Indigenous Student Assistance Grants Guidelines 2017

I, Nigel Scullion, Minister for Indigenous Affairs, make the following instrument.

Dated 03/01/2017

Nigel Scullion
Minister for Indigenous Affairs

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Part 1—Preliminary

1 Name

This instrument is the *Indigenous Student Assistance Grants Guidelines 2017*.

2 Commencement

(1) Each provision of these Guidelines specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of these Guidelines	These Guidelines commence the day after these Guidelines are registered.	11 January 2017

Note: This table relates only to the provisions of these Guidelines as originally made. It will not be amended to deal with any later amendments of these Guidelines.

(2) Any information in column 3 of the table is not part of this these Guidelines. Information may be inserted in this column, or information in it may be edited, in any published version of these Guidelines.

3 Authority

These Guidelines are made under section 238-10 of the Act for the purposes of Part 2-2A of the Act.

4 Definitions

Note: A number of expressions used in these Guidelines are defined in Schedule 1 of the Act, including the following:

(a) annual financial reporting period;
(b) course of study;
(c) EFTSL;
(d) enabling course;
(e) enrolled;
(f) higher education award;
(g) higher education provider;
(h) student;
(i) Table A provider;
(j) Table B provider;
(k) unit of study;
(l) VET course of study.

These expressions are identified in *italics* in these Guidelines.

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In these Guidelines:

Act means the *Higher Education Support Act 2003*.

administering officer means an employee in the Department administered by the Minister administering Part 2-2A of the Act.

asset means any item of real or personal property that has a value or acquisition cost of $5,000 (excluding GST) or more, and is either:

(a) leased, purchased or created (all or part) using an ISSP grant; or

(b) transferred to the *higher education provider* for the purpose of delivering an activity specified in these Guidelines.

earlier Indigenous Commonwealth Accommodation Scholarship means an Indigenous Commonwealth Accommodation Scholarship described in paragraph 2.1.1(3) of the *Commonwealth Scholarships Guidelines (Education) 2010*.

earlier Indigenous Commonwealth Education Costs Scholarship means an Indigenous Commonwealth Education Costs Scholarship described in paragraph 2.1.1(2) of the *Commonwealth Scholarships Guidelines (Education) 2010*.

earlier Indigenous Commonwealth Scholarship means an earlier Indigenous Commonwealth Accommodation Scholarship or an earlier Indigenous Commonwealth Education Costs Scholarship.

Education Department means the Department administered by the Minister administering the *Higher Education Funding Act 1988*.

eligible higher education provider means a *higher education provider* that meets the requirements of section 38-10 of the Act and section 10 of these Guidelines.

grant means:

(a) the money or any part of it payable by the Commonwealth to a higher education provider under section 38-35 of the Act; and

(b) any interest earned on a grant.

grant year means the calendar year in respect of which a grant is paid under section 38-35 of the Act.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Higher Education Information Management System means the electronic information system for higher education maintained by the Education Department.

Human Services Department means the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Indigenous Commonwealth Accommodation Scholarship means a scholarship described in paragraph 20(b) of these Guidelines.

Indigenous Commonwealth Education Costs Scholarship means a scholarship described in paragraph 20(a) of these Guidelines.

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Indigenous Commonwealth Reward Scholarship means a scholarship described in paragraph 20(c) of these Guidelines.

Indigenous Commonwealth Scholarship means:

(a) an Indigenous Commonwealth Accommodation Scholarship; or

(b) an Indigenous Commonwealth Education Costs Scholarship; or

(c) an Indigenous Commonwealth Reward Scholarship,

and includes a preserved Indigenous Commonwealth Scholarship.

Indigenous Education Strategy means a strategy of a *higher education provider* that meets the requirements of section 13 of these Guidelines.

Indigenous Governance Mechanism means a mechanism established by a *higher education provider* that meets the requirements of section 11 of these Guidelines.

Indigenous Support Program means the program by that name provided for under the *Other Grants Guidelines (Education) 2012*.

Indigenous Workforce Strategy means a strategy of a *higher education provider* that meets the requirements of section 12 of these Guidelines.

ISSP means the Indigenous Student Success Programme.

ISSP grant means a grant provided for under section 5 of these Guidelines.

ISSP grant amount means the amount of an ISSP grant to be paid to an eligible higher education provider as determined, and notified to providers, under section 7 of these Guidelines.

preserved Indigenous Commonwealth Accommodation Scholarship means an Indigenous Commonwealth Scholarship that assists with relocation costs, accommodation costs, or relocation and accommodation costs that is offered under subsection 28(2) of these Guidelines and awarded under subsection 28(5) of these Guidelines.

preserved Indigenous Commonwealth Education Costs Scholarship means an Indigenous Commonwealth Scholarship that assists with education costs that is offered under subsection 28(2) of these Guidelines and awarded under subsection 28(5) of these Guidelines.

preserved Indigenous Commonwealth Scholarship means a preserved Indigenous Commonwealth Accommodation Scholarship or a preserved Indigenous Commonwealth Education Costs Scholarship.

regional area means an area classified as Inner Regional Australia or Outer Regional Australia in the Australian Statistical Geography Standard that is referred to in the item for Regional and Remote in the glossary to the Higher Education Information Management System.

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remote area means an area classified as Remote Australia or Very Remote Australia in the Australian Statistical Geography Standard that is referred to in the item for Regional and Remote in the glossary to the Higher Education Information Management System.

study period means a period over which at least one *unit of study* that is a requirement of a *course of study* is undertaken by a *student*.

Part 2—ISSP grants

5 Description of ISSP grants

ISSP grants are grants to eligible higher education providers to use for any or all of the activities specified in these Guidelines.

6 Amount to be spent on ISSP grants

The amount that will be spent on ISSP grants in a particular grant year will be an amount that is the difference between:

(a) maximum payments for grants under Part 2-2A of the Act in respect of that year as determined by the Minister under section 38-45 of the Act; and

(b) the total amount for grants approved by the Minister under subsection 38-20 of the Act in respect of that year.

7 ISSP grant amounts

(1) Subject to subsection (3), the amount of an ISSP grant to be paid to an eligible higher education provider in a grant year will be an amount that is:

(a) determined before the start of the grant year in accordance with the method in Schedule 1 of these Guidelines; and

(b) adjusted after the last business day in April of the grant year in accordance with the method in Schedule 1 of these Guidelines.

(2) An administering officer must give the notices specified in column 2 of the table in writing to an eligible higher education provider by the date, or in the timeframe, specified in column 3 of the table.

Notice of ISSP grant amounts		
Column 1	**Column 2**	**Column 3**
Item	**Notice**	**Date**
1.	Notice of ISSP grant amount as determined before the start of the grant year	24 December of the previous grant year
2.	Notice of ISSP grant amount as adjusted during the grant year	20 business days after the adjustment is calculated

(3) For the 2017 grant year, the amount of an ISSP grant to be paid to an eligible higher education provider in the grant year will be an amount that is:

(a) determined after the start of the grant year but before the last business day in April of the grant year in accordance with the method in Schedule 1 of these Guidelines; and

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(b) adjusted after the last business day in April of the grant year in accordance with the method in Schedule 1 of these Guidelines.

8 Payment of ISSP grants

For an ISSP grant to be payable under section 38-35 of the Act, the Minister must be satisfied that a *higher education provider* meets the requirements of these Guidelines.

Note: Section 164-5 of the Act provides that grant amounts will be paid in such a way as the Minister determines, and at such times as the Secretary determines.

9 Taxes

(1) Subject to subsections (2) and (3), a *higher education provider* that receives an ISSP grant must pay all taxes, duties and government charges levied in Australia or overseas in connection with the ISSP grant.

(2) If a *higher education provider* is registered for GST, an amount to cover the provider's GST obligations in relation to the use of an ISSP grant must be provided in addition to the provider's ISSP grant amount.

(3) A *higher education provider* that is registered for GST when it receives an ISSP grant must notify an administering officer if it ceases to be registered for GST in the grant year.

Part 3—Eligibility to receive ISSP grants

10 Extra conditions of eligibility

(1) In addition to the conditions of eligibility in section 38-10 of the Act, a *Table A provider* or a *Table B provider* must satisfy the following extra conditions to be eligible for an ISSP grant:

(a) the provider has an *EFTSL* of at least five Indigenous students;

(b) the provider can demonstrate it has access to funding other than ISSP grants that it intends to use to:

(i) assist Indigenous students to undertake higher education; and

(ii) increase the number of Indigenous students enrolling in, progressing in and completing courses leading to a *higher education award*; and

(iii) increase the number of Indigenous students participating in a higher education environment;

(c) the provider has the following arrangements in place or the provider has notified an administering officer within 30 days of failing to have the following arrangements in place and the administering officer has agreed a process for the provider to establish the following arrangements:

(i) an Indigenous Governance Mechanism that meets the requirements of these Guidelines;

(ii) an Indigenous Workforce Strategy that meets the requirements of these Guidelines and is publicly available; and

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(iii) an Indigenous Education Strategy that meets the requirements of these Guidelines and is publicly available.

(2) A *Table A provider* or a *Table B provider* must provide evidence that it complies with the conditions in subsection (1) within 10 business days of a request by an administering officer.

11 Indigenous Governance Mechanism

To meet the requirements of these Guidelines, the Indigenous Governance Mechanism of a *Table A provider* or a *Table B provider* must:

(a) consist of:
  (i) an appropriately qualified senior academic employee of the provider who is an Indigenous person; or
  (ii) an appropriately qualified senior executive employee of the provider who is an Indigenous person; or
  (iii) a committee constituted by a majority of Indigenous persons, each of whom has skills and experience relevant to the role; and
(b) have responsibility for advising on, reviewing, making recommendations about, and monitoring the use of ISSP grants; and
(c) have authority within the governance structure of the provider; and
(d) have a charter that outlines:
  (i) criteria for appointment; and
  (ii) roles and responsibilities; and
  (iii) decision-making processes.

12 Indigenous Workforce Strategy

To meet the requirements of these Guidelines, the Indigenous Workforce Strategy of a *Table A provider* or a *Table B provider* must:

(a) include key performance indicators; and
(b) prioritise the following matters:
  (i) increasing the number of academic employees engaged by the provider who are Indigenous persons; and
  (ii) the professional development and career advancement of academic employees engaged by the provider who are Indigenous persons; and
(c) for the 2018 grant year and subsequent grant years, include a plan agreed by an administering officer in writing that:
  (i) increases the number of employees engaged by the provider who are Indigenous persons to at least 3 per cent of all employees of the provider; and
  (ii) provides for the employment of at least one Indigenous person as a senior executive employee at the level of Pro Vice-Chancellor or Deputy Vice-Chancellor, or equivalent level.

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13 Indigenous Education Strategy

To meet the requirements of these Guidelines, the Indigenous Education Strategy of a *Table A provider* or a *Table B provider* must:

(a) include key performance indicators; and

(b) prioritise increasing the number of Indigenous students enrolling in, progressing in and completing courses leading to *higher education awards*; and

(c) facilitate, monitor and improve upon the inclusion of Indigenous knowledge in curricula, graduate attributes, and teaching practices; and

(d) include activities for *students* and employees of the provider that promote cultural competency in Indigenous cultures, traditions and histories and the diversity of circumstances of Indigenous people in Australia.

Part 4—ISSP grant conditions (use and reporting)

14 Using ISSP grants

(1) A *higher education provider* that receives an ISSP grant must use the grant:

(a) to administer and deliver any or all of the activities specified in these Guidelines, including any activities the provider is required to deliver under these Guidelines; and

(b) in the grant year, unless the Secretary has made a determination under subsection 38-40 of the Act in relation to the provider; and

(c) to supplement at least some of the activities of the provider established using a grant paid to the provider under other Parts of the Act.

Note: A *higher education provider* may be required to use an ISSP grant to award scholarships to Indigenous students and to provide certain support for Indigenous students: see sections 28(5) and 34 of these Guidelines.

A *higher education provider's* approval may be revoked if the provider fails to comply with, relevantly, the Act and any Guidelines made under section 238-10 of the Act that apply to the provider: see sections 19-65 and 22-15 of the Act.

The Act stipulates rules for the treatment of unspent grant amounts, reduction and repayment of grants, and overpayment. Specifically:

(a) section 38-40 of the Act enables the Secretary to rollover unspent grant amounts paid under Part 2-2A of the Act to the next year;

(b) Part 2-5 of the Act provides that a *higher education provider* may have their grants reduced, or be required to repay a grant, for breaches of conditions of grants, including grants under Part 2-2A of the Act;

(c) Section 164-15 of the Act provides that an overpayment of an amount made to a *higher education provider* may be deducted from a future amount payable or recovered as a debt due to the Commonwealth.

(2) A *higher education provider* must hold all unspent ISSP grant money in an account that meets the following criteria:

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(a) the account is with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on business in Australia; and

(b) the account is in the name of the provider; and

(c) the account is wholly controlled by the provider.

(3) A *higher education provider* must manage its account and financial records so that all receipts and expenditure of an ISSP grant are clearly identifiable and ascertainable at all times.

15 Excluded use

A *higher education provider* must not use an ISSP grant for any of the following purposes:

(a) administering any aspect of the provider's business other than delivery of activities specified in these Guidelines, except in the following circumstances:

(i) the business activity is the delivery of a *unit of study* about Indigenous societies and cultures; and

(ii) in the year before these Guidelines commenced, the provider used a grant received under the Indigenous Support Program to deliver the same business activity; and

(iii) an administering officer has approved a transition plan prepared by the provider committing the provider to cease using an ISSP grant to deliver that business activity by the end of an agreed period of time;

(b) duplicating an amount obtained by the provider or paid to an Indigenous student from other Commonwealth sources;

(c) providing incentives to an employee, unless the activity is specified in these Guidelines;

(d) funding corporate or administrative savings or dividends;

(e) discharging any financial or other obligation of an Indigenous student, unless the student is in receipt of an Indigenous Commonwealth Education Costs Scholarship and the student makes a request in writing for an amount of the scholarship to be used to pay a loan, owed by the student, that has an education purpose;

(f) providing assistance to an Indigenous student *enrolled* in a *VET course of study*, unless:

(i) the *VET course of study* is an *enabling course*; and

(ii) the provider is otherwise unable to provide assistance to the student or the assistance provides information on the provider's services or on undertaking a *course of study*;

(g) paying for the following things:

(i) business or first class travel for an employee involved in delivering activities specified in these Guidelines or an Indigenous student, unless the employee or the student provides evidence to the provider that he or she has a medical condition that necessitates business or first class travel;

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(ii) international travel for an employee or an Indigenous student, unless, in the case of an Indigenous student, the travel is a requirement of the student's *course of study* and the student is unable to cover, or otherwise obtain financial assistance to cover, the costs of the travel.

16 Assets

(1) A *higher education provider* must not use an ISSP grant to purchase an asset unless an administering officer approves the purchase in writing.

(2) If a *higher education provider* uses an ISSP grant to purchase an asset, the provider must:
   (a) use the asset for the activities specified in these Guidelines; and
   (b) protect and maintain the asset; and
   (c) maintain insurance for the asset for the full value of the asset.

