

## **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 (National Priorities and Other Matters) 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 (National Priorities and Other Matters) 2021* (the Instrument) amends the Guidelines to:

- list, for the purposes of subparagraph 30-1(1)(b)(i) of the Act, additional higher education providers, that are not Table A providers, that can be paid grants under Part 2-2 of the Act;
- update, for the purposes of paragraph 30-20(b) of the Act, the national priorities specified in the Guidelines; and
- update, for the purposes of subparagraph 33-1(1)(b)(ii) of the Act, the amount of medical student loading worked out under the Guidelines for the provider for that grant year.

The expanded list of providers is required for those providers to receive grants under Part 2-2 of the Act and offer Commonwealth supported places in short courses in national priority areas for Semester 2, 2021. These providers and courses have been selected through a competitive application process as part of a 2021-22 Budget measure to support international education providers affected by losses of international students due to the COVID-19 pandemic.

Broadening the areas of study that constitute national priorities for 2021 will provide greater options for Australian students and the recently unemployed to reskill quickly and improve their employment prospects as the Australian economy recovers from the

COVID-19 pandemic. It will also support non-university higher education providers affected by declines in international student enrolments to pivot their businesses to domestic delivery, across all fields in which they offer courses.

### **REGULATORY IMPACT**

The measures have minor regulatory impact, OBPR reference 43871.

### **COMMENCEMENT**

The measures in 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 results of an application process in May to June 2021 have directly informed the expanded list of providers and additional national priority areas. This process was similar to one undertaken in the second half of 2020 that also allocated funding to non-university higher education providers for short course delivery in 2021. Many providers were familiar with the 2020 process for allocating funding which meant the 2021 process was well received. The providers only applied through this process if they wished to receive CGS funding, and therefore be listed in the Instrument. Courses and fields of study in the Instrument were nominated by providers.

Providers that were not approved under the Act or who had active financial or compliance matters with the Tertiary Education Quality and Standards Agency were considered ineligible.

Successful providers were advised of outcomes and provided with funding agreements in June and July 2021, to enable receipt of Commonwealth Grant Scheme funding for their approved courses in time for Semester 2, 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 (National Priorities and Other Measures) 2021*

*The Commonwealth Grant Scheme Guidelines Amendment (National Priorities and Other Measures) 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, additional higher education providers, that are not Table A providers, that can be paid grants under Part 2-2 of the Act;
- update, for the purposes of paragraph 30-20(b) of the Act, the national priorities specified in the Guidelines; and
- update, for the purposes of subparagraph 33-1(1)(b)(ii) of the Act, the amount of medical student loading worked out under the Guidelines for the provider for that grant year.

The expanded list of providers is required for those providers to receive grants under Part 2-2 of the Act and offer Commonwealth supported places in short courses in national priority areas for Semester 2, 2021. These providers and courses have been selected through a competitive application process as part of a 2021-22 Budget measure to support international education providers affected by losses of international students due to the COVID-19 pandemic.

Broadening the areas of study that constitute national priorities for 2021 will provide greater options for Australian students and the recently unemployed to reskill quickly and improve their employment prospects as the Australian economy recovers from the COVID-19 pandemic. It will also support non-university higher education providers affected by declines in international student enrolments to pivot their businesses to domestic delivery, across all fields in which they offer courses.

Changing the parameters of medical student loading will ensure the maximum amount allocated aligns with the provider's allocation of medical Commonwealth supported places, as outlined in their funding agreement for that particular year.

### **Human rights implications**

#### Right to education

This Instrument supports 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 expanding the 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, through flexible delivery methods and in relation to a range of different areas of study.

The Instrument supports the right to education by expanding the areas of study listed as national priorities in 2021. This amendment improves access to education by enabling students to study a diverse range of short courses and thereby improve their employability at a subsidised cost. This subsidised cost through the Commonwealth Grant Scheme (CGS) reduces barriers to students studying and ensures they have less debt upon graduating. In addition, eligible students can defer upfront costs through the Higher Education Loan Program.

In recognition of the importance of clinical training for medical students, the Instrument will ensure a maximum amount of medical student loading will be provided for every medical Commonwealth supported place allocated to providers, in line with their funding agreement. Medical student loading assists specifically with the cost of clinical training for medical students during their studies.

### **Conclusion**

The Instrument is compatible with human rights because it promotes the right to education.

**Minister for Education and Youth, the Hon Alan Tudge MP**

***Commonwealth Grant Scheme Guidelines Amendment (National Priorities and Other Measures) 2021***

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

This section states the name of the instrument is the *Commonwealth Grant Scheme Guidelines Amendment (National Priorities and Other Measures) 2021* (the Instrument).

**Section 2: Commencement**

This section provides that the Instrument commences the day after the Instrument is registered on the Federal Register of Legislation.

**Section 3: Authority**

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

**Section 4: Schedules**

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

**Section 5: Application of amendments**

This section explains, for the avoidance of doubt, how the provisions in the Instrument are to be applied. Paragraph (a) explains that the amendment to the list of providers made by item 1 in the Schedule applies from commencement of this instrument. Paragraph (b) explains that the amendment to the national priorities made by item 2 in the Schedule applies in relation to grants made after commencement of this instrument. Finally, paragraph (c) explains that the amendment relating to the allocation of medical student places made by item 3 applies in respect of an allocation of medical student places in 2022 and future years.

**Schedule 1—Amendments**

**Item 1 – Section 8**

This item lists, for the purposes of subparagraph 30-1(1)(b)(i) of the Act, additional higher education providers, that are not Table A providers, that can be paid grants under Part 2-2 of the Act.

The providers are required to be listed to be able to offer Commonwealth supported places in short courses from Semester 2, 2021. These providers and courses have been selected by the Department of Education, Skills and Employment through a competitive application process.

### **Item 2 – Section 10**

This item amends section 10 of the Guidelines to specify, for the purposes of paragraph 30-20(b) of the Act, national priority areas. 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.

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.

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. The national priorities also enable providers heavily affected by declines in international student enrolments and commencements to receive Commonwealth Grant Scheme funding to offer subsidised domestic student places and thereby shift their focus to the domestic student market.

### **Item 3 – Section 12**

Item 3 amends the parameters of medical student loading to ensure the maximum amount allocated aligns with the provider's allocation of medical Commonwealth supported places, as outlined in their funding agreement for that particular year. It also explains that allocation of medical student places for the purposes of determining medical student loading for a particular year must not be more than the number of Commonwealth supported medical places allocated in that provider's Commonwealth Grant Scheme funding agreement for that particular year.