

EXPLANATORY STATEMENT

Issued by the authority of The Hon Alan Tudge MP, Minister for Education and Youth

Higher Education Support Act 2003

Commonwealth Grant Scheme Guidelines Amendment (No. 1) 2021

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 2 of the table at section 238-10 specifies that the Minister may make the Commonwealth Grant Scheme Guidelines in order to carry out or give effect to the matters set out in Part 2-2 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. The amendments to the *Commonwealth Grant Scheme Guidelines 2020* (the Guidelines) made by this instrument rely on that provision.

PURPOSE AND OPERATION

The Commonwealth Grant Scheme Guidelines Amendment (No. 1) 2021 (the Instrument) amends the Guidelines to:

- list, for the purposes of subparagraph 30-1(1)(b)(i) of the Act, higher education providers, that are not Table A providers, that can be paid grants under Part 2-2 of the Act;
- specify, for the purposes of paragraph 30-20(b) of the Act, a new outcome in the provision of higher education as a national priority, that is in addition to the national priorities already specified in the Guidelines;
- update notes 5 and 6 at the end of the table at section 14 of the Guidelines to correct a drafting error and expand the Professional Pathway Social Work part of funding cluster two to include courses of study that lead to a bachelor degree, honours degree or master's degree in:
 - social work accredited by the Australian Association of Social Workers;
 - youth work accredited by Youth Work Australia;
 - counselling accredited by the Australian Counsellors Association and/or the Psychotherapy and Counselling Federation of Australia; and
 - community work accredited by the Australian Community Workers Association;
- amend paragraph 10(b) to state that supporting a number of persons undertaking courses of study in any field of education at the University of Notre Dame Australia (UNDA) is a national priority for the purposes of paragraph 30-20(b) of the Act; and

- repeal paragraph 10(c) which is no longer required due to the changes made to paragraph 10(b).

The expanded and revised list of providers is required to enable those providers to be eligible for grants under Part 2-2 of the Act and offer Commonwealth supported places in short courses in national priority areas in 2021. These providers and courses have been selected through a competitive application process.

Expansion of the Professional Pathway Social Work part of funding cluster two reflects the importance of youth workers, counsellors and community workers to Australia and will encourage Australians into these professions. The expansion also acknowledges that, as is the case for social workers, youth workers, counsellors and community workers, who require an undergraduate degree to practise, a professional body accredits designated units, and work-integrated learning is required before being able to practise in the profession.

The amendment to paragraph 10(b) of the Guidelines is a transitional amendment that implements the Government's 2020-21 MYEFO commitment to re-categorise UNDA as a Table A provider under the Act. UNDA is currently a Table B provider and is only eligible to receive funding under Part 2-2 (Commonwealth Grant Scheme) of the Act for its non-medical domestic undergraduate students in relation to the courses listed in the national priority set out in existing paragraph 10(b) of the Guidelines, i.e. UNDA only receives Part 2-2 funding in relation to some of its non-medical domestic undergraduate students.

The Government intends to amend the Act to change UNDA from a Table B provider to a Table A provider, meaning that UNDA will be eligible to receive Part 2-2 funding in relation to all of its non-medical domestic undergraduate students; however, this is expected to occur later in 2021. To ensure that this Government commitment is implemented as soon as possible, it is proposed that the Guidelines be amended now to ensure that UNDA is effectively treated like a Table A provider for the purposes of receiving funding for its non-medical domestic undergraduate students. This change will also mean that all of UNDA's non-medical domestic undergraduate students will be eligible to access Commonwealth supported places (provided they also meet the other eligibility criteria in the Act).

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has determined that the amendments relating to the list of providers and new national priority areas in the Instrument have minor regulatory impact (OBPR ID 42899) and a regulation impact statement (RIS) is not required.

The amendment relating to the Professional Pathway Social Work is part of measures contained in the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020*, which have minimal regulatory impact.

The amendment to re-categorise UNDA as a Table A provider has a minor regulatory impact and a RIS is not required (OBPR ID 43451).

COMMENCEMENT

Part 1 of Schedule 1 to the Instrument will commence retrospectively on 1 January 2021, which is the date that the main amendments made by the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* came into effect. The retrospective commencement is appropriate to ensure that the listed providers are eligible to receive grants under Part 2-2 of the Act from 1 January 2021.

