

# **EXPLANATORY STATEMENT**

Issued by the authority of the Minister of Education

## ***Higher Education Support Act 2003***

### ***Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020***

#### **Purpose**

The primary purpose of the *Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020* (the **Amendment Guidelines**) is to amend the *Higher Education Provider Guidelines 2012* (**Guidelines**) to put in place administrative and operational provisions to support the amendments made to the *Higher Education Support Act 2003* (**HESA**) through Schedule 2 of the *Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020* (the **Tuition Protection Act**).

Under section 19-66A of HESA, a higher education provider to whom Part 5-1A applies must comply with the tuition protection requirements. Section 16-30 of HESA provides that the tuition protection requirements include the requirements set out in the Guidelines. The Amendment Guidelines set out additional tuition protection requirements.

The Amendment Guidelines also contain technical provisions to support changes made to HESA through Schedule 4 of the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* (**Job-Ready Graduates Act**).

#### **Authority**

The Amendment Guidelines are made under section 238-10 of HESA, specifically item 6 of the table which specifies that the Minister may make Higher Education Provider Guidelines to give effect to matters under various provisions in HESA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendment of the Guidelines by the Schedule to this instrument relies on that provision.

#### **Overview**

The tuition protection requirements set out in the Amendment Guidelines specify matters with which higher education providers to whom Part 5-1A of the HESA applies must comply, including:

- requirements for the collection and recovery of the HELP tuition protection levy (**Levy**), including the issuing of Levy notices by the Higher Education Tuition Protection Director (the **Director**);

- detail around the written notices that higher education providers that default must give to students and the Director;
- other circumstances when a provider defaults in relation to a student that is additional to subsections 166-10(1) and (2) of HESA;
- detail around the Director's payments that are made in connection with tuition protection;
- detail around the written notice that defaulting higher education providers must give to the Director in notifying the outcome of discharging their obligations to the student in accordance with section 166-26A of HESA;
- other tuition protection requirements related to special circumstances.

The Amendment Guidelines also make technical amendments to the Guidelines to reflect changes made to HESA through Schedule 4 of the Job-Ready Graduates Act, including extending the application of certain provisions in the Guidelines to all higher education providers and updating references to sections of HESA.

## Background

The HELP Tuition Protection Service (**TPS**), which commenced on 1 January 2020, provides tuition protection to domestic higher education students that take out a HECS-HELP and/or FEE-HELP loan for their study costs at a private higher education provider. Part 5-1A and 5-1B of HESA, and the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* set out the HELP Tuition Protection Scheme requirements, and the Guidelines set out the administrative details for that scheme.

Based on feedback from higher education providers and peak bodies in 2019, the Commonwealth made a commitment to consider expanding the Commonwealth managed TPS to domestic up-front paying students in the higher education sector. The Tuition Protection Act and the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020* will commence on 1 January 2021 to deliver on this commitment.

These new tuition protection arrangements are modelled on the successful TPS for international students under the *Education Services for Overseas Students Act 2000*.

Schedule 1 of the Tuition Protection Act extends the TPS to domestic up-front fee paying higher education students, by amending the *Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)*. The expansion ensures domestic higher education students that take out a HELP loan and/or pay up-front for their study costs at a private higher education provider are assisted by either a recredit, refund or suitable replacement unit and course in the event that their provider defaults in failing to commence or ceasing to provide a unit of study and/or course.

