

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Commonwealth Grant Scheme Amendment (Maximum Basic Grant Amount) Guidelines 2023

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 (Maximum Basic Grant Amount) Guidelines 2023* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

Section 30-25 of the Act provides that the Minister may, on behalf of the Commonwealth, enter into a funding agreement with a higher education provider relating to grants made under Part 2-2 of the Act. Paragraph 30-27(1)(a) provides that a funding agreement for a higher education provider that is a Table A provider must specify an amount as the “maximum basic grant amount” (MBGA) payable to the provider for a grant year for higher education courses. A provider’s MBGA is the maximum amount the provider can receive in funding for higher education courses under the Act. Paragraph 30-27(3)(a) of the Act provides that a funding agreement made in respect of a 2024 grant year, must not have an MBGA for a Table A provider for higher education courses that is less than the amount specified in the Principal Instrument.

The Principal Instrument does not currently specify the amounts that Table A providers’ MBGAs for higher education courses must not fall below for the 2024 grant year. The Amendment Instrument amends the Principal Instrument to specify that amount for Table A providers for the 2024 grant year. The amounts specified for each provider for 2024 represent the MBGA ‘floor’ for higher education courses for each provider (i.e. a guaranteed baseline for MBGAs for those courses), subject to their delivery of higher education courses. This means that the MBGA for a provider for higher education courses for 2024, which will

be specified in the provider's funding agreement, must not be less than the amount specified in the Principal Instrument.

REGULATORY IMPACT

The Office of Impact Analysis (OIA) has advised that the Amendment Instrument is unlikely to have a more than minor regulatory impact. As such, it advised the preparation of an Impact Analysis is not required (OIA23-06054).

COMMENCEMENT

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

CONSULTATION

The amendments made by the Amendment Instrument to the Principal Instrument are routine and technical amendments to specify the amounts that Table A providers' MBGAs for higher education courses must not fall below for the 2024 grant year. The specification of these amounts will facilitate funding agreements being made with Table A providers in respect of the 2024 grant year. Universities Australia was notified of the proposed amendments to the Principal Instrument and did not raise concerns.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Commonwealth Grant Scheme Amendment (Maximum Basic Grant Amount) Guidelines 2023

The *Commonwealth Grant Scheme Amendment (Maximum Basic Grant Amount) 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

Section 30-25 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may, on behalf of the Commonwealth, enter into a funding agreement with a higher education provider relating to grants made under Part 2-2 of the Act. Paragraph 30-27(1)(a) provides that a funding agreement for a higher education provider that is a Table A provider must specify an amount as the “maximum basic grant amount” (MBGA) payable to the provider for a grant year for higher education courses. A provider’s MBGA is the maximum amount the provider can receive in funding for higher education courses under the Act. Paragraph 30-27(3)(a) of the Act provides that a funding agreement made in respect of a 2024 grant year, must not have an MBGA for a Table A provider for higher education courses that is less than the amount specified in the *Commonwealth Grant Scheme Guidelines 2020* (the Principal Instrument).

The Principal Instrument does not currently specify the amounts that Table A providers’ MBGA for higher education courses must not fall below for the 2024 grant year. The Amendment Instrument amends the Principal Instrument to specify that amount for Table A providers for the 2024 grant year. The amounts specified for each provider for 2024 represent the MBGA ‘floor’ for higher education courses for each provider (i.e. a guaranteed baseline for MBGAs for those courses), subject to their delivery of actual Commonwealth supported places. This means that the MBGA for a provider for higher education courses for 2024, which will be specified in the provider’s funding agreement, must not be less than the amount specified in the Principal Instrument.

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) 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 amends the Principal Instrument to specify amounts for Table A providers, that their MBGA for higher education courses must not fall below for the 2024 grant year. This provides a guarantee to Table A providers that the MBGA specified in their funding agreement, in respect of Part 2-2 funding for higher education courses, will not fall below the amounts specified in the Principal Instrument. This, in effect, guarantees that Table A providers are able to receive a certain amount of Part 2-2 funding for higher education courses (subject to their actual delivery of Commonwealth supported places), which supports their delivery of Commonwealth supported places under that Part.

As such, the specification of amounts that Table A providers' MBGAs for higher education courses must not fall below for the 2024 grant year, supports the provision of Commonwealth supported places under Part 2-2 of the Act, and supports the provision of 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 (MAXIMUM BASIC GRANT AMOUNT) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the name of the instrument is *Commonwealth Grant Scheme Amendment (Maximum Basic Grant Amount) Guidelines 2023* (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 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: Section 21

5. This item repeals old section 21 and substitutes a new section 21.
6. Old section 21 specified the amounts for Table A providers that their maximum basic grant amount for higher education courses must not fall below for the 2021, 2022 and 2023 grant years.
7. New section 21 is largely unchanged from old section 21, with the only changes to amend the table to provide that the amounts specified also apply to the 2024 grant year, and to specify an amount for the University of Notre Dame Australia.