The commencement is consistent with public messaging to the higher education sector and students, and is beneficial to both providers and students. For providers, it will ensure Commonwealth payments are accurate for any Professional Pathway Social Work units the provider delivers from the start of 2021. The retrospective commencement also ensures students are charged accurate student contribution amounts for Professional Pathway Social Work units in which they enrol from the start of 2021. For Professional Pathway Social Work accredited courses, a lower maximum student contribution amount of \$7,950 applies from 1 January 2021. Should the commencement date for the Instrument be the day after it is registered, the higher maximum student contribution amount of \$14,500 would apply to students undertaking these accredited courses in early January 2021 which would disadvantage those students.

Part 2 of Schedule 1 to the Instrument will commence the day after the Instrument is registered on the Federal Register of Legislation.

AVAILABILITY OF MERITS REVIEW

The Commonwealth makes grants to eligible providers under Part 2-2 (Commonwealth Grant Scheme) of the Act. These decisions are not made under the Instrument or the Guidelines, but are made consistently with the matters set out in the Guidelines.

Section 206-1 of the Act specifies the types of decisions made under the Act that are reviewable decisions. This is an exhaustive list. Funding decisions made under Part 2-2 of the Act are not specified at section 206-1 as decisions that are reviewable. The Instrument does not create new decision making powers, nor does it provide the Minister with the power to establish a new review mechanism in addition to the review process available under the Act.

CONSULTATION

The expanded list of providers results from a competitive application process undertaken in the second half of 2020 to allocate Commonwealth Grant Scheme funding to non-university higher education providers to deliver short courses in areas of national priority in 2021. This process was similar to the application process undertaken earlier in 2020 that allocated funding to non-university higher education providers for short course delivery from May–December 2020. An expression of interest to apply for short courses was provided to all non-university higher education providers with an application form and guidelines on the

assessment criteria. Courses were assessed against criteria which focused on an assessment of the labour force relevance of each provider's individual course proposals, along with the assessment of each provider's capacity to fill the courses proposed in their application. In particular, the Department of Education, Skills and Employment (the department) examined the recent performance of providers in filling places allocated under the 2020 short course allocation. The national priorities are areas of community and industry need in Australia's labour market, where training opportunities will improve the employability of displaced workers as the economy recovers from the COVID-19 pandemic. These fields of education were initially utilised for the 2020 short course initiative element of the Higher Education Relief Package delivered between May and December 2020.

The department engaged a working group of university vice-chancellors to consult with peak bodies in the areas of psychology and social work to finalise the details of the Professional Pathways policy. The peak bodies consulted were the Australian Psychological Society (APS), the Australian Clinical Psychology Association (ACPA), the Australian Association of Psychologists (AAP), the Psychology Board of Australia, Heads of Departments and Schools on Psychology Association (HODSPA), the Australian Psychology Accreditation Council (APAC), the Australian Association of Social Workers (AASW), the Australian Council of Heads of Schools of Social Work (ACHSSW), the Australian Services Union (ASU), the Commonwealth Alliance of Youth Workers Associations (CAYWA), the Youth Workers' Association (YWA), the Australian Counselling Association (ACA), the Psychotherapy and Counselling Federation of Australia (PACFA), and the Australian Community Workers Association. The consultations informed the working group's advice to Government on the Professional Pathways policy, including the inclusion of youth work, counselling and community work units in Professional Pathway Social Work.

Over the past year, the department has been in discussions with UNDA on the re-categorisation of the university. The university and its community fully support UNDA's transition to a Table A provider. In January 2021, the department also consulted with UNDA on the transition arrangements implemented through this Instrument. The university is supportive of the amendments, which will provide the practical effect of UNDA becoming a Table A provider as soon as possible and immediately benefit students in Semester 1 2021.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Commonwealth Grant Scheme Guidelines Amendment (No. 1) 2021

The Commonwealth Grant Scheme Guidelines Amendment (No. 1) 2021 (the 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 Instrument

The Instrument amends the *Commonwealth Grant Scheme Guidelines 2020* (the Guidelines) made under the *Higher Education Support Act 2003* (the Act) to:

- list, for the purposes of subparagraph 30-1(1)(b)(i) of the Act, higher education providers, that are not Table A providers, that can be paid grants under Part 2-2 of the Act;
- specify, for the purposes of paragraph 30-20(b) of the Act, a new outcome in the provision of higher education as a national priority, that is in addition to the national priorities already specified in the Guidelines;
- update notes 5 and 6 at the end of the table at section 14 of the Guidelines to correct a drafting error and expand the Professional Pathway Social Work part of funding cluster two to include courses of study that lead to a bachelor degree, honours degree or master's degree in:
 - social work accredited by the Australian Association of Social Workers;
 - youth work accredited by Youth Work Australia;
 - counselling accredited by the Australian Counsellors Association and/or the Psychotherapy and Counselling Federation of Australia; and
 - community work accredited by the Australian Community Workers Association;
- amend paragraph 10(b) to state that supporting a number of persons undertaking courses of study in any field of education at the University of Notre Dame Australia (UNDA) is a national priority for the purposes of paragraph 30-20(b) of the Act; and
- repeal paragraph 10(c) which is no longer required due to the changes made to paragraph 10(b).