(3) If a *higher education provider* uses an ISSP grant to purchase an asset, the provider must not sell or dispose of the asset without the prior written consent of an administering officer unless the asset has an adjustable value of less than $5000.

(4) If a *higher education provider* sells or disposes of an asset purchased using an ISSP grant, the provider must:
   (a) use the proceeds of the sale or disposal for activities specified in these Guidelines; and
   (b) notify the Minister of the amount or value of the proceeds of any sale or disposal of the asset in a statement accompanying the reports required under subsection 17(1) of these Guidelines.

(5) *A higher education* provider must maintain a register of all assets purchased using an ISSP grant that remain within the provider's possession, which must include for each asset:
   (a) a description of the asset, including the serial number and the location of the asset; and
   (b) the purchase, lease, or acquisition price of the asset; and
   (c) the amount of the ISSP grant used to purchase, lease or otherwise acquire the asset; and
   (d) whether the asset is owned, leased or acquired; and
   (e) the adjustable value of the asset.

(6) At the end of a grant year, an administering officer may direct a *higher education provider* that used an ISSP grant to purchase an asset in the grant year to deal with the asset in a particular way, including but not limited to, directing the provider to:
   (a) sell the asset and returning the full sale amount to the Commonwealth; or
   (b) transfer the asset to the Commonwealth or its nominee.

(7) A *higher education provider* must provide evidence that it has complied with the conditions in this section within 10 business days of a request by an administering officer.

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(8) In this section, ***adjustable value*** means the cost of an asset less its decline in value determined in accordance with the Australian Taxation Office Guide to Depreciating Assets 2014.

17 Reporting

(1) A *higher education provider* that receives an ISSP grant must give the reports specified in column 2 of the table for activities delivered using the ISSP grant in the grant year to the Minister by the day specified in column 3 of the table.

Reporting		
Column 1	**Column 2**	**Column 3**
Item	**Report**	**Date**
1.	Acquittals report	Last business day of April of the next grant year.
2.	Performance report	Last business day of April of the next grant year.

Note: In addition to the reports specified in column 2 of the table in subsection (1), paragraph 19-10(1)(a) of the Act provides that a *higher education provider* must give to the Minister a financial statement for each *annual financial reporting period* for the provider in which the provider receives assistance under Chapter 2 of the Act.

(2) The reports a *higher education provider* is required to give under subsection (1) must meet the following requirements:

(a) the reports must be prepared in a form, and contain the information, specified by an administering officer in writing; and

(b) the reports must include a statement authorised by the provider's Indigenous Governance Mechanism.

(3) An administering officer may request a revised report if the administering officer reasonably considers that the form or content of a report is unsatisfactory.

(4) An administering officer may request any additional information or reports about the use of an ISSP grant by a *higher education provider*.

(5) A *higher education provider* must comply with a reasonable request under subsections (3) or (4) within 10 business days of the request, or a longer period specified by an administering officer in writing.

18 Access to premises and records

(1) An administering officer may, in writing, request access to the premises or records of a *higher education provider* for the purpose of determining whether the provider is using an ISSP grant in accordance with the Act and the Guidelines.

(2) A *higher education provider* must not unreasonably withhold consent to a request under subsection (1).

(3) A *higher education provider* that receives a request under subsection (1) must provide the administering officer with such assistance as is necessary and reasonable for determining whether the provider is using an ISSP grant in accordance with the Act and the Guidelines.

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Part 5—ISSP grant conditions (scholarships)

19 Using ISSP grants for scholarships

Subject to these Guidelines and the Act, a *higher education provider* may use an ISSP grant to award the Indigenous Commonwealth Scholarships described in section 20 of these Guidelines to Indigenous students who are *enrolled* in a *course of study* with the provider.

20 Indigenous Commonwealth Scholarships

The Indigenous Commonwealth Scholarships that may be awarded using an ISSP grant are:

(a) scholarships that assist with education costs ***(Indigenous Commonwealth Education Costs Scholarships)***;

(b) scholarships that assist with relocation costs, accommodation costs, or relocation and accommodation costs ***(Indigenous Commonwealth Accommodation Scholarships)***;

(c) scholarships ***(Indigenous Commonwealth Reward Scholarships)*** that

(i) involve a payment that is unlikely to be repeated; and

(ii) are not intended to duplicate or supplement the purpose for which an Indigenous Commonwealth Education Costs Scholarship or an Indigenous Commonwealth Accommodation Scholarship is provided; and

(iii) a recipient would not have reasonably expected, or necessarily anticipated, receiving.

21 Offering Indigenous Commonwealth Scholarships

(1) A *higher education provider* that offers an Indigenous Commonwealth Scholarship to an Indigenous student must determine the value, purpose, duration and other conditions of the scholarship.

(2) When making an offer of an Indigenous Commonwealth Scholarship to an Indigenous student, a *higher education provider* must inform the student that if the student accepts the offer the student may:

(a) be required to inform any of the following persons of the receipt of the scholarship, depending on his or her personal circumstances:

(i) an employee of the Human Services Department;

(ii) an employee of the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;

(iii) an employee of the Department administered by the Minister administering section 258 of the *Military Rehabilitation and Compensation Act 2004*; and

(b) not qualify for certain other forms of Commonwealth assistance.

(3) For the 2017 and 2018 grant years, the amount of an ISSP grant a *higher education provider* must use to offer Indigenous Commonwealth Scholarships to Indigenous students from remote areas and regional areas must be:

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(a) for the 2017 grant year – at least 95 per cent of the total value of earlier Indigenous Commonwealth Scholarships that the provider awarded to the following Indigenous students in the 2016 calendar year, unless otherwise agreed by the Minister in writing:
  (i) Indigenous students from remote areas and regional areas; and
  (ii) Indigenous students who met the additional eligibility requirements specified in paragraph 2.10.15 of the *Commonwealth Scholarships Guidelines (Education) 2010*;

(b) for the 2018 grant year – at least 95 per cent of the total value of Indigenous Commonwealth Scholarships that the provider awarded to Indigenous students from remote areas and regional areas in the 2017 grant year, unless otherwise agreed by the Minister in writing.

22 Awarding Indigenous Commonwealth Scholarships

(1) In awarding an Indigenous Commonwealth Scholarship, a *higher education provider* must give priority to:
  (a) Indigenous students from remote areas or regional areas; and
  (b) Indigenous students who are financially disadvantaged.

(2) If a *higher education provider* awards an Indigenous Commonwealth Scholarship to an Indigenous student who is not described in subsection (1), the provider must:
  (a) document the reasons for the award of the scholarship on the student's file; and
  (b) if requested by an administering officer, provide a copy of the reasons to the officer within 10 business days of the receipt of the request.

(3) A *higher education provider* may award an Indigenous Commonwealth Scholarship as any of the following payments:
  (a) a payment to the Indigenous student in the form of money or valuable consideration ***(direct payment)***;
  (b) a payment on behalf of the Indigenous student to enable the student to undertake or complete a *course of study* ***(indirect payment)***;
  (c) a combination of a direct and indirect payment.

(4) A *higher education provider* must not award an Indigenous Commonwealth Scholarship to an Indigenous student unless the student accepts in writing the conditions of the scholarship as determined by the provider.

23 Monitoring use of Indigenous Commonwealth Scholarships

A *higher education provider* must take all reasonable steps to ensure that the recipient of an Indigenous Commonwealth Scholarship complies with the conditions of the scholarship, including using the scholarship for its intended purpose.

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24 Interaction with other forms of assistance

(1) Subject to subsection (2), a *higher education provider* may award an Indigenous Commonwealth Scholarship to an Indigenous student already in receipt of assistance.

(2) A *higher education provider* must take all reasonable steps to avoid awarding an Indigenous Commonwealth Scholarship to an Indigenous student where the award of the scholarship would result in the student receiving assistance concurrently from two or more Commonwealth sources for the same purpose.

Note: A person in receipt of an Indigenous Commonwealth Education Costs Scholarship or an Indigenous Commonwealth Accommodation Scholarship will not qualify for assistance intended for the same or similar purpose under the *Social Security Act 1991*, the ABSTUDY Scheme and the *Student Assistance Act 1973*, the *Veterans' Children Education Scheme,* or the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004*.

25 Notices to Commonwealth Departments

(1) A *higher education provider* must notify the following persons of the award of an Indigenous Commonwealth Education Costs Scholarship or an Indigenous Commonwealth Accommodation Scholarship to an Indigenous student in a semester or trimester, and the amount or value of the scholarship, by the day specified under subsection (2):

(a) an employee of the Human Services Department;

(b) an employee of the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*;

(c) an employee of the Department administered by the Minister administering section 258 of the *Military Rehabilitation and Compensation Act 2004*.

(2) For each semester or trimester, an administering officer must specify in writing the last day for a *higher education provider* to notify the persons specified under subsection (1).

(3) If a *higher education provider* awards an Indigenous Commonwealth Education Costs Scholarship or an Indigenous Commonwealth Accommodation Scholarship for study in a semester or trimester after the day specified under subsection (2), the provider must notify the persons specified under subsection (1) of the award of the scholarship and amount or value of the scholarship as soon as possible.

26 Termination of Indigenous Commonwealth Scholarships

(1) A *higher education provider* must terminate an Indigenous Commonwealth Scholarship if the scholarship recipient ceases to be *enrolled* in a *course of study* with the provider.

(2) A *higher education provider* may terminate an Indigenous Commonwealth Scholarship if the scholarship recipient fails to comply with a condition of the scholarship.

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27 Recovery of Indigenous Commonwealth Scholarship amounts

(1) Subject to subsection (2), a *higher education provider* must take steps to recover an amount of an Indigenous Commonwealth Scholarship that has not been exhausted if:

(a) a *higher education provider* terminates the scholarship under section 26 of these Guidelines; or

(b) if the scholarship recipient transfers his or her course of study from the provider to a different *higher education provider*.

(2) If a *higher education provider* determines that the recipient of an Indigenous Commonwealth Scholarship had valid reasons for the circumstances resulting in termination or transfer, or the recipient would suffer severe financial hardship as a result of recovery under subsection (1), the provider may:

(a) elect not to recover a scholarship amount that has not been exhausted; or

(b) accept the return of an amount that is less than the total of the scholarship amount that has not been exhausted.

(3) For the purposes of subsection (2), valid reasons include, but are not limited to:

(a) the scholarship recipient develops an illness or injury that prevents the recipient continuing with the *course of study* for which the scholarship was awarded;

(b) the scholarship recipient is required to provide care or support for a member of the recipient's immediate family or household because of an illness or injury of that member or an unexpected emergency affecting that member;

(c) a member of the scholarship recipient's immediate family or household contracts or develops an illness or injury that poses a serious threat to that member's life;

(d) death of a member of the scholarship recipient's immediate family or household.

(4) If a *higher education provider* elects not to recover a scholarship amount that has not been exhausted or accepts the return of an amount that is less than the total of the scholarship amount that has not been exhausted, the provider must:

(a) document the reasons why the whole amount was not recovered on the student's file; and

(b) if requested by an administering officer, provide a copy of the reasons to the officer within 10 business days of the receipt of the request.

(5) Subject to the Act and these Guidelines, a *higher education provider* that recovers an amount of an Indigenous Commonwealth Scholarship other than a preserved Indigenous Commonwealth Scholarship may use the amount recovered for any or all of the activities specified in these Guidelines.

(6) A *higher education provider* that recovers an amount of a preserved Indigenous Commonwealth Scholarship awarded under subsection 28(4) of these Guidelines must not use the amount for any subsequent activity.

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Note: Under section 164-15 of the Act, the Commonwealth may deduct an overpayment of an amount made to a higher education provider from any amount that is payable or to be paid to the provider, or recover the overpayment as a debt due to the Commonwealth.

28 Transitional arrangements for Indigenous Commonwealth Scholarships

(1) A *higher education provider* must offer an Indigenous Commonwealth Scholarship other than a preserved Indigenous Commonwealth Scholarship to an Indigenous student if, in the year before the commencement of these Guidelines, the student satisfies the following criteria:

(a) the student received an earlier Indigenous Commonwealth Scholarship for an *enabling course* that was awarded by the provider; and

(b) the student successfully completed the *enabling course*.

(2) Subject to these Guidelines, a *higher education provider* must offer a preserved Indigenous Commonwealth Scholarship to an Indigenous student if, before the commencement of these Guidelines, the student satisfied the following criteria:

(a) the student was in receipt of an earlier Indigenous Commonwealth Scholarship that was awarded by the provider for a *higher education award*; and

(b) the student was *enrolled* in, or was on approved leave from, the *course of study* for which the student received the scholarship; and

(c) the student had been *enrolled* in the *course of study* for no more than seven study periods in the *course of study* for which the student received the scholarship.

(3) The preserved Indigenous Commonwealth Scholarship that a *higher education provider* must offer to an Indigenous student under subsection (2) must be for the same general purpose, and equivalent value to, the earlier scholarship.

(4) A *higher education provider* that offers a preserved Indigenous Commonwealth Scholarship under subsection (2) must offer the scholarship only on the following conditions:

(a) subject to paragraphs (b) and (c), the scholarship has the same conditions as the earlier Indigenous Commonwealth Scholarship; and

(b) the scholarship is available for the study periods ***(remaining study periods)*** that the scholarship recipient had not used under the earlier Indigenous Commonwealth Scholarship; and

(c) any scholarship amount that remains to be utilised is to be forfeited if the scholarship recipient:

(i) defers his or her *course of study* for more than two study periods; or

(ii) fails to use the remaining study periods by 30 June 2021.

(5) A *higher education provider* that offers an Indigenous Commonwealth Scholarship to an Indigenous student under subsection (1) or a preserved Indigenous Commonwealth Scholarship to an Indigenous student under subsection (2) must award the scholarship to the student if the student accepts the offer in writing.

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(6) A *higher education provider* must notify an administering officer in writing of the matters specified in column 2 of the table in respect of the expected award of preserved Indigenous Commonwealth Scholarships by the day specified in column 2 of the table.

Notice of expected award of preserved Indigenous Commonwealth Scholarships		
Column 1	**Column 2**	**Column 3**
Item	**Notice**	**Date**
1.	Notice of the amount of any potential ISSP grant the provider expects to use to award preserved Indigenous Commonwealth Scholarships in the grant year	Last business day of October of the preceding grant year
2.	Notice of the amount of an ISSP grant the provider expects to use to award preserved Indigenous Commonwealth Scholarships in the grant year	Last business day of April of the grant year

(7) Subsection (1) and subsection (2) do not apply if an administering officer has agreed in writing that the *higher education provider* is no longer required to offer a preserved Indigenous Commonwealth Scholarships.

(8) In this section, ***equivalent value*** means, in respect of a preserved Indigenous Commonwealth Scholarship, the amount or value of the preserved Indigenous Commonwealth Scholarship in the 2016 calendar year indexed using the method of indexation in Part 5-6 of the Act.

