

EDUCATION, SCIENCE AND TRAINING

**SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE
2006-2007 BUDGET ESTIMATES HEARING**

Outcome: 2

Output Group: 2.4 – Funding for Higher Education

DEST Question No. E065_07

Senator Wong asked on 1 June 2006, EWRE Hansard page 33.

Question:

You grant DEST grants funding to Carrick on certain conditions of grant; is that right? Where are they?

Answer:

Carrick Institute Conditions of Grant

Attached is the 2006 Conditions of Grant for the Carrick Institute for Learning and Teaching in Higher Education.

Commonwealth of Australia
Department of Education, Science and Training

Higher Education Support Act 2003

Determination under subparagraph 41-25(b)(i)

Conditions of Grant

**THE CARRICK INSTITUTE FOR LEARNING
AND TEACHING IN HIGHER EDUCATION
LIMITED**

ACN 30 109 826 628

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CONDITIONS OF GRANT

THE CARRICK INSTITUTE FOR LEARNING AND TEACHING IN HIGHER EDUCATION LIMITED

1. PREAMBLE

- 1.1 Under Division 41 of Part 2-3 of the *Higher Education Support Act 2003* (the “**Act**”), the body corporate specified in item 11(a) of the Schedule (the “**Recipient**”) is eligible for grants for activities that assure and enhance the quality of Australia’s higher education sector.
- 1.2 In accordance with subparagraph 41-25(b)(i) of the Act, where the Other Grant Guidelines do not specify conditions that apply to a grant, the grant is made on such conditions as determined in writing by the Minister (or his delegate).
- 1.3 The Minister for Education, Science and Training (the “**Minister**”) has approved a grant to the Recipient for an amount specified in item 2 of the Schedule (the “**Grant**”) subject to the conditions set out in this document (the “**Conditions of Grant**”).

CONDITIONS OF GRANT

2. THE GRANT

- 2.1 The Grant is in respect of the year specified in item 3 of the Schedule (the “**Grant Period**”).
- 2.2 The Grant is in respect of the activities specified in item 5 of the Schedule (the “**Activities**”). The Recipient must complete the Activities by the end of the Grant Period.
- 2.3 The Grant must be spent only on the Activities.
- 2.4 The manner and time of payments (as determined by the Minister and the Secretary respectively under subsections 164-5 (1) and 164-5(2) of the Act) are set out in Item 4 of the Schedule.
- 2.5 Interest earned by the Recipient on the Grant shall be taken to be part of the Grant and must be used and dealt with by the Recipient in accordance with these Conditions of Grant.
- 2.6 If the Recipient fails to spend an amount of a Grant (the “**Unspent Amount**”), the Recipient may request in writing to the Secretary, or the person specified in clause 7.1, that the Secretary:
 - (a) determine under paragraph 41-40(1)(b) of the Act that section 41-40 of the Act applies to the Recipient in respect of the Grant;
 - (b) specify under subsection 41-40(1) of the Act a part of the Unspent Amount that is taken to be granted to the Recipient under Part 2-3 of the Act in respect of the Year (the “**Rollover Grant**”); and
 - (c) determine under paragraph 41-40(3)(b) such other conditions under which the Rollover Grant is taken to be made.
- 2.7 The Recipient must not spend any of the Unspent Amount for any purpose without first receiving written notice from the Secretary (or a person acting on behalf of the Secretary) giving details of the Secretary’s determinations and specification referred to in clauses 2.6(a) to 2.6(c), above.

3. MANAGEMENT OF THE GRANT

3.1 The Recipient must:

- (a) ensure that the Grant is held in an account in the Recipient's name with a bank or credit union carrying on banking business in Australia and which is an account that:
 - (i) the Recipient solely controls;
 - (ii) is established solely to account for and administer the Grant; and
 - (iii) is separate from the Recipient's other operational accounts;
- (b) on request from the Department of Education, Science and Training (DEST), provide DEST and the authorised deposit-taking institution with an authority for DEST to obtain all details relating to any use of the account; and
- (c) identify the receipt and expenditure of the Grant separately within the Recipient's accounting records so that at all times the Grant is identifiable and ascertainable.

4. REPORTING

4.1 The Recipient must provide DEST with the following reports (the "**Reports**") in accordance with this clause 4 at the times specified below:

- (a) **An Annual Report** for the period to 30 June 2006 (due 31 October 2006)
- (b) **An End of Year Report** for the period 1 January 2006 to 31 December 2006 (due 28 February 2007).

