

REVISED EXPLANATORY STATEMENT

Issued by authority of the Minister for Education and Training

Higher Education Support Act 2003

Other Grants Guidelines (Education) Amendment (No. 1) 2018

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, and for matters necessary or convenient to be provided in order to carry out or give effect to the Act. In particular, item 8 of the table in section 238-10 specifies that 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 guidelines.

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

The *Other Grants Guidelines (Education) Amendment (No. 1) 2018* ('Amendment Instrument') amends the *Other Grants Guidelines (Education) 2012* ('Principal Instrument') to specify the Regional Study Hubs Program as a program under which grants are to be paid for the purpose of activities that support open access to higher education across Australia.

The purpose of the Amendment Instrument is to address the situation where students wish to remain in their local regional area for study, but enrolments are not sufficient to justify a university establishing a campus. By specifying the Regional Study Hubs Program as a program under which grants are to be paid, a number of community-owned centres can be established to provide academic support for students enrolled in distance tertiary education.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

Section 14 of the *Legislation Act 2003* (Legislation Act) allows legislative instruments to make provision in relation to matters by incorporating Acts and disallowable legislative instruments, either as in force at a particular time or as in force from time to time. Section 13(1)(a) of the Legislation Act has the effect that references to Commonwealth disallowable instruments (such as the Principal Instrument) can be taken to be references to versions of those instruments as in force from time to time.

The Schedule to the Amendment incorporates by reference the Principal Instrument. The Principal Instrument specifies one or more programs under which grants for particular purposes specified in the table in subsection 41-10(1) of the Act are to be paid. The manner of incorporation is as a disallowable Commonwealth legislative instrument as in force from time to time. The incorporated document is readily and freely accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/Series/F2012L00281>.

The new definition of ‘Remoteness Structure’ inserted by Schedule 1 to the Amendment Instrument incorporates by reference a document titled *Australian Statistical Geography Standard (ASGS): Volume 5 – Remoteness Structure* July 2016, published by the Australian Statistician. Paragraph 14(1)(b) of the Legislation Act allows a legislative instrument to incorporate any other document in writing which exists at the time the legislative instrument is made. However, subsection 14(2) provides that such other documents may not be incorporated as in force from time to time unless a specific provision in the authorising Act overrides subsection 14(2) to specifically allow the documents to be incorporated in the instrument as in force or existence from time to time. The document, which is incorporated by reference, is a date-specific, point in time document. The purpose of the document is to update the Remoteness Areas Structure within the Australian Statistical Geography Standard (ASGS). Remoteness Areas divide Australia into 5 classes of remoteness on the basis of a measure of relative access to services for the purpose of releasing and analysing statistical data. This document is readily and freely accessible at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/1270.0.55.005>.

Availability of Merits Review

Decisions by the Minister in relation to the provision of grants under the Regional Study Hubs Program are not subject to merit review for the following reasons.

Funding for the Regional Study Hubs Program will be provided under Part 2-3 of the Act. Under Part 2-3 of the Act, the Minister has the discretion to:

- approve grants made under Part 2-3 (section 41-20)
- determine the amount of those grants (where the Other Grants Guidelines do not specify an amount) (section 41-30), and
- determine the conditions that attach to the grant (where the Other Grants Guidelines do not determine the conditions) (section 41-25).

The Regional Study Hubs Program is a competitive discretionary grants based program. Section 206-1 of the Act specifies the types of decisions made under the Act that are reviewable decisions. Funding decisions made under Part 2-3 of the Act (including decisions pertaining to competitive discretionary grants) are not specified at section 206-1 as decisions that are reviewable. Providing for merits review in this case would be beyond the scope of the Act.

Furthermore, a finite amount of funding is available for the Regional Study Hubs Program and it is not possible for all applicants to be provided with funding. Providing for merits review where a finite amount of funding is available over a specified period would mean any decision for one applicant will necessarily adversely impact other applicants. Merits review would delay delivery of funding to successful applicants and potentially alter the amount of that funding.

While merits review is not available to applicants under the Regional Study Hubs Program, the Minister for Education will decide the outcome of each application round taking into account the evaluation of applications and recommendations made by an assessment panel comprised of departmental officials.

Commencement

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

Consultation

On 16 February 2018, the Department of Education and Training (the department) released a discussion paper titled “Discussion Paper on Implementation of Regional Study Hubs Initiative” inviting public comment on the implementation of a regional study hubs program.

Comments on the discussion paper closed on 26 March 2018. The department received 25 submissions: 12 submissions were received from Table A higher education providers, two submissions from Table B providers, five submissions from local councils, four submissions from peak bodies and two submissions from existing regional study centres in Geraldton, Western Australia, and Cooma, New South Wales. All submissions were supportive of an initiative to implement regional study hubs.

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Regulatory impact statement

The Office of Best Practice Regulation was consulted in the preparation of the Amendment Instrument. The Office concluded that a Regulation Impact statement was not required (OBPR ref 21960).

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Explanation of provisions

Section 1 of the Amendment Instrument specifies the name of the Amendment Instrument.

Section 2 states that the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 sets out the legal authority to make the Amendment Instrument.

