

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Commonwealth Grant Scheme Amendment (National Priorities) Guidelines 2022

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 Principal Instrument) made by the *Commonwealth Grant Scheme Amendment (National Priorities) Guidelines 2022* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The Amendment Instrument amends the Principal Instrument to:

- for the purposes of subparagraph 30-1(1)(b)(i) of the Act, list Torrens University, as a higher education provider that is not a Table A provider, that can be paid grants under Part 2-2 of the Act;
- remove the University of Notre Dame as a listed provider for the purposes of subparagraph 30-1(1)(b)(i) of the Act; and
- for the purposes of paragraph 30-20(b) of the Act, update the national priorities specified in the Principal Instrument.

Torrens University must be included in the list of providers in the Principal Instrument to receive grants under Part 2-2 of the Act and offer Commonwealth supported places in national priority areas. This provider was allocated funding through a competitive application process for the new national priority specified in Schedule 1 to the Amendment Instrument. The new national priority will support an election commitment to provide 20,000 additional Commonwealth supported places to address skill shortages and give more students from under-represented backgrounds the opportunity to attain a higher education qualification.

Higher education providers are eligible to receive grants under Part 2-2 of the Act if they are a Table A provider or any other provider that is specified in the Principal Instrument. As the University of Notre Dame is now listed as a Table A provider in the Act, the Amendment Instrument amends the Principal Instrument to remove the University of Notre Dame from the list of eligible providers specified in the Principal Instrument. The Amendment Instrument also removes the national priority related to the University of Notre Dame as it is no longer needed.

Inserting the areas of study that constitute national priorities for 2023 and 2024 will provide greater options for students from under-represented backgrounds to access higher education and to study in areas where there are current skills and workforce shortages. This amendment will also allow non-Table A providers who were successful in the competitive application process to deliver their allocation of Commonwealth supported places.

REGULATORY IMPACT

The Office of Impact Analysis (OIA) has been consulted and advised that the measure has a minor regulatory impact and a regulation impact statement was required (OBPR ID: OBPR22-02756).

COMMENCEMENT

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

CONSULTATION

The results of a competitive application process held in August and September of 2022 have directly informed the expanded list of non-Table A providers and national priority areas in the Amendment Instrument. This competitive application process was open to all Table A providers and selected non-Table A providers (Table B Universities, University Colleges registered with the Tertiary Education Quality and Standards Agency and higher education providers that already receive an ongoing allocation of Commonwealth Grant Scheme funding to deliver courses in the national priority areas of education and teaching).

The providers only applied through this process if they wished to receive a non-ongoing allocation of Commonwealth Grant Scheme funding for courses commencing in the 2023 and 2024 grant years. Courses and fields of study in the Principal Instrument were nominated by non-Table A providers and assessed through the application process as being within a current area of national priority or an area that has strong future demand.

All providers that applied for funding under this measure were successful in receiving an allocation of funding. Providers were advised of outcomes in October 2022.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Commonwealth Grant Scheme Amendment (National Priorities) Guidelines 2022

The *Commonwealth Grant Scheme Amendment (National Priorities) Guidelines 2022* (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 Amendment Instrument amends the *Commonwealth Grant Scheme Guidelines 2020* (the Principal Instrument) to:

- for the purposes of subparagraph 30-1(1)(b)(i) of the Act, list Torrens University as a higher education provider that is not a Table A provider, that can be paid grants under Part 2-2 of the *Higher Education Support Act 2003* (the Act);
- remove the University of Notre Dame as a listed provider for the purposes of subparagraph 30-1(1)(b)(i) of the Act; and
- for the purposes of paragraph 30-20(b) of the Act, update the national priorities specified in the Principal Instrument.

Torrens University must be included in the list of providers in the Principal Instrument to receive grants under Part 2-2 of the Act and offer Commonwealth supported places in national priority areas. This provider was allocated funding through a competitive application process for the new national priority specified in Schedule 1 to the Amendment Instrument. The new national priority will support an election commitment to provide 20,000 additional Commonwealth supported places to address skill shortages and give more students from under-represented backgrounds the opportunity to attain a higher education qualification.

Higher education providers are eligible to receive grants under Part 2-2 of the Act if they are a Table A provider or any other provider that is specified in the Principal Instrument. As the University of Notre Dame is now listed as a Table A provider in the Act, the Amendment Instrument amends the Principal Instrument to remove the University of Notre Dame from the list of eligible providers specified in the Principal Instrument. The Amendment Instrument also removes the national priority related to the University of Notre Dame as it is no longer needed.

Inserting the areas of study that constitute national priorities for 2023 and 2024 will provide greater options for students from under-represented backgrounds to access higher education and to study in areas where there are current skills and workforce shortages. This

amendment will also allow non-Table A providers who were successful in the competitive application process to deliver their allocation of Commonwealth supported places.

Human rights implications

The Amendment Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

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 improves access to higher education by listing Torrens University as a provider 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 providers listed in section 8 of the Principal Instrument can receive funding. By listing Torrens University as a provider that can receive grants under Part 2-2, this gives students more choice when considering undertaking higher education, by ensuring that more providers are able to offer students subsidised places. The Amendment Instrument also expands the national priorities in relation to which providers listed in section 8 can receive funding, to ensure providers can receive funding to support students from under-represented backgrounds undertaking courses of study in a range of different areas of study. This supports the right to education as it reduces barriers for students to undertake higher education.

Conclusion

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

Minister for Education, The Hon Jason Clare MP

**COMMONWEALTH GRANT SCHEME AMENDMENT (NATIONAL PRIORITIES) GUIDELINES
2022**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Commonwealth Grant Scheme Amendment (National Priorities) Guidelines 2022* (the Instrument).

Section 2: Commencement

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

Section 3: Authority

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

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

Commonwealth Grant Scheme Guidelines 2020

Item 1

5. Item 1 repeals paragraph 8(b) of the *Commonwealth Grant Scheme Guidelines 2020* (Principal Instrument) to remove the University of Notre Dame and list Torrens University as a provider that can be paid grants under Part 2-2 of the Act.

Items 2 to 4

6. Item 2 repeals paragraph 10(b) of the Principal Instrument, as that national priority related to supporting people undertaking courses of study at the University of Notre Dame. As the University of Notre Dame is now a Table A provider, the Minister no longer allocates a specified number of Commonwealth supported places to the University of Notre Dame in relation to national priority places and, consequently, paragraph 10(b) is no longer needed.
7. Items 3 and 4 make changes to section 10 to list a new national priority. This national priority applies to courses commencing in 2023 and 2024 only and relates to increasing the number of persons from under-represented backgrounds undertaking courses of study in a number of areas of study.
8. The amendments in item 4 would allow providers listed in section 8 of the Principal Instrument to be eligible to receive grants under Part 2-2 of the Act in relation to the new national priority.

Item 5

9. Item 5 adds new Chapter 9 at the end of the Principal Instrument, which deals with application, saving and transitional provisions.
10. Item 5 also inserts new section 22 into this Chapter. This section is an application provision that provides that, despite the amendments to section 8 of the Principal Instrument made by Schedule 1 to the Instrument, section 8 of the Principal Instrument, as in force immediately before the commencement of the Instrument, continues to apply on and after that commencement in relation to grants made to the University of Notre Dame Australia in calendar year 2021 and preceding years.