

EXPLANATORY STATEMENT

Guidelines issued under section 238-10 of the Higher Education Support Act 2003
Commonwealth Scholarships Guidelines (Education) 2013

Issued by the authority of the Minister for Education

Subject: *Higher Education Support Act 2003*
Commonwealth Scholarships Guidelines (Education) 2013

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 necessary or convenient to be provided in order to carry out or give effect to the Act. In particular item 3 of the Table in subsection 238-10(1) specifies the Minister may make Commonwealth Scholarships Guidelines to give effect to matters under Part 2-4 of the Act.

Section 33(3) of the *Acts Interpretation Act 1901* also 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.

Purpose and operation

The purpose of this instrument is to revoke the *Commonwealth Scholarships Guidelines (Education) 2010* (F2010L00696) (the Former Guidelines) and make the *Commonwealth Scholarships Guidelines (Education) 2013* (the Guidelines). The new Guidelines ensure that the efficiency dividend to university funding included in the 2013-14 Budget can be implemented. The Guidelines also separate out Indigenous Commonwealth Scholarships from other Commonwealth Scholarships.

Consultation

The efficiency dividend measure was announced by the previous Government on 13 April 2013 and subsequently included in the 2013-14 Budget. Changes other than those to give effect to the efficiency dividend are technical in nature.

Commencement

This legislative instrument takes effect on the day after it is registered on the Federal Register of Legislative Instruments.

Transitional arrangements

The revocation of the Former Guidelines does not affect the validity of a payment or decision made under the Former Guidelines. A decision made under the Former Guidelines is taken to continue to have effect as if it were made under the *Commonwealth Scholarships Guidelines (Education)* 2012.

Background

The changes made in revoking and remaking the Guidelines give effect to the efficiency dividend. The efficiency dividend was announced on 13 April 2013 and included as part of the 2013-14 Budget. Whether or not grant amounts are explicitly stated in the Guidelines, the efficiency dividend is being applied to the scholarship rates for programs specified in these Guidelines. The efficiency dividend is applied prior to indexation using the Higher Education Grant Index.

Overview of the Commonwealth Scholarships Guidelines (Education) 2013

Chapter 1 – Introduction

- 1.1 Sets out the purpose of the Guidelines.
- 1.5.1 Sets out the defined terms used in the Guidelines. This section has been updated to include a definition of Indigenous Commonwealth Scholarship to differentiate these from grandfathered Commonwealth Scholarships in Chapter 4.

Chapter 2 – Indigenous Commonwealth Scholarships Program

- 2.1 Specifies that the objective of the Indigenous Commonwealth Scholarships (ICS) program is to facilitate choice in higher education and to increase higher education participation for Indigenous students.
 - 2.1.1 Specifies that there are five scholarship types: Indigenous CECS, Indigenous Enabling CECS, Indigenous CAS, Indigenous Enabling CAS and Indigenous Access Scholarships.
 - 2.1.5 Specifies that an ICS is an indirectly-paid standard scholarship under paragraph 46-10 (aa) of the Act.
 - 2.5.1 Specifies how grant amounts are determined and the funding amounts that are available.
 - 2.5.5 Specifies that the allocation of all Indigenous scholarships will be based on a competitive bidding process.
 - 2.5.10 Specifies the flexibility and reporting requirements for higher education providers to roll over and convert funding of ICS across and within ICS types; the administrative processes for the return of ICS funds; and the reallocation of funds resulting from unspent ICS funds by higher education providers.
- 2.10 Specifies that a student may only hold one type of ICS from each of the respective Indigenous CECS and Indigenous CAS categories (the exception is that a student can hold an Indigenous Access Scholarship concurrently with another category of CAS); and the maximum duration a student can have access to one or more scholarships (eight scholarship periods, the exception being a student accessing an Indigenous Enabling CECS or Indigenous Enabling CAS may access ten scholarship periods if progressing to an undergraduate degree).

Concurrent arrangements between Indigenous Commonwealth Scholarships, Student Start-Up Scholarships, Student Start-Up Loans and Relocation Scholarships are also specified.

- 2.10.1 Specifies the basic eligibility requirements for each category of ICS.

