

## **EXPLANATORY STATEMENT**

### ***Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 1) 2018***

Issued by the authority of the Minister for Education and Training

#### **Authority**

The *Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 1) 2018* (Amendment Determination) is made by the Minister for Education and Training under subsection 41-45(1D) and subsection 41-50(2) of the *Higher Education Support Act 2003* (HESA).

There are no statutory preconditions to the making of the Amendment Determination.

#### **Purpose**

The Amendment Determination amends the *Education Support (Maximum Payments for Other Grants) Determination 2017* (Principal Determination) and the *List of Maximum Grant Amounts under Division 41 for 2018* (Principal List) to, respectively:

- increase the maximum amount of grants that may be made under Division 41 of HESA for 2018 by \$7,600,000 (to \$1,739,062,000); and
- increase the maximum amount of grants that may be made under Division 41 of HESA for 2018 for the purposes of:
  - supporting the capital development projects of higher education providers by \$7,000,000 (to \$7,000,000); and
  - assuring and enhancing the quality of Australia's higher education sector by \$600,000 (to \$1,567,650).

#### **Background**

Division 41 of HESA enables the Commonwealth to make grants for the purposes and to the bodies corporate specified in the table in subsection 41-10(1). Payments of such grants are supported by the standing appropriation in section 238-12 of HESA.

Subsection 41-45(1) of HESA imposes a maximum amount that can be paid in grants under Division 41 in any calendar year. In relation to 2017 and later years, the maximum amount that can be paid in grants under Division 41 is the amount determined by the Minister by legislative instrument made under subsection 41-45(1B). A determination under subsection 41-45(1B) in relation to a year must be made before the start of that year (subsection (1C)), but can be varied during the year (subsection (1D)).

The Principal Determination determines the maximum amount that can be paid in grants under Division 41 in 2018 as \$1,731,462,000.

Subsection 41-50(1) of HESA requires the Minister to prepare, by legislative instrument, a list of the maximum amounts of grants that can be paid in a year for each of the purposes specified in the table in section 41-10. The list of maximum amounts for each purpose must be prepared before the start of the year to which it relates (subsection (1)), but it can be varied during the year (subsection (2)).

Amongst other things, the Principal List determines the maximum amount of grants that may be made under Division 41 of HESA for 2018 as follows:

- for the purpose of supporting the capital development projects of higher education providers—Nil; and
- for the purpose of assuring and enhancing the quality of Australia’s higher education sector—\$967,650.

At the Mid-Year Economic and Fiscal Outlook for 2017-18, the Government decided to provide \$7 million to the University of Melbourne (a “Table A provider” under HESA) to assist the University in the construction of library facilities for its Menzies Institute (see Appendix A, p124, 145, at [www.budget.gov.au/2017-18/content/myefo/html/](http://www.budget.gov.au/2017-18/content/myefo/html/)). This funding will be provided by way of a grant under Division 41 of HESA, for the purpose of supporting a capital development project of the University.

As part of the 2017-18 Budget, the Government decided to transfer the Australian Awards for University Teaching (AAUT), formerly funded under the Promotion of Excellence in Learning and Teaching in Higher Education (PELTHE) Program under HESA, to Universities Australia. Additional funding is being provided to enable transition of the AAUT to sector control over the period 2018-2021.

As a result of these decisions, it is necessary to increase the maximum amount that can be paid in grants under Division 41 in 2018:

- for the purpose of supporting the capital development projects of higher education providers by \$7,000,000;
- for the purpose of assuring and enhancing the quality of Australia’s higher education sector by \$600,000; and
- as a consequence—in total by \$7,600,000.

The Amendment Determination amends the Principal Determination and the Principal List to give effect to these decisions.

### **Consultation**

Universities Australia and the University of Melbourne have been consulted on these grants.

### **Commencement**

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

## Statement of Compatibility with Human Rights

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

### ***Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 1) 2018***

This *Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 1) 2018* (Amendment Determination) is compatible with 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 Determination**

Division 41 of the *Higher Education Support Act 2003* (HESA) enables the Commonwealth to make grants for the purposes and to the bodies corporate specified in the table in subsection 41-10(1). Payments of such grants are supported by the standing appropriation in section 238-12 of HESA.

Subsection 41-45(1) of HESA imposes a maximum amount that can be paid in grants under Division 41 in any calendar year. In relation to 2017 and later years, the maximum amount that can be paid in grants under Division 41 is the amount determined by the Minister by legislative instrument made under subsection 41-45(1B). A determination under subsection 41-45(1B) in relation to a year must be made before the start of that year (subsection (1C)), but can be varied during the year (subsection (1D)).

The *Education Support (Maximum Payments for Other Grants) Determination 2017* (Principal Determination) determines the maximum amount that can be paid in grants under Division 41 in 2018 as \$1,731,461,400.

Subsection 41-50(1) of HESA requires the Minister to prepare, by legislative instrument, a list of the maximum amounts of grants that can be paid in a year for each of the purposes specified in the table in section 41-10. The list of maximum amounts for each purpose must be prepared before the start of the year to which it relates (subsection (1)), but it can be varied during the year (subsection (2)).

Amongst other things, the *List of Maximum Grant Amounts under Division 41 for 2018* determines the maximum amount of grants that may be made under Division 41 of HESA for 2018 as follows:

- for the purpose of supporting the capital development projects of higher education providers—Nil; and
- for the purpose of assuring and enhancing the quality of Australia’s higher education sector—\$967,650.

The Amendment Determination amends the Principal Determination and the Principal List to, respectively:

- increase the maximum amount of grants that may be made under Division 41 of HESA for 2018 by \$7,600,000 (to \$1,739,062,000); and
- increase the maximum amount of grants that may be made under Division 41 of HESA for 2018 for the purposes of:

- supporting the capital development projects of higher education providers by \$7,000,000 (to \$7,000,000); and
- assuring and enhancing the quality of Australia's higher education sector by \$600,000 (to \$1,567,650).

### **Human rights implications**

#### *Right to education*

The Amendment Determination engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

The Amendment Determination increases the maximum amounts that the Commonwealth can pay as grants under Division 41 of HESA, for the purposes of supporting the capital development of higher education providers and assuring and enhancing the quality of Australia's higher education sector. These purposes assist in providing access to, and improving the quality of, higher education in Australia, and hence are compatible with, and promote, the right to education.

### **Conclusion**

This Amendment Determination is compatible with human rights because it enables the provision of additional Commonwealth funding for purposes that promote the right to education.

**Senator the Hon Simon Birmingham, Minister for Education and Training**