

EXPLANATORY STATEMENT

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

Amendment No 1 to the Other Grants Guidelines (Education) 2010 (DEEWR)

Issued by the authority of the Minister for Education

Subject: *Higher Education Support Act 2003*
Other Grants Guidelines (Education) 2010 (DEEWR)

Authority

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may, by legislative instrument, make guidelines providing for matters required or permitted by the Act or necessary or convenient to be provided in order to carry out or give effect to the Act. In particular subsection 238-10(1) specifies the Minister may make Other Grants Guidelines to give effect to matters set out in 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 and operation

The purpose of the instrument, *Amendment No 1 to the Other Grants Guidelines (Education) 2010 (DEEWR)* ('the Amendment'), is to amend the *Higher Education Support Act 2003 – Other Grants Guidelines (Education) 2010 (DEEWR)* ('the Guidelines'). The Guidelines were made by the Minister for Education on 22 April 2010 (see F2010L01076), which was registered on the Federal Register of Legislative Instruments on 29 April 2010 and commenced on 30 April 2010.

The Amendment inserts a new chapter dealing with the payment of grants to support structural adjustment, as specified in table item 9B of section 41-10 of the Act. Item 1 of the Amendment adds new Chapter 10—Grants to Support Structural Adjustment which specifies guidelines for the Structural Adjustment Fund Program ('the Program').

Background

The package of higher education reforms announced in May 2009 includes provision of \$400 million over four years for structural adjustment.

The Structural Adjustment Fund (the Fund) provides opportunity for universities to secure significant levels of funding to assist structural adjustment. It will particularly benefit universities which may face challenges from student demand driven funding. Those universities may face the need to make significant structural adjustment to capitalise on their strengths and to better align courses, and where they are provided, with patterns of student demand. The universities most likely to be

impacted are likely to be those with the most limited capacity to respond within their own resources. The Fund is likely to have particular application to new models of provision of higher education in outer metropolitan and regional areas.

The Program has two components. \$200 million of funding for structural adjustment projects will be allocated in the form of grants made in accordance with Division 41—Other grants of the Act. The amendment to the Other Grants Guidelines made by the instrument relates to this part of the Fund.

A further \$200 million of funding to be allocated for capital elements of structural adjustment projects of \$10 million or more will be provided through the Education Investment Fund (EIF). Approval and funding of projects funded through the EIF component of the Program will be in accordance with the Administrative Guidelines, the *Nation-building Funds Act 2008* and relevant instruments made under that Act.

The Fund as a whole will operate in an integrated procedural fashion in accordance with the Program Administrative Guidelines to be issued by the Minister for Education.

Explanation of provisions

Sections 10.1 and 10.2 respectively outline the purpose and the objectives and outcomes of the Program. The Program objectives and outcomes are intended to provide additional guidance and clarity on the nature of projects which will be regarded as coming within the ambit of the purpose of the Fund, as announced in the Government's publication, *Transforming Australia's Higher Education System*.

Section 10.3 specifies that grants may be made on the basis of a competitive process open to all eligible higher education providers. However, if the competitive round does not result in the allocation of the entirety of the funds available for that round, the Minister for Education may direct the Department to initiate negotiations with particular institutions aimed at developing projects which better meet the objective of the Program.

Apart from funds that may be allocated through the competitive round or through direct negotiation as provided for in subsections 10.3.1-10.3.3 of the instrument, up to \$20 million of the funds available under the HESA component of the Program may be allocated for structural adjustment projects that the Minister considers are priorities for particular eligible higher education providers. Subsection 10.3.4 makes provision for support of such activities outside the principal funding mechanisms. The provision of any such grant remains subject to it being in accordance with the objective of the Program and contributing to the specified outcomes.

Subsection 10.3.6 provides that the total amount allocated to the Program for approval under the Act will be indexed in accordance with the method set out in Part 5-6 of the Act for each of the years 2011, 2012 and 2013.

Consultation

Consultation on the purpose and nature of the Structural Adjustment Fund was undertaken through correspondence between the Minister for Education and the Vice-Chancellors of eligible universities in July 2009 and in the course of Interim

Agreement discussions between the Department of Education, Employment and Workplace Relations and individual universities in the second half of 2009. A draft amendment, accompanied by draft program guidelines, was provided to Vice-Chancellors and other key stakeholders in April 2010 for comment. The only comment received on the draft amendment was recommendation that the funding which the Minister for Education may allocate outside the specified process (priority projects—subsection 10.3.4) should be separate from and supplementary to the Program. The provision is retained: it is a measure integral to the intended Program outcomes, which is necessary to allow the Minister limited capacity to respond to institutional exigencies which may arise from time to time.

Commencement

The Amendment takes effect the day after it is registered on the Federal Register of Legislative Instruments.