- 2.10.5 Specifies the low socio-economic status requirements in order to be eligible for an ICS.
- 2.10.10 Specifies the full-time student load requirements for different types of ICS.
- 2.10.15 Specifies the additional eligibility requirements for Indigenous CAS and Indigenous Enabling CAS; and further guidance to determine whether a student has lived in a regional or remote area consistent with the Guidelines.
- 2.15 Specifies the application, selection and offer processes and policies.
- 2.15.1 Specifies that higher education providers may only offer a student an ICS as a result of an application lodged by the student and that the application form must advise students that they may incur a debt to the Commonwealth if they make a claim or receive payments for a scholarships to which they were not entitled. Providers are also required to inform a student that the student must advise Centrelink that they have applied for an ICS.
- 2.15.5(1-2) Specify the selection policy that a higher education provider must maintain for ICS.
- 2.15.5(3-13) Specify special provisions for students progressing from an Indigenous Enabling CECS and/or Indigenous Enabling CAS and priority of offers for the offer of Indigenous Access Scholarships; and also outlines the interactions between scholarship types, including proposed Relocation, Student Start-Up Scholarships and Student Start-Up Loans.
- 2.15.5(14) Specifies that a student who is made an offer of a Governor-General's Indigenous Student Teacher Scholarship and is receiving an Indigenous-CECS or Indigenous-CAS is to advise the relevant provider of their choice in writing.
- 2.15.5(15-17) Detail the priority of offer for IAS.
- 2.15.10(1-2) Specifies the offer process that higher education must follow in terms of the numbers of scholarships offered and compliance with scholarship interactions.
- 2.15.10(3) Specifies that a provider should include on a student's offer letter that the assistance to which the student is entitled and any conditions on the assistance. It must also advise that applicant that he or she must tell Centrelink of the offer of an Indigenous Commonwealth Scholarship.
- 2.15.10(4) Specifies that scholarships are to be offered within ten working days of the offer of a Commonwealth-supported place.
- 2.15.10 (5) Specifies that a provider must report information to the Department on offers of scholarships by 22 January and 15 June in each calendar year.
- 2.15.10 (6) Specifies that where an offer of an ICS is not accepted by a student, providers may make second and subsequent round offers to students.

- 2.15.10 (7) Specifies that in any mid year offer of scholarships, a provider must advise the student of any offer before finalising the offer of a scholarship if the student is receiving a Student Start Up Scholarship and/or a Relocation Scholarship.
- 2.15.10(8) Requires providers to ensure that students accept the conditions of the ICS, and agree to provide personal information to the provider on request.
- 2.15.15 Specifies the requirement of higher education providers to collect student personal information for the purposes of administering Indigenous Commonwealth Scholarships across all types of ICS and to disclose personal information to the Department.
- 2.20 (1-6) Specify the requirements for the payment of ICS to students, including for cross-institutional study.
- 2.20 (7) Specifies that students must state whether they have consumed any entitlement of an ICS with the provider or with any provider; and prior to payment of an IAS, the student must sign a declaration stating that they have not accepted an offer of an IAS at any other provider.
- 2.20 (8) Specifies that, prior to payment of an Indigenous CECS or Indigenous Enabling CECS, a student must sign a declaration that they have not accepted a Student Start-Up Scholarship or a Student Start-Up Loan.
- 2.20 (9) Specifies that, prior to payment of an Indigenous CAS or Indigenous Enabling CAS, a student must sign a declaration that they have not accepted a Relocation Scholarship.
- 2.20(10-11) Specify that for the IAS, the provider must ensure that the student meets all of the eligibility criteria. Where a student receives a first payment, but is found not to meet all of the eligibility requirements at the first census date, the provider may determine whether the student is required to repay the first scholarship payment.
- 2.20.1 Specifies a payment of 50 % of the annual value of the ICS to the student is required by higher education providers across all ICS types. Depending on the type of ICS and when the offer is made, the timing of the payment may differ.
- 2.25.1 Specifies that each higher education provider is responsible for monitoring the ongoing eligibility of its students to ensure that each student continues to meet the ICS eligibility requirements.
- 2.25.5 Specifies the circumstances in which a suspension of an ICS may be granted.
- 2.25.10 Specifies the circumstances in which a higher education provider must terminate an ICS, and that an ICS may not be terminated for any other reason.
- 2.25.15 Specifies the steps which must be taken by the higher education provider if it or the Department believes a student has provided false or misleading information.

