

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Education and Training

Higher Education Support Act 2003

FEE-HELP Guidelines 2017

Purpose

The purpose of this instrument is to remake the FEE-HELP Guidelines made under section 238-10 of the *Higher Education Support Act 2003* (the Act).

These Guidelines specify listed professional occupations and assessing bodies for the purposes of bridging study under sections 104-60 and 104-55 of the Act and outline requirements for Open Universities Australia (OUA) for the purposes of section 104-3 of the Act.

Background

Section 238-10 of the Act provides that the Minister may make guidelines for the purposes of the Act. In particular, Item 4 of section 238-10 specifies that the Minister may make FEE-HELP Guidelines to give effect to matters set out in Part 3-3 of the Act.

These Guidelines repeal and replace the FEE-HELP Guidelines (as amended) which were first made in 2004 and which sunset on 1 October 2017 (F2015C00541) (Previous Guidelines).

Consultation

Open Universities Australia was consulted on the remake of these Guidelines.

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) has been consulted. A Regulation Impact Statement is not required for these Guidelines (OBPR ID 22757).

EXPLANATION OF PROVISIONS

Chapter 1

Chapter 1 of the FEE-HELP Guidelines 2017 provides definitions for terms used within the Guidelines.

Chapter 2

Chapter 2 of the FEE-HELP Guidelines 2017 specifies listed professional occupations for the purposes of section 104-60 of the Act and assessing bodies for those listed professional occupations for the purposes of section 104-55 of the Act.

Chapter 3

Chapter 3 of the FEE-HELP Guidelines 2017 sets out requirements for OUA for the purposes of section 104-3 of the Act.

Paragraph 3.5 requires OUA to be financially viable (both currently and likely to remain so in the future). It must provide an annual financial statement in the approved form and independent qualified auditors report on the statement within six months of the end of the relevant financial period.

Paragraph 3.10 sets out quality requirements for OUA. It requires it to have an Academic Program Board and specifies requirements relating to its role and membership. It also sets out requirements relating to students' access to units of study, the potential for articulation of OUA units with the higher education awards of higher education providers and the provision of information to students on the requirements and demands of units of study.

Paragraph 3.15 requires OUA to treat fairly all students accessing and seeking to access units of study through OUA. It requires OUA to have grievance and review procedures and a review officer to undertake reviews of decisions relating to the re-crediting of FEE-HELP balance. It requires OUA to comply with the information privacy principles of the *Privacy Act 1988* and to have procedures for students to access and obtain a copy of their personal information.

Paragraph 3.20 provides that OUA's administrative arrangements must support the provision of FEE-HELP assistance. It requires OUA to give to the Minister the same statistical and other information in respect of the provision of higher education and compliance with the requirements of the Act that the Minister requires of higher education providers. It requires OUA to inform the Minister of significant events affecting its capacity to comply with the Act and the FEE-HELP Guidelines 2017.

Paragraph 3.25 sets out the tuition fee requirements. It requires OUA to charge a student the tuition fee for a unit of study and not to charge a domestic student any other fee for the unit. There are some exceptions where OUA may charge a student an additional fee for the unit. It requires OUA to repay tuition fees to students who are no longer enrolled at the end of the census date. It requires OUA to give the Minister a schedule of tuition fees, the periods to which the schedule applies, the

circumstances under which the schedule may be varied, and the requirements for provision of a replacement schedule. The schedule must be published on OUA's website and provide sufficient information to enable a person to work out his or her tuition fees. Variations to tuition fees may only occur prior to the census date for the unit, and any variation must not disadvantage a person who is enrolled or seeking to enrol in the unit that is the subject of the variation.

Paragraph 3.30 requires OUA to issue a Commonwealth Assistance Notice to a person who is seeking FEE-HELP assistance for an OUA unit and provides for the correction of such notices. It also requires OUA to determine a census date for a unit of study for a year that occurs not less than 20% of the way through the period during which the unit is undertaken, and to publish those census dates before the earliest date a student may enrol in the unit of study. It sets out conditions for variation of census dates after publication. A variation of census date can only occur prior to the published census date and cannot disadvantage a person who is enrolled or seeking to enrol (for example by bringing the census date forward in time).

The Guidelines commence on the day on which they are registered on the Federal Register of Legislation.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

FEE-HELP Guidelines 2017

These Guidelines are 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 determination

Under the *Higher Education Support Act 2003* (the Act), bridging study, and FEE-HELP to defer the applicable tuition fees, is available to overseas-trained professionals who are permanent residents, and who require additional study in order to be accredited in their field in Australia. These Guidelines specify the listed professional occupations, and relevant assessing bodies, for the purposes of bridging studies under sections 104-60 and 104-55.

These Guidelines also contain requirements for Open Universities Australia (OUA). Under section 104-3 of the Act, OUA is able to enrol students in units of study, including offering Higher Education Loan Program assistance, subject to meeting requirements specified in these Guidelines.

These Guidelines specify that OUA must comply with financial viability, fairness, administrative, tuition fee and publication requirements.

Human rights implications

Right to education

Article 13 of the *International Covenant on Economic, Social and Cultural Rights* recognises the important personal, societal, economic and intellectual benefits of education. Article 13(2)(c) recognises that, for the full realisation of the right to education, higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means.

While overseas trained professionals have already accessed higher education, bridging study and the availability of FEE-HELP offers these individuals greater access to higher education required to become an accredited professional in Australia. By specifying the relevant occupations and assessing bodies in these Guidelines, the right to access higher education is being preserved. The availability of FEE-HELP to defer upfront costs for these studies is a crucial element to enable overseas trained professionals to access these higher education units of study.

These Guidelines do not introduce new charges or fees for individuals wishing to access bridging study, and therefore have no impact on the progressive introduction of free higher education.

These Guidelines ensure the integrity and sustainability of OUA, and the quality of the student experience in terms of administration, grievance procedures and overall education. OUA plays a valuable role in ensuring access to higher education via online courses and non-traditional delivery methods. For those who are unable to complete traditional education, OUA's ability to provide courses online is an important option in ensuring access to higher education. By ensuring the quality and sustainability of OUA, these Guidelines are fully compatible with the right to access higher education.

Right to privacy

The requirements for OUA also engage the right to privacy outlined in Article 17 of the *International Covenant on Civil and Political Rights*. Article 17 provides that no one shall be subject to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation.

The FEE-HELP Guidelines include privacy requirements that OUA must comply with. These include the requirements for the protection of personal information currently contained in the Act, as well as the Australian Privacy Principles in Schedule 1 to the *Australian Privacy Act 1988*. The Guidelines also provide mechanisms for students to access a copy of their personal information held by OUA, and to make complaints in relation to breaches of privacy.

By ensuring that OUA must comply with the strict requirements around the protection of personal information in the *Australian Privacy Act 1988* and the protection mechanisms embedded in the Act, these Guidelines are compatible with the right to privacy.

Conclusion

These Guidelines are compatible with human rights.