

## **REPLACEMENT EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Education**

### ***Higher Education Support Act 2003***

### ***Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023***

#### **AUTHORITY**

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make Other Grants Guidelines to, amongst other things, 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 *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) made by the *Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023* (the Amendment Instrument) rely on this provision.

#### **PURPOSE AND OPERATION**

The Amendment Instrument makes minor amendments to the provisions of the Principal Instrument in relation to the National Priorities Pool Program and the Regional Partnerships Project Pool Program. The amendments clarify how grants are to be paid under the programs; meaning that the amounts which will be spent on the entire National Priorities Pool Program in 2023, 2024 and 2025 are no longer specified in the Principal Instrument; and specify the amount that will be spent on the Regional Partnerships Project Pool Program for 2023.

The Minister's power to determine the amounts to be spent on grants under programs for the purposes of Part 2-3 of the Act is limited by any determination made under section 41-45 of the Act, which provides a cap on the total payments able to be made under Part 2-3 of the Act. The [Higher Education Support \(Maximum Payments for Other Grants\) Determination 2020](#) currently sets out the maximum amount that can be spent under Part 2-3 of the Act from 2020 to 2024.

The amendments will assist in ensuring that the full amount of available funding for the National Priorities Pool Program and the Regional Partnerships Project Pool Program can be administered and expended effectively.

## **IMPACT ANALYSIS**

The Office of Impact Analysis has advised that an Impact Analysis is not required as the instrument is unlikely to have a more than minor regulatory impact (OIA23-04973).

## **COMMENCEMENT**

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

## **CONSULTATION**

Consultation on movement of program funds was undertaken with the Department of Finance as part of a routine request to rollover unexpended funding—which included funding of the National Priorities Pool Program and Regional Partnerships Project Pool Program—from 2022-23 to 2023-24. The Department of Finance raised no concerns.

While the amendment does not affect the purpose and administration of the National Priorities Pool Program and the Regional Partnerships Project Pool Program, the department has advised Universities Australia of the amendments in the Amendment Instrument. Universities Australia raised no concerns.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
*Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023*

The *Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool 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

The Amendment Instrument makes minor amendments to the provisions of the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) in relation to the National Priorities Pool Program and the Regional Partnerships Project Pool Program. The amendments clarify how grants are to be paid under the programs; meaning that the amounts which will be spent on the entire National Priorities Pool Program in 2023, 2024 and 2025 are no longer specified in the Principal Instrument; and specify the amount that will be spent on the Regional Partnerships Project Pool Program for 2023.

The Minister's power to determine the amounts to be spent on grants under programs for the purposes of Part 2-3 of the Act is limited by any determination made under section 41-45 of the Act, which provides a cap on the total payments able to be made under Part 2-3 of the Act. The [Higher Education Support \(Maximum Payments for Other Grants\) Determination 2020](#) currently sets out the maximum amount that can be spent under Part 2-3 of the Act from 2020 to 2024.

The amendments will assist in ensuring that the full amount of available funding for the National Priorities Pool Program and the Regional Partnerships Project Pool Program can be administered and expended effectively.

### 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 makes minor changes to the provisions of the Principal Instrument in relation to the National Priorities Pool Program and the Regional Partnerships Project Pool Program. The changes provide some clarity as to the operation of the

programs, which supports grants being made under the programs. The National Priorities Pool Program and the Regional Partnerships Project Pool Program are grant programs specified for the purpose of promoting equality of opportunity in higher education.

As such, the Amendment Instrument supports the right to education by providing clarity on the operation of programs that promote equality of opportunity in higher education.

### **Conclusion**

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

**Minister for Education, The Hon Jason Clare MP**

**HIGHER EDUCATION SUPPORT (OTHER GRANTS) AMENDMENT (NATIONAL PRIORITIES  
POOL PROGRAM AND REGIONAL PARTNERSHIPS PROJECT POOL PROGRAM) GUIDELINES  
2023**

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. This section specifies the name of the instrument as the *Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool 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**

*Higher Education Support (Other Grants) Guidelines 2022*

**Item 1**

5. Item 1 repeals section 16 of the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) and substitutes a new section 16.
6. Previous section 16 provided that grants under the National Priorities Pool Program are made in respect of projects, and the amount that will be spent on the program for each of the 2022, 2023, 2024 and 2025 years, is \$6,500,000.
7. New section 16 simply provides that grants under the National Priorities Pool Program are made in respect of projects, and does not set out what amount will be spent on the program for each of the grant years.

8. This is because the amount of grants made to a higher education provider will be determined in writing by the Minister, consistent with paragraph 41-30(b) of the Act, and it is not necessary to set out the total amount that will be spent on the program for each of the grant years in the Principal Instrument.

#### Item 2

9. Item 2 repeals subsection 20(2) in the Principal Instrument and substitutes a new subsection 20(2).
10. Old subsection 20(2) provided that the amount that would be spent on the program for 2022 was \$2,648,145. New subsection 20(2) provides that the amount that will be spent on the program for 2023 is \$4,631,462.

#### Item 3

11. Item 3 repeals section 21.
12. Old section 21 provided that the amount mentioned in old subsection 20(2) for the year 2022 is to be indexed for the year 2023 using the method of indexation set out in Part 5-6 of the Act. As old subsection 20(2) has been repealed and replaced with a new subsection 20(2) setting out the amount for the year 2023, section 21 is no longer needed.