As this clause relates to the possible commission of an offence by the student under the Criminal Code against the Commonwealth (rather than against the higher education provider) the provider should not make contact with the student in relation to the matter as it may jeopardise the investigative process and the collection of evidence which may be needed for any subsequent prosecution. Officers of the Department's Investigations Branch are required to conduct any enquiries in accordance with the Australian Government Investigation Standards, the Fraud Control Policy of the Commonwealth and various statutory provisions governing investigatory and forensic processes.

Chapter 3 – Indigenous Staff Scholarships

- 3.1 Specifies that the objective of the Indigenous Staff Scholarship (ISS) Program is to develop Indigenous leadership in the higher education sector through the provision of opportunities for professional development.
- 3.1.1 and 3.1.5 describe the ISS, the number of ISS available each year and that they are standard scholarships in accordance with paragraph 46-10(aa) of the Act.
- 3.5.5 Specifies how grant amounts are to be determined.
- 3.10 Specifies the student eligibility requirements.
- 3.15 Specifies the application process, the selection policy and the offer process and that application forms will be made available by the Department on request.
- 3.20 Specifies the condition of grants to eligible providers.
- 3.20.1 Specifies the time and manner of payments.
- 3.20.5 Specifies that the value of the ISS is payable for tuition fees and/or student contribution amounts, and that any unspent funds will be recovered from the provider under the Act.
- 3.20.10 Specifies the process for recovery of funds on termination or transfer of ISS.
- 3.20.15 Specifies reporting and notice requirements which the provider must comply with in order to provide the Department with certain information.
- 3.25 Specifies the conditions of scholarship.
- 3.25.1 Specifies the ISS value in terms of the stipend to students and the grant to providers.
- 3.25.5 Specifies the duration of the ISS.
- 3.25.10 Specifies the circumstances in which an ISS may commence.
- 3.25.15 Specifies the circumstances in which a suspension of an ISS may be granted.
- 3.25.20 and 3.25.25 Specify the circumstances in which a course may be withdrawn from or change within the conditions of the ISS.

- 3.25.30 Specifies the circumstances in which a transfer to another provider within the tenure of the ISS may be granted.
- 3.25.35 Specifies the circumstances in which the student might be eligible for concurrent scholarships or awards.
- 3.25.40 and 3.25.45 Specify the conditions in relation to work and leave.
- 3.25.50 Specifies reporting requirements with which the student must comply in order to provide the Department with certain information.
- 3.25.55 Specifies the circumstances in which an ISS may be terminated.

Chapter 4 – Commonwealth Scholarships Program

- 4.1 Specifies that the objective of the program is to meet the existing commitments to students for Commonwealth Scholarships (CS) awarded prior to 1 January 2010; and provides that higher education providers will be responsible for the continued administration of continuing CS students.
 - 4.1.1 Describes CS awarded in the period covering the commencement of the program prior to 1 January 2010.
 - 4.1.5 Specifies that an ICS is an indirectly-paid standard scholarship under paragraph 46-10 (aa) of the Act.
 - 4.5.1 Specifies how grant amounts are to be determined.
 - 4.5.5 Specifies that no grants may be paid for a year after 2014.
 - 4.5.10 Specifies how the allocation of CS to a provider will be determined.
 - 4.10 Specifies the eligibility requirements for students.
 - 4.10.1 Specifies the continued basic eligibility requirements.
 - 4.10.5 Specifies the continued low SES requirements that a student must meet in order to remain eligible to receive a CS.
 - 4.10.10 Specifies the continued full-time student load requirements that a student must meet in order to remain eligible to receive a CS.
 - 4.15 Specifies that eligible providers are responsible for ongoing reporting and payment of eligible continuing CS recipients.
 - 4.15.1 Provides that the provider is responsible for managing and funding any liabilities above their allocation when that liability is created by the provider awarding a CS beyond its allocated CS.
 - 4.15.5 Specifies provisions for handling and reporting of personal information.