Schedule 2 of the Tuition Protection Act amends HESA to give effect to:

- renaming the 'HELP Tuition Protection Director' to be the 'Higher Education Tuition Protection Director' to clarify that there is a single Director administering tuition protection for domestic up-front fee paying students and HELP students across the higher education sector;
- renaming the 'HELP Tuition Protection Fund Advisory Board' to be the 'Higher Education Tuition Protection Fund Advisory Board' (**Advisory Board**), to clarify that

there is an Advisory Board providing support, advice and recommendations to the Director on tuition protection arrangements for domestic up-front fee paying students and HELP students;

- renaming the existing 'HELP Tuition Protection Fund' established under subsection 167-1(1) of HESA, to be the 'Higher Education Tuition Protection Fund'. This special account will be used to make payments in relation to the arrangements to support affected domestic students in the higher education sector, regardless of whether they pay their tuition fees up-front or defer them through a HELP loan and for the remuneration and allowances of the Director and Advisory Board;
- requiring providers under the HELP Tuition Protection Scheme to discharge their tuition protection obligations upon default in relation to their affected students, and if not discharged then the Director must assist the affected students. This ensures that the tuition protection process is consistent for all affected higher education students, regardless of if they pay their tuition fees up-front or defer them through a HELP loan.

Schedule 4 of the Job-Ready Graduates Act amended the *Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017* to extend various quality and accountability requirements contained in HESA to all higher education providers, and introduced new student protection measures in HESA (that would again apply to all providers). These amendments support work being done in the higher education sector around best practice approaches to student enrolment and progression, and re-signal the quality of Australia's higher education sector both domestically and internationally.

Specifically, the measures contained in Schedule 4:

- prohibit all providers from engaging in unscrupulous marketing practices and from submitting requests for Commonwealth assistance on behalf of students;
- require a person to be a 'genuine student' in order to receive Commonwealth assistance;
- require providers to assess a person's academic suitability to undertake a unit of study prior to that person receiving Commonwealth assistance for that unit;
- prevent providers from pursuing ineligible students for student contribution amounts or tuition amounts where the provider is at fault;
- require a provider to re-credit a person's HELP balance in a range of circumstances including where the provider completes any part of the person's request for Commonwealth assistance for the relevant unit of study, or where the person was not entitled to HECS-HELP assistance in the first place;
- allow the Minister to audit all higher education providers for matters of compliance with HESA;
- enhance financial reporting requirements for, and improve assessment of the financial viability of providers;
- apply civil penalties to existing obligations on providers under Division 19 of HESA;
- preclude providers from imposing financial or administrative barriers to a student withdrawing from study;
- require all higher education providers to co-operate with HESA and Tertiary Education Quality and Standards Agency investigators;

- require all higher education providers to keep records of a kind, in the manner and for the period required by the Guidelines, and publish information as required by those guidelines;
- require a student to maintain an overall pass rate of 50 per cent to remain eligible for Commonwealth assistance; and
- require providers to assess a student's capability to enrol in a concurrent study load above 2.0 Equivalent Full Time Study Load (EFTSL).

## Consultation

The Amendment Guidelines provide procedural detail to support the HELP tuition protection scheme changes, as set out in Schedule 2 of Tuition Protection Act. Peak industry bodies and higher education providers were consulted in November 2020 by email in relation to this aspect of the Amendment Guidelines. The feedback received was positive and supportive of the procedural and administrative requirements contained in this instrument.

An exposure draft of Schedule 4 of the Job-Ready Graduates Act was released on the department's website (<https://www.dese.gov.au/job-ready/consultations/jobready-graduates-package-draft-legislation-submissions>) on 11 August 2020 for public consultation. A number of submissions were received on the draft legislation during the consultation period and these submissions were considered when finalising the Job-Ready Graduates Act. Noting that the changes in the Amendment Guidelines are minor technical amendments to implement changes made to HESA by the Job-Ready Graduates Act, it was not considered necessary or appropriate to consult on this aspect of the draft Amendment Guidelines.

## Regulatory Impact Statement

The Office of Best Practice Regulation (**OBPR**) has been consulted. Based on their advice that the proposal relating to the tuition protection requirements does not appear to have a more than minor regulatory impact on business, community organisations or individuals, no Regulation Impact Statement (**RIS**) was required (OBPR ID No. 42730).

