

EXPLANATORY STATEMENT

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

Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2019

Issued by the authority of the Minister for Education

Subject: *Higher Education Support Act 2003*
Amendment No.1 to the *Commonwealth Scholarships Guidelines (Research) 2017*

Authority

The Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2019 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003* (Act). The Amendment Instrument amends the *Commonwealth Scholarships Guidelines (Research) 2017* that was made for the purposes of section 46-20 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01602) (Commonwealth Scholarships Guidelines).

Section 238-10 of the Act provides that the Minister may make guidelines providing for matters required or permitted by the Act or necessary or convenient to be provided in order to carry out or give effect to the Act. Item 3 of the table in subsection 238-10(1) of the Act provides that the Minister may make Commonwealth Scholarships Guidelines permitted under Part 2-4 of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

Section 46-5 of the Act provides that the Commonwealth Scholarships Guidelines may provide for Commonwealth scholarships. The purpose of the Commonwealth Scholarships Guidelines is to provide for the classes of Commonwealth scholarships described under section 46-10 of the Act. This includes the Research Training Program which provides for postgraduate research scholarships.

Grants are made for these Commonwealth scholarships to eligible Australian higher education providers (HEPs) which allocate the scholarships to students. HEPs are Table A providers listed in section 16-15 of the Act and Table B providers listed in section 16-20 of the Act.

Purpose and operation

The purpose of the Amendment Instrument is to amend the Commonwealth Scholarships Guidelines to clarify processes for the provision of incorrect data, conditions for overseas students and reporting.

Commencement

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

Consultation

Consultation was not undertaken because the amendments to the Commonwealth Scholarships Guidelines are either minor or technical (such as definitional changes), or are machinery in nature (such as the clarification of the adjustment process).

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) was consulted and determined that a Regulation Impact Statement is not required (OBPR ref 25077) as the amendments are likely to have no more than minor regulatory impacts on business, community organisations or individuals.

Explanation of the provisions

Part 1 - Preliminary

This contains preliminary matters relating to the name of the instrument, commencement and authority.

Schedule 1 - Amendments

Item 1 inserts or amends the following definitions in section i.v (Interpretation) of Chapter i (Introduction):

The acronym 'ABS' has been added for the Australian Bureau of Statistics (ABS).

- The acronym 'ASCED' has been updated to refer to the Australian Standard Classification of Education - 1272.0 - 2001 (ASCED) specified by the ABS. The ASCED, published by the ABS in 2001, is incorporated by reference as existing at the commencement of this section. The ASCED provides a basis for comparable administrative and statistical data on educational activities and attainment classified by level and field. The ASCED is publicly available on the ABS website at <https://www.abs.gov.au>.
- The definition for Categories 1 to 4 have been updated.
- The definition for the department has been updated.
- The term 'R&D' has been added to the existing defined term 'research', with 'R&D' to more appropriately reflect the underlying definition of Research and Experimental Development. The definition of Research and Experimental Development contained in the Frascati Manual 2015 (Manual) is incorporated by reference as existing at the commencement of this section. The Manual is published by the Organisation for Economic Cooperation and Development (OECD) and is used by national statistical agencies to collect research and development data. The Manual is publicly available on the OECD website at <http://www.oecd.org/sti/inno/Frascati-Manual.htm>.
- The definition of 'Research Doctorate' has been amended to include the Doctoral Degree (Professional) degree type where it consists of at least two-thirds R&D to confirm that this degree type is considered a higher degree by research.

Chapter 1 - Grants to Support the Training of Research Students

Items 2, 3 and 4

These items repeal and substitute paragraphs 1.4.15 and 1.4.20 to incorporate the newly created paragraph 1.4.30 (adjustments) in the allocation process.

Paragraph 1.4.30 is added to specify an adjustment process in relation to the provision of incorrect Higher Education Research Data Collection (HERDC) or Higher Education Student Data Collection (HESDC) data:

- Subparagraph 1.4.30(1) sets out that a HEP must provide the Commonwealth Department of Education (department) with corrected HERDC or HESDC data if it is determined that incorrect data has previously been provided, as well as supporting evidence which demonstrates the accuracy of the corrected data, and information on the causes of the incorrect data.
- Subparagraph 1.4.30(2) sets out that if corrected data and supporting evidence is provided by 1 October in the year the data was first provided then the corrected data will be used in the annual process of calculating RTP grant amounts and replaces the incorrect data. For example, if a HEP provided incorrect 2017 HERDC data on 30 June 2018 and corrected 2017 HERDC data on 30 September 2018 then the corrected data would be included in the annual process of calculating RTP grant amounts.
- Subparagraph 1.4.30(3) sets out that if either the corrected data or supporting evidence is provided after 1 October in the year the data was first provided then the corrected data will not be used in the annual process of calculating RTP grant amounts. For example, if a HEP provided incorrect 2017 HERDC data on 30 June 2018 and corrected 2017 HERDC data on 30 October 2018 then the corrected data would not be included in the annual process of calculating RTP grant amounts.
- Subparagraph 1.4.30(4) sets out that if the provision of incorrect data has resulted in an overpayment to the HEP then the HEP must repay the overpayment to the department. For example, if a HEP provided incorrect 2017 HERDC data on 30 June 2018 and corrected 2017 HERDC data on 30 October 2018 and the corrected data resulted in an overpayment in the HEPs RTP grant amount, then the HEP would have to repay the overpayment to the department.