Part 6—ISSP grant conditions (other support and activities)

29 Using ISSP grants for academic support

(1) Subject to subsection (2), a *higher education provider* may use an ISSP grant to provide academic support, including supplementary tuition, to an Indigenous student.

(2) In using an ISSP grant to provide academic support, a *higher education provider* must give priority to Indigenous students who, in the provider's opinion, are at risk of the following:

(a) failing a *course of study*, or an element of the course; or

(b) not completing a *course of study* to a required level.

30 Using ISSP grants for pastoral care etc

A *higher education provider* may use an ISSP grant to provide pastoral care and other support activities to an Indigenous student, including, but not limited to:

(a) maintaining a safe cultural space on the premises of the provider for Indigenous students to learn and study;

(b) providing support services for Indigenous students that are in addition to support services available to *student*s;

(c) providing advocacy and referral services to assist Indigenous students access and benefit from support services available to *students*.

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31 Using ISSP grants for cultural competency strategies

A *higher education provider* may use an ISSP grant to implement strategies to foster a culturally-safe learning environment for Indigenous students and employees of the provider who are Indigenous persons.

32 Using ISSP grants for engagement activities

A *higher education provider* may use an ISSP grant for the following engagement activities:

(a) activities to engage and prepare Indigenous students to enrol in a *course of study*, including providing orientation activities, strategies for transition to higher education, and ancillary support for the following persons:
  (i) school students;
  (ii) persons undertaking training activities;
  (iii) persons proposing mature-aged or other enrolment in a *course of study*;

(b) activities to engage an Indigenous student who has withdrawn his or her enrolment in a *course of study*.

33 Paying a person to provide support

(1) Subject to subsection (2), a *higher education provider* may use an ISSP grant to pay a person or organisation to deliver activities under this Part.

(2) A *higher education provider* must not use an ISSP grant to pay a person or organisation unless the provider is satisfied that the person, or the person employed by the organisation to deliver the activities:
  (a) has skills and knowledge in relation to matters of relevance to Indigenous persons; and
  (b) has skills necessary to work with Indigenous persons to deliver quality higher education to Indigenous students; and
  (c) is an appropriate person to provide the activities; and
  (d) in relation to providing support to Indigenous students under section 29 of these Guidelines, is not undertaking a *unit of study* that the student is also undertaking.

(3) In recruiting a person to deliver activities under this Part, a *higher education provider* must give priority to Indigenous persons.

(4) In procuring an organisation to deliver activities under this Part, a *higher education provider* must give priority to organisations that employ, or provide training opportunities for, Indigenous persons.

34 Transitional arrangements for support

(1) If, in the year before the commencement of these Guidelines, a *higher education provider* used a grant from the Commonwealth to provide support to Indigenous students, the provider must:

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(a) if the grant was made under the Children and Schooling Programme of the Indigenous Advancement Strategy for supplementary tutorial assistance for Indigenous students – use an ISSP grant to offer support under section 29 of these Guidelines;
(b) if the grant was made under the Indigenous Support Program for pastoral care and other support activities for Indigenous students – use an ISSP grant to offer support under section 30 of these Guidelines.

(2) Subsection (1) does not apply if an administering officer has agreed in writing that the *higher education provider* is no longer required to provide that support.

Part 7—ISSP grant conditions (miscellaneous)

35 Conflicts of interest

A *higher education provider* that receives an ISSP grant must:
(a) maintain a framework for identifying all potential and actual conflicts of interest arising from the provider's use of the grant; and
(b) take all reasonably practicable actions to ensure that all potential and actual conflicts of interest are avoided or prudently managed; and
(c) keep a conflict of interest register that includes the action taken to manage a conflict and the outcome of that action; and
(d) if requested by an administering officer, provide a copy of the register required by paragraph (c) of this section to the officer within 10 business days of the receipt of the request.

36 Grievances and complaints

A *higher education provider* must make information publicly available that advises employees of the provider and Indigenous students of the procedures for dealing with grievances and making complaints about the use of an ISSP grant by the provider.

Note: Paragraph 2.4 of the Higher Education Threshold Standards Framework provided for in the *Higher Education Standards Framework (Threshold Standards) 2015* sets out threshold standards for mechanisms, allowing a person to resolve grievances and complaints, that a higher education provider is required to meet in order to be registered by the Tertiary Education Quality Standards Agency to operate in Australia under section 21 of the *Tertiary Education Quality and Standards Agency Act 2011*.

37 Policies and processes for using an ISSP grant

(1) Subject to these Guidelines and the Act, a *higher education provider* that receives an ISSP grant must:
(a) establish and maintain policies and processes for using the grant; and
(b) make information about those policies and processes publicly available, including to Indigenous persons in remote areas and regional areas.

(2) A *higher education provider* must maintain full and accurate records of the use of an ISSP grant, including the selection processes followed to provide assistance to an Indigenous student.

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(3) Where a *higher education provider* requires a person to apply for assistance or enter into a written agreement with the provider, the provider must not provide the assistance or make a payment using an ISSP grant unless the person has signed a form prepared by the provider in which the person acknowledges the following matters:

(a) giving false or misleading information is a serious offence; and

(b) the person may incur a debt to the Commonwealth or the provider or both if the person receives assistance or payment that the person should not have received; and

(c) the provider may collect personal information of the person and share that information with the Commonwealth for the purposes of the Commonwealth administering these Guidelines.

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Schedule 1—Method for determining ISSP grant amounts

1 Definitions

In this Schedule:

Commonwealth Scholarships Program means the program provided for in Part A of the *Commonwealth Scholarships Guidelines (Education) 2010*.

ceiling means, in respect of an eligible higher education provider's raw entitlement, an amount that is 1.15 times the provider's normal previous year allocation as established under the fourth step under subitem 5(2) of this Schedule.

course completions has the meaning given by the glossary to the Higher Education Information Management System.

floor means, in respect of an eligible higher education provider's raw entitlement, an amount that is 0.85 times the provider's normal previous year allocation as established under the fourth step under subitem 5(3) of this Schedule.

Higher Education Student Data Collection means the statistical data collection about *students* maintained by the Education Department.

interim allocation amount means the amount for an eligible higher education provider set under the fifth step in Item 6 of this Schedule.

normal previous year allocation means the allocation for an eligible higher education provider for the previous grant year calculated under the fourth step under subitem 5(4) (for the 2017 grant year) or subitem 5(1) (for subsequent grant years) of this Schedule.

Pool A means the pool established under item 1 of the table in the first step in Item 2 of this Schedule.

Pool B means the pool established under item 2 of the table in the first step in Item 2 of this Schedule.

Pool A entitlement means the entitlement of an eligible higher education provider established under item 1 of the table in the second step in Item 3 of this Schedule.

Pool B entitlement means the entitlement of an eligible higher education provider established under item 2 of the table in the second step in Item 3 of this Schedule.

raw entitlement means the entitlement of an eligible higher education provider to Pool B after the third step in Item 4 of this Schedule.

success rate has the meaning given by the glossary to the Higher Education Information Management System.

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2 First step (Establish ISSP Grant Pools)

For each grant year, the amount to be spent on ISSP grants in the grant year as calculated under section 6 of these Guidelines is divided into the pools specified in column 2 of the table by performing the calculation in column 3 of the table.

ISSP grant pools		
Column 1	**Column 2**	**Column 3**
Item	**Pool**	**Calculation**
1.	Pool A	a. For a determination of ISSP grant amounts in a grant year before the start of the grant year – add the value of all preserved Indigenous Commonwealth Scholarships that eligible higher education providers expect to use to award in the grant year, as notified by providers under paragraph 28(5)(a) of these Guidelines b. For any adjustments of ISSP grant amounts during the grant year – add the value of all preserved Indigenous Commonwealth Scholarships that eligible higher education providers expect to use to award in the grant year, as notified by providers under paragraph 28(5)(b) of these Guidelines c. For a determination of ISSP grant amounts for the 2017 grant year before April of the grant year – add the value of all Indigenous Commonwealth Scholarships that eligible higher education providers expect to award in the grant year, as notified by providers before the start of the grant year
2.	Pool B	Subtract the amount of Pool A from the amount to be spent on ISSP grants, as calculated under section 6 of these Guidelines

3 Second step (Establish a Pool A and Pool B entitlement)

For each eligible higher education provider, establish the entitlements specified in column 2 of the table by performing the calculation or following the process in column 3 of the table.

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Pool entitlements		
Column 1	**Column 2**	**Column 3**
Item	**Pool**	**Calculation**
1.	Pool A entitlement	a. For a determination of ISSP grant amounts in a grant year before the start of the grant year – the sum of the value of the preserved Indigenous Commonwealth Scholarships the provider expects to award in the grant year, as notified by the provider under paragraph 28(5)(a) of these Guidelines b. For any adjustment of ISSP grant amounts during a grant year – the sum of the value of the preserved Indigenous Commonwealth Scholarships the provider expects to award in the grant year, as notified by the provider under paragraph 28(5)(b) of these Guidelines; c. For a determination of ISSP grant amounts for the 2017 grant year before April of the grant year – the sum of the value of the preserved Indigenous Commonwealth Scholarships the provider expects to award in the grant year, as notified by the provider before the start of the grant year
2.	Pool B entitlement	Follow the third step through to the sixth step in Items 4 to 7 of this Schedule

4 Third step (Establish a raw entitlement)

(1) Pool B is divided into the following components:

(a) a component for enrolment comprised of 30 per cent of Pool B ***(Enrolment Component)***;

(b) a component for regional areas and remote areas comprised of 10 per cent of Pool B ***(Regional and Remote Component)***;

(c) a component for success rate comprised of 30 per cent of Pool B ***(Success Rate component)***;

(d) a component for course completions comprised of 30 per cent of Pool B ***(Completion Component)***.

(2) For each eligible higher education provider, the factor in column 2 of the table is established by performing the calculation in column 3 of the table using data consistent with the most recent publicly available full-year student data in the Higher Education Student Data Collection.

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Factors		
Column 1	**Column 2**	**Column 3**
Item	**Factor**	**Calculation**
1.	Enrolment Factor	Divide the provider's *EFTSL* of Indigenous students by the sum of *EFTSL* of Indigenous students for all eligible higher education
2.	Regional and Remote Factor	Divide the provider's *EFTSL* of Indigenous students by the sum of *EFTSL* of Indigenous students from regional areas and remote areas for all eligible higher education providers
3.	Success Rate Factor	Divide the provider's success rate for Indigenous students by the sum of the success rates for Indigenous students at all eligible higher education providers
4.	Completion Factor	Divide the provider's course completions of Indigenous students by the sum of course completions of Indigenous students for all eligible higher education providers

(3) For each eligible higher education provider, the component share in column 2 of the table is established by performing the calculation in column 3 of the table:

Factors		
Column 1	**Column 2**	**Column 3**
Item	**Component Share**	**Calculation**
1.	Enrolment Component Share	The provider's Enrolment Factor is multiplied by the amount of the Enrolment Component
2.	Regional and Remote Component Share	The provider's Regional and Remote Factor is multiplied by the amount of the Regional and Remote Component
3.	Success Rate Component Share	The provider's Success Rate Factor is multiplied by the amount of the Success Rate Component
4.	Completion Component Share	The provider's Completion Factor is multiplied by the amount of the Completion Component

(4) An eligible higher education provider's ***raw entitlement*** is established by adding each of the following component shares of the provider:

(a) Enrolment Component Share; and

(b) Regional and Remote Component Share; and

(c) Success Rate Component Share; and

(d) Completion Component Share.

5 Fourth step (Establish a floor and ceiling)

(1) Subject to subitem (4), for each eligible higher education provider, a ***normal previous year allocation*** is calculated by:

(a) taking the provider's ISSP grant in the previous grant year as at 10 December; and

(b) subtracting the amount of the grant allocated to the provider to award preserved Indigenous Commonwealth Scholarships; and

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(c) indexing the result of (a) and (b) using the method of indexation set out in Part 5-6 of the Act.

(2) An eligible higher education provider's ceiling is established by multiplying the provider's normal previous year allocation by 1.15.

(3) An eligible higher education provider's raw entitlement floor is established by multiplying the provider's normal previous year allocation by 0.85.

(4) For the 2017 grant year, an eligible higher education provider's normal previous year allocation will be the sum of the following amounts:

(a) the amount of a grant made to the provider under the Indigenous Support Program as at 10 December 2016, except in the case of Batchelor Institute of Indigenous Tertiary Education where the amount will be $190,420; and

(b) the amount of a grant made to the provider under the Children and Schooling Programme of the Indigenous Advancement Strategy for tutorial assistance as at 10 December 2016; and

(c) the amount of grants made to the provider under the Commonwealth Scholarships Program as at 10 December 2016, less the amount provider and the Commonwealth agreed as the total funding used for continuing scholarships under the Commonwealth Scholarships Program as at 10 December 2016.

6 Fifth step (Ensure a raw entitlement is within the floor and ceiling)

For each eligible higher education provider, an ***interim allocation amount*** is set by:

(a) comparing the provider's raw entitlement to the provider's ceiling and floor; and

(b) if:

(i) if the provider's raw entitlement is greater than or equal to the provider's ceiling, then the provider's interim allocation amount is set at the level of the provider's ceiling;

(ii) if the provider's raw entitlement is less than or equal to the provider's floor, then the provider's interim allocation amount is set at the level of the provider's floor;

(iii) if the provider's raw entitlement is greater than the provider's floor but less than the provider's ceiling, then the provider's interim allocation amount is set at the level of the provider's raw entitlement.

7 Sixth step (Redistribute any Pool B residual)

(1) Any Pool B residual is determined by subtracting the sum of all eligible higher education providers' interim allocation amounts from Pool B.

(2) If:

(a) the result of the calculation in subitem (1) is positive, repeat the function described in subsection (4) ***(Function 1)*** until the result is zero and then go to the seventh step in Item 8 of this Schedule;

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(b) the result of the calculation in subitem (1) is negative, repeat the function described in subsection (5) ***(Function 2)*** until the result is zero and then go the seventh step in Item 8 of this Schedule;

(c) the result of the calculation in subitem (1) is zero, go to the seventh step in Item 8 of this Schedule.

(3) For each eligible higher education provider, the provider's Pool B entitlement is the provider's interim allocation amount when Pool B equals the sum of the interim allocation amounts for all eligible higher education providers.

(4) For the purposes of this Item, Function 1 has the following steps:

(a) set aside any eligible higher education provider ***(ceiling capped provider)*** whose interim allocation is set at the provider's ceiling under subparagraph 6(b)(i) of this Schedule;

(b) sum the interim allocation amounts of all eligible higher education providers ***(non-ceiling capped providers)*** whose interim allocation amount is not set at the provider's ceiling under subparagraph 6(b)(i) of this Schedule;

(c) calculate each non-ceiling capped provider's proportional share of the total from paragraph (b);

(d) for each non-ceiling capped provider, multiply the provider's share by the difference between Pool B and the sum of all eligible higher education provider's interim allocation amounts;

(e) subject to paragraph (f), for each non-ceiling capped provider, calculate a new interim allocation for the provider by adding the amount for the provider from paragraph (d) to the provider's interim allocation amount;

(f) if the new interim allocation for a non-ceiling capped provider is greater than or equal to the provider's ceiling, then the provider's new interim allocation is set at the provider's ceiling and the provider is a ceiling capped provider for any subsequent repetitions of Function 1;

(g) calculate the difference between Pool B and the sum of all ceiling capped provider interim allocation amounts and all new interim allocation amounts for non-ceiling capped providers.

