

**Research Infrastructure Equipment and Facilities  
Programme**

1998

**GRANT CONDITIONS**

regarding

**Section 23 of the**

**Higher Education Funding Act 1988**

administered by the

**Department of Employment, Education,  
Training and Youth Affairs**

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**Grant Conditions**  
**Regarding grants under section 23 of the**  
***Higher Education Funding Act 1988***  
**Department of Employment, Education and Training**

These Grant Conditions relate to the Grants to be made to your Institution as specified in the Delegate's Letter.

**1. Definitions**

1.1 In these Grant Conditions, unless the contrary intention appears:

- o '**Acknowledgment**' means the *Acknowledgment of the Conditions of Grant* form to be completed and returned by the Grantee to the Liaison Officer acknowledging that the Grantee shall receive the Grant subject to these Grant Conditions. The form is included in the Attachment to these Grant Conditions and applies to **all** grants named in the Delegate's letter of offer;
- o '**Act**' means the *Higher Education Funding Act 1988*, as amended, repealed or replaced from time to time;
- o '**Approved Proposal**' means the Grantee's Proposal as approved (including amendments, if any) by the Minister in accordance with section 23 of the Act;
- o '**Asset**' includes personal, real or incorporeal property, but shall not mean Intellectual Property;
- o '**Body**' means any person, agency or body, whether corporate or not, that is not an Institution;
- o '**Delegate**' means the person for the time being holding, occupying or performing the duties of the office of the person who signed the Delegate's Letter or any other person specified by the Minister in writing and notified to the Grantee;
- o '**Delegate's Letter**' means the letter addressed to the Grantee from the Delegate specifying the amount of the Grant in relation to any Approved Proposal(s) specified in the letter;
- o '**Department**' means the Commonwealth Department of Employment, Education, Training and Youth Affairs (DEETYA) or such other Department as may, from time to time, administer these Grant Conditions on behalf of the Commonwealth;
- o '**Facility**' means the research infrastructure, equipment or facility described in the Approved Proposal;
- o '**Following Year**' means the period of twelve months next following the Calendar year to which the Approved Proposal relates;
- o '**Grant**' means the amount of approved expenditure determined for the purpose of financial assistance for an approved proposal in accordance with subsection 23(3) of the Act;
- o '**Grant Conditions**' means these grant conditions and, where the context so admits, the Delegate's Letter and the Approved Proposal;

- o ‘**Grantee**’ means the Institution or Body first named in the Approved Proposal and to whom the Delegate’s Letter is addressed, being a beneficiary and holder of the Grant on behalf of any Participant(s), including any named officers, employees, agents and subcontractors of the Grantee, and the Grantee’s successors and assigns;
- o ‘**Institution**’ shall take the same meaning as an institution as defined for the purposes of Chapter 2 of the Act;
- o ‘**Intellectual Property**’ includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- o ‘**Liaison Officer**’ means the person for the time being holding, occupying or performing the duties in DEETYA of the office of Director, Research Infrastructure and Collaboration Section, Research Branch, Higher Education Division (16-18 Mort Street, Canberra, ACT 2601), or any other person specified by the Delegate in writing and notified to the Grantee;
- o ‘**Minister**’ means the Minister for Employment, Education, Training and Youth Affairs or such other Minister as may, from time to time, administer the Act or any officer to whom the Minister has delegated powers under section 112 of the Act;
- o ‘**Participant**’ means an Institution or Body, other than the Grantee, named in the Approved Proposal as a beneficiary of the Grant, including any named officers, employees, agents and subcontractors of the Participant, and the Participant’s successors and assigns;
- o ‘**Proposal**’ means the proposal submitted by the Grantee for funds under section 23 of the Act; and
- o ‘**Year**’ means the Calendar year to which the Approved Proposal relates.

## **2** *Precedence of the Act over documentation*

2.1 The Grantee acknowledges that these Grant Conditions are subject at all times to the operation of the Act, in particular:

- (a) the conditions regarding the use of the Grant and the reporting requirements specified in subsection 23(5) of the Act;
- (b) the requirements for the benefits of, and opportunities created by, any Grant to be equally available to female and male students under section 107 of the Act;
- (c) the ability for the Minister, where the Minister is satisfied that a condition applicable to a Grant has not been fulfilled, to require payment of an amount, not exceeding the amount of the Grant, specified under section 108 of the Act;
- (d) the determination of the time and manner of payments made under section 111 of the Act; and
- (e) the ability of the Minister to make any arrangements for the making of advances by way of the financial assistance under section 113 of the Act.

2.2 In the event of any conflict between these Grant Conditions and the Approved Proposal, these Grant Conditions shall prevail.

2.3 In the event of any conflict between the Approved Proposal and the Delegate's Letter, the Approved Proposal shall prevail.

