

Commonwealth Scholarships Guidelines (Education) 2013

FRLI: F2013L02070

Portfolio: Education

Tabled: House of Representatives and Senate, 12 December 2013

PJCHR comments: Second Report of the 44th Parliament, tabled 11 February 2014

Response dated: 17 March 2014

Information sought by the committee

3.9 The instrument revokes the *Commonwealth Scholarships Guidelines (Education) 2010* and makes new guidelines to replace them. The new guidelines implement the 'efficiency dividend' on university funding and also set out Indigenous Commonwealth Scholarships separately from other Commonwealth Scholarships.

3.10 The committee sought further information on the impact of the 'efficiency dividend' on the right to education, including whether it would result in a reduction of funding available for, or numbers of, Commonwealth scholarships and if so, how any reduction is consistent with the right to education.

3.11 The committee also sought further information on the purpose of separating out Indigenous scholarships from other scholarships and whether the separation is consistent with the right to equality and non-discrimination.

3.12 The Minister's response appears as part of the overall response to the concerns raised by the committee in relation to this instrument and the *Higher Education (Maximum Amounts for Other Grants) Determination 2013*. The relevant extract from the Minister's response is attached.¹

Committee's response

3.13 The committee thanks the Minister for his response.

3.14 The committee notes that this instrument is no longer in effect as it was disallowed on 17 March 2014. However, the committee sets out its final views on the instrument below.

1 Letter from The Hon Christopher Pyne MP, Minister for Education, to Senator Dean Smith, Chair PJCHR, 17 March 2014, pp 1-2.

Right to education

3.15 The committee sought further information on whether the application of the 'efficiency dividend' would result in a reduction of funding for Commonwealth Scholarships, or a reduction in the number of scholarships available and, if so, how any reduction is reasonable, necessary and proportionate to achieving a legitimate objective.

3.16 The response states that there will be no impact on the number of education scholarships available and that the actual value of scholarships in each consecutive year will continue to increase. However, the application of the 'efficiency dividend' will result in a slower rate of growth in the value of the scholarships than would otherwise have occurred.

3.17 The committee considers that, due to the fact that the measure will result in a slowing of growth in the value of scholarships, the measure constitutes a limitation or retrogressive measure with respect to the right to education, which must be justified as reasonable, necessary and proportionate to achieving a legitimate objective.

3.18 The response states that '[t]he slower rate of growth in the value of scholarships under the Higher Education Support Act 2003 (HESA) is proportionate to the policy objective of contributing to repairing the Budget'.

3.19 The committee respects the right of the government to make decisions regarding the allocation of resources and considers the need to contribute to 'repairing the budget' to be a legitimate objective. However, the response does not address how the measure is proportionate to this objective. A human rights compatibility assessment of measures reducing support in a given sector may require consideration of the impact on groups who are vulnerable or socially disadvantaged and any possible alternatives that were considered. The committee has previously commented on the importance of human rights impact assessment in the budgetary process.²

3.20 On the basis of the information provided, the committee is unable to conclude that the instrument is compatible with the right to education.

2 See, for example, Parliamentary Joint Committee on Human Rights, *Third Report of the 44th Parliament*, pp 3-5.

Right to equality and non-discrimination

3.21 The committee sought further information on the purpose of separating out Indigenous scholarships from other Commonwealth scholarships and whether the separation constitutes legitimate differential treatment consistent with the right to equality and non-discrimination.

3.22 The response states that the separation addresses the allocation of responsibility for Indigenous policies, programmes and service delivery to the Department of Prime Minister and Cabinet (PM&C), which occurred on 18 September 2013. Further, on 12 December 2013, changes to the Administrative Arrangements Order transferred policy responsibility for the Indigenous Support programme, the Indigenous Commonwealth Scholarships programme and the Indigenous Staff Scholarships Programme to PM&C. According to the response:

[t]his separation is reasonable and proportionate to achieving the objective of ensuring that expenditure to redress the historical disadvantage experienced by indigenous people is both effective and directed to practical outcomes.

3.23 On the basis of the information provided, the committee makes no further comment on this issue. The committee notes it would have been helpful if this information had been included in the statement of compatibility.



**THE HON CHRISTOPHER PYNE MP
MINISTER FOR EDUCATION
LEADER OF THE HOUSE
MEMBER FOR STURT**

17 MAR 2014

Our Ref BR14-000738

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Dear Chair

Thank you for the opportunity to respond to the Committee's *Second Report of the 44th Parliament* insofar as it relates to the *Commonwealth Scholarships Guidelines (Education) 2013* (Scholarships Guidelines) and the *Higher Education (Maximum Amounts for Other Grants) Determination 2013* (Determination).

