

EXPLANATORY STATEMENT

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

Amendment No. 3 to the *Other Grants Guidelines (Education) 2012*

Issued by the authority of the Minister for Higher Education

Subject Higher Education Support Act 2003
Amendment No. 3 to the Other Grants Guidelines (Education) 2012

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 8 of section 238-10 specifies the Minister may make *Other Grants Guidelines* to give effect to matters under Part 2-3 of the Act. Subsection 33(3) of the *Acts Interpretation Act 1901* provides the power to vary the instrument.

Section 41-15 of the Act provides that the Other Grants Guidelines may specify one or more programmes under which grants for particular purposes specified in the table in subsection 41-10(1) are to be paid.

Purpose and Operation

This legislative instrument amends the *Other Grants Guidelines (Education) 2012* which was registered on 13 February 2012 and commenced in 14 February 2012 (see F2012L00281).

Commencement

This legislative instrument will come into effect on the day it is registered on the Federal Register of Legislative Instruments.

Consultation

Consultation on the amendments was not considered necessary as the purpose of the amendments is to allow universities in New South Wales to receive grants under the Higher Education Superannuation Programme. Further amendments involve clarifying the scope of the programme and setting out the reporting and reconciliation processes necessary for programme administration.

Regulation Impact Statement

The Office of Best Practice Regulation was consulted in the preparation of the *Other Grants Guidelines (Education) 2012* and assessed that a Regulation Impact statement was not required (ref 16827).

Explanation of provisions

Item 1 repeals and substitutes Chapter 4 of the *Other Grants Guidelines (Education) 2012*.

New Chapter 4 contains provisions as follows:

Paragraph 4.1 sets out the purpose of the Higher Education Superannuation Programme (HESP)

Paragraph 4.2 sets out the programme objectives. In particular, this paragraph substitutes reference to Table A providers with reference to higher education providers.

Subparagraph 4.2.2 provides that a grant under this programme is only payable to former employees of an eligible provider.

Paragraph 4.3 prescribes the Higher Education Providers who are eligible to receive grants, as well as the eligible superannuation schemes or funds.

Paragraph 4.4 substitutes previous paragraph 4.4 'allocation of grants'. It prescribes the matters which grants made under this programme may cover. In addition, this paragraph omits reference to the Minister approving Administrative Information for Providers as the Administrative Information for Providers is unrelated to HESP.

Paragraph 4.5 prescribes the liabilities and expenses that are not covered under the programme.

Paragraphs 4.6 provides that grants made under this programme are to be approved by the Minister.

Paragraphs 4.7 provides that grant amounts paid under this programme will be determined by the Minister.

Paragraph 4.8 provides that the conditions applicable to grants made under this programme will be determined by the Minister in accordance with Section 41-25 of the Act.

Paragraph 4.9 specifies the reconciliation process conducted for the programme as well as the supporting documentation required for this process.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support Act 2003

OTHER GRANTS GUIDELINES (EDUCATION) 2012

Amendments to Guidelines made pursuant to section 238-10 of the
Higher Education Support Act 2003

This 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 Instrument is made by the Minister under Section 238-10 of the *Higher Education Support Act 2003* (the Act). In particular item 8 of section 238-10 specifies that the Minister may make Other Grants Guidelines to give effect to matters under Part 2-3 of the Act.

The purpose of this legislative instrument is to amend the *Other Grants Guidelines (Education) 2012* to enable funds to be provided to eligible New South Wales universities to assist with the cost of their superannuation liabilities under the Higher Education Superannuation Programme (HESP).

The 2014 -15 Budget includes provision for the resumption of the HESP to eligible universities, subject to agreement with the NSW Government.

The Department of Education is responsible for managing the supplementation of superannuation liabilities relating to former university employees who are members of State-based superannuation schemes.

The department provides supplementary financial assistance to universities through the HESP to meet annual expenses in respect of unfunded superannuation liabilities. A portion of the funding is recovered from participating States (Victoria, Western Australia, South Australia and Tasmania) under cost sharing arrangements.

Human rights implications

Right to just and favourable working conditions.

This Legislative Instrument engages the right to just and favourable conditions of work contained in article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

To the extent that the right to just and favourable conditions of work is engaged, this right is protected and promoted by the Instrument as the Instrument provides the basis for ongoing financial assistance to eligible universities to enable them to discharge their liability for their employees' superannuation, thereby ensuring employees continue to receive just and favourable conditions of work.

This instrument is compatible with the right to just and favourable conditions of work.

Conclusion

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

Christopher Pyne,
Minister for Education