(5) For the purposes of this Item, Function 2 has the following steps:

(a) set aside any eligible higher education provider ***(floor capped providers)*** whose interim allocation amount is set at the provider's floor under subparagraph 6(b)(ii) of this Schedule;

(b) sum the interim allocation amounts of all eligible higher education providers ***(non-floor capped providers)*** whose interim allocation is not set at the provider's floor under subparagraph 6(b)(ii) of this Schedule;

(c) calculate each non-floor capped provider's proportional share of the total from paragraph (b);

(d) for each non-floor capped provider, multiply the provider's share by the difference between Pool B and the sum of all eligible higher education provider's interim allocation amounts;

(e) subject to paragraph (f), for each non-floor capped provider, the calculation in paragraph (d) will reduce the interim allocation amount for the provider and result in a new interim allocation amount for the provider;

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(f) if the new interim allocation amount for a non-floor capped provider is less than or equal to the provider's floor, then the provider's new interim allocation amount is set at the provider's floor and the provider is a floor capped provider for any subsequent repetitions of Function 2;

(g) calculate the difference between Pool B and the sum of all floor capped provider interim allocation amounts and all new interim allocation amounts for non-floor capped providers.

8 Seventh step (Determine an ISSP grant amount)

For each eligible higher education provider, the provider's ISSP grant amount for a grant year is determined by adding each of the following entitlements:

(a) the provider's Pool A entitlement for preserved Indigenous Commonwealth Scholarships; and

(b) the provider's Pool B entitlement.

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EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Indigenous Affairs

Higher Education Support Act 2003

Indigenous Student Assistance Grants Guidelines 2017

Purpose

Section 238-10 of the *Higher Education Support Act* (the Act) provides that the Minister may, by legislative instrument, make Guidelines providing for the purposes of Part 2-2A of the Act (Item 6A of the table in section 238-10).

This instrument makes the *Indigenous Student Assistance Grants Guidelines 2017* (the Guidelines) to implement the Indigenous Student Success Programme (ISSP). The Guidelines provide a framework to deal with ISSP grants under Part 2-2A of the Act.

Background

Indigenous Student Success Programme

The Commonwealth's vision is for Indigenous persons to enrol, progress and complete higher education at the same rate as, or a better rate than, non-Indigenous persons. This vision is consistent with the Commonwealth's continuing commitment to the goals of the National Aboriginal and Torres Strait Islander Education Policy, which seeks:

- Involvement of Aboriginal people in educational decision making;
- Equality of access to educational services;
- Equity of educational participation; and
- Equitable and appropriate educational outcomes.

Education is a key factor in improving an individual's economic and social wellbeing. The Commonwealth also understands the significant benefit of an education environment that acknowledges, respects and embraces Indigenous peoples' cultures, languages, traditions and spirituality. When higher education providers and Indigenous peoples work together to provide an inclusive and supportive learning environment for Indigenous students, higher education providers improve the higher education outcomes of Indigenous students and build the cultural capacity of the Australian professional workforce more broadly.

The Commonwealth recognises that many Indigenous persons continue to experience social and economic disadvantage which requires extra effort to overcome. The ISSP is designed to address the additional barriers Indigenous students face to succeed in higher education by providing higher education providers with increased flexibility to tailor their support to meet the specific needs of Indigenous students. The programme builds on other Commonwealth assistance so that higher education providers can prioritise and accelerate improvements in academic achievement by Indigenous persons.

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The ISSP consolidates existing funding for Indigenous higher education from three sources under Part 2-2A of the Act. The three funding sources are:

(i) The Indigenous Support Program, currently administered under the *Other Grants Guidelines (Education) 2012* issued under Part 2-3 of the Act;

(ii) The Commonwealth Scholarships Program, currently administered under the *Commonwealth Scholarships Guidelines (Education) 2010* issued under Part 2-4 of the Act; and

(iii) Tutorial assistance offered under the Children and Schooling Programme of the Indigenous Advancement Strategy, authority for which is provided for by Schedule 1AB of the *Financial Framework (Supplementary Powers) Regulations 1997*.

The ISSP responds to the 2012 *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People*. The review recommended Commonwealth scholarships for Indigenous students be amalgamated and supplementary Indigenous support programmes be reformed to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates. The Commonwealth worked closely with higher education providers to build on these recommendations and develop the new programme.

Indigenous Student Assistance Grants Guidelines

Part 2-2A of the Act provides legislative authority for grants to be made to higher education providers for the ISSP.

Part 2-2A of the Act enables grants to be made in two ways. Section 38-15 of the Act provides for Indigenous Student Assistance Grants Guidelines to deal with grants under Part 2-2A, including imposing conditions and setting the amounts of grants. Section 38-20 enables the Minister to approve 'ad hoc' or 'special' grants outside of the Guidelines on a discretionary basis, including imposing conditions and setting amounts of grants. The maximum amount that can be spent in a year on grants provided for in the Guidelines and special grants under section 38-20 is the amount specified in the maximum payments determination the Minister is required to make under section 38-45 of the Act.

Grants under the ISSP are provided for in the Guidelines. The Guidelines:

- Specify the method for determining the amount of an ISSP grant to be paid to an eligible higher education provider;
- Establish extra conditions of eligibility that higher education providers are required to meet to be eligible for an ISSP grant; and
- Stipulate conditions on the use of an ISSP grant by a higher education provider.

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Under the Guidelines, a higher education provider may use an ISSP grant for any or all of the following activities for Indigenous students:

- To award scholarships;
- To provide academic support (including supplementary tuition);
- To provide pastoral care;
- To implement cultural competency strategies;
- To engage and prepare Indigenous students for higher education, or engage Indigenous students who have withdrawn from study.

To assist in the transition from the Commonwealth Scholarships Program, the Indigenous Support Program, and tutorial assistance under the Indigenous Advancement Strategy, the Guidelines may require a higher education provider to use an ISSP grant to award scholarships or provide support to Indigenous students in certain circumstances. Otherwise, the Guidelines afford higher education providers flexibility to determine the amount of an ISSP grant that is allocated to the activities specified in the Guidelines.

Several matters relating to the administration and use of grants made to higher education providers under Chapter 2 of the Act (including under Part 2-2A of the Act) are dealt with in the Act, and for this reason are not repeated in the Guidelines. The following table summarises these matters and relevant provisions of the Act.

Matter	**Provision of the Act**
Provision of financial information	Section 19-10
Requirement to comply with the Act, applicable Guidelines and a condition imposed on approval as a higher education provider	Section 19-65
Revocation of approval as a higher education provider for a breach of conditions (including a condition of a grant made under Part 2-2A) or the quality and accountability requirements	Section 22-15
Rollover of unspent grant amounts paid under Part 2-2A	Section 38-40
Reduction or repayment of a grant (including a grant made under Part 2-2A)	Section 54-1
Determinations about the time and manner of payments	Section 164-5
Overpayment of an amount (including an amount paid under Part 2-2A)	Section 164-15

Where relevant, notes are used in the Guidelines to identify where the Act already deals with a matter.

In addition to ISSP grants provided for under these Guidelines, section 38-20 of the Act allows the Minister to approve a grant under Part 2-2A for a single year to an eligible higher education provider. These grants will be paid from the total payments made under Part 2-2A in respect of a year. It is anticipated that these grants will be used in exceptional circumstances or to promote innovation and partnerships across higher education providers or between higher education providers and other organisations.

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The amount for special grants under section 38-20 of the Act is expected to be limited to no more than the indexation of the total amount for ISSP grants for a grant year. It is anticipated that the Minister will notify higher education providers of whether he or she will approve a special grant for a provider under section 38-20 of the Act by no later than the last business day of December.

The Guidelines do not address matters relating to the administration of, or qualification rules for, other forms of assistance (e.g. student start-up scholarships, student start-up loans or relocation scholarships), or Commonwealth Scholarships awarded prior to 1 January 2010. Other forms of assistance are dealt with in other laws or schemes (particularly, the *Social Security Act 1991*). Commonwealth Scholarships awarded prior to 1 January 2010 are dealt with in Part B of the *Commonwealth Scholarships Guidelines (Education) 2010.*

The Commonwealth intends to review these Guidelines in 2018 to ensure that grants to higher education providers under the ISSP are assisting as many Indigenous students as possible to access, and succeed in, higher education. The Commonwealth encourages higher education providers to share lessons learnt and examples of good practice with the Commonwealth and each other to improve outcomes for Indigenous students under the ISSP.

Regulatory Impact Statement

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required for these Guidelines (OBPR reference: 20239).

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights appears at the end of this Explanatory Statement.

Commencement

The Guidelines commence the day after they are registered on the Federal Register of Legislation.

Consultation

The National Aboriginal and Torres Strait Islander Higher Education Consortium (NATSIHEC), Universities Australia, Regional Universities Network, Group of Eight, Innovative Research Universities, Australian Technology Network, the National Union of Students, and all Table A and Table B providers were consulted during the development of this instrument.

The Departments of Education and Training, Finance, Human Services, Social Services and Veterans' Affairs were also consulted on this instrument.

All feedback was carefully considered in preparing this instrument.

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Explanation of provisions

Part 1 – Preliminary

Part 1 of the Guidelines deals with various preliminary matters, including commencement, authority and definitions.

Clause 1 sets out the name of the instrument, being the *Indigenous Student Assistance Grants Guidelines 2017* (referred to in this Explanatory Statement as 'the Guidelines').

Clause 2 deals with commencement of the Guidelines.

Subclause 2(1) provides for a three column table setting out commencement information for the Guidelines. Each provision of the Guidelines specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing that the whole of the Guidelines commence at the day after the Guidelines are registered on the Federal Register of Legislation.

The note provides that the commencement information only relates to the provisions of the Guidelines as originally made. It will not be amended to deal with any later amendments to these Guidelines.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of these Guidelines but that information is not part of the Guidelines.

Clause 3 specifies that the Guidelines are made under the authority of section 238-10 of the Act for the purposes of Part 2-2A.

Clause 4 defines key terms contained in the Guidelines.

The note provides that a number of expressions used in the Guidelines are defined in Schedule 1 to the Act. In these Guidelines, expressions defined in the Act are identified in italics. This ensures expressions common to both the Act and the Guidelines are interpreted consistently.

Part 2 – ISSP grants

Part 2 of the Guidelines provides for ISSP grants for subsection 38-15(1) of the Act, and specifies how ISSP grant amounts are to be determined for paragraph 38-15(2)(e) of the Act.

Clause 5 provides that grants under the ISSP (ISSP grants) are grants to eligible higher education providers to use for any or all of the activities specified in the Guidelines. This gives a higher education provider the discretion to choose which activities specified in the Guidelines it will deliver using an ISSP grant.

Clause 6 provides for the amount that will be spent on ISSP grants in a particular grant year.

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The total amount of ISSP grants that will be spent in a single grant year will be the difference between the maximum payments for grants under Part 2-2A of the Act in respect of that year, as determined by the Minister under section 38-45 of the Act, and the total amount for discretionary, ad hoc grants approved by the Minister under section 38-20 of the Act in respect of that year.

Clause 7 provides for the specific amount of an ISSP grant to be paid to an eligible higher education provider in a grant year.

Subclause 7(1) specifies that the amount to be paid to a higher education provider is the amount that is:

- determined before the start of the grant year in accordance with the method in Schedule 1 of these Guidelines, and
- adjusted after the last business day in April of the grant year in accordance with the method in Schedule 1 of these Guidelines.

ISSP grant amounts for a grant year will be determined before the start of the grant year using information higher education providers have given to an administering officer about the number of preserved Indigenous Commonwealth Scholarships providers expect to award in the grant year. An adjustment may be made to ISSP grant amounts after April of the grant year using updated information higher education providers have given to an administering officer about the number of preserved Indigenous Commonwealth Scholarships providers expect to award in the grant year. The requirement for higher education providers to give this information to an administering officer is set out in subclause 28(6) of the Guidelines. The Commonwealth may also adjust the amount of ISSP grants to correct any errors that may have been made inadvertently in calculating ISSP grant amounts.

Subclause 7(2) requires an administering officer to give notice in writing of an eligible higher education provider's ISSP grant amount before the start of the grant year by 24 December of the previous grant year, and notice of the eligible higher education provider's ISSP grant amount as adjusted during the grant year no later than 20 business days after an adjustment is calculated.

Subclause 7(3) provides a separate notification requirement for the 2017 grant year. In this grant year, the amount of an ISSP grant to be paid to an eligible higher education provider in the grant year will be an amount that is determined after the start of the grant year but before the last business day in April of the grant year in accordance with the method in Schedule 1 of these Guidelines; and adjusted after the last business day in April of the grant year in accordance with the method in Schedule 1 of these Guidelines.

Clause 8 provides that for an ISSP grant to be payable under section 38-35 of the Act, the Minister must be satisfied that the higher education provider meets the requirements of the Guidelines. Relevantly, section 38-35 of the Act provides that a grant is payable to a higher education provider if a higher education provider meets the requirements of the Guidelines.

A note to clause 8 refers to section 164-5 of the Act, which provides as follows:

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- amounts payable by the Commonwealth under the Act are to be paid in such a way, including payment in instalments, as the Minister determines;

- payments of amounts payable by the Commonwealth under the Act are to be made at such time as the Secretary determines.

Clause 9 deals with the tax obligations of a higher education providers.

Subclause 9(1) requires a higher education provider that receives an ISSP grant to pay all taxes, duties, and government charges levied in Australia or overseas in connection with the ISSP grant, subject to subclauses 9(2) and 9(3).

Subclause 9(2) provides that an amount to cover any GST obligations of a higher education provider must be added to the provider's ISSP grant amount.

Subclause 9(3) requires a higher education provider that is registered for GST when it receives an ISSP grant to notify an administering officer if it ceases to be registered for GST in the grant year.

Part 3 – Eligibility to receive ISSP grants

Part 3 of these Guidelines specifies extra conditions of eligibility that a Table A provider or a Table B provider must satisfy in order to receive an ISSP grant for paragraph 38-15(b) of the Act. These conditions are in addition to the conditions of eligibility set out in subsection 38-10(1) of the Act. Under paragraph 38-10(3)(b) of the Act, a Table A provider or a Table B provider is not eligible for a grant provided for in the Guidelines unless the provider complies with any extra conditions of eligibility specified in the Guidelines.

