

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment, Workforce, Skills, Small and Family
Business

Higher Education Support Act 2003

Higher Education Support (Student Learning Entitlement) Guidelines 2021

AUTHORITY

The *Higher Education Support (Student Learning Entitlement) Guidelines 2021 (SLE Guidelines)* are made under section 238-10 of the *Higher Education Support Act 2003 (HESA)*.

Subsection 238-10(1) of HESA provides that the Minister may, by legislative instrument, make Guidelines as specified in the table in subsection 238-10(1) providing for matters: (a) required or permitted to be provided, or (b) necessary or convenient to be provided to carry out or give effect to the provisions set out in that table. Relevantly, from 1 January 2022, the Minister is empowered to make the Student Learning Entitlement Guidelines providing for matters that are required or permitted to be provided by Part 3-1 of HESA, or necessary or convenient to be provided to carry out or give effect to Part 3-1 of HESA (refer to Schedule 4B to the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020 (Amendment Act)*).

The Minister may, in accordance with subsection 4(2) of the *Acts Interpretation Act 1901 (AIA)*, exercise the power to make the SLE Guidelines in the period after the Amendment Act is enacted but before the enabling provisions commence. If the SLE Guidelines are made and registered before 1 January 2022, the Minister relies on this power to ensure the SLE Guidelines will become effective from 1 January 2022, at the same time as Part 3-1 of HESA (containing the substantive provisions relating to the Student Learning Entitlement) commences.

BACKGROUND, PURPOSE AND OPERATION

A person may be a Commonwealth supported student in relation to a unit of study (and therefore be entitled to HECS-HELP assistance for that unit) if, among other things, the unit is covered by the person's Student Learning Entitlement (see sections 36-10 and 90-1 of HESA). A person's SLE amount (as referred to in section 73-1 of HESA) is reduced as the person undertakes units of study as a Commonwealth supported student. The person's SLE amount may also be re-credited in certain circumstances.

Part 3-1 of HESA deals with the Student Learning Entitlement. Section 70-5 of HESA provides that the Student Learning Entitlement is also dealt with in the Student Learning Entitlement Guidelines, and that the provisions of Part 3-1 indicate when a particular matter is or may be dealt with in the Student Learning Entitlement Guidelines.

Under section 73-1 of HESA, a person's Student Learning Entitlement is an entitlement that consists of:

- ordinary SLE that the person has – being the equivalent of 7 years of full-time study. Generally, this would cover a student's undergraduate studies;
- any additional SLE that the person has – being an extra amount of SLE a person has if they are enrolled in a course of study (or course of study of a kind) specified in the Student Learning Entitlement Guidelines and if they meet any other requirements specified in those Guidelines. Generally, additional SLE is intended to cover longer undergraduate courses of study and further studies in honours or postgraduate courses;
- any lifelong SLE that the person has – being an extra amount of SLE a person has in the circumstances specified in the Student Learning Entitlement Guidelines. Generally, lifelong SLE is intended to cover further studies later in a person's career.

A person's SLE amount at a particular time is the sum of: (a) the amount of ordinary SLE that the person has under subsection 73-5(3), (b) the amount of any additional SLE that the person has under subsection 73-10(3), (c) the amount of any lifelong SLE that the person has under subsection 73-15(3), taking into account any reduction or re-crediting that has occurred before that time under Division 76 or 79 of HESA, respectively.

The purpose of the SLE Guidelines is to provide for various administrative and operational matters to support the operation of Part 3-1 of HESA.

Specifically:

- Part 2 of the SLE Guidelines provides for matters relating to additional SLE by specifying: the courses of study, or kinds of courses, in relation to which a person has additional SLE, the requirements a person must meet to have additional SLE and how to work out the amount of additional SLE a person has;
- Part 3 of the SLE Guidelines provides for matters relating to lifelong SLE by specifying: the circumstances in which a person has lifelong SLE, the day on which the person has lifelong SLE and how to work out the amount of lifelong SLE a person has;
- Part 4 of the SLE Guidelines specifies how amounts of ordinary SLE, additional SLE and lifelong SLE are to be reduced if a higher education provider reduces a person's SLE amount at a particular time under subsection 76-1(1) of HESA;

- Part 5 of the SLE Guidelines specifies how amounts of ordinary SLE, additional SLE and lifelong SLE are to be re-credited if a higher education provider re-credits a person's SLE amount at a particular time under subsection 79-1(1) or 79-20(1) of HESA;
- Part 6 of the SLE Guidelines specifies the circumstances in which a higher education provider will be satisfied that special circumstances apply to a person in the context of an application by the person to have their SLE amount re-credited.