The measures in Schedule 4 of the Job-Ready Graduates Act, including the changes made in Amendment Guidelines, have minimal regulatory impact. OBRP has determined that a RIS is not required (OBPR ID No. 25577; ID No. 42717).

# ***Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020***

## **Explanation of Provisions**

### **Section 1: Name**

1. This is a formal provision specifying the name of the instrument as the *Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020 (Amendment Guidelines)*.

### **Section 2: Commencement**

2. Section 2 provides the Amendment Guidelines commence on 1 January 2021.

### **Section 3: Authority**

3. Section 3 provides the Amendment Guidelines are made under section 238-10 of the *Higher Education Support Act 2003 (HESA)*.

### **Section 4: Schedules**

4. Section 4 provides that each instrument specified in a Schedule to the Amendment Guidelines is taken to be amended or repealed as provided in the applicable items in the Schedule concerned, and that any other item in a Schedule to the Amendment Guidelines has effect according to its terms.

### **Section 5: Application of amendments**

5. Section 5 provides that the amendments in items 3 and 4 of Schedule 1 to the Amendment Guidelines apply in relation to provider defaults that occur on or after the commencement of the Amendment Guidelines. The tuition protection requirements in the *Higher Education Provider Guidelines 2012 (Guidelines)* as in force immediately before the commencement of the Amendment Guidelines will continue to apply to provider defaults that occur before 1 January 2021.

## **Schedule 1 – Amendments**

### ***Higher Education Provider Guidelines 2012***

#### **Item 1 - Item (ii) (Authority)**

6. Item 1 of Schedule 1 updates item (ii) (Authority) at the start of the Guidelines to remove the reference to Part 2-1 of HESA. This is a technical amendment to reflect the fact that the Guidelines deal with matters in other parts of HESA, not just Part 2-1.

## Item 2 – Section 1.1 (Purpose)

7. Item 2 of Schedule 1 deletes section 1.1 (Purpose) of the Guidelines. This section is outdated and is no longer needed in the Guidelines.

## Item 3 – Paragraph 1.5.10

8. Item 3 of Schedule 1 deletes the definition of ‘Affected Student’ in the Guidelines as the term is no longer used in the Guidelines.

## Item 4 – Chapter 2

9. Item 4 of Schedule 1 replaces Chapter 2 (The Tuition Protection Requirements) of the Guidelines with new tuition protection requirements to support the changes made to the HELP tuition protection scheme in HESA as amended through the *Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020* (the **Tuition Protection Act**).

### *2.1 Purpose and application*

10. New Chapter 2 sets out the tuition protection requirements for the purposes of section 16-30 of HESA. New paragraph 2.1.5 prescribes the kind of providers to whom Part 5-1A of HESA does not apply, which includes Commonwealth, State and Territory owned higher education providers. This reflects existing section 2.5 of the Guidelines which is repealed by this item.

### *2.5 HELP tuition protection levy*

11. New section 2.5 includes requirements relating to the collection or recovery of the HELP tuition protection levy (**Levy**).
12. Paragraph 2.5.5 sets out the matters which the Higher Education Tuition Protection Director (**Director**) must include in a written notice to each provider who is liable to pay the Levy. Paragraph 2.5.10 clarifies that even if the Director does not give a provider a notice in accordance with paragraph 2.5.5, the provider is still liable to pay the Levy. The notes under paragraph 2.5.10 outline that the Levy is imposed on a higher education provider to whom Part 5-1A of HESA applies and a provider is required to pay the Levy when it is due and payable.
13. Paragraph 2.5.15 explains that a notice under paragraph 2.5.5 does not need to be given to the provider if the provider’s liability to pay the Levy is waived under paragraphs 2.5.30 or 2.5.35.
14. Paragraph 2.5.20 provides that the Director may give a written overdue notice to a provider to comply with a notice issued under paragraph 2.5.5 after the date the Levy is due and payable. Paragraph 2.5.25 specifies the matters the overdue notice must include.
15. Paragraph 2.5.30 provides that liability to pay the Levy is waived for all higher education providers for the calendar year 2020. This reflects the waiver under

existing paragraph 2.10.45A of the Guidelines (as repealed by this item) which was introduced through the *Higher Education Provider Amendment (Levy Waiver) Guidelines 2020* to support providers during the COVID-19 pandemic. Paragraph 2.5.35 provides that the liability to pay the Levy is also waived if prior to the time the Director issues a notice under paragraph 2.5.5, the provider's approval is revoked under HESA, the provider's registration is cancelled under the *Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)* or the provider is no longer in operation.