Clause 10 specifies the conditions of eligibility a Table A provider or a Table B provider must satisfy to receive an ISSP grant. The extra conditions set out under subclause 10(1) are:

- The provider must have an EFTSL of at least five Indigenous students; and

- The provider must be able to demonstrate that it has access to funding other than ISSP grants that it intends to use to assist Indigenous students access, and succeed in, higher education; and

- The provider must have the following arrangements in place, or have notified an administering officer within 30 days of failing to have the following arrangements in place and the administering officer has agreed a process for the provider to establish the following arrangements:

    - An Indigenous Governance Mechanism that meets the requirements of clause 11 of the Guidelines; and

    - An Indigenous Workforce Strategy that meets the requirements of clause 12 of the Guidelines and is publicly available; and

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- An Indigenous Education Strategy that meets the requirements of clause 13 of the Guidelines and is publicly available.

The condition that a Table A provider or a Table B provider be able to demonstrate access to other funding for Indigenous students reinforces the supplementary nature of ISSP grants.

The purpose of the condition that a Table A provider or a Table B provider notifies an administering officer if it cannot meet the requirements for an Indigenous Governance Mechanism, Indigenous Workforce Strategy or Indigenous Education Strategy is to provide a level of flexibility where the provider is unable to meet these requirements, including as a transitional mechanism for the commencement of the ISSP.

Subclause 10(2) provides that a Table A provider or a Table B provider must provide evidence that it has complied with the conditions in subclause 10(1) within 10 business days of a request by an administering officer.

Clause 11 specifies requirements for the Indigenous Governance Mechanism that a Table A provider or a Table B provider must have to satisfy the extra conditions of eligibility in clause 10. The purpose of this requirement is to ensure Table A providers and Table B providers have a mechanism in place that involves Indigenous persons in decisions about the use of ISSP grants.

To comply with subparagraph 10(1)(c)(i), a provider's Indigenous Governance Mechanism must satisfy a number of the requirements.

Paragraph 11(a) provides that a provider's Indigenous Governance Mechanism must consist of an appropriately qualified senior academic employee of the provider who is an Indigenous person; or an appropriately qualified senior executive employee of the provider who is an Indigenous person; or a committee constituted by a majority of Indigenous persons, each of whom has skills and experience relevant to the role. Table A providers and Table B providers have discretion to determine what constitutes appropriate qualifications or relevant skills and experience.

Paragraph 11(b) provides that a provider's Indigenous Governance Mechanism must have responsibility for advising on, reviewing, making recommendations about, and monitoring the use of ISSP grants.

Paragraph 11(c) provides that a provider's Indigenous Governance Mechanism must have authority within the governance structure of the provider.

Paragraph 11(d) provides that a provider's Indigenous Governance Mechanism must have a charter that outlines:

- the criteria for appointment under the mechanism; and
- the roles and responsibilities of the employees or the committee that constitute the mechanism; and
- the decision-making processes of the mechanism.

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This provision gives Table A providers and Table B providers considerable flexibility in how they embed the mechanism in their decision-making processes. It allows for the establishment of an Indigenous Governance Mechanism constituted by a single person, or a committee. If a Table A provider or a Table B provider prefers a committee, this paragraph enables the provider to appoint both Indigenous persons who are employees of the provider and who are not employees of the provider.

If, prior to the commencement of these Guidelines, a Table A provider or a Table B provider had an established Indigenous Governance Mechanism that now satisfies the requirements of this clause, the provider is not required to establish a separate mechanism to comply with this clause.

Clause 12 specifies requirements for the Indigenous Workforce Strategy that a Table A provider or a Table B provider must have to satisfy the extra conditions of eligibility in clause 10. The purpose of this requirement is to ensure higher education providers have a strategy in place to increase the presence of Indigenous persons working in the higher education sector at all levels and across disciplines.

To comply with subparagraph 10(1)(c)(ii), a provider's Indigenous Workforce Strategy must:

- include key performance indicators; and

- prioritise increasing the number of academic employees engaged by the provider who are Indigenous persons, and the professional development and career advancement of academic employees engaged by the provider who are Indigenous persons; and

- for the 2018 grant year and subsequent grant years, include a plan agreed by an administering officer in writing that increases the number of employees engaged by the provider who are Indigenous persons to at least 3 per cent of all employees of the provider, and provides for the employment of at least one Indigenous person as a senior executive employee at the level of Pro Vice-Chancellor or Deputy Vice-Chancellor, or equivalent level.

Recommendations 2 and 32 of the Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People state that a provider should set in place targets to lift the proportion of the provider's employees that are Indigenous persons and that strategies should be developed to enable Indigenous persons to take up senior positions with the provider. Through these guidelines, a plan will be developed over 2017 with each Table A provider or Table B provider to ensure the provider's Indigenous Workforce Strategy includes a trajectory to achieve a target of at least 3 per cent of the provider's workforce being Indigenous persons as well providing for a strategy to employ an Indigenous person in a senior position. The plan can be tailored to the circumstances of each provider.

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Clause 13 specifies requirements for the Indigenous Education Strategy that a Table A provider or a Table B provider must have to satisfy the extra conditions of eligibility in clause 10. The purpose of this requirement is to ensure Table A providers and Table B providers have a strategy in place for improving the success of Indigenous persons in higher education as well as improving the presence of culture and the cultural competency of coursework, students and employees of the Table A provider or the Table B provider.

To comply with subparagraph 10(1)(c)(iii), a provider's Indigenous Education Strategy must satisfy a number of requirements:

Paragraph 13(a) provides that a provider's Indigenous Education Strategy must include key performance indicators; and

Paragraph 13(b) provides that a provider's Indigenous Education Strategy must prioritise increasing the number of Indigenous students enrolling in, progressing in and completing courses leading to higher education awards; and

Paragraph 13(c) provides that a provider's Indigenous Education Strategy must facilitate, monitor and improve upon the inclusion of Indigenous knowledge in curricula, graduate attributes and teaching practices; and

Paragraph 13(d) provides that a provider's Indigenous Education Strategy must include activities for students and employees of the provider that promote cultural competency in Indigenous cultures, traditions and histories and the diversity of circumstances of Indigenous people in Australia. This requirement is intended to foster culturally safe and welcoming learning environments for Indigenous students.

The Indigenous Workforce Strategy and Indigenous Education Strategy of a Table A provider or a Table B provider may be incorporated as part of the provider's corporate materials if they are made publicly available and links can be provided to an administering officer. There is no requirement that these strategies be standalone documents. Furthermore, if, prior to the commencement of these Guidelines, a higher education provider had an Indigenous Education Strategy and/or an Indigenous Workforce Strategy in place, the provider is not required to replace or create new strategies if they comply with these Guidelines.

Part 4 – ISSP grant conditions (use and reporting)

Part 4 of the Guidelines establishes general conditions for the use of an ISSP grant, and reporting arrangements in relation to the use of an ISSP grant, for paragraph 38-15(g) of the Act. These conditions are applicable to the use of an ISSP grant for any of the activities specified in the Guidelines.

Clause 14 deals with the use of ISSP grants. Subclause (1) prescribes how a higher education provider must use an ISSP grant.

Paragraph 14(1)(a) requires a higher education provider to use an ISSP grant to administer and deliver any or all of the activities specified in these Guidelines, including any activities the provider is required to deliver under these Guidelines.

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The Act establishes the purposes for which grants are provided under Part 2-2A. The Guidelines specify the activities an ISSP grant can be used for. These activities are:

- Providing scholarships to Indigenous students to assist with accommodation costs or education costs, or as a reward for high achievement (clause 19);
- Providing academic support, including supplementary tuition, to Indigenous students (clause 29);
- Providing pastoral care and related support activities for Indigenous students (clause 30);
- Implementing strategies to build cultural competency (clause 31); and
- Delivering activities to engage Indigenous students to enrol in university, and to engage Indigenous students who have withdrawn from study (clause 32).

Under clause 28 of the Guidelines, a higher education provider may be required to use an ISSP grant to award an Indigenous Commonwealth Scholarship to an Indigenous student. Under clause 34 of the Guidelines, a higher education provider may be required to offer academic support and pastoral care to Indigenous students.

Paragraph 14(1)(a) has the effect that a higher education provider cannot use an ISSP grant for things which are not provided for in the Act or the Guidelines. If a higher education breaches the conditions set out in these Guidelines, the Minister may reduce the amount of a future grant or require an amount of a grant to be repaid to the Commonwealth (see Part 2-5 of the Act).

Paragraph 14(1)(b) requires a higher education provider to use an ISSP grant in the grant year, unless the Secretary has made a determination under section 38-40 of the Act in relation to the provider. Section 38-40 enables the Secretary to rollover unspent grant amounts to the following year.

Paragraph 14(1)(c) requires a higher education provider to use an ISSP grant to supplement at least some of the higher education provider's existing activities established using a grant paid under Parts of the Act other than Part 2-2A. The Commonwealth provides a range of assistance to ensure students can access, and succeed in, higher education. The major source of Commonwealth funding for higher education providers is provided in the form of grants under Part 2-2 of the Act for all domestic students.

The note explains that:

(i) a higher education provider may be required to award scholarships to Indigenous students (see clause 28 of the Guidelines), and to provide academic support or pastoral care for students (see clause 34 of the Guidelines);

(ii) a higher education provider's approval may be revoked if the provider fails to comply with the Act and these Guidelines;

(iii) the Act sets out rules for the treatment of unspent grant amounts, reduction and repayment of grants, or overpayment.

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Subclause 2 specifies where a higher education provider must hold unspent ISSP grant money. A higher education provider must hold all unspent ISSP grant money in an account that is with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on business in Australia. The account must be in the name of the provider, and wholly controlled by the provider. Subclause 2 does not have the effect of requiring a higher education provider to open a new, separate account to hold unspent ISSP grant money.

Subclause 3 requires a higher education provider to manage its account and financial records so that all receipts and expenditure of an ISSP grant are clearly identifiable and ascertainable at all times. The purpose of this provision is to ensure the use of an ISSP grant can be properly accounted.

Clause 15 explicitly excludes the use of an ISSP grant for certain purposes. The underlying policy intention is that an ISSP grant is supplementary to other forms of the higher education provider's funding and should not be used for an activity if the activity can be delivered using funding obtained through other means.

Paragraph 15(a) prevents a higher education provider using an ISSP grant to administer any aspect of the provider's business other than delivery of activities specified in the Guidelines.

This is to make clear that a provider cannot use an ISSP grant on any of the following things:

- permanent employee or contractor costs incurred through administration of activities other than activities specified in the Guidelines;
- mainstream or faculty based administration costs or corporate overheads;
- costs of delivering courses leading to higher education awards, including permanent employee and contractor costs.

Specifically, this provision excludes the use of an ISSP grant to deliver mainstream courses on Indigenous societies and cultures (subject to a limited transitional exception). The intention is that these courses be treated in the same manner as other mainstream courses and are delivered using funding obtained from other sources (such as grants under Part 2-2 of the Act).

The limited transitional exception to this rule is where the higher education provider used a grant received under the Indigenous Support Program provided for in the *Other Grants Guidelines (Education) 2012* to deliver a unit of study about Indigenous societies and cultures. Provided an administering officer has approved a transition plan which specifies a date by which the higher education provider will cease to use an ISSP grant to deliver this particular activity, the provider can continue to deliver the activity using an ISSP grant for a transitional period.

This paragraph does not prevent a recipient of an Indigenous Commonwealth Education Costs Scholarship using, or authorising the provider to use, the scholarship to pay course costs.

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Nor does this provision exclude the use of an ISSP grant to pay a person to deliver support or other activities specified in Part 6 of these Guidelines. That is, this provision does not prevent a higher education provider using an ISSP grant to pay an employee an amount additional to the employee's standard salary or wage to provide supplementary tuition to Indigenous students. However, no portion of the ISSP grant could be used to pay the person for activities outside of the Guidelines (e.g. mainstream course delivery).

Paragraph 15(b) prevents a higher education provider using an ISSP grant to duplicate an amount obtained by the provider or paid to a student from other Commonwealth sources. This is to make clear that a provider cannot use an ISSP grant where funding or payments for similar purposes are received by an Indigenous student. Specifically, this paragraph prevents a provider from using an ISSP grant to substitute for ABSTUDY, Youth Allowance, Austudy or other payments administered through the Human Services Department.

Paragraph 15(c) prevents a higher education provider using an ISSP grant to provide incentives to an employee, unless the activity is specified in these Guidelines. This is to make clear that a higher education provider cannot use an ISSP grant to provide a wage subsidy to employees delivering core university activities.

This paragraph does not prevent a higher education provider providing the assistance specified in the Guidelines to an employee who is an Indigenous student, or prevent an employee from benefitting from cultural competency activities provided in accordance with the Guidelines.

Paragraph 15(d) prevents a higher education provider from using an ISSP grant to fund corporate or administrative savings or dividends.

Paragraph 15(e) prevents a higher education provider from using an ISSP grant to discharge any financial or other obligation of an Indigenous student. The exception is where an Indigenous student in receipt of an Indigenous Commonwealth Education Costs Scholarship makes a request in writing for an amount of the scholarship to be used to pay a loan owed by the student, provided the loan has an education purpose.

Paragraph 15(f) prevents a higher education provider from using an ISSP grant to provide assistance to an Indigenous student enrolled in a VET course of study, unless:

- the VET course of study is an enabling course, and
- the provider is otherwise unable to provide assistance to the student, or the assistance provides information on the services of the provider or on undertaking a course of study leading to a higher education award with the provider.

This provision enables a dual-sector provider to use an ISSP grant to host orientation or information sessions targeted primarily at Indigenous students without requiring the exclusion of Indigenous students enrolled in a VET course of study.

Paragraph 15(g) prevents a higher education provider from using an ISSP grant to pay for specific things.

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Subparagraph 15(g)(i) prevents use of an ISSP grant to pay for business or first class travel for an employee or an Indigenous student, unless the employee or student provides medical evidence that he or she has a medical condition that necessitates business or first class travel, and in the case of student, the student is an Indigenous student. This subparagraph makes clear that business and first class travel is not an appropriate use of an ISSP grant, except in particular circumstances.

Subparagraph 15(g)(ii) prevents use of an ISSP grant to pay for international travel for an employee or an Indigenous student, unless in the case of an Indigenous student, the travel is a requirement of the student's course of study and the student is unable to cover, or otherwise obtain financial assistance to cover, the costs of the travel.

Clause 16 deals with the use of an ISSP grant to purchase assets. Asset is defined in clause 4 as any item of real or personal property that has a value or acquisition cost of $5,000 (excluding GST) or more, and is either leased, purchased or created (all or part) using an ISSP grant, or transferred to the provider for the purpose of delivering an activity specified in the Guidelines. 'Cultural' assets with a value or acquisition cost of $5000 (excluding GST) or more are captured by this definition of asset. The bulk purchase of multiple items with an individual value less than $5000 but a combined value over $5000 would not fall within this definition.

Generally, under its definition in these Guidelines, an asset is a high cost item. The purpose of clause 16 is to encourage higher education providers to use ISSP grants for activities that target direct services and assistance to Indigenous students.

Subclause 16(1) prevents a higher education provider from purchasing an asset unless an administering officer approves the purchase in writing.

