

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Other Grants (Research) Amendment (National Industry PhD Program) Guidelines 2023

AUTHORITY

Item 8 of the table at subsection 238-10(1) of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make Other Grants Guidelines to provide for matters necessary or convenient to be provided in order to carry out or give effect to Part 2-3 of the Act in relation to grants payable under that Part.

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 *Other Grants Guidelines (Research) 2017* (the Principal Instrument) made by the *Other Grants (Research) Amendment (National Industry PhD Program) Guidelines 2023* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The Amendment Instrument amends the Principal Instrument to make changes to the National Industry PhD Program, a program specified in Chapter 4 of the Principal Instrument. Chapter 4 is currently made for the purposes of item 8 (grants to support the training of research students) of the table at subsection 41-10(1) of the Act.

Item 1 in Schedule 1 to the *Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023* amended the table at subsection 41-10(1) of the Act to include item 11A, which permits grants to be provided to bodies corporate specified in the Other Grants Guidelines for the purpose of supporting arrangements to increase industry-led study and postgraduate research.

The Amendment Instrument makes changes to the National Industry PhD Program to allow for the Commonwealth to make payments directly to industry partners who are partnered with higher education providers in the Industry Researcher PhD Stream, relying on item 11A of the table at subsection 41-10(1) of the Act. The Amendment Instrument also makes changes to provide for a method to determine the amount of grants to industry partners and imposes conditions on industry partners receiving grants under the National Industry PhD Program.

The provisions in Chapter 4 that currently apply to higher education providers have only been amended to the extent required to ensure that grants can be made directly to industry

partners for the Industry Researcher PhD Stream. For example, the method to determine grants to higher education providers has been amended to remove the reference to the industry component of the grant (which will now be paid directly to industry partners).

IMPACT ANALYSIS

The Office of Impact Analysis has been consulted and advised that the Amendment Instrument is unlikely to have a more than minor impact, as it reduces the burden on higher education providers by directing the allocated grant funding directly to industry partners. As such, the preparation of an Impact Analysis is not required.

COMMENCEMENT

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

CONSULTATION

Item 11A of the table in subsection 41-10(1) of the Act, which provides the authority for grants to industry partners for the Industry Researcher PhD Stream, was inserted by section 1 of Schedule 1 to the *Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023*. Extensive public and stakeholder consultation was undertaken prior to that Act being made, including through releasing a consultation paper on the measures included in that Act and considering public submissions received as part of that process. 171 public submissions were received during that process and indicated broad support for improving industry-university collaboration.

No consultation was undertaken in relation to this Amendment Instrument. Previous consultation was conducted by the Department of Education (the Department) with targeted stakeholders between 6 July and 20 July 2022 (first round of consultation) and between 14 September and 5 October 2022 (second round of consultation). A total of 36 submissions were received: 27 submissions for the first round of consultation; and nine for the second round of consultation.

The stakeholders consulted included universities, university peak bodies and cohort groups, university staff in a private capacity, government agencies, and industry groups with many highlighting that paying the Industry Partner subsidy to the university and requiring the university to pass on the subsidy to the Industry Partner is inefficient and puts an unnecessary burden on the university. The Amendment Instrument addresses those concerns by allowing the Commonwealth to make grant payments directly to industry partners and place conditions on those grants.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Other Grants (Research) Amendment (National Industry PhD Program) Guidelines 2023

The *Other Grants (Research) Amendment (National Industry PhD Program) Guidelines 2023* (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

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Item 1 of Schedule 1 to the *Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023* amended the table at subsection 41-10(1) of the Act to include item 11A, which permits grants to be provided to bodies corporate specified in the Other Grants Guidelines for the purpose of supporting arrangements to increase industry-led study and postgraduate research.

The Amendment Instrument makes changes to the National Industry PhD Program to allow for the Commonwealth to make payments directly to industry partners who are partnered with higher education providers in the Industry Researcher PhD Stream, relying on item 11A of the table at subsection 41-10(1) of the Act. The Amendment Instrument also makes changes to provide for a method to determine the amount of grants to industry partners, and imposes conditions on industry partners receiving grants under the National Industry PhD Program.