Item 5

Item 5 repeals and substitutes paragraph 1.6.30 to amend the additional conditions for overseas students. The conditions retain the requirement that a HEP can spend a maximum of 10 per cent of the RTP grant amount on overseas students and includes a new provision that this cap must take into account any funding expended on RTP students from unspent RTP grant amount funding rolled over from the previous Grant Year.

Item 6

Item 6 adds new paragraphs 1.6.60 and 1.6.65. New paragraph 1.6.60 sets out the details of data items required to be reported to the department. These include HERDC data, a HERDC Audit Certificate, a HERDC Vice-Chancellor's Certification Statement and the latest set of information provided to the ABS about higher education research and development expenditure. The three HERDC items are required to be provided in accordance with the HERDC Specifications by 30 June in the relevant year. The HERDC Specifications control the collection of higher education research data. The current 2019 HERDC Specifications is incorporated by reference as existing at the commencement of this section, and is publicly available on the department's website at <https://docs.education.gov.au/node/51966>.

The ABS data must be provided to the department within 30 days of the HEP receiving its return data from the ABS in the same form provided by the ABS to the HEP.

New paragraph 1.6.65 sets out the details of data items that will be taken into account for the purposes of existing business operations that have already reported to the Commonwealth. The

Acquittal of Australian Government financial assistance data must be provided in accordance with and by the date specified in the Financial Statement Guidelines for Australian HEPs (Guidelines). These Guidelines prescribe the form of the financial statements approved by the Minister for Education, or delegates, under section 19-10(2) of the Act. These Guidelines are incorporated by reference as existing at the commencement of this section, and are issued to HEPs annually and may be obtained from the department at ppfinance@education.gov.au. Any HEP that does not submit data through the Acquittal of Australian Government financial assistance must complete a substitute RTP rollover request. HESDC data is required to be provided in accordance with and by the date specified in the Higher Education Data Requirements and Change Control document (Data Control Document). The Data Control Document provides the details for the student data requirements of HEPs for a reporting year. It is incorporated by reference as existing at the commencement of this section, and is publicly available on the department's website at <https://heimshelp.education.gov.au/he-student-data-collection>.

Statement of Compatibility with Human Rights

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

Commonwealth Scholarships Guidelines (Research) Amendment (No.1) 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

The Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2019 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003* (Act).

The Amendment Instrument amends the *Commonwealth Scholarships Guidelines (Research) 2017* that was made for the purposes of section 46-20 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01602) (Commonwealth Scholarships Guidelines).

The Commonwealth Scholarships Guidelines provide for the classes of Commonwealth scholarships described under section 46-10 of the Act. This includes the Research Training Program (RTP).

Grants are made for these Commonwealth scholarships to eligible Australian higher education providers (HEP) which allocate the scholarships to students.

Human Rights implications

The Amendment Instrument engages the following human rights:

- the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- the right to enjoy the benefits of scientific progress and its applications – Article 15 of the ICESCR
- the right to privacy – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR)

Right to education

The Amendment Instrument engages the right to education contained in Article 13 of the ICESCR. The right to education recognises the important personal, societal, economic and intellectual benefits of education.

The Amendment Instrument promotes the right to pursue, develop and transmit knowledge and ideas through research, teaching and discussion.

The Amendment Instrument supports a high quality research training environment by providing research students with support to undertake research training without paying tuition fees. In addition, the Amendment Instrument provides access on a competitive basis to living allowance stipends which further enhance the capacity of students to engage effectively with their research training.

The Amendment Instrument is compatible with the right to education.

Right to enjoy the benefits of scientific progress and its applications

The Amendment Instrument engages the right to enjoy the benefits of scientific progress and its applications contained in Article 15 of the ICESCR.

The Amendment Instrument promotes improving access to scientific research facilities and its applications as an important step towards ensuring this right can be enjoyed by all Australians.

The Amendment Instrument supports a high quality research training environment for Australia's higher education sector. This environment allows research students to strengthen Australia's knowledge base, and enhances the contribution of Australia's research capabilities to national economic development, international competitiveness and the attainment of social goals.

The Amendment Instrument is compatible with the right to enjoy the benefits of scientific progress and its applications.

Right to privacy

The Amendment Instrument engages the right to privacy contained in Article 17 of the ICCPR. In particular, Article 17 provides that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation'.

HEPs who receive funding for Commonwealth Scholarships are restricted under the Act in their use and disclosure of personal information obtained or created for the purpose of the RTP. This Amendment Instrument specifies the RTP formula which includes information related to the nature of RTP scholarship recipients and their courses of study. This requires that HEPs submit to the department personal information of students assisted by the RTP. In order to protect a student's right to privacy in relation to this information, Part 5-4 of the Act applies criminal penalties for unauthorised disclosures of information. These penalties apply to Commonwealth officers and officers of HEPs.

The Act also makes provision for the release of personal information in limited circumstances related to effective administrative obligations established under authority of the Act as specified in Part 5-4.

This Amendment Instrument is compatible with the right to privacy.

Conclusion

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

Dan Tehan
Minister for Education