4.2 The **Annual Report** must contain, for the period covered by the Report, at a minimum:

- (a) Financial Statements as prepared to meet the requirements of the Corporations Act 2001 and the *Commonwealth Authorities and Companies Act 1997* (due by 31 October 2006) which include:
 - (i) budget estimates;
 - (ii) annual Financial Report including Audited Financial Statements;
 - (iii) annual Director's Report; and
 - (iv) audit statement.
- (b) a summary of the following programmes:
 - Grants Scheme
 - Resource Identification Network
 - Fellowships and International Links
 - Discipline Based Activities
 - Awards Program

4.3 The **End of Year Report** must contain, for the period covered by the Report, at a minimum:

- (a) a detailed statement of income and expenditure for the Grant which must include a definitive statement as to whether the financial accounts are true and fair, and a statement of the balance of the Recipient's account (referred to in paragraph 3.1 of these Conditions of Grant); and
- (b) a statement that the Grant was expended in accordance with these Conditions of Grant.

4.4 The statements referred to in clauses 4.3(a) and 4.3(b) must be certified by:

- (a) the Recipient's chief executive officer; and
- (b) the senior executive officer employed by the Recipient who has primary responsibility for managing the Recipient's audit functions.

4.5 The Recipient must:

- (a) notify the Minister in writing of any event that may significantly affect the Recipient's capacity to meet these Conditions of Grant; and
- (b) provide the Minister (in the form required by the Minister and at such times specified by the Minister) with such other information that the Minister by notice in writing requires from the Recipient in respect of the Grant or compliance by the Recipient with these Conditions of Grant.

5. INTELLECTUAL PROPERTY RIGHTS IN THE REPORTS AND THE GRANT MATERIAL

- 5.1 Subject to this clause 5, ownership and Intellectual Property Rights in the Reports and the Grant Material vest immediately in the Recipient.
- 5.2 The Recipient grants to the Commonwealth a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit the Intellectual Property Rights in the Reports and the Grant Material for any purpose.
- 5.3 If a third party has Intellectual Property Rights in Non-Grant Material incorporated or supplied with the Reports or Grant Material, the Recipient must, if requested to do so, arrange for the grant to the Commonwealth of a licence in the same terms as set out in clause 5.2.
- 5.4 The Recipient must, if requested by the Commonwealth to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 5.
- 5.5 The Recipient warrants that it:
 - (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Reports, Grant Material and Non-Grant Material in accordance with this clause 5;
 - (b) will obtain valid written consents from all authors (including any authorised subcontractors under these Conditions of Grant involved in creating Reports, Grant Material and Non-Grant Material so that the Commonwealth's use of the Reports, Grant Material or Non-Grant Material in any way will not infringe any author's moral rights under the *Copyright Act 1968*.
- 5.6 The Recipient must provide DEST with a copy of the Reports or the Grant Material if requested to do so by DEST and in the form requested.
- 5.7 In these Conditions of Grant,
 - (a) "**Intellectual Property Rights**" includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
 - (b) "**Non-Grant Material**" means all Material created independently of the Grant (including Material in existence prior to the Grant Period) in which the Intellectual Property Rights are owned by the Recipient or a third party (alone or jointly with any other party) and which is:
 - (i) incorporated in;
 - (ii) supplied with, or as part of; or
 - (iii) required to be supplied with or as part of;Reports or the Grant Material;
 - (c) "**Material**" includes documents, equipment, software (including source code and object code), products, information and data stored by any means including copies and extracts of the same but does not include Assets;
 - (d) "**Grant Material**" means all Material other than Reports:

- (i) brought into existence as a result of complying with the Conditions of Grant;
- (ii) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (i); or
- (iii) copied or derived from Material referred to in paragraphs (i) or (ii).

6 ASSETS

6.1 The Recipient owns any Asset acquired or created with the Grant.

6.2 During the Grant Period the Recipient must:

- (a) use any Asset in accordance with these Conditions of Grant;
- (b) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 6, without the Minister's prior written approval;
- (c) safeguard all Assets against theft, loss, damage, or unauthorised use;
- (d) maintain all Assets in good working order;
- (e) maintain all appropriate insurances for all Assets to their full replacement value, noting the Commonwealth's interest in the asset under these Conditions of Grant, and provide satisfactory evidence of this on request from DEST;
- (f) if required by law, maintain registration and licensing of all Assets;
- (g) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
- (h) register all Assets on an assets register; and
- (i) as and when requested by DEST, provide copies of the assets register to DEST.

6.3 The Minister may require the Recipient to pay to the Commonwealth a proportion of the market value of an Asset which is equivalent to the contribution from the Grant to the purchase of the Asset:

- (a) if the Recipient sells or otherwise disposes of the Asset during the Grant Period (which must be with the Minister's prior written consent and subject to any conditions the Minister may impose); or
- (b) on completion of the Grant Period.

6.4 If the Recipient fails to make payment as required by clause 6.3 within 20 business days of receiving written notice from DEST:

- (a) the Recipient must pay the Commonwealth the interest on the amount from the date it was due, for the period it remains unpaid; and
- (b) the amount and interest are recoverable by the Commonwealth as a debt due to the Commonwealth by the Recipient.

