

## **EXPLANATORY STATEMENT**

*Guidelines issued under section 238-10 of the Higher Education Support Act 2003*

Higher Education Provider Guidelines 2012

Issued by the authority of the Minister for Tertiary Education, Skills, Science and Research

### **Subject**

*Higher Education Support Act 2003*  
*Higher Education Provider Guidelines 2012*

### **Authority**

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines for the purposes of the Act. In particular, item 6 of the table at section 238-10 specifies that the Minister may make the *Higher Education Provider Guidelines* in order to carry out or give effect to the matters set out in Part 2-1 of the Act.

### **Purpose and operation**

The purpose of this instrument is to revoke the *Higher Education Provider Guidelines* dated 5 September 2005 (F2005L02590) (the Former Guidelines) and all subsequent amendments and make the Higher Education Provider Guidelines 2012 (the Guidelines).

### **Overview of the Higher Education Provider Guidelines**

#### **Chapter 1 Introduction**

- 1.1 Sets out the purpose of the Guidelines.
- 1.5 Sets out defined terms used within the Guidelines which directs interpretation of the Guidelines.

#### **Chapter 2 The tuition assurance requirements**

- 2.1.1 Introduces the tuition assurance requirements.
- 2.1.5 Sets out that the tuition assurance requirements have four parts: general requirements, course assurance requirements, student contribution or tuition fee requirements and administrative and other requirements.

- 2.1.10 Defines “First Provider” and states that the First Provider must satisfy the Secretary that it complies with the tuition assurance requirements.
- 2.1.15 Sets out an exemption to the operation of the tuition assurance requirements.
- 2.1.20 Outlines the remedies available to people enrolled in a course of study in the event that a First Provider ceases to provide that course of study.
- 2.1.25 Provides the meaning of “ceases to provide a course of study”.
- 2.1.30 Outlines other circumstances that may amount to ceasing to provide a course of study.
- 2.1.35 Further outlines other circumstances that may amount to ceasing to provide a course of study.
- 2.5.1 Requires that the First Providers and each of its tuition assurance administrators are legally separate entities and that they are not related to each other; not associated entities; not in a position where one is able to control the other; and that they do not have in common one half or more of the persons who are directors or officers of either entity as set out in the *Corporations Act 2001*.
- 2.5.5 Requires notice to be provided in writing to the Secretary where the requirements of 2.5.1 cease to be met; and an alternative proposal for the Secretary’s approval.
- 2.10.1 Sets out the arrangements which a First Provider must have in place in order to demonstrate, to the satisfaction of the Secretary, that it complies with paragraph 2.10.5 for each higher education course of study it provides. The First Provider must demonstrate one or more of the arrangements.
- 2.10.5 Sets out what a First Provider must do and must not require when a student chooses the course assurance option, in the event of a First Provider ceasing to provide a course of study in which the student was enrolled.
- 2.10.10 Requires a Second Provider to obtain approval as a higher education provider within a specified period, where they are named as a Second Provider in an agreement used to satisfy 2.10.1.
- 2.15.1 Sets out what arrangements a First Provider must have in place in order to demonstrate, to the satisfaction of the Secretary, that it complies with the requirements in paragraphs 2.15.5 to 2.15.30 for each higher education course of study it provides.
- 2.15.5 Sets out what a First Provider must do when a student chooses the student contribution / tuition fee repayment option, in the event of a First Provider ceasing to provide a course of study in which the student was enrolled.

- 2.15.10 Requires that a Repayment TAS Operator or Repayment Guarantor must, within ten business days of receiving notification from a First Provider under paragraph 2.15.5, repay the student any up-front payments paid for the course of study and repay to the Commonwealth any amounts paid to the First Provider by the Commonwealth to discharge the student's debt related to the course.
- 2.15.15 Details the processes to be undertaken by the Second Provider where special circumstances provisions apply to a student's withdrawal from a replacement unit provided by the Second Provider.
- 2.15.20 Requires the First Provider to notify its Repayment TAS Operator or Repayment Guarantor that the Second Provider has approved a student's special circumstances application.
- 2.15.25 Requires that where a special circumstances application under subsection 104-25 is approved, the Second Provider must liaise with the First Provider and the Secretary to ensure all things reasonably necessary are done to re-credit a student's FEE-HELP balance.
- 2.15.30 Requires the Repayment TAS Operator or Repayment Guarantor to pay, (within five business days of receiving notification from a First Provider or the Secretary):
  - (a) to the student, the total amount of any student payments made up-front to the First Provider for the replaced unit; and
  - (b) to the Commonwealth any amounts required to discharge the students debt in respect of the replaced unit.
- 2.20 Details the requirements for and the form of Statements of Tuition Assurance and Statements of Tuition Assurance Exemption and the manner in which they must be published.
- 2.25 Sets out the information that must be kept by First Providers and Second Providers, where stipulated, in relation to persons enrolled with the First and Second Providers, requires access to the information to be provided to the Commonwealth and sets out requirements placed on tuition assurance administrators once the tuition assurance scheme is activated.
- 2.30 Sets out the requirements for tuition assurance administrators to provide written tuition assurance offers where a First Provider ceases to provide a course of study. Also sets out requirements as to the form and contents of the written tuition assurance offer.
- 2.35 Allows bodies corporate to apply, in writing, to the Minister to be exempted from complying with the tuition assurance requirements.

### **Chapter 3 Particular Obligations on Certain Providers**

- 3.1 Sets out the purpose of the chapter.

