

REPLACEMENT EXPLANATORY STATEMENT

Determination made under section 30-12 of the Higher Education Support Act 2003

Higher Education (Designated Courses of Study) Specification 2020

Authority

The Higher Education (Designated Courses of Study) Specification 2020 (Specification) is made under section 30-12 of the *Higher Education Support Act 2003* (Act).

Purpose

The purpose of this Specification is to specify courses of study that are designated courses of study for the purposes of subsection 30-12(2) of the Act.

Commencement

The Specification commences on the day after it is registered on the Federal Register of Legislation.

Availability of merits review

Merits review is unnecessary, as the purpose of this Specification is to specify courses of study that are designated courses of study for the purposes of subsection 30-12(2) of the Act. Having regard to the established grounds set out in the Administrative Review Council's Guidance document, *What decisions should be subject to merit review?*, these types of decision, being tantamount to a legislation-like decision of broad application (and subject to the accountability safeguards that apply to legislative decisions) are not suitable for merits review.

Consultation

A comprehensive, open and transparent review of the Australian Qualifications Framework (AQF) was undertaken during 2019, with a final report released in October of that year. The terms of reference included an assessment of the role of micro-credentials, such as short courses, for inclusion in the Framework. Over 130 stakeholder submissions were received in response to the discussion paper, and the expert panel undertook three rounds of stakeholder consultation, including national consultation sessions, for the review. In December 2019, the Government accepted all recommendations of the review in relation to higher education and accepted the aims of recommendations of the review in relation to vocational education, contingent on further discussions with state and territory governments. The review includes a recommendation to revise the AQF reflect general capabilities and emerging skills needs and facilitate credit recognition for shorter form credentials such as micro-credentials.

States and territories were consulted extensively as part of the process for introducing the Undergraduate Certificate (UC) as an additional qualification type into the AQF. The Government will also undertake a review of the UC before the end of 2021 to determine its suitability to become a permanent part of the AQF.

In the lead up to the announcement of the April 2020 Higher Education Relief Package, informal discussions were held with the higher education sector on the concept of

introducing, on a trial basis, an accredited short course to allow people to upskill or reskill through a recognised qualification while physically isolating.

This instrument specifies courses leading to the award of an undergraduate certificate as ‘designated courses of study’ under the Act, meaning that funding can be provided for Undergraduate Certificates under that Act. The Undergraduate Certificate is a new award in the Australian Qualifications Framework (‘AQF’), providing a qualification of six months duration as part of the Australian Government’s Higher Education Relief Package in response to the COVID-19 pandemic.

As universities responded quickly and positively to the April 2020 Higher Education Relief Package, they were already offering a large number of short courses in a range of areas of national need by the time the Specification was drafted. As such, no additional consultation was undertaken on the Specification. In addition, more detailed consultation was not considered necessary as the Specification is beneficial to students and higher education providers.

Regulatory Impact Statement

Advice from OBPR (ID 26451) is that this is a minor proposal and a regulation impact statement is not required.

Explanation of the provisions

Section 1 provides that the name of the Specification is the *Higher Education (Designated Courses of Study) Specification 2020*.

Section 2 provides for the commencement of the Specification. The Specification commences on the day after it is registered on the Federal Register of Legislation.

Section 3 states that the Specification is made under subsection 30-12(2) of the Act.

Section 4 defines terms used in the Specification.

Section 5 provides that each instrument that is specified in a Schedule to the Specification is amended or repealed as set out in the Schedule.

Section 6 specifies the courses of study, in relation to Table A providers that are designated courses of study, including:

- (a) courses leading to an award of diploma;
- (b) courses leading to an award of advanced diploma;
- (c) courses leading to an award of associate degree;
- (d) courses leading to an award of undergraduate certificate; and
- (e) enabling courses.

This means that for these courses the Government provides funding to public universities for an agreed number of Commonwealth supported places in a given year.

Item 1 of Schedule 1 repeals the *Higher Education (Designated Courses of Study) Specification 2011*.

Statement of Compatibility with Human Rights

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

Higher Education (Designated Courses of Study) Specification 2020

This Specification is compatible with 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 Specification

The Higher Education (Designated Courses of Study) Specification 2020 (Specification) is made under subsection 30-12(2) of the *Higher Education Support Act 2003* (Act).

Human Rights implications

The Specification engages the right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right to education

The Specification engages the right to education contained in Article 13 of the ICESCR. The right to education recognises the important personal, societal, economic and intellectual benefits of education.

The Specification supports a high quality training and learning environment by subsidising tuition costs (through the Commonwealth Grant Scheme (CGS)) for higher education students across a wide range of discipline areas and qualification levels.

In doing so, the Specification promotes the right to pursue, develop and transmit knowledge and ideas through teaching and learning.

Conclusion

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

Dan Tehan

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