The expanded and revised list of providers is required to enable those providers to be eligible for grants under Part 2-2 of the Act and offer Commonwealth supported places in short courses in national priority areas in 2021. These providers and courses have been selected through a competitive application process.

Expansion of the Professional Pathway Social Work of funding cluster two reflects the importance of youth workers, counsellors and community workers to Australia and will encourage Australians into these professions. The expansion also acknowledges that, as is the case for social workers, youth workers, counsellors and community workers require an

undergraduate degree to practise, a professional body accredits designated units, and work-integrated learning is required before being able to practise in the profession.

The amendment to paragraph 10(b) of the Guidelines is a transitional amendment that implements the Government's 2020-21 MYEFO commitment to re-categorise UNDA as a Table A provider under the Act. UNDA is currently a Table B provider and is only eligible to receive funding under Part 2-2 (Commonwealth Grant Scheme) of the Act for its non-medical domestic undergraduate students in relation to the courses listed in the national priority set out in existing paragraph 10(b) of the Guidelines, i.e. UNDA only receives Part 2-2 funding in relation to some of its non-medical domestic undergraduate students.

The Government intends to amend the Act to change UNDA from a Table B provider to a Table A provider, meaning that UNDA will be eligible to receive Part 2-2 funding in relation to all of its non-medical domestic undergraduate students; however, this is expected to occur later in 2021. To ensure that this Government commitment is implemented as soon as possible, it is proposed that the Guidelines be amended now to ensure that UNDA is effectively treated like a Table A provider for the purposes of receiving funding for its non-medical domestic undergraduate students. This change will also mean that all of UNDA's non-medical domestic undergraduate students will be eligible to access Commonwealth supported places (provided they also meet the other eligibility criteria in the Act).

Human rights implications

Right to education

This Instrument 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 Instrument improves access to higher education by listing non-Table A providers that can receive grants under Part 2-2 of the Act for the purposes of supporting Commonwealth supported students, and by including additional national priorities in relation to which these providers can receive funding. This gives students more choice when considering undertaking higher education, by ensuring that more providers are able to offer students subsidised places in a range of different locations and in relation to a range of different areas of study.

The Instrument also improves access to education for non-medical domestic undergraduate students at UNDA, by making all of these students eligible to access Commonwealth supported places (provided they also meet the other eligibility criteria in the Act). This means these students will pay lower tuition fees based on the maximum student contribution amounts set out in the Act.

The Instrument also expands the description of the Professional Pathway Social Work part of funding cluster two to include youth work, counselling and community work units of study undertaken in courses leading to certain accredited qualifications. This amendment means that the lower maximum student contribution amount of \$7,950 will apply to students undertaking these accredited courses. Without this amendment, the higher maximum student contribution amount of \$14,500 would apply to students undertaking these accredited courses. As such, the Instrument assists these students to access higher education by lowering the price of these accredited youth work, counselling and community work courses, reducing barriers to their study and ensuring they have less debt when they graduate.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights.

Minister for Education and Youth, the Hon Alan Tudge MP

COMMONWEALTH GRANT SCHEME GUIDELINES AMENDMENT (NO. 1) 2021

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section states the name of the instrument, the Commonwealth Grant Scheme Guidelines Amendment (No.1) 2021 (the Instrument).

Section 2: Commencement

2. This section provides for the retrospective commencement of Part 1 of Schedule 1 to the Instrument on 1 January 2021, to align with the commencement of key provisions in the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020*. Retrospective commencement is appropriate for the reasons described in the outline above.
3. This section also provides that Part 2 of Schedule 1 to the Instrument commences the day after the Instrument is registered on the Federal Register of Legislation.

Section 3: Authority

4. This section states that the Instrument is made under section 238-10 of the *Higher Education Support Act 2003* (Act).

Section 4: Schedules

5. This section provides that the instrument specified in the Schedule to the Instrument is amended as set out in the Schedule.

