

EXPLANATORY STATEMENT

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

Other Grants Guidelines (Education) Amendment (Women in STEM) 2020

Authority

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines for the purposes of 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.

Section 33(3) of the *Acts Interpretation Act 1901* also 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 the power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendment of the *Other Grants Guidelines (Education) 2012* by the Schedule to this instrument relies on that provision.

Purpose

The *Other Grants Guidelines (Education) Amendment (Women in STEM) 2020* (Amendment Instrument) amends the *Other Grants Guidelines (Education) 2012* (Principal Instrument) to implement the Women in STEM Cadetships and Advanced Apprenticeships Program (the program), announced in the 2020-21 Budget.

The program will provide grants to Table A providers and eligible bodies corporate for the purpose specified in item 1 of the table in subsection 41-10(1) of the Act—grants to promote equality of opportunity in higher education. Grants made under the program are aimed at improving the participation of women in STEM Fields of Education and increase the female STEM qualified labour force.

Commencement

The Amendment Instrument commences on 1 January 2021 to align with commencement of amendments in the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020*.

Availability of merits review

Grants under the program will be provided under Part 2-3 of the Act. Under Part 2-3 of the Act, the Minister has the discretion to:

- approve grants made under Part 2-3 (section 41-20);

- determine the amount of those grants (where the Principal Instrument does not specify an amount) (section 41-30); and
- determine the conditions that attach to the grant (where the Principal Instrument does not determine the conditions) (section 41-25).

Section 206-1 of the Act specifies the types of decisions made under the Act that are reviewable decisions. Funding decisions made under Part 2-3 of the Act (including decisions pertaining to competitive discretionary grants) are not specified at section 206-1 as decisions that are reviewable.

Furthermore, a finite amount of funding is available for the Women in STEM Cadetships and Advanced Apprenticeships Program. Providing for merits review where a finite amount of funding is available over a specified period would mean any decision for one applicant will necessarily adversely impact other applicants. Merits review would also delay delivery of funding to successful applicants and potentially alter the amount of that funding.

The allocation of finite resources between competing applicants reflects an established ground for excluding merits review (Attorney-General's Department, *Administrative Review Council, What decisions should be subject to merit review?* (1999), [4.11]-[4.19]).

While independent merits review by the AAT will not be available, the Commonwealth Ombudsman is able to investigate any complaints made in relation to the administration of the funding program, and make recommendations to the Department.

Consultation

Consultation on this amendment was not considered necessary as the purpose of the amendment is to implement a decision from the 2020-21 Budget. Additionally, the measures contained in the instrument are positive measures that are for the benefit of students and providers (as it may encourage more students to enrol in relevant courses).

Regulatory impact statement

The regulatory impact is minor and a regulation impact statement was not required (OBPR ID 43263)

Explanation of provisions

Section 1 provides the name of the Amendment Instrument.

Section 2 provides for the commencement of the Amendment Instrument on 1 January 2021.

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

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

Schedule 1 – Amendments

The items contained in Schedule 1 of the Amendment Instrument amend the Principal Instrument.

Items 1 and 2 of Schedule 1 to the Amendment Instrument add to the definitions contained in section i.ii (Interpretation) of the Principal Instrument for the purposes of ensuring terms defined in the Principal Instrument are accurate. These terms are inserted so that the remaining list remains in alphabetical order.

Item 3 of Schedule 1 to the Amendment Instrument repeals section 1.5.1 of the Principal Instrument and substitutes it with a new section 1.5.1, which includes the aim of the Women in STEM Cadetships and Advanced Apprenticeships Program (Program).

Item 4 of Schedule 1 to the Amendment Instrument repeals section 1.10 (Eligible *providers*) of the Principal Instrument and substitutes it with a new section 1.10, which removes providers from the title and expands eligibility in this section to Table A providers and bodies corporate that are specified in the Principal Instrument.

Item 5 of Schedule 1 to the Amendment Instrument inserts new Part 5, which sets out the details of the Program.

New section 1.170 outlines the purpose of the Program.

New Subsection 1.170.1 specifies the Women in STEM Cadetships and Advanced Apprenticeships Program as a program for the purposes of subsection 41-15 of the Act.