Subclause 16(2) requires a higher education provider to use an asset purchased with an ISSP grant for activities specified in the Guidelines, and to insure and maintain the asset. For the purposes of this provision, acceptable insurance includes an arrangement between a higher education provider and the Commonwealth according to which a provider assumes full responsibility for the full replacement value of the asset without going through a third party insurer.

Subclause 16(3) prevents a higher education provider from selling or disposing of an asset purchased using an ISSP grant without the prior written consent of an administering officer, unless the asset has an adjustable value of less than $5000. Under subclause 16(4), if a higher education provider sells or disposes of an asset purchased using an ISSP grant, the provider is required to use the proceeds of the sale or disposal for activities specified in the Guidelines and notify the Minister of the amount or value of the proceeds of any sale or disposal of the asset in a statement accompanying the reports required under subclause 17(1) of these Guidelines.

Subclause 16(5) requires a higher education provider to maintain a register of all assets purchased with an ISSP grant that remain under the provider's control, and specifies the details to be included on the register.

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Subclause 16(6) enables an administering officer, at the end of a grant year, to direct a higher education provider that used an ISSP grant to purchase an asset in the grant year to deal with the asset in a particular way, including but not limited to, directing the provider to:

- sell the asset and return the full sale amount to the Commonwealth; or
- transfer the asset to the Commonwealth or its nominee.

The purpose of this provision is to provide the Commonwealth with a mechanism to ensure higher education provider's do not realise an inappropriate windfall by using an ISSP grant to purchase an asset.

Subclause 16(7) requires a higher education provider to provide evidence that it has complied with the conditions in clause 16 within 10 business days of a request by an administering officer. This is so the Commonwealth can verify how an ISSP grant has been used, and enables the Commonwealth to ensure an ISSP grant is being used appropriately.

Subclause 16(8) defines adjustable value to mean the cost of an asset less its decline in value determined in accordance with the Australian Taxation Guide to Depreciating Assets 2014.

Clause 17 establishes reporting requirements for higher education providers that receive an ISSP grant. Reporting is an important mechanism for the Commonwealth to ensure ISSP grants are being used appropriately and effectively and as a resource to compare and promote effective strategies across providers.

Subclause 17(1) requires providers to provide the two reports specified in column 2 of the table for activities conducted using an ISSP grant in the grant year by the day specified in column 3 of the table. Acquittals and a report on performance are required to be provided by the last business day of April of the next grant year.

The note explains that, in addition to the reports specified in column 2 of the table in subclause 17(1), paragraph 19-10(1)(a) of the Act provides that a higher education provider must give to the Minister a financial statement for each annual financial reporting period for the provider in which the provider receives assistance under Chapter 2 of the Act.

These reporting requirements apply to ISSP grants. The first deadline for providing each report will fall in 2018, for ISSP grants made in 2017. Grants received in 2016 must be reported on and acquitted in accordance with the arrangements that applied to those grants. These arrangements are set out in the table below.

If a provider received a grant in 2016 under the:	**the provider must comply with the:**
Indigenous Support Program	*Other Grants Guidelines (Education) 2012*
Commonwealth Scholarships Program	*Commonwealth Scholarships Guidelines (Education) 2010*
Children and Schooling Programme of the Indigenous Advancement Strategy, for tutorial assistance	Funding Agreement between the provider and the Commonwealth

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To assist higher education providers prepare the performance report required under subclause 17(1), higher education providers should monitor performance data to ensure effective strategies are implemented to accelerate Indigenous student outcomes, and conduct evaluation exercises, from time to time, to ensure ISSP grants are providing quality support and outcomes for Indigenous students.

Subclause 17(2) specifies that the acquittal and performance report required under subclause 17(1) must be prepared in a form, and contain the information, specified by an administering officer in writing, and must include a statement authorised by the provider's Indigenous Governance Mechanism.

Preparing the reports in an approved form provides the Commonwealth with flexibility to update the information to be reported on without amending the Guidelines. Requiring a statement authorised by a higher education provider's Indigenous Governance Mechanism is intended to ensure the provider's Indigenous Governance Mechanism is involved in, and aware of, the higher education provider's administration of an ISSP grant.

Subclause 17(3) empowers an administering officer to request a revised report if the administering officer reasonably considers that the form or content of a report is unsatisfactory, for example missing required information. Subclause 17(4) empowers an administering officer to request any additional information or reports about the use of an ISSP grant by a higher education provider. Subclause 17(5) compels a higher education provider to comply with a reasonable request for a revised report or additional information within 10 business days of the request, or a longer period specified by the administering officer in writing.

The purpose of subclauses 17(3) to 17(5) is to ensure the Commonwealth can obtain the information it needs to assess the ongoing eligibility of a higher education provider and the effectiveness of a provider's performance and the ISSP.

Clause 18 deals with access to the premises and records of a higher education provider, and complements the reporting requirements in clause 17.

Subclause 18(1) empowers an administering officer to request, in writing, access to the premises of records of a higher education provider for the purpose of determining whether the provider is using an ISSP grant in accordance with the Act or the Guidelines. Subclause 18(2) stipulates that a higher education provider must not unreasonably withhold consent to a request for access.

Subclause 18(3) requires a higher education provider that receives a request for access from an administering officer to provide the administering officer with such assistance as is necessary and reasonable for determining whether the provider is using an ISSP grant in accordance with the Act or the Guidelines.

This clause is necessary to give the Commonwealth the ability to intervene quickly in circumstances where the Commonwealth believes the use of an ISSP grant by a higher education provider may contravene the Act or the Guidelines. Failure of a higher education provider to comply with the requirements of this clause would provide a basis for the Minister to withhold future ISSP grant amounts under Part 2-5 of the Act.

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Part 5 – ISSP grant conditions (scholarships)

Part 5 of these Guidelines establishes the conditions on which a higher education provider may use an ISSP grant to award scholarships for paragraph 38-15(2)(g) of the Act. Clauses under this Part may require a higher education provider to give a notice to an Indigenous student under section 169-5 of the Act. Where applicable, Chapter 4 of the *Administration Guidelines 2012* specifies the information that a notice must contain under subsection 169-5(2) of the Act, and the period within which a notice must be given under subsection 169-5(3) of the Act.

Clause 19 allows a higher education provider to use an ISSP grant to award the Indigenous Commonwealth Scholarships described in clause 20 to Indigenous students who are enrolled in a course of study. Higher education providers are not able to characterise costs associated with delivering other types of activities to persons who are not enrolled in a course of study as scholarships.

Clause 20 describes the Indigenous Commonwealth Scholarships that may be awarded using an ISSP grant. The scholarships are:

- Indigenous Commonwealth Education Costs Scholarships, to assist with education costs for Indigenous students enrolled and studying in a course of study;
- Indigenous Commonwealth Accommodation Scholarships, to assist with relocation costs, accommodation costs, or relocation and accommodation costs for Indigenous students enrolled and studying in a course of study;
- Indigenous Commonwealth Reward Scholarships that involve a once-off payment of a monetary amount or prize to recognise and reward an Indigenous student's achievement or excellence (for example, an Indigenous student's achievement in supporting peers or achieving an exceptional result in their studies).

Clause 21 sets out basic rules for offering Indigenous Commonwealth Scholarships.

Subclause 21(1) requires a higher education provider that offers an Indigenous Commonwealth Scholarship to determine the value, purpose, duration and other conditions of the scholarship. This provision makes clear that it is up to higher education providers to establish scholarships using an ISSP grant. In establishing scholarships using an ISSP grant, higher education providers should bear in mind requirements under clause 28 of these Guidelines dealing with transitional arrangements for Indigenous Commonwealth Scholarships provided for under the *Commonwealth Scholarships Guidelines (Education) 2010*.

Subclause 21(2) requires a higher education provider, when offering an Indigenous Commonwealth Scholarship to an Indigenous student, to inform the student that if the offer is accepted the student may be required to notify certain Commonwealth Departments of the receipt of the scholarship, and may not qualify for certain other forms of Commonwealth assistance.

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Currently, the Department administered by the Minister administering the statutes referenced at subparagraphs 21(2)(a)(ii) and 21(2)(a)(iii) is, in both cases, the Department of Veterans' Affairs.

The purpose of this provision is to ensure that an Indigenous student is fully informed about the consequences of accepting a scholarship offer.

Subclause 21(3) stipulates the amount of an ISSP grant that a higher education provider is required to use to offer Indigenous Commonwealth Scholarships to Indigenous students from remote areas and regional areas in the 2017 and 2018 grant years, unless the amount is otherwise agreed by the Minister in writing.

Remote area is defined in clause 4 as an area classified as Remote Australia or Very Remote Australia in the Australian Statistical Geography Standard that is referred to in the item for Regional and Remote in the glossary to the Higher Education Information Management System.

Regional area is defined in clause 4 as an area classified as Inner Regional Australia or Outer Regional Australia in the Australian Statistical Geography Standard that is referred to in the item for Regional and Remote in the glossary to the Higher Education Information Management System.

For the 2017 grant year, the amount is at least 95 per cent of the total value of Indigenous Commonwealth Scholarships awarded to:

- Indigenous students from remote areas and regional areas in the 2016 grant year; and
- Indigenous students who met the additional the additional eligibility requirements relating to regional and remote locality specified in paragraph 2.10.15 of the *Commonwealth Scholarships Guidelines (Education) 2010*.

For the 2018 grant year, the amount is at least 95 per cent of the total value of Indigenous Commonwealth Scholarships that the provider awarded to Indigenous students from remote areas and regional areas in the 2017 grant year using an ISSP grant.

Consistent with the definition of Indigenous Commonwealth Scholarship in clause 4 of the Guidelines, the value of scholarships awarded to Indigenous students from remote areas and regional areas can include both preserved Indigenous Commonwealth Scholarships and Indigenous Commonwealth Scholarships described in clause 20 of the Guidelines. The value can also include payments to students as well as in-kind support, consistent with how an Indigenous Commonwealth Scholarship can be awarded under clause 22 of the Guidelines.

If a higher education provider offers scholarships to Indigenous students from remote areas and regional areas with a total value of less than 95 per cent of the previous year, the provider will not have met this condition of the grant. The Minister may require repayment of an amount of the grant to the Commonwealth under Part 2-5 of the Act, despite having other eligible expenditure that is equal to or greater than the ISSP grant amount.

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The purpose of subclause 21(3) is to aid in the transition from the Commonwealth Scholarships Program to the ISSP. Under the Commonwealth Scholarships Program, higher education providers could only award accommodation scholarships to Indigenous students from remote areas and regional areas. The ISSP does not include this restriction. By ensuring that higher education providers cannot significantly rebalance scholarship awards in 2017 and 2018 away from Indigenous students from remote areas and regional areas, the Guidelines provide for a measured transition to more flexible arrangements.

Clause 22 deals with awarding Indigenous Commonwealth Scholarships.

Subclause 22(1) requires a higher education provider to prioritise Indigenous students from remote areas or regional areas, and Indigenous students who are financially disadvantaged.

The Higher Education Information Management System uses postcode of permanent home residence, as reported by higher education providers, to a map each student to the appropriate Australian Statistical Geography Standard Remoteness Area classification. This allows higher education providers to determine whether an Indigenous student is from a remote area of a regional area.

Higher education providers have the discretion to determine whether an Indigenous student is financially disadvantaged for the purposes of paragraph 22(1)(b). Possible means to make this determination include: applying income tests to the Indigenous student; a statutory declaration signed by the Indigenous student attesting to their financial situation; whether an Indigenous student is in receipt of Commonwealth income support payments; or using a definition consistent with the low-socio economic status indicator used in the Higher Education Information Management System.

Subclause 22(2) requires a higher education provider that awards an Indigenous Commonwealth Scholarship to an Indigenous student who is not described in subclause 22(1), to document the reasons for the award on the student's file, and provide a copy of the reasons to an administering officer within 10 business days if requested.

The purpose of subclauses 22(1) and 22(2) is to ensure that assistance is provided to those who need it most.

Subclause 22(3) stipulates how an Indigenous Commonwealth Scholarship may be awarded.

Subclause 22(4) prevents a higher education provider from awarding an Indigenous Commonwealth Scholarship to an Indigenous student unless the student accepts in writing the conditions of the scholarship as determined by the provider.

Clause 23 obligates a higher education provider to take all reasonable steps to ensure that the recipient of an Indigenous Commonwealth Scholarship complies with the conditions of the scholarship, including using the scholarship for its intended purpose.

Clause 24 sets out rules for how Indigenous Commonwealth Scholarships interact with other forms of assistance that a student may receive.

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Subclause 24(1) allows a higher education provider to award an Indigenous Commonwealth Scholarship to an Indigenous student already in receipt of assistance (including another type of Indigenous Commonwealth Scholarship).

However, subclause 24(2) requires a higher education provider to take all reasonable steps to avoid awarding an Indigenous Commonwealth Scholarship to an Indigenous student if the award of the scholarship would result in the student receiving assistance from two or more Commonwealth sources for the same purpose. For example, a higher education provider must take steps to avoid awarding an Indigenous Commonwealth Accommodation Scholarship to an Indigenous student in receipt of a Residential Costs Option payment under the ABSTUDY scheme.

The note explains that a person in receipt of an Indigenous Commonwealth Education Costs Scholarship or an Indigenous Commonwealth Accommodation Scholarship will not qualify for assistance intended for the same or similar purpose. Specifically, the *Social Security (Indigenous Student Assistance Scholarships – Disqualifying Scholarships) Instrument 2016* made under the authority of subsection 23(24) of the *Social Security Act 1991* ensures that:

- a person in receipt of an Indigenous Commonwealth Accommodation Scholarship will not qualify for:
  - a 'relocation scholarship payment' under sections 592J and 592K of the *Social Security Act 1991*;
  - a 'relocation scholarship payment' under paragraphs 7.5.3(d) and 7.5.4(e) of the Veterans' Children Education Scheme; or
  - a 'relocation scholarship payment' under paragraphs 7.3.3(d) and 7.3.4(e) of the Military Rehabilitation and Compensation Act Education and Training Scheme.
- a person in receipt of an Indigenous Commonwealth Education Costs Scholarship will not qualify for:
  - a 'student start-up scholarship payment' under sections 592F and 592G of the *Social Security Act 1991*;
  - a 'student start-up loan' under section 1061ZVBB of the *Social Security Act 1991*;
  - an ABSTUDY start-up loan under sections 7C and 7D of the *Student Assistance Act 1973*;
  - a 'student start-up scholarship payment' under paragraphs 7.4.3(d) and 7.4.4(e) of the Veterans' Children Education Scheme; or
  - a 'student start-up scholarship payment' under paragraphs 7.2.3(d) and 7.2.4(e) of the Military Rehabilitation and Compensation Act Education and Training Scheme.

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Clause 25 stipulates requirements for a higher education provider to notify certain Commonwealth agencies of an award of an Indigenous Commonwealth Education Costs Scholarship or an Indigenous Commonwealth Accommodation Scholarship and the amount or value of the scholarship. Subclause 25(1) specifies who must be notified under this clause.