Schedule 1, Part 1 – Item 1: Section 8

6. Item 1 repeals section 8 of the *Commonwealth Grant Scheme Guidelines 2020* (Guidelines) and substitutes it with a new section that lists, for the purposes of subparagraph 30-1(1)(b)(i) of the Act, higher education providers, that are not Table A providers, that can be paid grants under Part 2-2 of the Act.
7. The first nine providers in the list are currently specified in section 8 of the Guidelines and receive grants under Part 2-2 (the Instrument updates the legal and trading names of providers as necessary). The other providers in the list are providers that do not currently receive grants under Part 2-2, but are intended to be eligible to receive these grants from 1 January 2021.

8. The providers are required to be listed in order to be able to offer Commonwealth supported places in short courses from 1 January 2021. These providers and courses have been selected by the Department of Education, Skills and Employment through a competitive application process.

Schedule 1, Part 1 – Item 2: Section 10

9. Item 2 amends section 10 of the Guidelines to specify, for the purposes of paragraph 30-20(b) of the Act, a new outcome in the provision of higher education as a national priority, that is in addition to the national priorities already specified in the Guidelines. This new outcome is included for 2021 only and relates to the provision of retraining and upskilling opportunities in a number of areas of study.
10. Under subsection 30-1(2) of the Act, a provider that is not a Table A provider is only eligible for a grant under Part 2-2 if the grant relates to the national priorities that are specified in the Guidelines. If the amendment to section 10 is not made, the new providers listed in section 8 would only be eligible to receive grants under Part 2-2 in relation to the national priorities currently listed in section 10 (being increasing the number of persons undertaking Education and Nursing courses of study).
11. The national priorities are areas of community and industry need in Australia’s labour market, where training opportunities will improve the employability of displaced workers as the economy recovers from the COVID-19 pandemic. These fields of education were initially utilised for the 2020 short course initiative element of the Higher Education Relief Package delivered between May and December 2020.

Schedule 1, Part 1 – Item 3: Section 14, notes 5 and 6

12. Item 3 repeals notes 5 and 6 at the end of the table at section 14 of the Guidelines and substitutes them with two new notes.
13. The only change to note 5 is to correct an error in the name of the Psychology Board of Australia (from ‘Psychology Board or Australia’). The note is otherwise unchanged.
14. New note 6 expands the description of the Professional Pathway Social Work part of funding cluster two to include youth work, counselling and community work units of study undertaken in courses leading to certain accredited qualifications. This amendment means that the lower maximum student contribution amount of \$7,950 will apply to students undertaking these accredited courses. Without this amendment, the higher maximum student contribution amount of \$14,500 would apply to students undertaking these accredited courses.

15. Reducing the student contributions for students undertaking approved youth work, counselling and community work courses will help ensure students obtain qualifications that make them job-ready to provide essential mental health support for their communities.

Schedule 1, Part 2 – Item 4: Paragraph 10(b)

16. Item 4 repeals and substitutes paragraph 10(b) of the Guidelines to state that supporting a number of persons undertaking courses of study in any field of education at the University of Notre Dame Australia (UNDA) is a national priority for the purposes of paragraph 30-20(b) of the Act.
17. The amendment to paragraph 10(b) of the Guidelines is a transitional amendment that implements the Government’s 2020-21 MYEFO commitment to re-categorise UNDA as a Table A provider under the Act. UNDA is currently a Table B provider under the Act, and does not receive as much funding under Part 2-2 of the Act as it would if it were a Table A provider under the Act.
18. The Government intends to amend the Act to change UNDA from a Table B provider to a Table A provider; however, this is not expected to occur until later in 2021. To ensure that this Government commitment is implemented as soon as possible, it is proposed that the Guidelines be amended now to ensure that UNDA can receive Part 2-2 funding in relation to all of its non-medical domestic undergraduate students, and that these students will be eligible to access Commonwealth supported places (provided they also meet the other eligibility criteria in the Act). This change will mean that UNDA is effectively treated like a Table A provider for the purposes of receiving funding for its domestic undergraduate students, and that all of these students will pay lower tuition fees based on the maximum student contribution amounts set out in the Act.

Schedule 1, Part 2 – Item 5: Paragraph 10(c)

19. Item 5 repeals paragraph 10(c) of the Guidelines. Paragraph 10(c) previously enabled UNDA’s non-medical domestic undergraduate Indigenous students to access Commonwealth supported places. This paragraph is no longer required as the amendment to paragraph 10(b) means that all of UNDA’s non-medical domestic undergraduate students, including Indigenous students, will be able to access Commonwealth supported places (provided they also meet the other eligibility criteria in the Act).