

EXPLANATORY STATEMENT

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

Other Grants Guidelines (Research) Amendment (No. 1) 2020

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, or is 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 subsection 238-10(1) specifies the Minister may make Other Grants Guidelines to give effect to matters under Part 2-3 of the Act. 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.

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.

Purpose

The purpose of this legislative instrument is to amend the Other Grants Guidelines (Research) 2017 to extend the current Research Support Program (RSP) funding allocation transitional safety net for higher education providers (HEPs) by 12 months to 31 December 2021.

Commencement

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

Availability of merits review

Merits review is unnecessary in this case, as the purpose of this instrument is to extend the transitional safety net for HEPs to 2021, in order to ensure universities have funding certainty in their Research Support Program (RSP) allocations.

Consultation

Changes made through this Amendment Instrument were requested by a range of higher education stakeholders to support HEPs and HDR students during the COVID-19 pandemic. This includes Universities Australia, the Australian Council of Graduate Research and the Council of Australian Postgraduate Associations.

Regulatory Impact Statement

Due to the urgent and unforeseen events related to the spread of COVID-19, the Prime Minister, the Hon Scott Morrison MP, has granted an exemption from the need to complete regulatory

impact analysis in the form of Regulation Impact Statements for all urgent and unforeseen Australian Government measures made in response to COVID-19.

Explanation of the provisions

Section 1 provides that the name of the Amendment Instrument is the *Other Grants Guidelines (Research) Amendment (No. 1) 2020*.

Section 2 provides for the commencement of the Amendment Instrument. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 states that the Amendment Instrument is made under section 238-10 of the Act.

Section 4 provides that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the Schedule.

Schedule 1 – Amendments

Item 1:

Amends the following definitions in section i.v (Interpretation) of Chapter i (Introduction):

- The definition for ‘the department’ has been updated to mean the Commonwealth department responsible for administering part 2-3 of the Act; and
- The definition for ‘the Minister’ has been updated to mean the Minister responsible for administering part 2-3 of the Act.

Item 2:

Amends paragraph 1.4.15 to extend the transitional safety net to 2021. This will provide HEPs with greater certainty in their RSP allocations as they seek to recover from the impacts of COVID-19.

Item 3:

Repeals the existing paragraph 1.4.20 and replaces it with a new paragraph 1.4.20, which specifies that, subject to any adjustment that may be made under paragraph 1.4.26, for the 2022 and future grant years each higher education provider’s research support program grant amount is calculated in accordance with paragraph 1.4.10. This will delay the commencement of RSP funding allocations without safety net arrangements for HEPs by 12 months.

Statement of Compatibility with Human Rights

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

Other Grants Guidelines (Research) Amendment (No.1) 2020

This 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 (Research) Amendment (No. 1) 2020 (Amendment Instrument) is made under section 238-10 of the *Higher Education Support Act 2003* (Act).

The Amendment Instrument amends the *Other Grants Guidelines (Research) 2017* that was made for the purposes of section 41-15 of the Act and registered on the Federal Register of Legislation on 10 October 2016 (F2016L01603) (Other Grants Guidelines).

The Other Grants Guidelines identify programs under which grants for purposes specified in the Act are to be paid to higher education providers and other eligible bodies. The Other Grants Guidelines also set out the purpose and programs under which grants may be made for research. These include grants to support research by, and the research capability of, higher education providers.

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

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. Recognition of this right includes that there be educational programs available in sufficient quantity to promote full participation in educational settings and research initiatives within the jurisdiction of states parties.

The Amendment Instrument engages and promotes the right to education by fortifying and supporting a high quality research environment, which provides academics in higher education institutions with the necessary systems and resources required to deliver high quality research training to students.

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. In the progressive realisation of this right, states parties must engage in positive measures to ensure access to the benefits of science and its application, including the development and promotion of scientific and research knowledge, enhance opportunities to contribute to, and participate in, the scientific enterprise and scientific research and support an enabling research environment which fosters the development and diffusion of science and its applications.

The Amendment Instrument promotes improved quality of, and access to, scientific research facilities and its applications to the scientific and broader community as an important step towards ensuring this right can be enjoyed by all Australians. It achieves this by providing a flexible funding stream to Australian HEPs to support the delivery of world class research. The Amendment Instrument is compatible with the right to enjoy the benefits of scientific progress and its applications.

Conclusion

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

Dan Tehan

Minister for Education