



Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023

No. 5, 2023

An Act to amend the *Higher Education Support Act 2003*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023

No. 5, 2023

An Act to amend the *Higher Education Support Act 2003*, and for related purposes

[Assented to 14 March 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023*.

No. 5, 2023

Higher Education Support Amendment (Australia's Economic Accelerator) Act 2023

1

2 Commencement

- (1) Each provision of this Act 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 this Act	The day after this Act receives the Royal Assent.	15 March 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Higher Education Support Act 2003

1 Subsection 41-10(1) (after table item 11)

Insert:

- | | | |
|-----|---|---|
| 11A | Grants to support arrangements to increase industry-led study and postgraduate research | *Table A providers, *Table B providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item |
|-----|---|---|

2 Subsection 41-10(1) (at the end of the table)

Add:

- | | | |
|----|--|---|
| 14 | Grants to assist higher education providers to undertake programs of research, in areas of national priority, that progress development of technologies and services to a state of commercial investor readiness | *Table A providers, *Table B providers and bodies corporate that are specified in the Other Grants Guidelines for the purposes of this item |
|----|--|---|

3 At the end of Part 2-3

Add:

Division 42—Australia’s Economic Accelerator

Subdivision 42-A—Research commercialisation strategy and investment plan

42-1 Research commercialisation strategy

- (1) The *AEA Advisory Board must make a written strategy, to be known as the research commercialisation strategy, to:

- (a) outline the vision, aims and objectives for translation and commercialisation of university research in areas of national priority; and
- (b) identify new and emerging technologies in areas of national priority; and
- (c) identify and propose ways of addressing regulatory, financial and cultural barriers to translating and commercialising university research in areas of national priority.

Note: For variation and revocation of a strategy, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (1A) The strategy must not be inconsistent with *Australia's greenhouse gas emissions reduction targets.
- (2) The first strategy must be made as soon as practicable after this section commences. A subsequent strategy must be made and in force as soon as the current strategy ceases to be in force.
- (3) A strategy is in force for 5 years.
- (4) The *AEA Advisory Board must give a copy of a strategy to the Minister as soon as practicable after making it.
- (5) The Minister must cause a copy of a strategy to be laid before each House of the Parliament.
- (6) A strategy made under subsection (1) is not a legislative instrument.

42-5 Investment plan

- (1) The *AEA Advisory Board must, in relation to each year, formulate written policies for the *Australia's Economic Accelerator program, dealing with the following matters in relation to the year:
 - (a) areas of national priority;
 - (b) the total amount of funding available;
 - (c) any other matters the AEA Advisory Board considers appropriate to deal with to ensure the program meets the program's objectives.

-
- (2) The *AEA Advisory Board must ensure that the policies are consistent with the research commercialisation strategy in force under section 42-1.
 - (3) A member of the *AEA Advisory Board, or a person performing functions or exercising powers under the *Australia's Economic Accelerator program, must not act inconsistently with policies formulated under subsection (1).

Subdivision 42-B—Advisory Board

42-10 Australia's Economic Accelerator Advisory Board

The Australia's Economic Accelerator Advisory Board (*AEA Advisory Board*) is established.

42-15 Functions of the AEA Advisory Board

The *AEA Advisory Board has the following functions:

- (a) to advise the Minister in relation to translation and commercialisation of university research;
- (b) to advise the Minister in relation to the *Australia's Economic Accelerator program, including in relation to objectives, conditions of eligibility and conditions of grants;
- (c) to oversee the performance of functions by priority managers engaged under section 42-75;
- (d) any other functions conferred on the *AEA Advisory Board by this Act or the Other Grants Guidelines;
- (e) to do anything incidental or conducive to the performance of the above functions.

42-20 Annual report

- (1) The *AEA Advisory Board must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the AEA Advisory Board's operations during the year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

- (2) The report must include details of:
 - (a) achievements and outcomes in translating and commercialising university research in areas of national priority; and
 - (b) regulatory, financial and cultural barriers to translating and commercialising university research in areas of national priority and proposed ways of addressing them.

42-25 Membership of the AEA Advisory Board

The *AEA Advisory Board consists of the following members:

- (a) the Chair;
- (b) the Deputy Chair;
- (c) not fewer than 4, and not more than 6, other members.

42-30 Appointment of members of the AEA Advisory Board

- (1) Members of the *AEA Advisory Board are to be appointed, on a part-time basis, by the Minister by written instrument.
- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: Subject to subsection (3), a member may be reappointed—see section 33AA of the *Acts Interpretation Act 1901*.
- (3) A member cannot be appointed for more than 3 consecutive periods.
- (4) The Minister must appoint one member to be the Chair and another to be the Deputy Chair.
- (5) The Minister must ensure that the members collectively:
 - (a) possess experience and knowledge in research and its translation and commercialisation; and
 - (b) represent the sectors of government, industry, business and research.