- 3.5 Requires a Second Provider to meet its obligations under a legally binding agreement referred to in paragraph 2.3.1(b) of the Guidelines as well as the requirements placed on a Second Provider under Chapter 2 of the Guidelines.
- 3.10 Without limiting the requirements that may be placed on Exempt Providers, requires an Exempt Provider under subsection 19-40(2) of the Act to keep up-to-date enrolment information as though it were a First Provider for the purposes of 2.5.2.1 of the Guidelines.

## **Chapter 4 Grievance and Review Procedures**

- 4.1.1 Sets out the purpose of the chapter.
- 4.5.1 A provider, other than a Table A provider, must have a grievance procedure to deal with complaints from students and persons seeking enrolment relating to both academic and non-academic matters.
- 4.5.5 Sets out the necessary elements to be included in the grievance procedures required by 4.5.1 of the Guidelines.
- 4.5.10 Lists other requirements for providers in formulating and implementing grievance procedures such as: a mechanism for implementing the grievance procedures, general and specific fairness provisions; the communication of grievance procedures to the public and staff and record keeping requirements.
- 4.5.15 Requires that the grievance procedures cover all students or people seeking to enrol regardless of the location at which the grievance arose, the students place of residence or mode of study.
- 4.5.20 Provides that the grievance procedures document does not replace or modify procedures or any other responsibilities that may arise under other higher education provider policies or under statute or any other law.
- 4.10.1 States that providers reviewing reviewable decisions under chapter 3 of the Act must comply with section 4.10 and Division 209 of the Act.
- 4.10.5 Requires the provider to acknowledge, in writing, the receipt of an application for review and notify the applicant that the original decision is taken to be confirmed if no decision has been provided by the reviewer after 45 days.
- 4.10.10 Requires the reviewer to inform the applicant of their right to appeal the decision to the Administrative Appeals Tribunal and also requires the reviewer to provide contact details of the closest Administrative Appeals Registry and the approximate cost of lodging the application.

## **Chapter 5 Publication and Other Requirements for Student Contribution Amounts and Tuition Fees**

- 5.1.1 Sets out the purpose of the chapter.

- 5.5 Defines the start and end date for the first and second periods of a year. It also restricts the definition in 5.5.1 of the Guidelines to specific sections of the Act and paragraph 5.10.1 of the Guidelines.
- 5.10.1 Specifies the date by which a higher education provider must publish the schedule of student contribution amounts for place and tuition fees for a particular period.
- 5.15.1 Sets out matters to which a provider must not have regard when determining more than one student contribution amount or tuition fee.
- 5.20.1 Specifies the date before which a variation to a student contribution amount or tuition fee must be made.
- 5.25 Specifies the only circumstances in which a student contribution amount or tuition fee may be varied.
- 5.30.1 Specifies the date by which student cohort information must be published.
- 5.35.1 Requires a provider to advise the Department, in writing, of its intention to revoke a saved determination and specifies the date before which a saved determination may be revoked.

## **Chapter 6 Fees in Respect of Overseas Students**

- 6.1 Sets out the purpose of the chapter.
- 6.5 Sets out requirements for a higher education provider in determining fees for overseas students.
- 6.10 Sets out an exemption to paragraph 6.5.1 for formal exchange students and particular categories of postgraduate research students. It also defines 'formal exchange program' for the purposes of paragraph 6.10.1(a).
- 6.15 Sets out the minimum indicative course fees for 2012. It also requires indexation of amounts in paragraph 6.15.1 in accordance with the method set out in Division 198 of the Act.

## **Chapter 7 Fees for Goods and Services Incidental to Studies**

- 7.1 Sets out the purpose of the chapter.
- 7.5.1 Sets out the categories of fees that are to be considered 'incidental to studies' for the purposes of paragraph 19-102(3)(f) of the Act.

## **Commencement**

These Guidelines take effect on the day after the Guidelines are registered on the Federal Register of Legislative Instruments.

## **Consultation**

The changes made in revoking and remaking the Guidelines are largely technical in nature and do not significantly alter the relationship that exists between providers and the Act. Previous references to the Minister have been changed to the Secretary in some provisions. The reference to the Australian Universities Quality Agency has been removed as its functions have transferred to the Tertiary Education Quality and Standards Agency (TEQSA). The Department's name has been updated to reflect machinery of Government changes.

## **Statement of Compatibility with Human Rights**

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

### **HIGHER EDUCATION PROVIDER GUIDELINES 2012**

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**

The Higher Education Provider Guidelines 2012 are made by the Minister under section 238-10 of the *Higher Education Support Act 2003* (the Act).

The Higher Education Provider Guidelines set out the requirements for higher education providers in regards to tuition assurance arrangements, grievance and review procedures, publication of tuition fees and student contribution amounts, fees for overseas students and fees for goods and services that are incidental to studies.

#### **Human rights implications**

The Instrument engages the following human rights:

##### *Right to education*

The Instrument engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

The requirements contained in the Guidelines all aim at ensuring integrity in the higher education sector. For example, the tuition assurance requirements ensure that higher education providers have arrangements in place to ensure their students are guaranteed to be able to complete their course of study and, if necessary, to obtain a refund for any incomplete portion of their course, in the event that the higher education provider is no longer able to deliver the course. The grievance and review procedure requirements ensure that providers, other than public universities, have appropriate procedures in place to guarantee effective and fair handling of complaints about academic and non-academic matters.

To the extent that the right to education is engaged, this right is promoted by the Instrument as the Instrument aims to improve the integrity of higher education sector by ensuring that appropriate procedures and systems are in place.

#### **Conclusion**

This Instrument is compatible with human rights because it advances the protection of human rights.

**Senator Chris Evans, Minister for Tertiary Education, Skills, Science and Research**