### **3 *Grantee's specific obligations***

3.1 Payment of the Grant shall not occur until the Grantee has completed and returned the Acknowledgment. In cases where a Grantee is administering more than one Grant under the Equipment and Facilities Programme, only one Acknowledgment applying to all approved Grants is required to be completed.

3.2 The Grantee shall use the Grant in accordance with terms of the Approved Proposal, the Delegate's Letter and these Grant Conditions.

3.3 The Grantee shall ensure that any Participant has such access to the Facility at all reasonable times and in such appropriate manner as accords with the Approved Proposal.

3.4 The Grantee shall provide a copy of these Grant Conditions to the Participant and shall use all best endeavours to ensure that a Participant does not cause the Grantee to breach these Grant Conditions.

3.5 The Grantee shall submit an End of Year Report with the signatures of all Participants to the Liaison Officer by 31 March of the Following Year on its and any Participant's use of the Grant, including details regarding the following matters:

- (a) the expenditure of the Grant on the Facility, including any specific Assets, Intellectual Property, and significant purchases of equipment;
- (b) funding and/or other resources provided by any Participant towards meeting the aims of the Approved Proposal;
- (c) funding and/or other resources provided by any other Institution or Body other than the Grantee and any Participant towards meeting the aims of the Approved Proposal;
- (d) the extent to which the objectives of the Approved Proposal were met;
- (e) the achievements and developments in research, the outlook for the future, and any other outputs achieved resulting from the use of the Grant, including any advances in knowledge, relevant publications or international collaboration; and
- (f) use of the Facility by students, staff and other personnel of the Grantee, the Participants or any other Institution or Body.

The Department reserves the right to suspend payment of further instalments of any current Equipment and Facilities Programme grant until the End of Year Report has been received.

3.6 In accordance with subsection 23(5) of the Act, the Grantee shall submit an audited Annual Financial Report of Grant expenditure by 30 June in the Following Year to the Director, Finance and Legislation Section, Coordination Branch, DEETYA.

#### **4 Grant Use**

4.1 Where the amount of the Grant is less than the amount originally sought in the Proposal, the Grantee shall, before accepting the Offer of the Grant, assess whether the Grant can still be applied towards the Facility in keeping with the aims of the Approved Proposal.

4.2 The Grantee shall cause to be kept proper accounts and records of its transactions and affairs in relation to the use of the Grant in accordance with relevant accounting principles and as required by law, and shall do all things necessary to ensure that all payments made out of the Grant are correctly made and properly authorised and adequate control is maintained over the incurring of liabilities.

4.3 The Grant shall not be used as security for the purposes of obtaining commercial loans or entering into hire purchase arrangements nor for the purpose of meeting existing loan obligations.

#### **5 Unacquitted Grant Funds**

5.1 Where the Grantee believes that it will need to spend or commit any portion of the Grant after the Year, they may submit a carry over request in writing to the Director of the Research Infrastructure and Collaboration Section of the Department before 31 March of the Following Year for the Minister to make a determination under paragraph 108(c) of the Act for the Grantee to use that part of the Grant in the Following Year. A request to carry over funds must state the amount to be carried over, the date to which the funds are to be carried over, and an explanation as to why the funds could not be spent during the Year for which the grant was allocated. If the exact part of the Grant is not known, it shall be estimated by the Grantee as accurately as possible.

5.2 Any part of the Grant that is neither expended nor committed before the end of the Following Year shall be recovered by the Commonwealth in accordance with paragraph 108(a) of the Act following the advice provided in the 31 March - End of Year report by the Grantee. The amount to be recovered must be shown in the Institution's 31 March - End of Year Report and 30 June Annual Financial Report.

#### **6 Assets and Intellectual Property**

6.1 Any Asset purchased wholly or partly with the Grant shall not be encumbered in any way without the prior written approval of the Commonwealth and the Grantee shall take steps to safeguard that Asset against loss, damage or unauthorised use and to maintain it in good condition.

6.2 The ownership of any Asset purchased wholly or partly with the Grant shall be vested in the lead institution nominated in the Approved Proposal and listed in its Assets Register.

6.3 Intellectual Property that arises from the use of the Grant shall vest in the host institution or Body in accordance with normal institutional practice.

## **7. *Access to Premises & Records***

7.1 Without derogating from any other right under these Grant Conditions, the Grantee shall at all reasonable times give to the Delegate or to any persons authorised in writing by the Minister, access to premises occupied by the Grantee where the Facility is located or can be accessed and shall permit those persons to inspect the Facility.

7.2 Without derogating from any other right under these Grant Conditions, the Grantee shall at all reasonable times allow the Delegate or any persons authorised in writing by the Minister full and free access to all accounts, records, documents and papers of the Grantee relating directly or indirectly to any receipt or expenditure relating to the Grant.