6.5 If any of the Assets are lost, damaged or destroyed, the Recipient must reinstate the Assets including from the proceeds of the insurance and this clause 6 continues to apply to the reinstated Assets. Any surplus from the proceeds of the insurance must be notified to DEST and used and accounted for as part of the Grant under these Conditions of Grant.

6.6 In these Conditions of Grant, "**Asset**" means personal, real or incorporeal property which has a value of over \$5,000 inclusive of GST created wholly or partly from the Grant, but not including Intellectual Property Rights, Reports or Grant Materials.

7. ADDRESS FOR REPORTS AND NOTICES

7.1 The Reports required under clause 4 and any notice provided by the Recipient to DEST must be submitted in hard copy to:

Branch Manager, Teaching, Equity and Collaboration Branch
Department of Education, Science and Training
GPO Box 9880

CANBERRA ACT 2601

8. DISSEMINATION

- 8.1 The Commonwealth reserves the right to publicise the awarding of the Grant to the Recipient and information about any aspect of the Conditions of Grant at any time and in such a manner and to such parties as it sees fit.

9. ACKNOWLEDGMENTS, PUBLICATIONS AND PUBLICITY

- 9.1 When, at any time the Recipient publishes promotional material, books, articles, television or radio programmes, web sites, newsletters or other literary or artistic works or lays foundation stones/plaques relating to the Grant, the Recipient must include the acknowledgement: "*An initiative of the Australian Government Department of Education, Science and Training*" in a prominent position.

10. DISCLOSURE OF INFORMATION

- 10.1 DEST gives no undertaking to keep confidential these Conditions of Grant or any information contained in the Reports.
- 10.2 DEST gives no undertaking to keep confidential any information contained in the Grant Material or Non-Grant Material unless that information, when first disclosed to DEST, is clearly identified by the Recipient and is accompanied by a request from the Recipient that DEST treat the information as confidential, including reasons for the request. DEST reserves the right to accept or refuse a request to treat the information as confidential and will use the criteria set out in the Australian National Audit Office's Report Number 38/2000 *The Use of Confidentiality Provisions in Government Contracts* as a guide when determining whether to accept a claim for confidentiality.

11. INSURANCE

- 11.1 The Recipient must, for as long as any obligations remain in connection with the Grant, ensure that it has appropriate insurance, including:
- (a) Workers' compensation insurance for an amount required by the relevant state or territory legislation;
 - (b) Public liability insurance (ie, insurance that covers a Recipient's liability arising out of negligent acts or omissions that cause personal injury to other people or damage to the property of another person or organisation) for an amount of not less than ten million dollars (\$10,000,000) per claim; and
 - (c) Professional indemnity insurance (ie, insurance that covers a Recipient's liability arising out of performance of professional services or breach of professional duty) for an amount of not less than one million dollars (\$1,000,000) per claim.

12. INDEMNITY

- 12.1 The Recipient must indemnify the Commonwealth against any:

- (a) loss or liability incurred by the Commonwealth;
- (b) loss of or damage to Commonwealth property; or
- (c) loss or expense incurred by the Commonwealth in dealing with any claim against the Commonwealth, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Commonwealth;

arising from:

- (i) any act or omission by the Recipient, or any of the Recipient's employees, agents, or subcontractors in connection with these Conditions of Grant, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;

- (ii) any breach by the Recipient or any of the Recipient's employees, agents, or subcontractors of obligations or warranties under these Conditions of Grant;
- (iii) any use or disclosure by the Recipient, or its officers, employees, agents or subcontractors of Personal Information (as defined in the *Privacy Act 1988* (the "**Privacy Act**")) held or controlled in connection with these Conditions of Grant; or
- (iv) the use by the Commonwealth of the Grant Material or Reports, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including moral rights, as defined in the *Copyright Act 1968*) in Grant Material or Reports.

12.2 The Recipient's liability to indemnify the Commonwealth will be reduced proportionally to the extent that any fault on the part of the Commonwealth contributed to the relevant loss, damage, expense, or liability.

12.3 The Commonwealth's right to be indemnified is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

12.4 In this clause 12, "**fault**" means any negligent or unlawful act or omission or wilful misconduct.

13 PROTECTION OF PERSONAL INFORMATION

13.1 The Recipient must:

- (a) comply with the Information Privacy Principles (as defined in the Privacy Act) when doing any act or engaging in any practice in relation to Personal Information for the purposes of these Conditions of Grant, as if the Recipient were an agency as defined in the Privacy Act; and
- (b) deal with Personal Information received, created or held by the Recipient for the purposes of these Conditions of Grant only to fulfil its obligations under these Conditions of Grant; and
- (c) ensure that any contractor engaged by the Recipient to perform any of its obligations under these Conditions of Grant are contractually bound to comply with the Information Privacy Principles.

