

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2022

AUTHORITY

The *Higher Education Support (Maximum Payments for Other Grants) Determination 2020* (the Principal Instrument) is made under subsection 41-45(1B) of the *Higher Education Support Act 2003* (the Act). The Principal Instrument determines the maximum payments made under Part 2-3 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 *Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2022* (the Amendment Instrument) relies on that provision.

PURPOSE AND OPERATION

The Amendment Instrument amends the Principal Instrument to increase the maximum payment amount for payments made under Part 2-3 of the Act for 2022 and 2023.

The Amendment Instrument increases the maximum amount for payments under Part 2-3 of the Act for 2022 and 2023 to account for new grant programs, including the Australia's Economic Accelerator (AEA) Program and Trailblazer Universities Program.

The University Research Commercialisation Action Plan was announced in February 2022 with a set of initiatives designed to drive the translation and commercialisation of university research. These initiatives include the AEA and Trailblazer Universities Program.

The AEA is an entrepreneurial, research-driven grants program focussed on supporting projects that bolster research translation and commercialisation activities in universities. The program provides funding to Table A and Table B higher education providers to develop research in areas of national priority, and progress new technologies and services to a state of commercial investor readiness. The AEA Program will commence in 2023, with grants to be made under Part 2-3 of the Act.

The Trailblazer Universities Program provides funding for universities under Part 2-3 of the Act to build new research capabilities and invest in new industry engagement opportunities, in strategic priority areas. The program was announced in November 2021, with a competitive assessment process undertaken to select the Trailblazer Universities. The Trailblazer Universities Program will commence in late 2022 and have funding matched by

the university and industry partners, to boost their research translation and commercialisation capability at speed.

The amounts for 2022 and 2023 also include payments for the Higher Education Relief Program (HERP). Introduced as part of the Higher Education Relief Package, the HERP provides financial assistance to eligible higher education providers affected by the COVID-19 pandemic in 2020 for activities to ensure that these providers continue to operate during, and after, the pandemic. HERP payments ensure universities' 2020 Commonwealth Grant Scheme funding is guaranteed regardless of any decrease in enrolments. HERP payments need to be made in 2022 and 2023 because 2020 data was not available until 2022.

REGULATORY IMPACT

The Office of Best Practice Regulation has been consulted and advised that no Regulatory Impact Statement is required as the instrument is unlikely to have a more than minor regulatory impact (OBPR ID: 22-03698).

COMMENCEMENT

The Amendment 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. The Amendment Instrument is a technical step that must be undertaken by the Minister to enable grants under Part 2-3 to be made. As such, it was considered that broad consultation on the Amendment Instrument was not required.

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 2022

The *Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 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 *Higher Education Support (Maximum Payments for Other Grants) Determination 2020* (the Principal Instrument) to increase the maximum payment amount for payments made under Part 2-3 of the Act for 2022 and 2023.

The Amendment Instrument increases the maximum amount for payments under Part 2-3 of the Act for 2022 and 2023 to account for new grant programs, including the Australia's Economic Accelerator (AEA) Program and Trailblazer Universities Program.

The University Research Commercialisation Action Plan was announced in February 2022 with a set of initiatives designed to drive the translation and commercialisation of university research. These initiatives include the AEA and Trailblazer Universities Program.

The AEA is an entrepreneurial, research-driven grants program focussed on supporting projects that bolster research translation and commercialisation activities in universities. The program provides funding to Table A and Table B higher education providers to develop research in areas of national priority, and progress new technologies and services to a state of commercial investor readiness. The AEA Program will commence in 2023, with grants to be made under Part 2-3 of the Act.

The Trailblazer Universities Program provides funding for universities under Part 2-3 of the Act to build new research capabilities and invest in new industry engagement opportunities, in strategic priority areas. The program was announced in November 2021, with a competitive assessment process undertaken to select the Trailblazer Universities. The Trailblazer Universities Program will commence in late 2022 and have funding matched by the university and industry partners, to boost their research translation and commercialisation capability at speed.

The amounts for 2022 and 2023 also include payments for the Higher Education Relief Program (HERP). Introduced as part of the Higher Education Relief Package, the HERP provides financial assistance to eligible higher education providers affected by the COVID-19 pandemic in 2020 for activities to ensure that these providers continue to operate during, and after, the pandemic. HERP payments ensure universities' 2020 Commonwealth Grant

Scheme funding is guaranteed regardless of any decrease in enrolments. HERP payments need to be made in 2022 and 2023 because 2020 data was not available until 2022.

Human rights implications

The Amendment Instrument engages the following human rights:

- the right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
the right to education – Article 13 of the ICESCR.

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 grants to be made under Part 2-3 of HESA to support the AEA Program and the Trailblazer Universities Program which will promote the right to work because they will support and help build strong links between universities and industry and help assist researchers in developing the skills to develop their research to a state of commercial level readiness.

Similarly, the HERP provides financial assistance to eligible higher education providers affected by the COVID-19 pandemic in 2020 for activities to ensure that these providers continue to operate during, and after, the pandemic. These payments will assist providers to continue operating and employing their staff while the higher education sector continues to recover from the pandemic.

Right to education

The Amendment Instrument promotes the right to education contained in Article 13 of the 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 grants to be made under Part 2-3 of HESA to support the Australia’s Economic Accelerator Program and the Trailblazer Universities Program, which will promote the right to education because they will strengthen and ensure the ongoing quality of Australia’s higher education sector through assisting higher education providers to develop research to a state of commercial investor readiness.

Similarly, the HERP provides financial assistance to higher education providers to ensure they can continue to operate and provide high quality tertiary education to their students.

Conclusion

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

Minister for Education, the Hon Jason Clare MP

HIGHER EDUCATION SUPPORT AMENDMENT (MAXIMUM PAYMENTS FOR OTHER GRANTS) DETERMINATION 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the name of the instrument as the *Higher Education Support Amendment (Maximum Payments for Other Grants) Determination 2022* (the Amendment Instrument).

Section 2: Commencement

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

Section 3: Authority

3. This section provides that the Amendment Instrument is made by the Minister under section 41-45 of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This section clarifies that the items in Schedule 1 to the Amendment Instrument have effect according to their terms (that is, to amend the *Higher Education Support (Maximum Payments for Other Grants) Determination 2020* (the Principal Instrument)).

SCHEDULE 1 – AMENDMENTS

Higher Education Support (Maximum Payments for Other Grants) Determination 2020

Item 1: Paragraph 6(c)

5. This item amends the amount which the total payments made under Part 2-3 of the Act must not exceed for the year 2022 as determined in the Principal Instrument.
6. The amount for the year 2022 has been increased from \$2,230,560,000 to \$2,265,000,000 to reflect the additional grant amounts for indexation and the payment of grants under various programs, including the Higher Education Relief Program and Trailblazer Universities Program.

Item 2: Paragraph 6(d)

7. This item amends the amount which the total payments made under Part 2-3 of the Act must not exceed for the year 2023 as determined in the Principal Instrument.
8. The amount for the year 2023 has been increased from \$2,210,378,000 to \$2,412,000,000 to reflect the additional grant amounts for indexation and the payment of grants under various programs, including the Higher Education Relief Program, Australia's Economic Accelerator Program and Trailblazer Universities Program.