16. The existing internal and external review of Levy decisions in paragraphs 2.10.35 to 2.10.40 of the Guidelines (as repealed by this item) is replaced by new paragraphs 2.5.40 to 2.5.65 which provides a more robust internal review process for higher education providers to seek a reconsideration of a notice issued under paragraph 2.5.5 and retains the existing availability of external merits review under new paragraph 2.5.65.
17. A higher education provider may request the Director to reconsider a notice issued under paragraph 2.5.5 in relation to the determination of any components of the Levy (paragraph 2.5.40).
18. Paragraphs 2.5.45 to 2.5.60 sets out the internal review process. A higher education provider must make a request for an internal review in writing and give to the Director within 14 days after the day on which the provider received the notice. Paragraph 2.5.50 provides that the Director must reconsider the decision and confirm, vary or set the decision aside and substitute a new decision. The Director must give the provider written notice of the Director's internal review decision within 7 days after the decision is made, including a statement of reasons and new notice under paragraph 2.5.5 where the Director varies or substitutes the original notice.
19. Paragraph 2.5.65 provides that a higher education provider may make an application to the Administrative Appeals Tribunal for the review of a decision that has been confirmed, varied or set aside under paragraph 2.5.50. Paragraph 2.5.65 allows a provider to apply for independent merits review at the Administrative Appeals Tribunal of the Director's internal review decision.

#### *2.10 When a higher education provider defaults in relation to a student*

20. Paragraph 2.10.1 sets out additional circumstances where a higher education provider defaults in relation to a student. A provider defaults where a student is enrolled in a course of study with the provider and is not enrolled in any units of study within that course and the provider fails to commence the course on the day the course was scheduled to start or ceases to provide the course on a day after the course starts but before it is completed.
21. For example, if a student is enrolled in a course of study but deferred a semester (therefore not enrolled in any units) and the provider ceases to provide the course during that semester, the student would still be offered tuition protection under

HESA in the form of a suitable replacement course to assist the student to complete their course of study.

22. Similarly, if a student is enrolled in a course of study, and it is a semester break but the student has not yet enrolled in any units, and the provider defaults in delivering the student's course, then the student would also be provided with tuition protection under HESA in the form of a suitable replacement course to enable the student to continue their course of study.

#### *2.15 Notifying the Higher Education Tuition Protection Director of the details of the default*

23. Paragraph 2.15.1 sets out the additional requirements that a higher education provider must notify the Director about in the written notice given under subsection 166-15(3) of HESA. The additional information is necessary for the Director to promptly assist a student if a provider fails to discharge its obligations under HESA. In particular, the collection of the student's personal information (including contact information) is reasonably necessary for the Director to contact students and take steps to assist the student should the provider fail to discharge its obligations under HESA.

24. Paragraphs 2.15.5 and 2.15.10 specify other requirements for the notices given under subsections 166-15(2) and 166-15(3).

#### *2.20 Requirements of notice to student*

25. Paragraph 2.20.1 specifies the matters a higher education provider must include in a written notice of default to students under section 166-20 of HESA. Paragraph 2.20.5 provides the manner the provider must send the notice.

#### *2.25 Providers to notify of outcome of discharge of obligations*

26. Paragraph 2.25.1 sets out additional matters a higher education provider must include in its written notice to the Director under section 166-26A of HESA.