These Instruments are compatible with human rights. I have set out the reasons for their compatibility with human rights by addressing the Committee's questions below.

Commonwealth Scholarships Guidelines (Education) 2013

Will the implementation of the efficiency dividend result in a reduction of funding for Commonwealth scholarships or a reduction in the number of scholarships available?

Under the approach being implemented in the 2013 Scholarships Guidelines, there will be no impact on the number of education scholarships available.

The actual value of scholarships in each consecutive year will continue to increase. The efficiency dividend is resulting in a slower rate of growth in the value of the scholarships than otherwise would occur.

If so, how is any reduction reasonable, necessary and proportionate to achieving a legitimate objective?

The slower rate of growth in the value of scholarships under the *Higher Education Support Act 2003* (HESA) is proportionate to the policy objective of contributing to repairing the Budget.

What is the purpose of separating out Indigenous scholarships and other scholarships in the guidelines? Is this separation reasonable and proportionate to achieving a legitimate objective and therefore does it constitute legitimate differential treatment consistent with the right to equality and non-discrimination?

On 18 September 2013, the Department of Prime Minister and Cabinet became the responsible agency for the majority of Indigenous policies, programmes and service delivery, with the aim of streamlining arrangements, reducing red tape and prioritising expenditure to achieve practical outcomes on the ground.

In the *Commonwealth Scholarships Guidelines (Education) 2010*, the Indigenous Commonwealth Scholarships and a number of former Commonwealth Scholarship programmes were provided for in Part A and Part B, respectively, of Chapter 2, Commonwealth Scholarships. The former Commonwealth Scholarships were not specifically targeted to Indigenous students and while no new scholarships are being awarded under these programs, those students awarded a scholarship prior to 2010 have continued to receive scholarship payments (i.e. they are 'grandfathered').

In the 2013 Guidelines, Indigenous Commonwealth Scholarships were separated from the old 'grandfathered' Commonwealth scholarships, becoming Chapters 2 and 4 respectively.

Separation of Indigenous Commonwealth Scholarships program from other Commonwealth Scholarships enabled new Administrative Arrangement Orders to transfer responsibility for the Indigenous Commonwealth Scholarships Program to the Department of the Prime Minister and Cabinet and for the Commonwealth Scholarships (Grandfathered) Program to be the responsibility of the Department of Education.

On 12 December 2013, an Administrative Arrangement Order was made which transferred portfolio responsibility for HESA insofar as it relates to grants to higher education providers for the Indigenous Support programme, the Indigenous Commonwealth Scholarships programme and the Indigenous Staff Scholarships Programme, to the Department of the Prime Minister and Cabinet.

This separation is reasonable and proportionate to achieving the objective of ensuring that expenditure to redress the historical disadvantage experienced by Indigenous people is both effective and directed to practical outcomes.

Higher Education (Maximum Amounts for Other Grants) Determination 2013

Does the provision of lesser amounts for certain grants constitute a limitation on the right to education or a retrogressive measure?

No. The changes to these amounts do not constitute a limitation on the right to education or a retrogressive measure.

The maximum amounts for Other Grants are updated each year to take into account Budget decisions, estimated changes to indexation parameters, and changes to the timing of payments for projects. In past years, these changes were amendments to HESA. Beginning in 2013, these changes are made by legislative instrument.

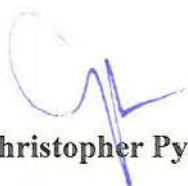
The changes in the current Determination do not affect students' access to education. The actual amount of funding available in each consecutive year will continue to increase, despite the changes to the maximum amounts. The changes to the maximum amounts do not affect the number of subsidised student places. They do not reduce the availability of income contingent loans under the Higher Education Loan Program, which enable students to defer the costs of their tuition. The changes also provide for an increase in the total funding for equity programs.

How is the reduction in funding considered reasonable, necessary and proportionate to achieving a legitimate objective?

The changes to the maximum amounts for Other Grants are proportionate to the policy objective of repairing the Budget so that higher education funding, and the educational opportunities it affords, can be sustained over the long term.

I trust the information provided is helpful.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'C. Pyne', written over the printed name.

Christopher Pyne MP