7.3 Upon receipt of reasonable written notice from the Delegate, the Grantee shall provide any information required by the Commonwealth for monitoring and evaluation purposes of the Grant, the Facility or the Approved Proposal.

## **8. *Liaison***

8.1 The Grantee shall liaise with and report to the Delegate or the Liaison Officer as reasonably required by the Delegate regarding the use of the Grant or regarding the use of the Facility in accordance with the Approved Proposal.

8.2 The Grantee may nominate from time to time a person who has authority to receive and sign notices and written communications for the Grantee under these Grant Conditions and accept any request or direction in relation to the Approved Proposal.

## **9. *Acknowledgment & Publications***

9.1 In all publications, promotional materials and activities relating to the Approved Proposal or the Facility, the Grantee shall acknowledge the financial and other support it has received from the Commonwealth using the following form of words (or a variation approved by the Delegate): “This facility has been made possible through financial assistance from the Commonwealth Department of Employment, Education, Training and Youth Affairs”.

## **10. *Indemnity***

10.1 Subject to the provisions of these Grant Conditions, the Grantee shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as “those indemnified”) from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or

negligent act or omission of the Grantee, its officers, employees, agents or subcontractors in connection with Approved Proposal, the Facility or these Grant Conditions.

10.2 The Grantee's liability to indemnify the Commonwealth under clause 10.1 shall be reduced proportionally to the extent that any act or omission of the Commonwealth or its officers, employees or agents contributed to the loss or liability.

10.3 The indemnity referred to in clause 10.1 shall survive the expiration or termination of these Grant Conditions.

### ***11. Negation of Employment, Partnership and Agency***

11.1 The Grantee shall not represent itself, and shall ensure that its employees do not represent themselves, as being an employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

11.2 The Grantee shall not by virtue of these Grant Conditions be or for any purpose be deemed to be an employee, partner or agent of the Commonwealth, or as having any power or authority to bind or represent the Commonwealth.

### ***12. Entire Agreement and Variation***

12.1 These Grant Conditions constitute the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of these Grant Conditions.

12.2 Subject to the Act, no agreement or understanding varying or extending these Grant Conditions shall be legally binding upon either party unless in writing and signed by both parties.

### ***13. Waiver***

13.1 A waiver by either party in respect of any breach of a condition or provision of these Grant Conditions shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of either party to enforce at any time any of the provisions of these Grant Conditions shall in no way be interpreted as a waiver of such provision.

### ***14. Compliance with Law***

14.1 The Grantee shall in carrying out these Grant Conditions comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority.

### ***15. Assignment and Novation***

15.1 The Grantee shall not assign, in whole or in part, its benefits under these Grant Conditions without the prior written approval of the Commonwealth.

15.2 The Grantee shall not consult with any other person or body for the purposes of entering into an arrangement which will require novation of these Grant Conditions without first consulting the Commonwealth.

## ***16. Applicable Law***

16.1 These Grant Conditions shall be governed by and construed in accordance with the laws of the Australian Capital Territory and the parties agree, subject to the Contract that the Courts of that State or Territory shall have jurisdiction to entertain any action in respect of, or arising out of, these Grant Conditions.

## ***17. Notices***

17.1 Any notice, request or other communication to be given or served pursuant to these Grant Conditions shall be in writing and dealt with as follows:

- (a) if given by the Grantee to the Commonwealth: addressed and forwarded to the Department, for the attention of the Delegate at the address indicated in the Delegate's Letter or as otherwise notified in writing by the Delegate; or
- (b) if given by the Commonwealth to the Grantee: signed by the Delegate and forwarded to the Grantee at the address indicated in the Proposal or as otherwise notified by the Grantee under clause 8 [Liaison].

17.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid security post or facsimile, to the address of the party to which it is sent.

17.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
- (c) if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible.

ATTACHMENT**1998****RESEARCH INFRASTRUCTURE  
EQUIPMENT AND FACILITIES PROGRAMME GRANT(S)****Acknowledgment by Vice-Chancellor (or delegate)**

I hereby acknowledge that I accept the Grant(s) specified in the Delegate's Letter in relation to the Approved Proposal(s) subject to the *Higher Education Funding Act 1988* and to the Grant Conditions.

I also acknowledge that a copy of the Grant Conditions accompanied the Delegate's Letter and that I have read the Grant Conditions.

Finally, I warrant that I am entitled to sign this acknowledgment on behalf of the Grantee.

Name (*please print*): \_\_\_\_\_

Title: \_\_\_\_\_

Higher Education  
Institution (Grantee) \_\_\_\_\_

Signature \_\_\_\_\_

Date: \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_