REGULATORY IMPACT

The Office of Best Practice Regulation (**OBPR**) has advised that a Regulation Impact Statement is not required (OBPR ID No. 44313).

COMMENCEMENT

The SLE Guidelines take effect from the later of: (a) the start of the day after the SLE Guidelines are registered (in case they are registered after 1 January 2022); and (b) on 1 January 2022, immediately after the commencement of Schedule 4B to the Amendment Act (in case they are registered before 1 January 2022). In both cases, the SLE Guidelines will be purely prospective in their effect (and cannot be effective before 1 January 2022).

CONSULTATION

The following stakeholders were consulted on draft SLE Guidelines:

- University peak bodies, namely Universities Australia, The Group of Eight, The Australian Technology Network of Universities, Innovative Research Universities and Regional Universities Network;
- The Australian Network of University Planners;
- select higher education providers with significant experience in higher education administrative matters.

This involved draft SLE Guidelines and draft explanation of provisions being provided by email for feedback from these parties. Any feedback received through this process was assessed and minor amendments were made to the SLE Guidelines as a result. These stakeholders were considered reasonable for consultation due to the largely technical nature of the SLE Guidelines, noting matters relating to the Student Learning Entitlement are largely set out in Part 3-1 of HESA.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support (Student Learning Entitlement) Guidelines 2021

The *Higher Education Support (Student Learning Entitlement) Guidelines 2021 (SLE 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 Legislative Instrument

A person may be a Commonwealth supported student in relation to a unit of study (and therefore be entitled to HECS-HELP assistance for that unit) if, among other things, the unit is covered by the person's Student Learning Entitlement (see sections 36-10 and 90-1 of HESA). A person's SLE amount (as referred to in section 73-1 of HESA) is reduced as the person undertakes units of study as a Commonwealth supported student. The person's SLE amount may also be re-credited in certain circumstances.

Part 3-1 of HESA deals with the Student Learning Entitlement. Section 70-5 of HESA provides that the Student Learning Entitlement is also dealt with in the Student Learning Entitlement Guidelines, and that the provisions of Part 3-1 indicate when a particular matter is or may be dealt with in the Student Learning Entitlement Guidelines.

Under section 73-1 of HESA, a person's Student Learning Entitlement is an entitlement that consists of:

- ordinary SLE that the person has – being the equivalent of 7 years of full-time study. Generally, this would cover a student's undergraduate studies;
- any additional SLE that the person has – being an extra amount of SLE a person has if they are enrolled in a course of study (or course of study of a kind) specified in the Student Learning Entitlement Guidelines and if they meet any other requirements specified in those Guidelines. Generally, additional SLE is intended to cover longer undergraduate courses of study and further studies in honours or postgraduate courses;
- any lifelong SLE that the person has – being an extra amount of SLE a person has in the circumstances specified in the Student Learning Entitlement Guidelines. Generally, lifelong SLE is intended to cover further studies later in a person's career.

A person's SLE amount at a particular time is the sum of: (a) the amount of ordinary SLE that the person has under subsection 73-5(3), (b) the amount of any additional SLE that the person has under subsection 73-10(3), (c) the amount of any lifelong SLE that the person has

under subsection 73-15(3), taking into account any reduction or re-crediting that has occurred before that time under Division 76 or 79 of HESA, respectively.

The purpose of the SLE Guidelines is to provide for various administrative and operational matters to support the operation of Part 3-1 of HESA.

Specifically:

- Part 2 of the SLE Guidelines provides for matters relating to additional SLE by specifying: the courses of study, or kinds of courses, in relation to which a person has additional SLE, the requirements a person must meet to have additional SLE and how to work out the amount of additional SLE a person has;
- Part 3 of the SLE Guidelines provides for matters relating to lifelong SLE by specifying: the circumstances in which a person has lifelong SLE, the day on which the person has lifelong SLE and how to work out the amount of lifelong SLE a person has;
- Part 4 of the SLE Guidelines specifies how amounts of ordinary SLE, additional SLE and lifelong SLE are to be reduced if a higher education provider reduces a person's SLE amount at a particular time under subsection 76-1(1) of HESA;
- Part 5 of the SLE Guidelines specifies how amounts of ordinary SLE, additional SLE and lifelong SLE are to be re-credited if a higher education provider re-credits a person's SLE amount at a particular time under subsection 79-1(1) or 79-20(1) of HESA;
- Part 6 of the SLE Guidelines specifies the circumstances in which a higher education provider will be satisfied that special circumstances apply to a person in the context of an application by the person to have their SLE amount re-credited.

