

EXPLANATORY STATEMENT

Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 2) 2018

Issued by the authority of the Minister for Education

Authority

The *Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 2) 2018* (Amendment Determination) is made by the Minister under 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 *List of Maximum Grant Amounts under Division 41 for 2018* (Principal List) to vary the maximum amount of grants that may be made under Division 41 of HESA for 2018 to:

- reduce the maximum amount for grants to promote equality of opportunity in higher education by \$8,886,000 (to \$153,533,600); and
- increase the maximum amount for grants to support open access to higher education across Australia by \$8,886,000 (to \$8,886,000).

Background

Division 41 of HESA enables the Commonwealth to make grants for the purposes and to the recipients 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 41-50(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 at subsection 41-10(1) of HESA. 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 at any time before the end of that 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 promoting equality of opportunity in higher education (Item 1) — \$162,419,600; and
- for the purpose of supporting open access to higher education across Australia (Item 11(c)) — Nil.

As part of the 2017–18 Budget, the Australian Government committed \$16.7 million to establish and maintain up to eight community-owned Regional Study Hubs across regional Australia for the period 2018–19 to 2021–22. On 12 November the Minister for Education, the Hon Dan Tehan, announced additional funding of \$7.5 million to fund a total of 16 Regional Study Hubs in 22 locations.

The Regional Study Hubs program provides open access to higher education for students in regional areas who wish to remain in their local regional area for study, but enrolment numbers are not sufficient to justify a higher education provider establishing a campus. Regional Study Hubs are not intended to replicate the traditional university campus model but to provide open access to higher education for regional students by providing flexibility in distance education.

On 22 August 2018, then Minister Birmingham signed a legislative instrument to amend the *Other Grants Guidelines (Education) 2012* to establish the Regional Study Hubs program, a program for the purposes of Item 11(c) of the table at subsection 41-10(1) of HESA (Grants to support open access to higher education across Australia).

Accordingly, the Principal List must also reflect that the amount allocated to the Regional Study Hubs program is to be paid for the purpose of Item 11(c) of the table in subsection 41-10(1) of HESA.

The Amendment Determination amends the Principal List to give effect to this change.

Consultation

No consultation was undertaken as Amendment Determination makes a minor procedural amendment to give effect to the underlying policy intent of the Regional Study Hubs.

Commencement

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

Explanation of provisions in the *Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 2) 2018*

Section 1 of the Amendment Determination provides that the title of the instrument is the *Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 2) 2018*.

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

Section 3 provides that the legal authority to make the Amendment Determination is specified in subsection 41-50(2) of the *Higher Education Support Act 2003*.

Section 4 provides that the Principal List will be amended in the terms set out in the Schedule to the Amendment Determination.

Schedule 1

Item 1 omits the current entry for Item 1 in the Principal List and replaces it with an entry that specifies the new maximum grant amount for Item 1 of \$153,533,600.

Item 2 omits the current entry for Item 11(c) in the Principal List and replaces it with an entry that specifies the new maximum grant amount for Item 11(c) of \$8,886,000.

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. 2) 2018

This *Higher Education Support (Maximum Payments for Other Grants) Amendment Determination (No. 2) 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) of HESA. Payments of such grants are supported by the standing appropriation in section 238-12 of HESA.

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 at subsection 41-10(1). 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 at any time before the end of that year (subsection (2)).

Amongst other things, the *List of Maximum Grant Amounts under Division 41 for 2018* (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 promoting equality of opportunity in higher education—\$162,419,600; and
- for the purpose of supporting open access to higher education across Australia—Nil.

On 22 August 2018, then Minister Birmingham signed a legislative instrument to amend the *Other Grants Guidelines (Education) 2012* to create the Regional Study Hubs program under Item 11(c) of subsection 41-10(1) of HESA (Grants to support open access to higher education across Australia).

. The proposed variations to maximum amounts specified in the Principal List are:

- decrease the maximum amount for Item 1 by \$8,886,000 to \$153,533,600, and
- increase the maximum amount for Item 11(c) from nil to \$8,886,000.

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

Human rights implications

The Amendment Determination does not engage any of the applicable rights or freedoms because the measures in the Amendment Determination reallocate maximum grant amounts within the list of purposes specified in subsection 41-10(1) of HESA.

Conclusion

The Amendment Determination is compatible with human rights as it does not raise any human rights issues.

The Hon Dan Tehan MP

Minister for Education