Under subclause 25(2), the last day for a higher education provider to notify the persons specified under subclause 25(1) is the day specified by an administering officer in writing for the relevant semester or trimester.

It is intended that a higher education provider should notify each agency depending upon whether the scholarship recipient, to the provider's knowledge, is receiving a payment or benefit from that agency.

Subclause 25(3) provides that if a higher education provider awards one of the scholarships described in subclause 25(1) after the day specified in subclause 25(2), the higher education provider must notify the persons specified in subclause 25(1) as soon as possible. Wherever possible, this notification should occur within five business days.

The purpose of this clause is to ensure that relevant Commonwealth Departments have the information necessary to determine a scholarship recipient's eligibility for various payments each Department administers.

Clause 26 deals with termination of an Indigenous Scholarship. Subclause 26(1) requires a higher education provider to terminate an Indigenous Commonwealth Scholarship if the scholarship recipient ceases to be enrolled in a course of study with the provider. Subclause 26(2) gives a higher education provider discretion to terminate an Indigenous Commonwealth Scholarship if the scholarship recipient fails to comply with a condition of the scholarship.

Clause 27 obligates a higher education provider to take steps to recover scholarship amounts in certain circumstances. This provision is necessary to ensure the integrity of the Indigenous Commonwealth Scholarships awarded under these Guidelines.

Subclause 27(1) requires a higher education provider to take steps to recover an amount of an Indigenous Scholarship that has not been exhausted if the provider terminates the scholarship, or the scholarship recipient transfers his or her course of study from the provider to a different higher education provider.

The purpose of this provision is to ensure that:

- an Indigenous student is not continuing to receive a financial benefit after terminating their study; and
- an Indigenous student does not receive a double benefit by transferring their course of study (e.g. if a receiving provider also awards an Indigenous Commonwealth Scholarship).

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This provision does not obligate a higher education provider to recover scholarship amounts. Rather, it is a matter for a higher education provider to determine the steps that should be taken to recover a scholarship amount, taking into account such matters as the amount that could be recovered and the cost of recovery.

Subclause 27(2) gives a higher education provider the ability to elect not to recover a scholarship amount that has not been exhausted, or to accept the return of an amount that is less than the total of the scholarship amount that has not been exhausted, if the provider determines that the scholarship recipient had valid reasons for the circumstances resulting in termination or transfer, or the recipient would suffer severe financial hardship as a result of the recovery.

Subclause 27(3) provides a non-exhaustive list of circumstances that give rise to valid reasons for the purposes of subclause 27(2).

Subclause 27(4) requires a higher education provider that elects not to recover a scholarship amount that has not been exhausted or accepts the return of an amount that is less than the total of the scholarship amount that has not been exhausted to:

- document the reasons why the whole amount was not recovered on the student's file; and
- if requested by an administering officer, provide a copy of the reasons to the administering officer within 10 business days of the receipt of the request.

This requirement ensures that there is transparency and accountability for when a higher education provider decides not to recover a scholarship amount.

Subclauses 27(5) and 27(6) explain how an amount recovered under subclause 27(1) may be used by the recovering higher education provider.

Subclause 27(5) provides that, if an amount of an Indigenous Commonwealth Scholarship other than a preserved Indigenous Commonwealth Scholarship is recovered, the recovered amount may be used for any or all of the activities specified in these Guidelines. This allows a higher education provider the discretion to decide for which activities under these Guidelines the recovered amount may be used.

Subclause 27(6) provides that, if an amount of an Indigenous Commonwealth Scholarship awarded under subclause 28(5) is recovered, the recovered amount must not be used for any activity subsequent to the amount's recovery. This provision prevents the higher education provider from using the recovered amount for any purpose subsequent to the recovery. The note refers to section 164-15 of the Act, which empowers the Commonwealth to recover an overpayment of a grant to a higher education provider via two means: firstly, the Commonwealth may deduct an overpayment of an amount from any future amount payable (or to be paid) to the provider; or secondly, the Commonwealth may recover the overpayment as a debt due to the Commonwealth.

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Clause 28 sets out arrangements to deal with the transition from the Commonwealth Scholarships Program provided for under the *Commonwealth Scholarships Guidelines (Education) 2012)* to the ISSP administered under the Guidelines. The policy intention of this provision is to ensure that Indigenous students are not disadvantaged by the transition from the Commonwealth Scholarships Program to the ISSP.

Clause 28 does not continue arrangements set out in the *Commonwealth Scholarships Guidelines (Education) 2012*. Rather, clause 28 mandates the offer of a new Indigenous Commonwealth Scholarship described in these Guidelines, but on conditions that are similar to the conditions of the equivalent scholarship awarded using a grant under the Commonwealth Scholarships Program. The effect is to enable the preservation of scholarships awarded using a grant under the Commonwealth Scholarships Program.

While clause 28 requires higher education providers to offer students who previously received a scholarship a scholarship under these Guidelines, the Guidelines do not preclude higher education providers from offering, and a student from accepting, new Indigenous Commonwealth Scholarships on more favourable terms.

The Guidelines use the term 'earlier Indigenous Commonwealth Scholarships' to refer to scholarships awarded using a grant under the Commonwealth Scholarships Program (see clause 4), and 'preserved Indigenous Commonwealth Scholarships' to refer to an Indigenous Commonwealth Scholarship awarded using an ISSP grant, where the Indigenous Commonwealth Scholarship has conditions and value essentially equivalent to the earlier Indigenous Commonwealth Scholarship (see clause 4).

Subclause 28(1) requires a higher education provider to offer an Indigenous Commonwealth Scholarship to an Indigenous student if, in the year before the commencement of the Guidelines, the student:

- received a scholarship under the Commonwealth Scholarships Programme provided for in Part A of the *Commonwealth Scholarships Guidelines (Education) 2010* for an enabling course; and
- the student successfully completed the enabling course.

Subclause 28(2) requires a higher education provider to offer a preserved Indigenous Commonwealth Scholarship to an Indigenous student if, before the commencement of these Guidelines, the student satisfies the following criteria:

- the student was in receipt of an Indigenous Commonwealth Scholarship for a higher education award that was awarded by the provider using a grant made under the Commonwealth Scholarships Programme; and
- the student was enrolled in or was on approved leave from the course of study for which the student received the scholarship; and
- the student had been enrolled in the course of study for no more than seven study periods in the course of study for which the student received the scholarship.

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This provision does not require a higher education provider to offer an Indigenous Commonwealth Scholarship to an Indigenous student who has changed their course of study from the course of study for which the student received a scholarship under the Commonwealth Scholarships Program. However, a higher education provider could still offer a new Indigenous Commonwealth Scholarship to the student.

Subclause 28(3) stipulates that a preserved Indigenous Commonwealth Scholarship that a higher education provider must offer to an Indigenous student under subclause 28(2) must be for the same general purpose, and equivalent value to, the earlier scholarship.

Subclause 28(4) clarifies the conditions on which a higher education provider must offer a preserved Indigenous Commonwealth Scholarship to an Indigenous student under subclause 28(2). Such a scholarship must be offered on the following conditions:

- the preserved Indigenous Commonwealth Scholarship must have the same conditions as the earlier scholarship; and
- the Indigenous Commonwealth Scholarship must be available for all the study periods (remaining study periods) that the scholarship recipient had not used under the earlier scholarship; and
- any remaining scholarship amount is to be forfeited if the scholarship recipient either defers his or her course of study for more than two study period or fails to use the remaining study periods by 30 June 2021.

The conditions specified at subclause 28(4) ensure that, in being offered an Indigenous Commonwealth Scholarship to replace an earlier scholarship for a higher education award, the scholarship recipient is not subject to conditions more onerous than those originally imposed on the earlier scholarship awarded to the scholarship recipient. If a preserved Indigenous Commonwealth Scholarship expires or is forfeited, the higher education provider has the discretion to offer an Indigenous Commonwealth Scholarship under clause 21 of these Guidelines on different or similar terms. However, the subsequent Indigenous Commonwealth Scholarship will not be a preserved Indigenous Commonwealth Scholarship.

Subclause 28(5) mandates that if an Indigenous student accepts an Indigenous Commonwealth Scholarship in writing that is offered under subclause 28(1) or under subclause 28(2), the higher education provider must award the scholarship to the student.

Subclause 28(6) requires a higher education provider to notify an administering officer of two matters related to the awarding of preserved Indigenous Commonwealth Scholarships:

- the provider must notify an administering officer of the potential amount of an ISSP grant the provider expects to use to award preserved Indigenous Commonwealth Scholarships in the grant year by the last business day of October in the year preceding the grant year; and

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- the provider must notify an administering officer of the amount of an ISSP grant the provider expects to use to award preserved Indigenous Commonwealth Scholarships in the grant year by the last business day in April of the grant year.

The purpose of this requirement is so that the Commonwealth has the information it needs to calculate (i) a higher education provider's ISSP grant amount for the next grant year; and (ii) any adjustments to the provider's ISSP grant amount for the grant year.

Subclause 28(7) provides that a higher education provider that is required to offer an Indigenous Commonwealth Scholarship to an Indigenous student under subclause 28(1) or subclause 28(2) is not required to continue to offer Indigenous Commonwealth Scholarships to Indigenous students if an administering officer has agreed in writing that the provider is no longer required to do so.

Subclause 28(8) defines, for the purposes of this clause, the term equivalent value to mean, in respect of a preserved Indigenous Commonwealth Scholarship, the amount or value of the preserved Indigenous Commonwealth Scholarship in the 2016 grant year indexed using the method of indexation in Part 5-6 of the Act. The Commonwealth intends to notify higher education providers of this amount prior to the events at subclause 28(5).

Part 6 of the Guidelines sets out conditions regarding the use of ISSP grants for other support activities for paragraph 38-15(g) of the Act.

Clause 29 allows a higher education provider to use an ISSP grant for academic support. In using an ISSP grant to provide academic support, a higher education provider is required to give priority to Indigenous students who, in the provider's opinion, are at risk of failing a course of study, or an element of that course, or of not completing a course of study to a required level.

This provision requires higher education providers, when using an ISSP grant to offer academic support to Indigenous students, to prioritise Indigenous students who are clearly failing, as well as Indigenous students who are passing but who may require additional assistance to sustain a grade point average necessary to progress in the course of study to a required level (e.g. to undertake honours).

This provision is intended to ensure Indigenous students with the highest risk of withdrawing from higher education awards are given priority for academic support. The provision, however, does not preclude a higher education provider from offering academic support for high-achieving Indigenous students, Indigenous students seeking higher grades, or Indigenous students aiming for post graduate and research opportunities.

Academic support is intended to provide additional, tailored assistance to Indigenous students to assist them to progress through their course of study. It is not intended that higher education providers will use an ISSP grant to provide support that would otherwise be available to students of the higher education provider. Academic support may include providing an additional tutor to Indigenous students to provide supplementary tuition.

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A higher education provider is responsible for the recruitment and payment of persons employed to provide supplementary academic support (including Pay As You Earn taxation deductions and superannuation contributions). A higher education provider is also responsible for determining the type and method of academic assistance to be provided. Clause 33 of the Guidelines applies to the recruitment of a person delivering supplementary academic support such as tuition.

A person engaged to provide supplementary tuition to an Indigenous student may be associated with a unit of study that the Indigenous student is undertaking (such as being the usual teacher, lecturer, or tutor of the unit of study). However, an ISSP grant may only be used to pay a person to provide support to an Indigenous student where the provision of that support is in addition to the person's usual core work. In accordance with paragraph 15(a) of these Guidelines, an ISSP grant is not to be used to provide payments or income which would otherwise be paid by the higher education provider to provide similar support (such as providing usual lectures or tutorials for a unit of study). This is to ensure a person is not paid twice for undertaking the same work.

Clause 30 allows a higher education provider to use an ISSP grant to provide pastoral care and other support activities to an Indigenous student. These activities may include, among other things, maintaining safe cultural spaces for Indigenous students to learn and study, providing support services for Indigenous students that are in addition to support services available to other students, and providing advocacy and referral services to assist Indigenous students access and benefit from support services available to other students.

While not mandated, this provision enables the establishment or continuation of Indigenous Higher Education Units or similar arrangements to provide pastoral care and other support services for Indigenous students.

Clause 31 allows a higher education provider to use an ISSP grant to implement cultural competency strategies. The purpose of this provision is to enable higher education providers to enhance cultural awareness and create a higher education environment that is respectful and inclusive of Indigenous people and their cultures.

This provision does not permit the use of an ISSP grant to deliver mainstream courses on Indigenous societies and cultures, as assistance for the teaching of courses of study are provided for under other parts of the Act. Use of an ISSP grant for this purpose is excluded under paragraph 15(a) of these Guidelines, subject to a limited transitional exemption.

Clause 32 allows a higher education provider to use an ISSP grant to engage and prepare Indigenous students to enrol in a course of study, and to engage an Indigenous student who has withdrawn his or her enrolment in a course of study. The engagement activities that may be provided under this clause may include winter or summer schools for the people described in paragraph 32(a), where a higher education provider cannot obtain all or some of the costs from sources other than an ISSP grant.

Clause 33 sets out rules for using an ISSP grant to pay a person or organisation to provide other support or activities under Part 6 of these Guidelines. Clause 33 applies to all permanent employees, contractors and Indigenous Education Workers who a higher education provider proposes to pay using an ISSP grant.

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Subclause 33(1) enables a higher education provider to pay a person or organisation to provide support or activities under Part 6 of these Guidelines. Because the ISSP grant is being used to deliver activities specified in these Guidelines, using the grant to pay a person to provide the support is not prevented under clause 15 of these Guidelines.

Subclause 33(2) prevents a higher education provider from using an ISSP grant to pay a person or organisation unless the provider is satisfied that the person, or the person employed by the organisation to deliver the activities has specified skills and knowledge, is an appropriate person, and in relation to providing academic support to Indigenous students is not delivering or undertaking the same unit of study as the student. The purpose of this provision is to ensure that persons engaged to provide support activities are able to deliver high quality and culturally appropriate services.

A person paid under clause 33 (either directly by the provider or through an organisation) must have skills and knowledge in relation to matters of relevance to Indigenous persons. This may include:

- demonstrated knowledge and understanding of Indigenous societies, cultures, and the diversity issues affecting Indigenous communities; and
- demonstrated communication and negotiation skills to considerately and effectively work with Indigenous persons on matters relevant to the delivery of quality higher education to Indigenous persons.

A higher education provider must be satisfied that the person being paid to provide activities (either directly by the provider or through an organisation) is an appropriate person. Factors that a higher education provider may consider in determining whether a person is appropriate include whether the person:

- is qualified to deliver, or is otherwise capable of delivering, the required support; and
- complies with all applicable state or territory legislation in relation to, but not limited to, dealing with children and vulnerable people; and
- is a member of the immediate or de facto family of an Indigenous student who will likely benefit from the support to be provided by the person.