Human rights implications

The SLE 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(2)(c) of the ICESCR provides 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'.

In particular, Part 2 and Part 3 of the SLE Guidelines promote the right to education by specifying:

- the courses of study, or kinds of courses, in relation to which a person has additional SLE and the requirements a person must meet to have additional SLE – these include

undergraduate courses of study requiring longer than 6 years of full-time study, honours courses of study requiring up to 1 year of full-time study, postgraduate courses of study and graduate entry bachelor degrees;

- the circumstances in which a person has lifelong SLE – these include where a higher education provider restructures a course of study in a manner that will require the person to undertake additional units of study in order to complete the course, or where a person is or was enrolled in a unit of study as part of a course of study with a higher education provider (which would enable them to undertake an additional 3 years of full-time study later in their career).

As a result, where a person meets the requirements in Part 2 and/or Part 3 of the SLE Guidelines, the overall time they will be able to study as a Commonwealth supported student will increase. As noted above, more generally, the SLE Guidelines provide for various administrative and operational matters to support the operation of Part 3-1 of HESA.

Together with Part 3-1 of HESA, the SLE Guidelines contain measures that are reasonable, necessary and proportionate to support the policy objective of ensuring broad access to Commonwealth supported study.

Conclusion

The SLE Guidelines are compatible with human rights because they promote the right to education.

Minister for Employment, Workforce, Skills, Small and Family Business
The Hon Stuart Robert MP

HIGHER EDUCATION SUPPORT (STUDENT LEARNING ENTITLEMENT) GUIDELINES 2021

EXPLANATION OF PROVISIONS

Section 1: Name

1. Section 1 specifies that the name of the instrument is the *Higher Education Support (Student Learning Entitlement) Guidelines 2021 (SLE Guidelines)*, which is how it is to be cited.

Section 2: Commencement

2. Section 2 provides that the SLE Guidelines will commence the later of: (a) the start of the day after the SLE Guidelines are registered; and (b) immediately after the commencement of Schedule 4B to the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020 (Amendment Act)*, which contains the enabling provisions for the SLE Guidelines and commences on 1 January 2022.
3. If the SLE Guidelines are made and registered after the Amendment Act is enacted but before the enabling provisions commence, the power to make the SLE Guidelines in that “pre-commencement” period will derive from subsection 4(2) of *the Acts Interpretation Act 1901 (AIA)* (noting this provision will not be applicable if the SLE Guidelines are made and registered on or after 1 January 2022). This commencement provision ensures the SLE Guidelines will commence and become effective on either: (a) the day after they are registered, if they are registered after 1 January 2022; or (b) on 1 January 2022, if they are registered before that day. In both cases, the SLE Guidelines will be purely prospective in their effect (and cannot be effective before 1 January 2022).

Section 3: Authority

4. Section 3 provides that the SLE Guidelines are made under section 238-10 of the *Higher Education Support Act 2003 (HESA)*. As noted above, if the SLE Guidelines are made and registered before 1 January 2022, they will also be authorised by subsection 4(2) of the AIA.

Section 4: Definitions

5. Section 4 defines some terms used in the Guidelines.
6. In particular, the term “course load” means the minimum aggregated EFTSL value of all the units of study required to complete the course of study to which the units relate. For example, a three-year Bachelor of Commerce may be made up of 4 units per semester

for six semesters. Each course is worth .125 EFTSL, aggregating to a course load of 3 EFTSL.

7. The note in section 4 explains that a number of expressions used in the SLE Guidelines (including those listed in the note) are defined in Schedule 1 to HESA.

Part 2 – Additional SLE

Section 5 – Purpose

8. Section 73-10 of HESA sets out when a person has additional SLE. Generally, additional SLE is intended to cover longer undergraduate courses of study and further studies in honours or postgraduate courses.
9. Section 5 of the SLE Guidelines provides that the purpose of Part 2 of the SLE Guidelines is to specify various matters for the purposes of section 73-10 of HESA, specifically:
 - a. the courses of study, or kinds of courses of study, in relation to which a person has additional SLE (for the purposes of paragraph 73-10(1)(b) of HESA). This is dealt with in section 6;
 - b. the requirements a person must meet to have additional SLE (for the purposes of paragraph 73-10(1)(c) of HESA). This is dealt with in section 6; and
 - c. how to work out the amount of additional SLE a person has (for the purposes of subsection 73-10(3) of HESA). This is dealt with in section 7.

