

EXPLANATORY STATEMENT

Determination made under subsection 41-45(1B) of the Higher Education Support Act 2003

Issued by the authority of the Minister for Education

Subject: *Higher Education Support Act 2003 (the Act)*
Higher Education Support (Maximum Payments for Other Grants)
Determination 2019 (Determination)

Authority

Subsection 41-45(1B) of the Act provides that the Minister must determine, by legislative instrument, the total payments made under Part 2-3 in respect of a year starting on or after 1 January 2017.

Subsection 33(3) of the *Acts Interpretation Act 1901*, provides that 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.

Purpose

The Determination:

- revokes the *Higher Education Support (Maximum Payments for Other Grants) Determination 2018* and
- sets out the maximum total payments to be made under Part 2-3 for Other Grants for the 2019 to 2023 calendar years.

A determination made under subsection 41-45(1B) of the Act must be made before the start of the relevant year.

The amounts determined for 2020 to 2023 are expressed with the 2020 indexation factor applied. The indexation factors for 2021 to 2023 are yet to be determined.

Consultation

Consultation was not undertaken on the Determination as it does not create new commitments.

Commencement

The 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) Determination 2019

This *Higher Education Support (Maximum Payments for Other Grants) Determination 2019* (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

Subsection 41-45(1B) of the *Higher Education Support Act 2003* (the Act) provides that the Minister must, by legislative instrument, determine the total payments made under Part 2-3 in respect of a year starting on or after 1 January 2017. The Determination specifies, for the purpose of subsection 41-45(1B) of the Act, an amount in respect of the year 2019.

The Determination:

- revokes the *Higher Education Support (Maximum Payments for Other Grants) Determination 2018* and
- sets out the maximum total payments to be made under Part 2-3 for Other Grants for the 2019 to 2023 calendar years.

Human rights implications

Right to education

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

The Minister is empowered to determine maximum amounts payable for Other Grants for the 2019 calendar year that differs from that already prescribed in the table in subsection 41-45(1) of the Act. The Minister is required to determine the maximum amounts payable for the 2020 to 2023 calendar years. By doing so, the Determination will support the payments of the Other Grants for the purposes specified in the table in section 41-10 of the Act. As the purposes of the Other Grants include the promotion of equality of opportunity in higher education, the support of diversity and structural reform and the support of the training of research students (amongst other purposes) the Determination enables access to education and therefore is compatible with, and promotes, the right to education.

Conclusion

This Determination is compatible with human rights because it provides clarity of funding for programs that support access and equality in higher education.

The Hon Dan Tehan MP, Minister for Education