For example, if a person is being paid to provide supplementary academic support under clause 29 of the Guidelines, the person may be an appropriate person to provide the activities if he or she has achieved a level of education attainment higher than the level of the unit of study or course of study for which he or she is engaged to provide support. A person may also be an appropriate person to provide support under Part 6 of the Guidelines if he or she has relevant industry experience.

Subclause 33(3) requires a higher education provider to give priority to Indigenous persons in recruiting a person to deliver activities under Part 6 of the Guidelines.

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Subclause 33(4) requires a higher education provider to give priority to organisations that employ, or provide training opportunities for, Indigenous persons in engaging an organisation to deliver activities under Part 6 of the Guidelines. The Commonwealth Indigenous Procurement Policy, which is publicly available, may provide further information on opportunities to identify organisations that may meet this requirement.

Subclauses 33(3) and 33(4) seek to increase the number of Indigenous persons working in the higher education sector across classifications. This is intended to encourage higher education providers to also employ qualified Indigenous persons.

Clause 34 sets out arrangements to deal with the transition from the Indigenous Support Program and tutorial support provided under the Indigenous Advancement Strategy to the ISSP. The purpose of this provision is to ensure that support services for Indigenous students that were previously available to Indigenous students do not cease following the transition to the ISSP. While the higher education provider is required to deliver certain activities, the provider has the discretion to determine how these activities will be delivered under clauses 29 and 30 of these Guidelines.

Subclause 34(1) requires, firstly, a higher education provider that provided supplementary tuition under a programme known as the Children and Schooling Programme of the Indigenous Advancement Strategy in 2016 to continue to offer some form of supplementary tuition; and secondly, a higher education provider that delivered pastoral care and other support activities using a grant made under the Indigenous Support Program in 2016, to continue to provide a similar set of services.

Subclause 34(2) provides that a higher education provider that received an Indigenous Support Program Grant or a grant under the Indigenous Advancement Strategy for supplementary tuition is not required to continue to provide support under Part 6 of the Guidelines if an administering officer has agreed in writing that the provider is no longer required to provide that support. Without this agreement, if a higher education provider fails to provide the required support, the provider will not meet this condition of the ISSP grant. Consequently, the Minister may require repayment of an amount of the grant to the Commonwealth under Part 2-5 of the Act.

This clause does not apply to a higher education provider that did not receive a grant from the Commonwealth to provide support to Indigenous students. A higher education provider in these circumstances may use an ISSP grant to deliver support activities, the provider is not required to do so, but is not required to do so.

Part 7 – ISSP grant conditions (miscellaneous)

Part 7 of the Guidelines sets out miscellaneous conditions applying to the use of ISSP grants for paragraph 38-15(g) of the Act.

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Clause 35 deals with conflicts of interest. The provision requires a higher education provider that receives an ISSP grant to put in place arrangements for dealing with conflicts of interest, to take action to manage conflicts, to maintain a conflicts of interest register, and to provide a copy of the register to an administering officer if requested within 10 business days of receipt of the request. This provision reflects good governance arrangement for any organisation. It does not require a higher education provider to establish new or separate conflict of interest processes for ISSP grants, provided existing processes meet the requirements of this provision.

The Guidelines do not define conflict of interest, leaving it to a higher education provider to determine. Examples of conflicts of interest that potentially may arise under these Guidelines include, but are not limited to, situations where an employee of a higher education provider, who has the authority to influence decisions relating to Indigenous Commonwealth Scholarships or the engagement of employees using an ISSP grant:

- is a family member or close friend of an Indigenous student who has been offered a scholarship or a person employed to provide activities under these Guidelines;
- has a business interest with an Indigenous student who has been offered a scholarship or a person employed to provide activities under these Guidelines;
- is a student applying for support; or
- any other circumstances where the provider determines that the circumstance may compromise, or may have the potential to comprise, the professional integrity of employees of the provider, tutors or students.

Clause 36 deals with complaints processes concerning the use of an ISSP grant. The provision requires a higher education provider to have procedures for employees of a higher education provider and Indigenous students to make a complaint about the use of an ISSP grant. This information must be made publicly available.

The note explains that paragraph 2.4 of the Higher Education Threshold Standards Framework (which is provided for in the *Higher Education Standards Framework (Threshold Standards) 2015*) sets out threshold standards for student grievances and complaints that a higher education provider is required to meet in order to be registered by the Tertiary Education Quality Standards Agency to operate in Australia (as per section 21 of the *Tertiary Education Quality and Standards Agency Act 2011*).

This provision is intended to make clear that persons who wish to make a complaint about how a higher education provider uses an ISSP grant should seek resolution of the issue with the higher education provider. While it may be appropriate for students or employees to approach external bodies rather than the higher education provider (eg, relevant Ombudsman or the Australian Human Rights Commission), this does not remove the requirement of a provider to have a complaints procedure in place.

Clause 37 deals with policies and processes for offering assistance to students.

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Subclause 37(1) requires that, subject to any other provision of these Guidelines and the Act, a higher education provider that receives an ISSP grant must establish and maintain policies and processes for using the grant, and make information about those policies and processes publicly available, including to Indigenous persons in remote areas and regional areas where access to such information may be more difficult.

Subclause 37(2) requires a higher education provider to maintain full and accurate records of the use of an ISSP grant, including the selection processes followed to provide assistance to an Indigenous student. This ensures that there is transparency in how higher education providers use ISSP grants to assist Indigenous students.

Subclause 37(3) stipulates that where a higher education provider requires a person to apply for assistance or enter into a written agreement with the provider, the provider must not provide the assistance or make the payment using an ISSP grant unless the person has signed a form prepared by the provider in which the person acknowledges that:

- giving false or misleading information is a serious offence; and
- the person may incur a debt to the Commonwealth or the provider or both if the person receives assistance or payment that the person should not have received; and
- the provider may collect personal information of the person and share that information with the Commonwealth for the purposes of the Commonwealth administering these Guidelines.

The purpose of this provision is to ensure that an Indigenous student applying for assistance or a person entering into a written agreement with a higher education provider is aware of the implications of other Commonwealth laws.

Schedule 1 – Method for determining ISSP grant amounts

Schedule 1 sets out the methodology for calculating the ISSP grant for each eligible higher education provider in a grant year.

Item 1 defines key terms used in the Schedule.

Items 2 to 7 describe the method for determining ISSP grant amounts for each eligible higher education provider. The methodology starts with the amount calculated under clause 6 of the Guidelines, being an amount that is the difference between the maximum payments for grants under Part 2-2A of the Act in respect of that year as determined by the Minister under section 38-45 of the Act, and any special grants made under section 38-20 of the Act for that year

Item 2 divides the amount for ISSP grants into a pool (Pool A) for preserved Indigenous Commonwealth Scholarships and a pool (Pool B) to be allocated according to a formula. In effect, Item 2 excludes the amount for preserved Indigenous Commonwealth Scholarships from application of the formula.

Item 3 establishes an eligible higher education provider's entitlement to Pool A and Pool B.

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Item 4 establishes each provider's raw share of Pool B considering the provider's relative share for Indigenous students of EFTSL, EFTSL from regional areas and remote areas, success rate and course completions;

Item 5 establishes a floor and ceiling for the amount of Pool B an eligible higher education provider is entitled to. Each eligible higher education provider's ceiling is set at 115 percent of the provider's ISSP grant in the previous grant year (less any amount for preserved Indigenous Commonwealth Scholarships). Each eligible higher education provider's floor is set at 85 per cent of the provider's ISSP grant in the previous grant year (less any amount for preserved Indigenous Commonwealth Scholarships). A transitional arrangement is provided for the 2017 grant year.

Item 6 provides for an eligible higher education provider's raw share is then tested and adjusted, if necessary, to ensure the ISSP grant amount less an amount for preserved Indigenous Commonwealth Scholarships is within the provider's floor and ceiling and also to also ensure the total for ISSP grants is fully allocated;

Item 6 then provides for an eligible higher education provider's Pool A entitlement for preserved Indigenous Commonwealth Scholarships to be added to the provider's Pool B entitlement to establish the provider's ISSP grant amount in the grant year.

The process may be repeated in the grant year after the last business day of April to maximise the use of any unused preserved Indigenous Commonwealth Scholarship and to correct any errors subsequently discovered in a provider's allocation.

At Schedule 1, paragraph (4)(b), the amount for Batchelor Institute of Indigenous Tertiary Education is required to be adjusted because a sum of funding relating to that provider's Indigenous Support Programme allocation was transferred into the National Institutes Programme administered by the Department of Education and Training. This transfer is referred to in the 2016-17 Budget papers under the Indigenous Student Success in Higher Education expense measure.

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

This legislative 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 238-10 of the *Higher Education Support Act* (the Act) provides that the Minister may, by legislative instrument, make Guidelines for the purposes of Part 2-2A of the Act (Item 6A of the table in section 238-10).

This instrument makes the Indigenous Student Assistance Grants Guidelines (the Guidelines) to implement the Indigenous Student Success Programme. The Guidelines provide a framework to deal with grants under Part 2-2A of the Act.

Part 2-2A enables grants to certain higher education providers to assist Indigenous students. The policy objective of Part 2-2A of the Act is to address the current disparity between the higher education outcomes of Indigenous students and the higher education outcomes of non-Indigenous students.

The scheme established by Part 2-2A of the Act and these Guidelines responds to the 2012 *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People* (2012 Review), which recommended Commonwealth scholarships for Indigenous students be amalgamated and supplementary Indigenous support programmes overall be reformed to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates (Recommendations 13 and 17). The Commonwealth worked closely with universities to build on these recommendations.

Human rights implications

Careful consideration was given to Australia's obligations under key human rights instruments throughout the development of Part 2-2A and these Guidelines, particularly those listed at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Instruments that were considered in preparing these Guidelines relevantly include:

- the International Covenant on Civil and Political Rights (ICCPR);
- the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

These Guidelines engage the following human rights:

- Right to education: Article 13 of the ICESCR;

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- Right of equality and non-discrimination: Article 2 of the ICESCR; Articles 2, 16 and 26 of the ICCPR; and Article 5 of the ICERD.

Right to education

The right to education is contained in Article 13 of the ICESCR, which recognises the 'right of everyone to education.'

Relevantly, Article 13(2)(c) of the ICESCR recognises that for the full realisation of the right to education, 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means …'.

The United Nations Committee on Economic Social and Cultural Rights has stated that the right to education requires that functioning educational institutions and programmes must be available in sufficient quantity within a country.[1]

These Guidelines establish a framework for the Commonwealth to make grants to certain higher education providers for the purposes of:

- assisting Indigenous students to undertake higher education; and
- increasing the number of Indigenous students enrolling in, progressing in and completing courses leading to higher education awards.

Under the Guidelines, higher education providers may provide the following assistance to Indigenous students:

- scholarships to assist with accommodation costs or education costs, or as a reward for high achievement;
- academic support (including supplementary tuition);
- pastoral care and related support activities;
- strategies to build cultural competency; and
- activities to engage Indigenous students to enrol in university, and to engage Indigenous students who have withdrawn from study.

This assistance will enable Indigenous students to access higher education and attain higher education awards. The Bill therefore advances the right to education.

Right of equality and non-discrimination

The right of equality and non-discrimination is contained in Articles 2, 16 and 26 of the ICCPR, Article 2 of the ICESCR and Article 5 of the CERD.

[1] United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 13: The right to education (Article 13), 21st sess, UN Doc *E/C.12/1999/10 (8 December 1999), at paragraph [6]*.

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The right of equality and non-discrimination recognises that all human beings have the right to be treated equally and to not be discriminated against.

'Special measures'

To the extent that the Guidelines will mean Indigenous persons are provided with a different level of assistance to access higher education than other persons, the Guidelines are intended to be a 'special measure' within the meaning of Article 1(4) of the CERD and subsection 8(1) of the *Racial Discrimination Act 1975*.

'Special measures' are an exception to the general prohibition on racial discrimination, and are designed to 'secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms'.[2] For a measure to be characterised as a 'special measure' it must:

- Be for a particular group or individuals;
- Be taken for the sole purpose of securing the adequate advancement of those groups or individuals;
- Be 'necessary'; and
- Not continue after its objectives have been achieved.

These Guidelines provide for grants to higher education providers to provide assistance specifically to Indigenous students.

This measure has been taken for the sole purpose of securing the adequate advancement of Indigenous peoples to ensure their equal enjoyment or exercise of human rights, in particular the right to education and right of equality and non-discrimination.

The United Nations Committee on Economic Social and Cultural Rights has expressed concern about disparities in access to the educational system for Indigenous peoples, including those living in remote areas, compared with the rest of the population, as well as the deficient quality of education provided to persons living in remote areas, in particular Indigenous peoples.[3] Data available at the time Part 2-2A of the Act indicates that in Australia Indigenous peoples do not access or complete higher education at a rate equivalent to non-Indigenous peoples.

These Guidelines enable targeted assistance to Indigenous students and allows them to better access, progress in and complete higher education awards in order to address the disparity in access to, and completion of, higher education as exists between Indigenous persons and other persons.

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[2] Committee on the Elimination of Racial Discrimination, General Recommendation: No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination (August 2009), at paragraph [11].

[3] United Nations Committee on Economic Social and Cultural Rights, *Consideration of Reports submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights*, 42nd sess, UN Doc, E/C.12/AUS/CO/4 (22 May 2009), at paragraph [31].

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These measures are reasonably necessary to secure the equal enjoyment of the right to education and the right of equality and non-discrimination by Indigenous persons.

The 2012 Review recommended Commonwealth scholarships for Indigenous students be amalgamated and supplementary Indigenous support programmes overall be reformed to ensure funding was flexible, simple to administer and had a greater focus on improving retention and completion rates (Recommendations 13 and 17).

The Commonwealth worked closely with universities, including with Indigenous employees from universities across Australia and the National Aboriginal and Torres Strait Islander Higher Education Consortium, to develop the reforms implemented by Part 2-2A of the Act and these Guidelines.

Although the number of Indigenous persons accessing higher education is increasing, the arrangements provided for in Part 2-2A of the Act and these Guidelines are necessary to capitalise on improvements in Indigenous access to higher education and ensure students are not only enrolling, but also progressing and completing university awards, in greater numbers.

These arrangements are appropriate, adapted and proportionate as they will facilitate the consolidation of existing higher education programmes which are known to be effective but could be improved. Part 2-2A of the Act and these Guidelines streamline and increase the capacity of universities to tailor assistance to the individual needs of Indigenous students.

The Guidelines establish annual reporting requirements for higher education providers that receive a grant. Assistance offered by higher education providers using grants under these Guidelines will be monitored after twelve months and reviewed after two years to ensure that assistance has not diminished as a result of the flexibility in the new arrangements. If necessary, these Guidelines will be revised in 2018 to ensure appropriate assistance is being offered to Indigenous students. This will ensure that that there will be a continual evaluation of the level of assistance that needs to be provided until the objective of the measures are achieved.

These Guidelines meet the criteria to be characterised as a special measure.

Conclusion

These Guidelines are compatible with human rights.

Minister for Indigenous Affairs, Senator the Hon Nigel Scullion

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