New subsection 1.170.5 explains that the purpose of the program is to promote equality of opportunity in higher education, in accordance with item 1 of the table in subsection 41-10(1) of the Act, by providing grants to higher education providers and employers, to improve the participation of women in STEM Fields of Education.

New section 1.175 specifies the program objective of promoting equality of opportunity for women in STEM through models of course delivery that help women upskill in STEM, help women build STEM careers and develop a pathway for women to graduate with workplace-relevant STEM skills.

New section 1.180 specifies bodies corporate that are eligible to receive a grant under the Program, including higher education providers approved under the Act, and bodies corporate that

employ women undertaking a STEM qualification and enter into a deed of agreement with the Commonwealth under the Program.

New section 1.185 outlines the broad grant allocation, the number of places and Equivalent Full-Time Study Load for each place in the program. This section also provides information on how recipients will be chosen and how the grant will be distributed to recipients.

New subsection 1.185.1 explains that the Program has up to 500 employer reserved places to allocate to eligible providers over the 2021 to 2024 calendar years.

New subsection 1.185.5 specifies that each employer reserved place is equivalent to 0.5 EFTSL per annum.

New subsection 1.185.10 explains that the Commonwealth will run an application process for the employer reserved places under this Program. The details of this process will be available on the department's public website at www.dese.gov.au.

New subsection 1.185.15 specifies that the maximum grant amount and grant period for a provider or eligible employer is the amount and period specified in a deed of agreement between the recipients and the Commonwealth.

New subsection 1.185.20 states that grant funding for providers and eligible employers will be distributed, on the basis of actual enrolments, twice per calendar year.

New subsection 1.185.25 explains that the total amount of tuition fees payable by a student enrolled in an employer reserved place under the Program is the amount of the grant provided by the Commonwealth to the provider, and any tuition fees payable by, or on behalf of, the student (up to a maximum amount agreed in a deed of agreement).

New subsection 1.185.30 explains that where a student enrolled in an employer reserved place under the Program is paying some or all of their tuition fees using FEE-HELP, the grant made by the provider must accept the grant provided by the Commonwealth as an up-front payment made on behalf of the student in relation to the unit for the purposes of section 107-1 of the Act.

New subsection 1.185.35 states that where, but for subsection 1.185.35, a student would have incurred a FEE-HELP loan fee in accordance with paragraph 137-10(2)(b) of the Act, in relation to a unit of study referred to in subsection 1.185.30, an additional grant amount is payable to the provider to be applied as an up-front payment made on behalf of the student, and is to be calculated as the amount that would result in the student's FEE-HELP debt being increased by only so much as it would have if no loan fee applied. This means that for student's paying their tuition fees using FEE-HELP, who would have incurred a FEE-HELP loan fee, will only be incur an amount of FEE-HELP debt as if the FEE-HELP loan fee was not incurred.

Example

Sonia is enrolled in a unit of study in an employer reserved place under the Program. The tuition fee payable for this unit of study is \$4,000. The Commonwealth pays \$2,000 as an up-front payment on behalf of Sonia under section 1.185.30. If section 1.185.35 did not apply, and Sonia is eligible to receive FEE-HELP for the remaining \$2,000, and a FEE-HELP loan fee is applicable in accordance with paragraph 137-10(2)(b) of the Act, the amount of Sonia's FEE-

HELP debt would be an amount equal to 120% of the loan – a FEE-HELP loan fee (in this case, \$2,400).

However, section 1.185.35 requires the provider to pay an additional grant amount so that Sonia’s FEE-HELP debt does not exceed \$2,000, which is what her debt would have been if the FEE-HELP loan fee had not applied.

In this example, this means that the Commonwealth would pay the provider \$2,333.33 and Sonia would be loaned \$1,666.67 plus a FEE-HELP loan fee, meaning that Sonia’s total FEE-HELP debt for this unit is \$2,000.

New section 1.190 imposes conditions of grant for providers in receipt of a grant under the Program Women in STEM Cadetships and Advanced Apprenticeships Program grant amount. This includes the requirements courses and students must meet in order to receive a grant under this program, and a requirement that providers must enter into a deed of agreement with the Commonwealth. 1.190.20 also makes clear that Participating students can only be charged up to a maximum tuition fee for their course of study as agreed in writing with the Commonwealth in the deed of agreement under 1.190.5.

