

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support Amendment (Maximum Payments for Commonwealth Scholarships) Determination 2023

AUTHORITY

The *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2020* (the Principal Instrument) is made under subsection 46-40(3) of the *Higher Education Support Act 2003* (the Act). The Principal Instrument determines the maximum payments made under Part 2-4 of the Act in respect of a year starting on or after 1 January 2017.

Subsection 46-40(5) of the Act provides that the Minister may, in writing, vary a determination under subsection 46-40(3) 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 Commonwealth Scholarships) Determination 2023* (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 2-4 of the Act for 2024, and to include a maximum payment amount for 2025.

The Amendment Instrument increases the maximum amount for payments made under Part 2-4 of the Act for 2024 to account for indexation. This ensures that grants made under Part 2-4 can be increased in line with indexation.

REGULATORY IMPACT

The Office of Impact Analysis has been consulted and advised that no Impact Analysis is required as the Amendment Instrument is unlikely to have a more than minor regulatory impact (OIA ID: 23-05986).

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 2-4 of the Act. The Amendment Instrument is a technical step that must be undertaken by the Minister to enable grants

under Part 2-4 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 Commonwealth Scholarships) Determination 2023

The *Higher Education Support Amendment (Maximum Payments for Commonwealth Scholarships) Determination 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 amends the *Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2020* (the Principal Instrument) to increase the maximum payment amount for payments made under Part 2-4 of the *Higher Education Support Act 2003* (the Act) for 2024, and to introduce a maximum payment amount for 2025.

The Amendment Instrument increases the maximum amount for payments made under Part 2-4 of the Act for 2024 to account for indexation. This ensures that grants made under Part 2-4 can be increased in line with indexation.

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 will enable payments under Part 2-4 of the Act to be made, and for those payments to account for indexation. Part 2-4 of the Act provides grants for scholarships to be made to higher education providers who pay the scholarships to students for the purposes of the students’ education or for scholarships paid directly to students. Therefore, the increase of the maximum payment in the Amendment Instrument will help support the payment of scholarships to students, 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

HIGHER EDUCATION SUPPORT AMENDMENT (MAXIMUM PAYMENTS FOR COMMONWEALTH SCHOLARSHIPS) DETERMINATION 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the name of the instrument is the *Higher Education Support Amendment (Maximum Payments for Commonwealth Scholarships) Determination 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 46-40 of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This section clarifies that 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 Commonwealth Scholarships) Determination 2020* (the Principal Instrument)).

SCHEDULE 1 – AMENDMENTS

Higher Education Support (Maximum Payments for Commonwealth Scholarships) Determination 2020

Item 1: Paragraph 6(d)

5. This item makes a minor change to paragraph 6(d) of the Principal Instrument to remove the 'and' in the paragraph, to reflect the inclusion of a new paragraph in item 3.

Item 2: Paragraph 6(e)

6. This item amends the amount which the total payments made under Part 2-4 of the Act must not exceed for the year 2024, as determined in the Principal Instrument.
7. The amount for the year 2024 has been increased from \$1,091,142,000 to \$1,199,000,000 to account for indexation.

Item 3: After paragraph 6(e)

8. This item inserts a new paragraph 6(f) which determines the amount which the total payments made under Part 2-4 of the Act must not exceed for the year 2025
9. New paragraph 6(f) determines that the maximum payment amount for the year 2025 for payments made under Part 2-4 of the Act is \$1,249,000,000.