#### *2.30 Payments in connection with tuition protection*

27. Paragraph 2.30.1 provides that if a student accepts an offer of a replacement unit or replacement course, the Director may make a payment to the replacement provider or to another person in order to facilitate a student's placement in a replacement unit or replacement course. The Director should consider the matters at paragraph 2.30.5 in determining whether to make a payment and the amount of such a payment. The Director may make this payment out of the Higher Education Tuition Protection Fund (**Fund**) for the purposes of making payments in connection with tuition protection (paragraph 167-10(1)(a) of HESA).

#### *2.40 Other tuition protection requirements – special circumstances*

28. Paragraphs 2.40.1 to 2.40.10 set out tuition protection requirements for the purposes of subsection 36-20(4) of HESA.



29. If a higher education provider (the replacement provider) determines that section 36-20 of HESA applies to a person (i.e. amongst other requirements, is satisfied that special circumstances apply to the person under section 36-21 of HESA) and the person enrolled in the unit as a replacement unit, then the defaulting provider (see paragraph 2.40.20 of the Amendment Guidelines) must:
- pay the person an amount equal to the payment (or sum of payments) that the person made in relation to their student contribution amount for the affected unit. As the student would have paid any student contribution amounts for the affected unit to the defaulting provider, as opposed to in respect of the replacement unit, it is appropriate that the defaulting provider is responsible for this repayment; and
  - pay to the Commonwealth an amount equal to any HECS-HELP assistance to which the person was entitled to for the affected unit. Note section 97-25 of HESA deals with re-crediting a person's HELP balance in relation to HECS-HELP assistance in the circumstances of special circumstances.
30. Paragraph 2.40.5 provides that if the defaulting provider is unable to repay the person for the purposes of subparagraph 2.40.1(a), the Director must pay the person an amount equal to the payment (or sum of payments) that the person made in relation to their student contribution amount for the affected unit. The Director may make this payment out of the Fund for the purposes of making payments in connection with tuition protection (paragraph 167-10(1)(a) of HESA).
31. Paragraph 2.40.10 provides that if the Director makes a payment under paragraph 2.40.5, the defaulting provider must repay that amount to the Commonwealth for the purposes of the Fund. Paragraph 167-5(e) of HESA provides each amount received by the Commonwealth for the purposes of the Fund must be credited to the Fund.
32. Paragraph 2.40.15 sets out the tuition protection requirements for the purposes of subsection 110-5(1B) of HESA to provide that where the circumstances at subsection 110-5(1A) of HESA apply, then the defaulting provider must pay to the Commonwealth an amount equal to any FEE-HELP assistance to which the person was entitled to for the affected unit which the replacement unit replaces.
33. Paragraph 2.40.20 defines the meaning of 'defaulting provider' for the purposes of section 2.40.

**Items 5, 6 and 13 – Chapter 8 (heading) and paragraphs 8.1.1 and 9.1.1**

34. Items 5, 6 and 13 of Schedule 1 amend the heading of Chapter 8 and paragraphs 8.1.1 and 9.1.1 of the Guidelines to reflect the fact that the matters set out in Chapters 8 and 9 of the Guidelines are relevant to all higher education providers under HESA, not just those providers approved under section 16-25.

### **Items 7 and 8 – Paragraphs 8.2.1 and 8.3.1**

35. Items 7 and 8 of Schedule 1 amend paragraphs 8.2.1 and 8.3.1 of the Guidelines to provide that the requirements related to financial statements and financial viability set out in Chapter 8 of the Guidelines only apply to providers approved under section 16-25 of the HESA and not to Table A, B and C providers.
36. This is because Table A, B and C providers must already comply with the financial reporting requirements as prescribed by the Minister under paragraph 19-10(2)(a) of HESA. Table A providers are required to prepare general purpose financial statements and comply with the Financial Statement Guidelines, which are more comprehensive than the requirements under sections 8.2 and 8.3 of the Guidelines. The requirements under sections 8.2 and 8.3 were drafted specifically to address financial viability and transparency concerns relating to the providers approved under section 16-25 of HESA.
37. The student protection measures extended or strengthened through the Job-Ready Graduates Act were not related to financial viability or transparency concerns for Table A, B and C providers. However, the powers extended under the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020 (Job-Ready Graduates Act)* give the Government the ability to prescribe specific financial requirements for these providers in the Guidelines if financial concerns relating to these providers arise in the future.