42-35 Acting AEA Advisory Board members*Acting by operation of law*

- (1) The Deputy Chair of the *AEA Advisory Board is to act as the Chair of the AEA Advisory Board:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Chair, see section 33A of the *Acts Interpretation Act 1901*.

Acting appointments

- (2) The Minister may, by written instrument, appoint a member to act as the Deputy Chair of the *AEA Advisory Board:
- (a) during a vacancy in the office of Deputy Chair of the AEA Advisory Board (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair of the AEA Advisory Board:
 - (i) is acting as the Chair of the AEA Advisory Board; or
 - (ii) is absent from duty; or
 - (iii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may, by written instrument, appoint a person to act as a member (other than the Chair or Deputy Chair) of the *AEA Advisory Board:
- (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member:
 - (i) is acting as the Deputy Chair; or
 - (ii) is absent from duty; or

(iii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Experience and knowledge etc. of acting members

- (4) Subsection 42-30(5) applies to an appointment under this section in the same way as it applies to an appointment under section 42-30.

42-40 Remuneration and allowances

- (1) A member of the *AEA Advisory Board is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by rules made under subsection (4).
- (2) A member of the *AEA Advisory Board is to be paid the allowances that are prescribed by rules made under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Minister may, by legislative instrument, make rules prescribing matters for the purposes of this section.

42-45 Leave of absence

The Minister may grant leave of absence to a member of the *AEA Advisory Board on the terms and conditions that the Minister determines.

42-50 Disclosure of interests to the Minister

A member of the *AEA Advisory Board must give written notice to the Minister of any direct or indirect pecuniary interest that the member has or acquires and that conflicts or could conflict with the proper performance of the member's functions.

42-55 Disclosure of interests to the AEA Advisory Board

- (1) A member of the *AEA Advisory Board who has an interest, pecuniary or otherwise, in relation to either of the following must disclose the nature of the interest to a meeting of the AEA Advisory Board:
 - (a) a decision by the AEA Advisory Board to recommend, or not recommend, approval of a grant under the *Australia's Economic Accelerator program;
 - (b) another matter being considered or about to be considered by the AEA Advisory Board.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the *AEA Advisory Board.
- (4) Unless the *AEA Advisory Board determines otherwise, the member:
 - (a) must not be present during any deliberation by the AEA Advisory Board on the matter; and
 - (b) must not take part in any decision of the AEA Advisory Board with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member:
 - (a) must not be present during any deliberation of the *AEA Advisory Board for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the *AEA Advisory Board.

42-60 Resignation

- (1) A member of the *AEA Advisory Board may resign the member's appointment by giving the Minister a written resignation.

- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

42-65 Termination

The Minister may terminate the appointment of a member of the *AEA Advisory Board for misbehaviour, or if any of the following applies:

- (a) the member is unable to perform the duties of the member's office because of physical or mental incapacity;
- (b) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors;
- (c) the member is absent, except on leave of absence, from 3 consecutive meetings of the AEA Advisory Board;
- (d) the member fails, without reasonable excuse, to comply with section 42-50 or 42-55 (which deal with the disclosure of interests).

42-70 Other terms and conditions

A member of the *AEA Advisory Board holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

Subdivision 42-C—Priority managers

42-75 Priority managers

- (1) The Secretary may, on behalf of the Commonwealth, engage persons to be known as priority managers:
- (a) to perform any functions conferred by the Other Grants Guidelines on priority managers in relation to the *Australia's Economic Accelerator program; and

(b) to provide technical and specialist advisory services to assist the *AEA Advisory Board in performing any functions conferred by the Guidelines on the Board in relation to the Australia's Economic Accelerator program.

(2) The persons are to be engaged on the terms and conditions that the Secretary determines.

4 At the end of subsection 179-5

Add:

; and (c) not *Australia's Economic Accelerator program information.

Note: See Division 181 for *Australia's Economic Accelerator program information.

5 Section 180-5

Before "*Higher*", insert "(1)".

6 At the end of section 180-5

Add:

(2) However, *Australia's Economic Accelerator program information is not *Higher Education Support Act information*.

Note: See Division 181 for *Australia's Economic Accelerator program information.

7 After Division 180

Insert:

Division 181—Protection, disclosure and use of Australia's Economic Accelerator program information

181-1 What this Division is about

An officer who discloses, copies or records information obtained or created by the officer for the purposes of the Australia's Economic Accelerator program, other than in the course of official employment, commits an offence if the information is personal information, or the officer's actions are likely to cause competitive

detriment to a person or found an action for breach of confidence.
This is the case unless an exception in this Division applies.