New section 1.195 contains the conditions of grant for employers in receipt of a Women in STEM Cadetships and Advanced Apprenticeships Program grant. This includes the employer support grant amount, and requirements for participating employers. This section also requires employers to enter into a deed of agreement with the Commonwealth which will set, at a minimum, the maximum grant amount for an employer and the study conditions that the employer will provide for any employees undertaking study under the Program.

New section 1.200 imposes a condition on both employers and providers, in that both must enter into a restricted access arrangement as defined in the Act prior to receiving a grant.

Statement of Compatibility with Human Rights

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

Other Grants Guidelines (Education) Amendment (Women in STEM) 2020

The *Other Grants Guidelines (Education) Amendment (Women in STEM) 2020* (Amendment Instrument) is compatible with the 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 Amendment Instrument amends the *Other Grants Guidelines (Education) 2012* (Principal Instrument) by establishing one new program under Chapter 1 (grants to promote equality of opportunity in higher education). The Women in STEM Cadetships and Advanced Apprenticeships Program is a program under which grants can be made to eligible recipients for the purpose specified in item 1 of the table in subsection 41-10(1) of the Act—grants to promote equality of opportunity in higher education.

Human rights implications

Right to education

The Amendment Instrument positively engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 13(2)(c) of the ICESCR provides that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.’ The Amendment Instrument will directly contribute to this requirement by assisting more people to undertake higher education. In particular, the stated objective of the program is promoting equality of opportunity in higher education by providing grants to encourage the enrolment of women in STEM Fields of Education. The funding provided under the program will assist providers in conjunction with employers to improve access to these traditionally underrepresented (across several STEM areas) group of students, thus supporting the right of these students to obtain a higher education qualification. This grant program is also a targeted step towards the progressive realisation of the right to education in accordance with article 13 (2) (c) – (d) of the ICESCR.

Right to work

The Amendment Instrument positively engages the right to work contained in Article 6(1) of the ICESCR which recognises the “the right of everyone to the opportunity to gain [their] living by work” and that the State will “take appropriate steps to safeguard this right”. Article 6(2) cites “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual” as steps to be taken by a State Party to achieve the full realisation of the right contained in Article 6(1).

The Amendment Instrument creates the Women in STEM Cadetships and Advanced Apprenticeships Program, which has specific objectives that include providing opportunities for

women to upskill in STEM and gain job relevant skills, and developing a pathway for women with practical workplace skills into and through STEM sectors. These activities are all aimed at assisting students to upskill while remaining employed, thus supporting the right of these students to work.

Right to enjoy the benefits of scientific progress and its applications

By promoting women's access to scientific research and educational opportunities in the field, 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 progressive realisation of the right is furthered by this measure to the extent that it supports the acquisition of scientific knowledge by women and serves to redress existing gender imbalances in science and technology education and training, as well as the professional advancement of women. In order for Australia's highly skilled STEM workforce to remain at the forefront of emerging opportunities, investment in the growth and development of STEM knowledge and skills for women is necessary as a pathway to further scientific advancement. In implementing the right to enjoy the benefits of scientific progress, states parties have an immediate obligation to eliminate all forms of discrimination, in law and in fact. However, the right to enjoy the benefits of scientific progress allows special measures for certain vulnerable or disadvantaged groups, such as women, minorities, Indigenous people, people living in poverty, provided there is an objective and reasonable justification for differential treatment or special measures. The proposed measures a reasonable, proportionate and directed to the legitimate policy objective of encouraging women to take part in scientific research and harness educational opportunities on the basis of that they are unrepresented in sciences. In its General Comment on Article 3 of ICESCR, which includes the general principle of the equal right of men and women to the enjoyment of the rights in the Covenant, the UN Committee on Economic, Social and Cultural Rights emphasised that States should overcome institutional barriers and other obstacles that prevent women from fully participating in science education and scientific research (General Comment No. 16 on Article 3 of the Covenant, 2005, para. 31).

Conclusion

This Amendment Instrument is compatible with human rights because it advances the protection of human rights, including the right to education and the right to work.

Hon Dan Tehan MP, Minister for Education