The provisions in Chapter 4 that currently apply to higher education providers have only been amended to the extent required to ensure that grants can be made directly to industry partners for the Industry Researcher PhD Stream. For example, the method to determine grants to higher education providers has been amended to remove the reference to the industry component of the grant (which will now be paid directly to industry partners).

Human rights implications

The Amendment Instrument engages the following rights:

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

Right to work

Article 6(1) of the ICESCR recognises 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).

The Amendment Instrument provides for grants to be paid directly to industry partners for the purpose of supporting those industry partners to support their employees to undertake further study, and imposes conditions on the industry partner to support their employee to undertake study and work concurrently. This will allow for the PhD Candidates employed by the industry partners to upskill while remaining employed, and supports the right of these students to work.

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 makes changes to the Principal Instrument to allow for the Commonwealth to make payments directly to industry partners, for the purpose of supporting those industry partners to support their employees to undertake further study. The amendments will provide support to industry partners so that their employees are able to undertake higher education, and as such, supports the right to education by removing barriers to accessing higher education.

Conclusion

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

Minister for Education, The Hon Jason Clare MP

OTHER GRANTS (RESEARCH) AMENDMENT (NATIONAL INDUSTRY PHD PROGRAM) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Other Grants (Research) Amendment (National Industry PhD Program) Guidelines 2023* (the Amendment Instrument).

Section 2: Commencement

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

Section 3: Authority

3. This section provides that the Amendment 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 Amendment Instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

Other Grants Guidelines (Research) 2017

Item 1

5. Item 1 repeals Chapter 4 (old Chapter 4) in the *Other Grants Guidelines (Research) 2017* (the Principal Instrument) and substitutes it with a new Chapter 4 (new Chapter 4).
6. New Chapter 4 will continue to specify the National Industry PhD Program (the Program) for the purposes of subsection 41-10(1) of the Act. New Chapter 4 makes amendments to provide for payments to be made directly to industry partners in the Program.
7. Section 4.1 specifies the Program for the purposes of subsection 41-10(1) of the Act. Old section 4.1 provided that the Program was specified for the purpose of item 8 of

the table in subsection 41-10(1) of the Act. New section 4.1 provides that the Program is also specified for the purpose of item 11A of the table in subsection 41-10(1) of the Act, as the payment of grants directly to industry partners relies on item 11A.

8. New section 4.5 sets out the objectives of the Program. New section 4.5 mostly reflects the original wording of old section 4.5, but provides further detail to clarify that support to higher education providers is provided for the purpose of item 8 of the table in subsection 41-10(1) of the Act, and that support to bodies corporate that meet the requirements in subsection 4.10(1) (defined as an 'industry partner' for the purposes of Chapter 4) to support their employees is provided for the purpose of item 11A of the table in subsection 41-10(1) of the Act.
9. New section 4.10 sets out the specified bodies corporate and extra conditions of eligibility for the program.
10. New subsection 4.10(1) provides that bodies corporate that meet certain criteria are specified for the purposes of item 11A in the table in subsection 41-10(1) of the Act, as an industry partner eligible to receive a grant under the Program. New subsection 4.10(1) provides that the body corporate must undertake R&D activities, be partnered with an eligible higher education provider and employ a PhD Candidate that meets certain criteria listed in paragraph 4.10(1)(c) in order to be specified for the purposes of item 11A in the table in subsection 41-10(1) of the Act.
11. New subsections 4.10(2) to (4) set out the extra conditions of eligibility for grants under the Program. The extra conditions of eligibility for grants in new subsections 4.10(2) to (4) are similar to the extra conditions of grants in old section 4.10, with consequential changes made to reflect that the structure of the Program has changed so it is possible to make payments directly to industry partners for the Industry Researcher PhD Stream.
12. Section 4.15 sets out the method by which the amount of grants under the program are determined. New section 4.15 mostly reflects the wording of old section 4.15, with changes made to specify that grants for participating higher education providers will no longer include an industry component (to reflect that grants will be made directly to industry partners), and to provide for a new method to determine the amount of grants to industry partners.
13. Section 4.20 is unchanged, and provides that the amounts listed in section 4.15 are listed for the year 2023 and are to be indexed for subsequent years using the method of indexation set out in Part 5-6 of the Act.
14. Section 4.25 sets out conditions that apply to grants made under the Program.
15. Subsections 4.25(1) to (6) set out the conditions on grants to higher education providers.
16. New subsections 4.25(1) to (3) set out the conditions on participating higher education providers in relation to the student component of the grant. These are