181-5 Object of this Division

The object of this Division is to give recipients and potential recipients of grants under the *Australia's Economic Accelerator program, and their industry partners, confidence that personal information and other sensitive information they provide in relation to the program will be dealt with appropriately.

181-10 Meaning of Australia's Economic Accelerator program information

Australia's Economic Accelerator program information is any information that was obtained or created by an *officer for the purposes of the *Australia's Economic Accelerator program.

181-15 Use of Australia's Economic Accelerator program information

Offence

- (1) An *officer commits an offence if:
 - (a) the officer:
 - (i) discloses information; or
 - (ii) makes a copy or other record of information; and
 - (b) the information is *Australia's Economic Accelerator program information that was obtained or created by the officer in the course of the officer's *official employment; and
 - (c) the disclosure did not occur, or the copy or record was not made, in the course of that official employment; and
 - (d) any of the following circumstances exist:
 - (i) the information is personal information within the meaning of the *Privacy Act 1988*;
 - (ii) the disclosure, or the making of the copy or record, causes or is likely to cause competitive detriment to a person;

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- (iii) the disclosure, or the making of the copy or record, finds or is likely to find an action by a person (other than the Commonwealth) for breach of a duty of confidence.

Penalty: Imprisonment for 2 years.

Exception—consent

- (2) Subsection (1) does not apply if the person to whom the information relates has consented to the disclosure, or the making of the copy or record.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Exception—authorised by this Division

- (3) Subsection (1) does not apply if the disclosure, or the making of the copy or record, is authorised by this Division.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Exception—required by a Commonwealth law

- (4) Subsection (1) does not apply if the disclosure, or the making of the copy or record, is required by a law of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

181-20 Disclosure of Australia’s Economic Accelerator program information to Minister and staff

A *Commonwealth officer may disclose *Australia’s Economic Accelerator program information to:

- (a) the Minister; or
- (b) a person employed under section 13 or 20 of the *Members of Parliament (Staff) Act 1984* as a member of staff of the Minister.

181-25 Disclosure of Australia’s Economic Accelerator program information by Minister

- (1) The Minister may make *Australia’s Economic Accelerator program information publicly available, if the information:
 - (a) relates to programs of research in respect of which grants have been approved for the purposes of item 14 of the table in subsection 41-10(1); and
 - (b) is any of the following:
 - (i) the name of a researcher;
 - (ii) a description of the field of research;
 - (iii) the amount of a grant;
 - (iv) other information of a general nature.
- (2) Despite subsection (1), the Minister must not disclose the information if a person demonstrates to the Minister that:
 - (a) release of the information would cause competitive detriment to the person; and
 - (b) the information is not in the public domain; and
 - (c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
 - (d) the information is not readily discoverable.

8 Section 206-1 (after table item 1A)

Insert:

1AA A	If a person applies for a grant for the purposes specified in item 14 of the table in subsection 41-10(1) and the grant is not approved—the decision not to approve the grant	section 41-20	the Minister
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9 Section 238-12

Before “Amounts”, insert “(1)”.

10 At the end of section 238-12

Add:

- (2) Subsection (1) does not apply in relation to amounts payable in respect of members of the *AEA Advisory Board (see Subdivision 42-B) or priority managers engaged under section 42-75.

11 Subclause 1(1) of Schedule 1

Insert:

AEA Advisory Board has the meaning given by section 42-10.

Australia's Economic Accelerator program means a program specified in the Other Grants Guidelines under which grants for purposes specified in item 14 of the table in subsection 41-10(1) are to be paid.

Australia's Economic Accelerator program information has the meaning given by section 181-10.

Australia's greenhouse gas emissions reduction targets means:

(a) if:

- (i) Australia's current nationally determined contribution was communicated in accordance with Article 4 of the Paris Agreement in June 2022; and
- (ii) that nationally determined contribution has not been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement;

the greenhouse gas emissions reduction targets set out in paragraphs 10(1)(a) and (b) of the *Climate Change Act 2022*;
or

(b) in any other case—the greenhouse gas emissions reduction targets included in:

- (i) Australia's current nationally determined contribution communicated in accordance with Article 4 of the Paris Agreement; or
- (ii) if that nationally determined contribution has been adjusted in accordance with paragraph 11 of Article 4 of

the Paris Agreement—that nationally determined contribution, as adjusted and in force from time to time.

Paris Agreement means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

[*Minister's second reading speech made in—
House of Representatives on 1 December 2022
Senate on 9 February 2023*]

(142/22)