13.2 In this clause 13, "**received**" includes "**collected**".

14 RECORDS

14.1 The Recipient must make full and accurate records (including documents, information and data stored by any means) (the "**Records**") of its conduct of the Activities including the receipt and use of the Grant, the acquisition of any assets and the creation of Intellectual Property Rights in the Reports and the Grant Material.

14.2 Without limiting the effect of clause 14.1, the Recipient must keep financial records relating to the Grant to enable:

- (a) all income and expenditure related to the Grant to be identified in the Recipient's accounts;
- (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
- (c) the audit of those records in accordance with Australian Auditing Standards.

14.3 Subject to the Recipient's obligations under clause 13, records must be retained by the Recipient for 7 years after the end of the Grant Period.

15 ACCESS TO PREMISES AND RECORDS

- 15.1 The Recipient must at all reasonable times give:
- (a) the Auditor-General (meaning the office established under the *Auditor-General Act 1997*, including any other entity that may, from time to time, perform the functions of that office);
 - (b) the Privacy Commissioner (meaning the Office of the Privacy Commissioner, established under the *Privacy Act 1988*, including any other entity that may, from time to time, perform the functions of that Office);
 - (c) the Programme Delegate (being the person occupying the position specified in item 6 of the Schedule);
 - (d) a member of the National Investigations Unit in DEST, on production of photo identification;
 - (e) or any person authorised in writing by the Secretary:
 - (i) reasonable access to:
 - A. the Recipient's employees;
 - B. premises occupied by the Recipient;
 - C. Material; and
 - (ii) reasonable assistance to:
 - A. inspect the performance of the Activities;
 - B. locate and inspect Material;
 - C. make copies of Material and remove those copies;
- relevant to the Grant.
- 15.2 The rights referred to in clause 15.1 are subject to:
- (a) the provision of reasonable prior notice to the Recipient; and
 - (b) the Recipient's reasonable security procedures.
- 15.3 If a matter is being investigated which, in the opinion of a member of the National Investigations Unit in DEST or any person authorised in writing by the Secretary of DEST, may involve an actual or apprehended breach of the law, clause 15.2(a) will not apply.
- 15.4 The requirement for access specified in clause 15.1 does not in any way reduce the Recipient's responsibility to perform its obligations under these Conditions of Grant.

16 COMPLIANCE WITH LAWS AND POLICIES

- 16.1. The Recipient must, in carrying out its obligations under these Conditions of Grant, comply with:
- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
 - (b) any Australian Government policies relevant to the Grant and notified to the Recipient by the Minister at the time of the Grant.
- 16.2 The Recipient acknowledges that where it is required to give information to DEST, giving false or misleading information is a serious offence under the Criminal Code.

SCHEDULE TO CONDITIONS OF GRANT

1. The Recipient is The Carrick Institute for Learning and Teaching in Higher Education Limited.
2. The Grant is for the amount of \$23.875 million (not including GST).
3. The year in respect of which the Grant is made is 2006.
4. Payments will be made in the following instalments:

amount	Payment	Instalment
(a)	5 January 2006	\$11.9375 million
(b)	13 July 2006	\$11.9375 million

5. The Activities are:
 - (a) operating the company including such things as the costs associated with meeting requirements, staffing, auditing, facilities, insurance, legal and accounting advice, communications systems and website;
 - (b) operating the Board, including remunerations, travel and allowances for Board members;
 - (c) planning and undertaking activities to fulfil the Recipient's roles as specified by the Australian Government in *Our Universities: Backing Australia's Future*;
 - (d) building strong key stakeholder relationships;
 - (e) dissemination of good practice and professional development in learning and teaching;
 - (f) communication to the higher education learning and teaching community and, where appropriate and possible, to the community at large, of the outcomes of activities and the competitive grants program unless DEST agrees in writing that there are specific reasons that make this inappropriate; and
 - (g) communication with the Minister and Department on issues which may impact government policy.
 - (h) providing the following payments for the 2006 Carrick Awards for Australian University Teaching ("CAAUT")
 - (i) \$25,000 for Teaching Excellence awards, programmes that enhance learning and the Neville Bonner Award (40 awards);
 - (ii) \$50,000 for the Prime Minister's Award; and
 - (iii) \$10,000 each for Citations for Contribution to Student Learning (210 citations).
6. Payments of the 2006 CAAUT must be limited to Table A and Table B providers (as defined in the *Higher Education Support Act 2003* (the "Act")), and other bodies approved as higher education providers under the Act that receive funding under Part 2-2 of the Act (the Commonwealth Grant Scheme).
7. The Programme Delegate is:
Branch Manager, Teaching Equity and Collaboration Branch
Higher Education Group
Department of Education, Science and Training
GPO Box 9880
CANBERRA ACT 2601