

EXPLANATORY STATEMENT

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

Amendment No. 2 to the Administration Guidelines 2012

**Issued by the authority of the
Minister for Higher Education**

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. Item 1 of the table in section 238-10 specifies that the Minister may make Administration Guidelines 2012 to give effect to matters set out in sections 19-37, 36-21 and Chapter 5 of the Act.

Purpose

This legislative instrument amends the Administration Guidelines 2012 dated 28 November 2011. The amendment aims to simplify and streamline requirements relating to the publication and submission of census dates and equivalent full-time student load for units of study in order to reduce administrative burden placed on higher education providers.

Consultation

Consultation was undertaken with industry, peak bodies, students, and state and territory governments as part of the design of these amendments. Further consultation was undertaken at the 2012 and 2103 Tertiary HELP Provider forums. The amendments are a result of these consultations.

The amendments do not place any further requirements on higher education providers approved under the Act.

Commencement

Amendment No. 2 to the Administration Guidelines 2012 takes effect on the day after registration on the Federal Register of Legislative Instruments.

Detailed explanation of the amendments

Item 1 and 2 – Chapter 1 - Introduction

Chapter 1 introduces the Guidelines.

Subchapter 1.5 provides guidance on reading the Administration Guidelines 2012.

- New definition of *Department* is inserted to provide a definition based on function rather than nomenclature. The Department that currently administers these guidelines at the time of the registration of this instrument is the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education.
- New definition for *published census date(s)* is inserted to provide for the ability for higher education providers to publish the census date as a specific date, or as referenced by the higher education provider.
- New definition for *published EFTSL value(s)* is inserted to provide for the ability for higher education providers to publish the census date as a specific date, or as referenced by the higher education provider.

Item 3 – Chapter 2 – Determining and publishing student services and amenities fees

Chapter 2 sets out the requirements for determining and publishing student services and amenities fees.

Subchapter 2.20 sets out the circumstances in which a higher education provider may vary a determination of a student services and amenities fee.

- Subparagraph 2.20.1(b) has been amended to provide a current email address for enquiries related to student services and amenities fees.

Item 4 to Item 9 – Chapter 6 – Publication requirements for census dates and EFTSL values

Chapter 6 sets out the requirements for publishing census dates and EFTSL values

Subchapter 6.5 sets out information regarding the period for publishing census dates and EFTSL values for higher education providers. The paragraph is amended to remove reference to two stipulated periods and replace with a period nominated to be on or after the earliest date of enrolment to the completion date for a unit of study.

- Paragraph 6.5.5 has been amended to provide for increased flexibility for the date by which a higher education provider must publish census dates and EFTSL values.

Subchapter 6.10 sets out the date by which a higher education provider must publish census dates and EFTSL values.

- Paragraph 6.10.5 has been amended to provide for increased flexibility for the date by which a higher education provider must publish census dates and EFTSL values and to include reference to the manner in which higher education providers must publish schedules of student contribution amounts and tuition fees.
- Paragraph 6.10.10 has been repealed as it is now redundant as a result of the amendments to paragraph 6.10.5.

Subchapter 6.15 sets out the dates before which a variation to census dates or EFTSL values must be made.

- Subchapter 6.15 and paragraph 6.15.1 and associated subparagraphs are repealed as requirements for variation to census dates or EFTSL values are specified in amended subchapter 6.20.

Subchapter 6.20 sets out the circumstances in which published census dates and EFTSL values may be varied by a higher education provider.

- Paragraph 6.20.1, and the subparagraphs contained therein, has been amended to ascertain the circumstances and date before which the higher education provider may vary a published census date or EFTSL value without Ministerial approval.
- Paragraph 6.20.5 has been amended to reflect the wording in amended paragraph 6.20.1 and reference the correct subparagraph in amended paragraph 6.20.1.

Subchapter 6.25 sets out the date by which and the manner in which varied census dates or EFTSL values must be published.

- Paragraph 6.25.1 has been amended to remove reference to the repealed subsection 6.15 and paragraphs contained therein, and correctly reference amended paragraph 6.20.1 that applies.
- Paragraph 6.25.5 has been amended to specify the manner in which the higher education provider must publish varied census dates or EFTSL values.
- Paragraph 6.25.10 has been repealed as it is now redundant as a result of the amendments to paragraph 6.25.5.

Subchapter 6.30 sets out requirements for determining a census date.

- Paragraph 6.30.1 has been amended to provide clarity as to how the higher education provider must determine the census date.

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 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 purpose of this legislative instrument is to give effect to matters set out in section 19-37, 36-21 and Chapter 5 of the Act.

Section 19-37 of the Act sets out administrative matters relating to the student services and amenities fee. Section 36-21 of the Act sets out administrative matters relating to special circumstances. Chapter 5 of the Act sets out administrative matters relating to payments made by the Commonwealth under the Act, administrative requirements imposed on higher education providers, electronic communication between higher education providers and students, management of information, tax file numbers of students, indexation of certain amounts, and reconsideration and administrative review of certain decisions.

The Administration Guidelines 2012 ascertain particular requirements to these matters, specifically relating to determining and publishing student services and amenities fees, special circumstances, notices to students, work experience in industry, census dates and equivalent full-time student load (EFTSL) values, and electronic communication.

This legislative instrument amends the provisions of the Administration Guidelines 2012 that set out requirements relating to publishing census dates and EFTSL for units of study. The amendment aims to simplify and streamline requirements relating to the publication and submission of census dates and EFTSL for units of study in order to reduce administrative burden placed on higher education providers.

Human rights implications

Right to education

This legislative instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

In particular, article 13(2)(b) states that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

This legislative instrument may indirectly promote the accessibility of education by improving the integrity of the higher education sector by ensuring that appropriate administrative procedures are in place.

Conclusion

This legislative instrument is compatible with human rights because it may indirectly promote the right to education.