largely the same as the current subsections, except that the reference to the industry component of the grant has been removed.

17. New subsection 4.25(4) provides that the participating higher education provider must inform the department if it becomes aware that a body corporate no longer meets the criteria under subsection 4.10(1) to be specified as an industry partner.
18. New subsection 4.25(5) provides that the higher education provider must provide appropriate PhD supervisors, access to the provider's facilities and infrastructure, learning and development opportunities and support for the development of research skills to PhD Candidates to ensure that the PhD Candidates are making appropriate progress and to ensure successful completion of the PhD project.
19. New subsection 4.25(6) sets conditions on the participating higher education provider in relation to the administrative component of the grant, and provides that the provider must only use the administrative component of the grant for administrative costs associated with the Program and must not pass on the administrative component of the grant to the PhD Candidate.
20. Subsections 4.25(7) to (11) set out the conditions on grants to industry partners.
21. New subsections 4.25(7) and (8) provide that the participating industry partner must agree to support the PhD Candidate for the full duration of the Program to undertake study and work concurrently, must pay full salary and benefits to the PhD candidate for the duration of the Program, and must agree to be responsible for all other relevant expenses incurred by their participation in the Program.
22. New subsection 4.25(9) provides that the participating industry partner must only use the grant amount to support the provision of higher education to their employed PhD Candidate, including for the purposes of supporting PhD Candidates to complete their PhD project and supporting the participating industry partner with releasing PhD Candidates and other employees of the industry partner for periods of time for the purposes of assisting PhD Candidates to complete their PhD project.
23. New subsections 4.25(10) and (11) provide that the participating industry partner must provide supervision for their employed PhD Candidate, and must provide appropriate access to appropriate facilities and infrastructure to support the PhD Candidate.
24. Subsections 4.25(12) and (13) impose conditions on higher education providers and industry partners in respect of their PhD Candidates.
25. New subsection 4.25(12) provides that participating higher education providers in the Industry Linked PhD Stream must ensure that PhD Candidates spend 20 to 50 per cent of the duration of their PhD Candidature undertaking work relevant to their PhD project in the facilities of the business or organisation referred to in paragraph 4.10(4)(b), unless an exception is approved by the department.
26. New subsection 4.25(13) provides that participating industry partners in the Industry Researcher PhD stream must ensure that PhD Candidates spend 20 to 50 per cent of

- the duration of their PhD Candidature embedded in the participating higher education provider's facilities, unless an exception is approved by the department.
27. Subsections 4.25(14) to (16) impose conditions on higher education providers and industry partners in respect of an agreement they must enter into for the relevant PhD Project.
 28. New subsection 4.25(14) provides that participating higher education providers and participating industry partners must enter into an agreement for each PhD project for the Industry Researcher PhD stream.
 29. New subsection 4.25(15) provides that the participating higher education provider must enter into an agreement with the relevant business or organisation for each PhD project in the Industry Linked PhD stream.
 30. New subsection 4.25(16) provides that the agreements referred to in subsections (14) and (15) must provide for how intellectual property rights created as part of the PhD project should be handled, and must allow the PhD Candidate to use and publish such intellectual property in their thesis or relevant publications.
 31. New subsections 4.25(17) to (19) impose conditions in relation to reporting and privacy. These conditions are largely unchanged from the conditions previously imposed in old section 4.25, with minor changes to provide that these conditions, which previously only applied to participating higher education providers, will also apply to participating industry partners.