

EXPLANATORY STATEMENT

Issued by the authority of Minister for Education and Youth

Higher Education Support Act 2003

Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2021

AUTHORITY

The *Higher Education Support (Maximum Payments for Other Grants) Determination 2020* (the Principal Instrument) is made under subsection 41-45(1D) of the *Higher Education Support Act 2003* (the Act). The Principal Instrument determines the total payments made under Part 2-3 (Other grants) of the Act in respect of a year starting on or after 1 January 2017.

Subsection 41-45(1D) of the Act provides that the Minister may, in writing, vary a determination under subsection 41-45(1B) of the Act for a year at any time before the end of that year. The amendment of the Principal Instrument by the Schedule to the *Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2021* (the Amendment Instrument) relies on that provision.

PURPOSE AND OPERATION

The University of Notre Dame Australia (UNDA) became listed as a Table A provider under section 16-15 of the Act on 28 May 2021. As a Table A provider, UNDA is now eligible to receive grants for a range of additional purposes and programs under Part 2-3 of the Act, which deals with other grants. In particular, UNDA is now eligible to receive grants under the Higher Education Participation and Partnerships Program (HEPPP) and the National Priorities and Industry Linkage Fund (NPILF).

The objectives of the HEPPP are to promote equality of opportunity in higher education by improving:

- a) outreach to widen aspiration and promote higher education to persons from a low socio-economic (SES) background, persons from regional areas and remote areas, and Indigenous persons; and
- b) the extent to which persons from a low SES background, persons from regional areas and remote areas, and Indigenous persons access, participate, remain and succeed in higher education, and obtain higher education awards.

Grants under the HEPPP program are made to Table A providers in respect of a year. Amounts paid are calculated by a formula based on the proportion of students from a low SES background, Indigenous students, and regional and remote students enrolled with the provider.

The NPILF is a program under which grants can be made to eligible providers for the purpose specified in item 13 of the table in subsection 41-10(1) of the Act—grants to encourage higher education providers to engage with industry. Grants made under the NPILF are aimed at encouraging universities to engage with industry to increase the amount of work integrated learning across disciplines and the number of STEM-skilled graduates, as well as improving employment outcomes for graduates.

The Amendment Instrument increases the maximum payments for grants under Part 2-3 of the Act to reflect the additional grant amounts for the HEPPP and the NPILF that may be paid to UNDA now that they are a Table A provider. This increase ensures that these grant amounts can be paid to UNDA without decreasing the amounts which would have been provided to other eligible providers.

REGULATORY IMPACT

The Office of Best Practice Regulation has advised that no Regulatory Impact Statement is required as the instrument is unlikely to have a more than minor regulatory impact (OBPR ID: 44745).

COMMENCEMENT

This instrument commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

Consultation was not undertaken on the Amendment Instrument as it does not create any new rights or liabilities or make any grants under Part 2-3 of the Act. Rather, the Amendment Instrument is a technical step that must be taken by the Minister to enable UNDA to receive grant amounts without impacting the grant amounts of other eligible bodies corporate. As such, it was not appropriate for broad consultation to be undertaken on the Amendment Instrument.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support Amendment (Maximum Payments for Other Grants)

Determination 2021

The *Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2021* (the 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 Legislative Instrument

The University of Notre Dame Australia (UNDA) became listed as a Table A provider under section 16-15 of the Act on 28 May 2021. As a Table A provider, UNDA is now eligible to receive grants for a range of additional purposes and programs under Part 2-3 of the Act, which deals with other grants. In particular, UNDA is now eligible to receive grants under the Higher Education Participation and Partnerships Program (HEPPP) and the National Priorities and Industry Linkage Fund (NPILF).

The objectives of the HEPPP are to promote equality of opportunity in higher education by improving:

- a) outreach to widen aspiration and promote higher education to persons from a low socio-economic (SES) background, persons from regional areas and remote areas, and Indigenous persons; and
- b) the extent to which persons from a low SES background, persons from regional areas and remote areas, and Indigenous persons access, participate, remain and succeed in higher education, and obtain higher education awards.

Grants under the HEPPP program are made to Table A providers in respect of a year. Amounts paid are calculated by a formula based on the proportion of students from a low SES background, Indigenous students, and regional and remote students enrolled with the provider.

The NPILF is a program under which grants can be made to eligible providers for the purpose specified in item 13 of the table in subsection 41-10(1) of the Act—grants to encourage higher education providers to engage with industry. Grants made under the NPILF are aimed at encouraging universities to engage with industry to increase the amount of work integrated learning across disciplines and the number of STEM-skilled graduates, as well as improving employment outcomes for graduates.

The Amendment Instrument increases the maximum payments for grants under Part 2-3 of the Act to reflect the additional grant amounts for the HEPPP and the NPILF that may be paid to UNDA now that they are a Table A provider. This increase ensures that these grant amounts can be paid to UNDA without decreasing the amounts which would have been provided to other eligible providers.

Human rights implications

The Amendment Instrument engages the following rights:

- the right to education; and
- the right to work.

Right to education

The Amendment Instrument promotes 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.’

By increasing the maximum payments for other grants, the Amendment Instrument enables the maximum grant amounts to be increased for the HEPPP. The objectives of the HEPPP are to promote equality of opportunity in higher education. Therefore, the Amendment Instrument promotes the right to education by enabling UNDA to receive grant payments under the HEPPP, without decreasing the grant amounts that may be paid to other eligible providers.

Right to work

The Amendment Instrument promotes 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).

By increasing the maximum payments for other grants, the Amendment Instrument enables the maximum grant amounts to be increased for the NPILF. The NPILF is aimed at encouraging providers to engage with industry to produce job-ready graduates. The specific objectives of this program include increasing the number of internships, practicums and other innovative approaches to work integrated learning across all disciplines, and improving the employment outcomes of STEM-skilled graduates. These activities are all

aimed at assisting students to obtain qualifications that assist them to get jobs, thus supporting the right of these students to work.

Therefore, the Amendment Instrument promotes the right to work by enabling UNDA to receive grant payments under the NPILF, without decreasing the grant amounts that may be paid to other eligible providers.

Conclusion

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

Minister for Education and Youth

**HIGHER EDUCATION SUPPORT AMENDMENT
(MAXIMUM PAYMENTS FOR OTHER GRANTS) DETERMINATION 2021**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2021* (the Amendment Instrument).

Section 2: Commencement

2. This section specifies that the Amendment Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3: Authority

3. The Amendment Instrument is made by the Minister under subsection 41-45(1D) of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This section simply clarifies that Schedule 1 is effective on its terms (that is, to amend the *Higher Education Support (Maximum Payments for Other Grants) Determination 2020* (the Principal Instrument)).

SCHEDULE 1—AMENDMENTS

Item 1: Section 6

5. This item amends the amounts which the total payments made under Part 2-3 of the Act must not exceed for the year 2021.
6. The amount for the year 2021 was \$3,272,065,000, as determined in the Principal Instrument.
7. The amount for the year 2021 has been increased to \$3,276,103,423 to reflect the additional grant amounts that may be paid to the University of Notre Dame Australia as a new Table A provider.