the Minister under section 238-10 of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This section simply clarifies that Schedule 1 is effective on its terms (that is, to amend the *Other Grants Guidelines (Education) 2012* (the Principal Instrument)).

SCHEDULE 1—AMENDMENTS

Item 1: Section 1.45

5. Item 1 repeals and replaces section 1.45 in the Principal Instrument to increase the total amount of HEPPP funding available to eligible providers for the years 2021, 2022, 2023.
6. The total amount of HEPPP funding for each year has been increased by the amount of funding that it is anticipated will be granted to UNDA. This increase ensures that the grant amounts which would have been provided to other Table A providers do not decrease, despite UNDA also receiving HEPPP funding.
7. New subsection 1.45.3 provides that the total funding amount for the year 2023 will be adjusted using the method of indexation set out in Part 5-6, Division 198 of the Act. The indexation provisions do not apply to the 2021 and 2022 amounts, as the specified amounts for those years have factored in increases due to indexation.
8. Subsection 1.45.5 continues to clarify that the total amount of HEPPP funds for 2024 and later years will be determined by the Minister.

Item 2: Section 1.47

9. Item 2 repeals and replaces section 1.47 to account for a separate method of calculating the grant amount for UNDA for 2021.
10. Subsection 1.47.1 provides the method for calculating grant amounts for eligible providers for 2021 onwards, except for the UNDA's 2021 grant amount, which is to be calculated in accordance with section 1.47A.
11. A new variable, *A1*, has replaced *A* in the equation for 2021. *A1* is set at \$138,009,092. This figure is the total amount of HEPPP funding that was available for 2021 prior to the Amendment Instrument.
12. The purpose of amending the formula for 2021 is to ensure the expected grant amounts for providers who were eligible at the start of the calendar year will not be impacted by the inclusion of UNDA as an eligible provider. The amendments to the 2021 formula, in conjunction with new section 1.47A, retain the status quo for existing Table A providers.
13. From 2022 onwards, the same formula will be used for all eligible providers, including UNDA.

Item 3: Section 1.47A

14. Item 3 inserts new section 1.47A after section 1.47.
15. New section 1.47A retains the status quo for existing Table A providers for 2021 and provides the method for calculating the grant amount for UNDA for 2021.
16. Subsection 1.47A.1 provides that the HEIMS data for UNDA is not to be included in the calculation of grant amounts for all other eligible providers for 2021. This ensures that the grant amounts for providers who were eligible at the start of 2021 will not be impacted by the inclusion of UNDA as an eligible provider.
17. Subsection 1.47A.5 provides that the maximum grant amount for UNDA for 2021 is the remainder of the total amount of HEPPP funding available for 2021 once all other eligible providers' grant amounts have been calculated in accordance with section 1.47.
18. In practice, the maximum grant amount for UNDA for 2021 will be the new total amount for 2021 of \$138,797,515 minus the previous total amount of \$138,009,092.
19. The actual grant amount for UNDA is subject to approval under section 41-20 of the Act.

Item 4: Section 8.15

20. Item 4 repeals and replaces section 8.15 in the Principal Instrument to increase the amount of funding available for grants under the NPILF.
21. Subsection 8.15.1 provides that the total amount of funding available for grants under the NPILF for the grant year 2021 is \$225.25 million. The total amount for 2021 was previously \$222 million.
22. The total amount of funding available under the NPILF for 2021 has been increased by the amount of funding that it is anticipated will be granted to UNDA. This increase ensures that the grant amounts which would have been provided to other Table A providers do not decrease, despite UNDA also receiving funding under the NPILF.
23. Subsection 8.15.5 provides that the total amount of funding available for grants under the NPILF for the grant years 2022, 2023 and 2024 is not set, but will be determined by the total amount of individual grant amounts paid to providers under section 8.20.
24. This approach is necessary, as eligible providers may move between enrolment bands, impacting the total amount of NPILF funding that is granted each year.