4.20 Provides for payments to students.

4.20.1 Specifies the value of scholarships.

4.20.5 Details payment arrangements.

4.25 Determines the conditions of continuing scholarships and specifies the circumstances in which a continuing scholarship may be suspended or terminated. The maximum duration of a continuing CS is also specified as are the arrangements for providers to manage the provision of false or misleading information.

Schedule 1 specifies the Fields of Education that will be accepted for the purposes of awarding a CECS-Priority Discipline for undergraduate study.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

COMMONWEALTH SCHOLARSHIPS GUIDELINES (EDUCATION) 2013

This Legislative 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 *Commonwealth Scholarships Guidelines (Education) 2013* (the Guidelines) are made by the Minister under section 238-10 of the *Higher Education Support Act 2003* (the Act), in order to carry out or give effect to the matters set out in Part 2-4 of the Act.

The Commonwealth Scholarships Guidelines are instructions for administering the Indigenous Commonwealth Scholarships Program; the Indigenous Staff Scholarships Program; and the Commonwealth Scholarships (Grandfathered Student) Program.

All scholarships under the Indigenous Commonwealth Scholarships Program described in Chapter 2 assist Aboriginal and Torres Strait Islander students from low socio-economic backgrounds, particularly those from rural and regional areas, with costs associated with higher education. The scholarships available are:

- Indigenous Commonwealth Education Costs Scholarships;
- Indigenous Enabling Commonwealth Education Costs Scholarships;
- Indigenous Commonwealth Accommodation Scholarships;
- Indigenous Enabling Commonwealth Accommodation Scholarships; and
- Indigenous Access Scholarships.

Chapter 3 of the Guidelines provides for the Indigenous Staff Scholarships (ISS), which are awarded nationally to enable Indigenous staff to take leave from their employment to undertake 12 months full-time higher education study in their chosen academic or professional area. The ISS are directed towards Indigenous staff who have actively encouraged Indigenous students to participate in higher education and complete their studies.

Provisions for meeting the commitment for Commonwealth Scholarships awarded prior to 1 January 2010 are included in Chapter 4 of the Guidelines.

An efficiency dividend for higher education funding of 2 per cent in 2014 and 1.25 per cent in 2015 was announced by the previous Government and included in the 2013-14 Budget. It is being applied to the scholarship rates for programs under the Guidelines. The efficiency dividend is applied prior to indexation using the Higher Education Grant Index.

Human rights implication

The Instrument engages the following human rights:

- Right to education
- Right to equality and non-discrimination

Right to education

The Guidelines engage the right to education. In particular, article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states 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 Guidelines provide for Scholarships to support students and staff while they are undertaking study. To the extent that the right to education is engaged this is promoted as it increases access to education.

The changes are not expected to have any impact on individuals' access to education.

Right to equality and non-discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

The legislative instrument engages the right to equality and non-discrimination as it specifies the Indigenous Commonwealth Scholarships Program and the Indigenous Staff Scholarships Program. The Indigenous Commonwealth Scholarships Program provides funding to eligible Indigenous students to assist with general education costs associated with participating in higher education; funding to assist eligible Indigenous students to participate in an enabling course or in an area of national priority in higher education; and funding to assist with relocation and accommodation costs associated with participation in higher education.

The Guidelines also provide for the Indigenous Staff Scholarships program. Under the program five scholarships per year are awarded nationally to enable Indigenous staff (academic or general) of a provider to take leave from their employment to undertake 12 months full-time higher education study in their chosen academic or professional area. The ISS are directed towards Indigenous staff who have actively encouraged Indigenous students to participate in higher education and complete their studies. The program helps to develop Indigenous leadership in the higher education sector through the provision of opportunities for professional development.

To the extent that the right is engaged, it promotes the right to self-determination as Indigenous staff and students are provided with funding which will assist them to participate in higher education. The effect of the efficiency dividend will not effectively reduce the numbers of Indigenous staff and students accessing these scholarships as funding will continue to rise, albeit at a slower rate.

Conclusion

This Legislative Instrument is compatible with human rights.

The Hon Christopher Pyne MP, Minister for Education