

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment, Workforce, Skills, Small and Family
Business

Higher Education Support Act 2003

Commonwealth Grant Scheme Amendment (Transition Fund Loading) Guidelines 2021

AUTHORITY

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines for the purposes of the Act. In particular, item 2 of the table at section 238-10 specifies that the Minister may make the Commonwealth Grant Scheme Guidelines in order to carry out or give effect to the matters set out in Part 2-2 of the Act.

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 amendment to the *Commonwealth Grant Scheme Guidelines 2020* (the Guidelines) made by the Schedule to this instrument relies on that provision.

PURPOSE AND OPERATION

Section 33-1 of the Act provides that grant amounts payable to higher education providers under Part 2-2 are calculated by working out the total basic grant amount for the provider for that year and adding together different components, one of which is the amount of transition fund loading worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year.

The *Commonwealth Grant Scheme Amendment (Transition Fund Loading) Guidelines 2021* (the Instrument) amends the Guidelines to:

- provide the amount of transition fund loading for providers for the years 2021, 2022 and 2023; and
- provide, for the purposes of paragraph 30-20(b) of the Act, that the broadened areas of study that are currently specified as national priorities for 2021 will continue to be national priorities in 2022.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) have agreed that this program is non-regulatory, or unlikely to have more than minor regulatory impact on businesses, individuals or community organisations (see OBPR ID 26106).

COMMENCEMENT

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

CONSULTATION

The Government undertook a period of extensive consultation in response to concerns raised by universities regarding the operation of the Transition Fund Loading in the CGS Guidelines commencing in March 2021. Universities listed as a Table A provider (under section 16-15) of the Act have been consulted, with consultations between universities and the Minister, and with officials from the Department of Education, Skills, and Employment concluding in November 2021. The Instrument substantially addresses concerns raised by stakeholders during consultation.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Commonwealth Grant Scheme Amendment (Transition Fund Loading) Guidelines 2021

The *Commonwealth Grant Scheme Amendment (Transition Fund Loading) Guidelines 2021* (the 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

Section 33-1 of the Act provides that grant amounts payable to higher education providers under Part 2-2 are calculated by working out the total basic grant amount for the provider for that year and adding together different components, one of which is the amount of transition fund loading worked out under the Commonwealth Grant Scheme Guidelines for the provider for that year.

The *Commonwealth Grant Scheme Amendment (Transition Fund Loading) Guidelines 2021* (the Instrument) amends the Guidelines to:

- provide the amount of transition fund loading for providers for the years 2021, 2022 and 2023; and
- provide, for the purposes of paragraph 30-20(b) of the Act, that the broadened areas of study that are currently specified as national priorities for 2021 will continue to be national priorities in 2022.

Human rights implications

The Instrument engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

The Instrument engages the right to education contained in Article 13 of the 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 Instrument will support the payment of grants to providers under the Commonwealth Grant Scheme in Part 2-2 of the Act. Grant payments under Part 2-2 of the Act are worked out by working out the total basic grant amount and adding the amount of any medical student loading, the amount of any transition fund loading and the amount of any performance funding grant amount for the provider. This Instrument facilitates the calculation of that grant amount by working out the amount of transition fund loading for providers for the years 2021, 2022 and 2023. The Instrument is therefore compatible with the right to education as it supports the payments of grants to providers under the Commonwealth Grant Scheme.

The Instrument also supports the right to education by expanding the areas of study listed as national priorities for 2022. This amendment improves access to education by enabling students to study a diverse range of short courses and improves their employability at a subsidised cost. This subsidised cost reduces barriers to students studying and ensures students have less debt upon graduating.

Conclusion

The Instrument is compatible with human rights because it supports the right to education.

Minister for Employment, Workforce, Skills, Small and Family Business
The Hon Stuart Robert MP

COMMONWEALTH GRANT SCHEME AMENDMENT (TRANSITION FUND LOADING) GUIDELINES 2021

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Commonwealth Grant Scheme Amendment (Transition Fund Loading) Guidelines 2021* (the Instrument).

Section 2: Commencement

2. This section provides that the Instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Instrument is made under section 238-10 of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This section provides that Schedule 1 is effective on its terms (that is, to amend the *Commonwealth Grant Scheme Guidelines 2020*).

Section 5: Application

5. This section clarifies that the amendments made by this Instrument apply to working out grants payable under Division 33 of the Act for the years 2021, 2022 and 2023.

SCHEDULE 1—AMENDMENTS

Item 1: paragraph 10(c)

6. This item provides that the broadened areas of study that are currently specified as national priorities for 2021 will continue to be national priorities in 2022.

Item 2: Section 19

7. This item repeals and substitutes section 19.

8. New section 19 provides that for the years 2021, 2022 and 2023, the amount of transition fund loading payable to a provider is the amount as listed in the table in the section.
9. The table lists providers and the amount of transition fund loading for those providers for the years 2021, 2022 and 2023.
10. The amounts set out in the Instrument are calculated as the difference between income a university would have received for Commonwealth supported students (excluding those enrolled in short courses, or in courses funded through the Innovative Places and National Priorities Places allocations) before amendments to the Act made by the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020*, and the income those students attract under the new funding system implemented by those amendments, plus income from the National Priorities and Industry Linkage Fund, and changes in income associated with the modified method for allocating funds in the Higher Education Participation and Partnerships Program, for 2021, 2022, and 2023. Income from students enrolled beyond a university's Maximum Basic Grant Amount is excluded from the calculation.