Section 6 – Specified courses and requirements for additional SLE

10. Section 6 specifies the courses of study, or kinds of courses of study, in relation to which a person has additional SLE and the requirements a person must meet to have additional SLE.
11. Under subsection 6(1), a person has additional SLE where they are enrolled in an undergraduate course of study (other than an honours course of study or a graduate entry bachelor degree course of study) and the course load of that course is greater than 6 EFTSL. The amount of additional SLE that a person has in these circumstances is calculated in accordance with subsection 7(1).
12. Under subsection 6(2), a person has additional SLE where they are enrolled in an honours course of study and the course load for that course is less than or equal to 1 EFTSL. The amount of additional SLE that a person has in these circumstances is calculated in accordance with subsection 7(2).

13. Under subsection 6(3), a person has additional SLE where they are enrolled in a postgraduate course of study or a graduate entry bachelor degree course of study and, ignoring paragraph 36-10(1)(d) of HESA, they would be a Commonwealth supported student (as defined in section 36-5 of HESA) in relation to a unit of study that forms part of that course. The amount of additional SLE that a person has in these circumstances is calculated in accordance with subsection 7(2).
14. Section 36-10 of HESA deals with advice by a higher education provider on whether a person is a Commonwealth supported student, and paragraph 36-10(1)(d) specifies that a provider must not advise a person that they are a Commonwealth supported student in relation to a unit of study unless the unit is covered by the person's Student Learning Entitlement. This is why subsection 6(3) states that paragraph 36-10(1)(d) of HESA needs to be ignored, given it is partly what determines whether a person's Student Learning Entitlement is sufficient for the purposes of paragraph 36-10(1)(d) of HESA. The intention of subsection 6(3) of the SLE Guidelines is that a person has additional SLE only where they are enrolled in a postgraduate course of study or a graduate entry bachelor degree as a Commonwealth supported student.

Section 7 – How to calculate the amount of additional SLE

15. Section 7 sets out how to calculate the amount of additional SLE a person has.
16. Subsection 7(1) includes a formula for calculating the amount of additional SLE (expressed in EFTSL) a person has for an undergraduate study course of study (other than an honours course of study or a graduate entry bachelor degree course of study) that has a course load of greater than 6 EFTSL.
17. Subsection 7(2) includes a formula for calculating the amount of additional SLE (expressed in EFTSL) a person has for an honours course of study, a graduate entry bachelor degree course of study, or postgraduate course of study, assuming the person also meets the requirements in subsection 6(2) or 6(3) as applicable.

Part 3 – Lifelong SLE

Section 8 – Purpose

18. Section 73-15 of HESA sets out when a person has lifelong SLE. Generally, lifelong SLE is intended to cover further studies later in a person's career, and it acknowledges the importance of lifelong learning, balanced with the need to encourage students not to remain at university for extended periods of time. Under the SLE Guidelines, lifelong SLE

also covers circumstances where a student is required to undertake additional study due to a course restructure.

19. Section 8 of the SLE Guidelines provides that the purpose of Part 3 of the SLE Guidelines is to specify various matters for the purposes of section 73-15 of HESA, as follows:
- (a) the circumstances in which a person has lifelong SLE (for the purposes of subsection 73-15(1) of HESA). This is dealt with in section 9;
 - (b) the day on which a person has lifelong SLE (for the purposes of subsection 73-15(2) of HESA). This is dealt with in section 10; and
 - (c) how to work out the amount of lifelong SLE a person has on the day specified for the purposes of subsection 73-15(2) of HESA (for the purposes of subsection 73-15(3) of HESA). This is dealt with in section 11.

Section 9 – Circumstances in which a person has lifelong SLE

20. Section 9 sets out two sets of circumstances in which a person has lifelong SLE.
21. Under subsection 9(1), a person has lifelong SLE if the person is or was enrolled in a unit of study as part of a course of study with a higher education provider.
22. Under subsection 9(2), a person has lifelong SLE where:
- (a) the person is enrolled in a course of study (other than an enabling course (as defined in clause 1 of Schedule 1 to HESA)) with a higher education provider;
 - (b) the person is a Commonwealth supported student (as defined in section 36-5 of HESA) in relation to a unit of study that forms part of the course; and
 - (c) the providers restructures the course in a manner that will require the person to undertake units of study, in addition to those originally required before the restructure, in order to complete the course.

Section 10 – Day on which a person has lifelong SLE

23. Section 10 specifies the day on which a person has lifelong SLE:
- (a) if the circumstances in subsection 9(1) apply to a person, the person has lifelong SLE the later of: (a) 1 January 2032 (which is 10 years after the commencement of the SLE Guidelines); and the 1 January immediately after the period of 10 years from the date the person first commenced in a unit of study as part of a course of study with a higher education provider (subsection 10(1)). This is intended to encourage time in the workforce before a person has lifelong SLE and is able to undertake further studies as a Commonwealth supported student;
 - (b) if the circumstances in subsection 9(2) apply to a person, the person has lifelong SLE on the day the provider restructures the course (subsection 10(2)).

