

EXPLANATORY STATEMENT

List prepared under subsection 41-50(1) of the Higher Education Support Act 2003

Issued by the authority of the Minister for Education

Subject: *Higher Education Support Act 2003 (the Act)*
List of Maximum Grant Amounts under Division 41 for 2019 (the Instrument)

Authority

Subsection 41-50(1) of the Act provides that before the start of a year, the Minister must, by legislative instrument, cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10 of the Act.

Purpose

The Instrument sets out:

- each purpose of grant specified in the table in section 41-10 of the Act
- the maximum amounts of all grants for each purpose of grant for the 2019 calendar year.

By comparison to the *List of Maximum Grant Amounts under Division 41 for 2018*, this Instrument provides that the maximum amount set out for each purpose of grant is the same amount as the total payments determined in the *Higher Education Support (Maximum Payments for Other Grants) Determination 2018* (made under section 41-45 of the Act).

Consultation

Consultation was not undertaken on the Instrument as it does not create new commitments, but implements Government decisions already announced.

Commencement

The Instrument is a Legislative Instrument under the *Legislation Act 2003*. The Instrument 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

List of Maximum Grant Amounts under Division 41 for 2019

This legislative 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 legislative instrument

Subsection 41-50(1) of the *Higher Education Support Act 2003* (the Act) provides that before the start of a year, the Minister must, by legislative instrument, cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10 of the Act.

The *List of Maximum Grant Amounts under Division 41 for 2019* (the Instrument) sets out each purpose of grant specified in the table in section 41-10 of the Act as well as the maximum amounts of all grants for each purpose of grant for the 2019 calendar year. The Instrument varies the maximum amounts of all grants for each purpose of grant for the 2019 calendar year.

The current *List of Maximum Grant Amounts under Division 41 for 2018* pursuant to subsection 41-50(1) of HESA sets a maximum dollar amount corresponding to each purpose of grant listed in section 41-10. The *List of Maximum Grant Amounts under Division 41 for 2019* specifies that the maximum amount for each purpose of grant is the same amount as the total payments determined in the relevant section 41-45 instrument.

There is no reduction in the transparency of program funding. Allocations for each individual grant are published in the Education and Training Portfolio Budget Statements and Portfolio Additional Estimates Statements. All grant determinations are also automatically uploaded to the Department of Education and Training website in the course of making payments.

Human rights implications

Right to Education

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

The Instrument provides for an increase to the maximum amount which is payable by the Commonwealth in relation to item 6 of the table in section 41-10 of the Act which concerns grants to assist with the cost of higher education providers' superannuation liabilities. The Instrument also provides for increases to the maximum grant amounts for national institutes and programs to support higher education institutions' research capabilities. To the extent that the right to education is engaged, this right is promoted as the Instrument provides clarity of funding for programs that support access and equality in higher education and research.

As the purpose of the grants include the promotion of equality of opportunity in higher education and the support of the training of research students (amongst other purposes) the Instrument engages and promotes the right to education.

The maximum payment amounts are capped having regard to reasonable, necessary and proportionate constraints on spending. The Instrument is compatible with, and does not impermissibly limit, the right to education.

Conclusion

The Instrument is compatible with human rights because it provides clarity of funding for programs that support the financially viable provision of higher education, including research, or enhance access to higher education.

The Hon Dan Tehan, Minister for Education