Section 4 provides the purpose of the Amendment Instrument.

Section 5 provides that the Principal Instrument will be amended in the terms set out in the Schedule to the Amendment Instrument.

Schedule 1

Item 1 of the Amendment Instrument inserts new definitions into paragraph i.ii of the Principal Instrument as follows:

Commonwealth assisted student, to mean a person undertaking tertiary education receiving a number of kinds of assistance from the Commonwealth.

Remoteness Structure, to mean the Remoteness Structure described in the document titled “Australian Statistical Geography Standard (ASGS): Volume 5 – Remoteness Structure” July 2016, published by the Australian Statistician.

RSHP, to mean the Regional Study Hubs Program.

Item 2 of the Amendment Instrument inserts a new Chapter 7C – Grants for activities that support open access to higher education across Australia.

New item 7C.1 establishes the purpose of the RSHP.

Sub-item 7C.1.1 establishes that the RSHP is a program for the purposes of subsection 41-15(1) of the Act, and specifies matters listed in subsection 41-15(2) of the Act in relation to the RSHP.

Sub-item 7C.1.5 outlines that the purpose of the RSHP is to support open access to higher education across Australia in accordance with item 11(c) of the table in subsection 41-10(1) of the Act.

New item 7C.5 provides the program objective for the RSHP.

Sub-item 7C.5.1 provides that the objective of the program is to provide financial assistance to community-based bodies corporate in regional and remote areas of Australia, to enable them to establish and maintain regional study hubs in regional

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areas that support Commonwealth assisted students who are undertaking an undergraduate course of study

New item 7C.10 sets out the entities which are eligible for funding under the RSHP.

Sub-item 7C.10.1 lists the types of entities that are eligible for funding under the RSHP.

Sub-item 7C.10.5 states that a body corporate listed in 7C.10.1(a) or (b) is only eligible for a grant under the RSHP where the Minister is satisfied that the body corporate, and each person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the body's affairs, is a fit and proper person within the meaning of the Act, and that the body corporate is financially viable

New item 7C.15 places conditions on grants provided under the RSHP.

Sub-item 7C.15.1 states that a grant under the RSHP must only be used to establish, operate and maintain a facility in, and to provide services from, a location in particular remoteness areas.

Sub-item 7C.15.5 provides that a recipient of a grant under the RSHP must ensure that the facilities and services provided using the grant primarily support Commonwealth assisted students. A note to the sub-item explains that facilities and services provided under the RSHP may be provided to other students undertaking students if the Regional Study Hub has spare capacity to do so.

Sub-item 7C.15.10 lists the purposes for which a grant under the RSHP may be used.

Sub-item 7C.15.15 requires grant recipients to comply with the terms of the grant approval imposed by the Minister.

Statement of Compatibility with Human Rights

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

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The *Other Grants Guidelines (Education) Amendment (No. 1) 2018* (Amendment Instrument) 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 Amendment Instrument

The *Other Grants Guidelines (Education) Instrument 2012* (Principal Instrument) sets out a number of programs under which grants may be provided in accordance with Part 2-3 of the Act. The Principal Instrument also sets out some conditions on the grants made under the programs specified in the instrument.

The Amendment Instrument inserts a new program in the Principal Instrument, the Regional Study Hubs Program (RSHP). The RSHP will provide grants to establish a number of study hubs in regional or remote areas, which will assist Commonwealth assisted students who experience difficulties in accessing the necessary services to complete their studies.

The Amendment Instrument sets out the purposes of the RSHP, the entities which are eligible to receive a grant under the RSHP, and sets out a number of conditions that grant recipients must comply with.

Human rights implications

Right to education

The measures set out in the Amendment Instrument engage, and promote the right to education, contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

In particular, the Amendment Instrument provides for a RSHP, which will increase the access of regional and remote students to education, by allowing these students to access important services that students in other areas are readily able to access. The RSHP will therefore support open access to higher education across Australia, and, in turn, promote the right to education by increasing access to education across Australia. The measures are in furtherance of the objective of Article 13(2), which is to ensure educational institutions and programmes are accessible to everyone, without discrimination, within the jurisdiction of the States party.

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Right to self-determination

The Amendment Instrument engages the right to self-determination contained in Article 1 of the *International Covenant on Civil and Political Rights*, and Article 1 of the *International Covenant on Economic, Social and Cultural Rights*.

The Amendment Instrument engages this right because it will allow students in regional and remote areas greater choice in their education, which is compatible with, and promotes the right to self-determination. The right to self-determination, as it intersects with the right to education, is promoted by the measures because, by addressing regional barriers to access to education, the measures allow a greater cross-section of students to participate in a wider range of educational programs. By extension, these initiatives strengthen students' collective identity as a group and augments their enjoyment of education through a policy of inclusiveness. This right, interdependently with the right to education, is promoted by measures which facilitate the broader aim of full development of students' personality through access and participation and by enhancing students' ability to exercise greater autonomy over their educational choices.

Conclusion

This Amendment Instrument is compatible with, and promotes, human rights because it enables the provision of Commonwealth funding for purposes that are compatible with the right to education and the right to self-determination.