**EXPLANATORY STATEMENT**

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

**Amendment No. 1 to the Administration Guidelines 2012**

**Issued by the authority of the**

**Minister for Tertiary Education, Skills, Science and Research**

**Subject:**

*Higher Education Support Act 2003*

Administration 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 1 of the table in section 238-10 specifies that the Minister may make *Administration Guidelines* (the Administration Guidelines) to give effect to matters set out in sections 19-37, 36‑21 and Chapter 5 of the Act.

**Purpose**

The purpose of the Instrument is to amend the Administration Guidelines to set out the requirements for determining a census date under section 169-25(2) of the Act. The *Higher Education Support Amendment (Streamlining and Other Measures) Act 2012* made amendments to subsection 169-25(2) of the Act to provide that a census date for a unit of study must be determined in accordance with the Administration Guidelines rather than the Act.

**Consultation**

Consultation was undertaken with industry, peak bodies, students and state and territory governments as part of the *VET FEE-HELP Redesign 2012* and these amendments are a direct result of that consultation. The amendments are technical in nature and do not change any requirements or obligations on approved higher education providers.

**Commencement**

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

**Detailed explanation of the amendments**

**Schedule 1 Amendments**

**Item 1 – Table of contents**

This item amends the table of contents to reflect the addition of new section 6.30 in the Administration Guidelines.

**Item 2 – Chapter 6**

This item repeals paragraph 6.1.1 of the Administration Guidelines and replaces it with a new paragraph 6.1.1 for the purposes of including a new paragraph (f) in the purposes of Chapter 6. Paragraph (f) is “Requirements for determining a census date under subsection 169-25(2) of the Act”.

This item also inserts a new section 6.30 in the Administration Guidelines, which is called “Requirement for determining a census date”. New paragraph 6.30.1 is also inserted in the Administration Guidelines, which specifies that a census date for a unit of study must not occur less than 20% of the way through the period during which the unit is undertaken.

**Statement of Compatibility with Human Rights**

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

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This 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 Instrument is made under section 238-10 of the *Higher Education Support Act 2003* (the Act).

The purpose of the Instrument is to give effect to matters set out in section 19-37, 36-21 and Chapter 5 of the Act. The Instrument amends the Administration Guidelines to set out the requirements for determining a census date under section 169-25(2) of the Act

**Human Rights Implications**

*Right to Education*

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

This Instrument has effects the determination of census dates for units of study. To the extent that the right to education is engaged, this right is promoted by the Instrument as the Instrument will clarify the requirement on higher education providers to set census dates for units of study.

**Conclusion**

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