### **Items 9, 11 and 12 - Subparagraphs 8.4.1(c), 8.7.5(c) and 8.7.5(d)**

38. Items 9, 11 and 12 of Schedule 1 amend subparagraphs 8.4.1(c), 8.7.5(c) and 8.7.5(d) to expand these provisions to include references to both FEE-HELP assistance and HECS-HELP assistance (and Commonwealth support where relevant). These changes reflect the fact that the requirements of section 19-36A regarding offering inducements, and section 19-73 regarding the publication of information by providers, have been extended to cover all higher education providers who may offer both FEE-HELP assistance and HECS-HELP assistance for their units of study.

### **Item 10 – After subparagraph 8.6.5(b)**

39. Item 10 of Schedule 1 amends paragraph 8.6.5 of the Guidelines to insert a new paragraph (c) requiring providers to keep records relating to a determination by the provider that undertaking a unit will not impose an unreasonable study load on a person for the purposes of subsections 36-12(2) and 104-1AA(2) of HESA. Sections 36-12 and 104-1AA are new provisions that require providers to assess a student's capability to enrol in a concurrent study load above 2.0 EFTSL.
40. If the provider does not determine that undertaking a unit will not impose an unreasonable study load on a person for the purposes of subsections 36-12(2) and 104-1AA(2) (i.e. undertaking a study load of 2 EFTSL would impose an unreasonable study load on the person), the person is not eligible to be a Commonwealth supported student or to receive FEE-HELP assistance in relation to the relevant unit. Item 10 only requires the provider to report on determinations made under

subsections 36-12(2) and 104-1AA(2), it does not have any effect on a provider's decision making in relation to these determinations.

**Item 14 – Paragraph 9.2.1**

41. Item 14 of Schedule 1 amends paragraph 9.2.1 to update references to sections of HESA to reflect changes to the genuine student requirements made by the Job-Ready Graduates Act. The Job-Ready Graduates Act repealed subsection 104-1(1A) and replaced it with new subsection 104-1(1AB), and also created new subsection 36-5(6). These changes aligned the application of the genuine student requirements across both HECS-HELP/Commonwealth support and FEE-HELP.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### ***Higher Education Amendment (Tuition Protection and Other Measures) Guidelines 2020***

The *Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020* (the **Amendment 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**

The primary purpose of the Amendment Guidelines is to amend the *Higher Education Provider Guidelines 2012 (Guidelines)* to put in place administrative and operational provisions to support the amendments made to the *Higher Education Support Act 2003 (HESA)* through Schedule 2 of the *Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020* (the **Tuition Protection Act**).

Under section 19-66A of HESA, a higher education provider to whom Part 5-1A applies must comply with the tuition protection requirements. Section 16-30 of HESA provides that the tuition protection requirements include the requirements set out in the Guidelines. The Amendment Guidelines set out additional tuition protection requirements.

The Amendment Guidelines also contain technical provisions to support changes made to HESA through Schedule 4 of the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020 (Job-Ready Graduates Act)*.

The tuition protection requirements set out in the Amendment Guidelines specify matters with which higher education providers to whom Part 5-1A of the HESA applies must comply, including:

- requirements for the collection and recovery of the HELP tuition protection levy (**Levy**), including the issuing of Levy notices by the Higher Education Tuition Protection Director (the **Director**);
- detail around the written notices that higher education providers that default must give to students and the Director;
- other circumstances when a provider defaults in relation to a student that is additional to subsections 166-10(1) and (2) of HESA;
- detail around the Director's payments that are made in connection with tuition protection;
- detail around the written notice that defaulting higher education providers must give to the Director in notifying the outcome of discharging their obligations to the student in accordance with section 166-26A of HESA;
- other tuition protection requirements related to special circumstances.

The Amendment Guidelines also make technical amendments to the Guidelines to reflect changes made to HESA through Schedule 4 of the Job-Ready Graduates Act, including

extending the application of certain provisions in the Guidelines to all higher education providers and updating references to sections of HESA.

## **Human rights implications**

### *Right to Education*

The Amendment Guidelines engage the right to education, which is set out in Article 13 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). Article 13 recognises the important personal, societal, economic and intellectual benefits of education. Article 13 provides that secondary education in its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

The Amendment Guidelines set out the administrative and technical details to support the changes made to HESA made through the Tuition Protection Act and Job-Ready Graduates Act. As a result, the Amendment Guidelines also promote the right to education as they are designed to support students in the event of a provider default (through tuition protection requirements) and give effect to the changes made through the Job-Ready Graduates Act to improve access to higher education for students.

### *Right to Privacy*

The Amendment Guidelines indirectly engage the right to privacy, under Article 17 of the *International Covenant on Civil and Political Rights (ICCPR)*, which provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation and that everyone has the right to the protection of the law against such interference or attacks.

The right to privacy can be permissibly limited in order to achieve a legitimate objective and where the limitations are lawful and not arbitrary. Authorised disclosure of personal information also invokes the exception in Australian Privacy Principle (**APP**) 6.2(b) in Schedule 1 to the *Privacy Act 1988 (Privacy Act)*, which permits the disclosure of an individual's personal information for a secondary purpose where the disclosure is authorised by law.

In this case, the legitimate objective is the protection and support of FEE-HELP and HECS-HELP students in the event that their private higher education provider defaults, through the Australian Government's Tuition Protection Service (**TPS**) arrangements, which the Amendment Guidelines supports by setting out the procedural and administrative requirements to reflect the amendments made to HESA through Schedule 2 of the Tuition Protection Act.

Higher education providers to whom Part 5-1A applies, will have additional requirements to meet in notifying the Director in the written notice given under subsection 166-15(3) of HESA. It will include collection of a student's personal information (including contact information), which is reasonably necessary to be collected to enable the Director to contact students and take steps to assist the student should the provider fail to discharge its obligations under HESA. Subsequently, the Director's collection, use and disclosure of personal information from providers about their domestic higher education students

affected by provider default is reasonable, proportionate and necessary to support the effective administration of tuition protection to quickly and effectively assist students when a provider defaults. The Director is also required to comply with the relevant APPs regarding the collection, use and disclosure of this personal information. Thus, the Amendment Guidelines are compatible with the right to privacy by ensuring that appropriate safeguards and limitations apply to persons who use and disclose personal information specified in the Amendment Guidelines.

The Amendment Guidelines do not otherwise engage any human rights noting that the changes made to the Guidelines impose obligations on higher education providers, but do not impose obligations on, or otherwise affect the rights of, individuals (subject to the discussion above).

A detailed explanation of the human rights engaged by the enabling legislation is set out in the *Statement of Compatibility with Humans Rights* for the Education Legislation Amendment (Up-front Payments Tuition Protection) Bill 2020 and appended to the Explanatory Memorandum for that Bill. The Explanatory Memorandum can be found at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r6576](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6576)

Similarly, a *Statement of Compatibility with Humans Rights* was prepared for the Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020 and appended to the Explanatory Memorandum for that Bill. The Explanatory Memorandum can be found at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEGislation/Bills\\_Search\\_Results/Result?bId=r6584](https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6584)

## **Conclusion**

The Amendment Guidelines are compatible with human rights because they promote the protection of human rights.

**Minister for Education  
The Hon Dan Tehan**