Section 11 – Amount of lifelong SLE

24. Section 11 sets out the amount of lifelong SLE (expressed in EFTSL) a person has on the day specified in section 10, according to the circumstances that apply to the person:
- (a) the amount of lifelong SLE a person has on the day specified in subsection 10(1) (which is relevant to the circumstances specified in subsection 9(1)) is 3 EFTSL (subsection 11(1)). For example, this would enable a person to undertake a new undergraduate course of study if the person wanted to change career, or undertake postgraduate studies in their existing field to gain further skills;
 - (b) the amount of lifelong SLE a person has on the day specified in subsection 10(2) (which is relevant to the circumstances specified in subsection 9(2)) is equal to the total EFTSL value of the additional units of study a person must undertake as a result of the course being restructured in order to complete the course (subsection 11(2)). This is so the person is not disadvantaged as a result of the course being restructured.

Part 4 – Reduction of a person’s SLE amount

Section 12 – Purpose

25. Section 76-1 of HESA deals with the reduction of a person’s SLE amount.
26. Section 12 of the SLE Guidelines provides that, for the purposes of subsection 76-1(4) of HESA, Part 4 of the SLE Guidelines specifies how amounts of ordinary SLE, additional SLE and lifelong SLE are to be reduced if a higher education provider reduces a person’s SLE amount at a particular time under subsection 76-1(1) of HESA.

Section 13 – Reduction of a person’s amounts of ordinary SLE, additional SLE and lifelong SLE

27. Subsection 13(1) provides that, if a higher education provider reduces a person’s SLE amount at a particular time under subsection 76-1(1) of HESA, the provider must reduce one or more of the person’s ordinary SLE amount, additional SLE amount and lifelong SLE to take account of the reduction under that subsection:
- (a) in the order specified in subsection 13(2); and
 - (b) in accordance with subsection 13(3).
28. The order specified in subsection 13(3) is: ordinary SLE first; then additional SLE; and finally lifelong SLE.
29. Subsection 13(3) provides that:

- (a) the person's ordinary SLE, additional SLE and lifelong SLE amounts must be reduced sequentially by amounts totalling the EFTSL value of the unit of study referred to in subsection 76-1(2) of HESA;
- (b) the person's ordinary SLE amount (if any) must be reduced to zero before the person's additional SLE amount is reduced;
- (c) the person's additional SLE amount (if any) must be reduced to zero before the person's lifelong SLE amount is reduced.

30. The intention is that each type of SLE be reduced to zero before the next type of SLE is reduced. The total amount to be reduced must equal the EFTSL value of the unit of study referred to in subsection 76-1(2) of HESA.

31. The example under subsection 13(3) illustrates this. In that example, Jack is enrolled in his last unit of study as part of a Bachelor of Commerce at a higher education provider. The EFTSL value of that unit of study is 0.75. Immediately before the census date for that unit of study: (a) the amount of ordinary SLE Jack has is 0.25; (b) the amount of additional SLE Jack has is 0.25; (c) the amount of lifelong SLE Jack has is 0.5. To take account of the reduction of Jack's SLE amount under subsection 76-1(1) of HESA, the provider must: (1) reduce Jack's ordinary SLE amount to zero; then (2) reduce Jack's additional SLE amount to zero; and finally (3) reduce Jack's lifelong SLE to 0.25.

Part 5 – Re-crediting a person's SLE amount

Section 14 – Purpose

32. Section 79-1 of HESA deals with the re-crediting of a person's SLE amount if special circumstances apply to the person. Section 79-20 of HESA deals with the re-crediting of a person's SLE amount if the person's HELP balance is re-credited under any of the provisions listed in subsection 79-20(1) of HESA.

33. Section 14 of the SLE Guidelines provides that the purpose of Part 5 of the SLE Guidelines is to specify how amounts of ordinary SLE, additional SLE and lifelong SLE are to be re-credited if a higher education provider re-credits a person's SLE amount at a particular time under subsection 79-1(1) or 79-20(1) of HESA (for the purposes of subsections 79-1(2) and 79-20(2) of HESA).

Section 15 – Re-crediting of a person's amounts of ordinary SLE, additional SLE and lifelong SLE

34. Section 15 provides that, if a higher education provider re-credits a person's SLE amount at a particular time under subsection 79-1(1) or 79-20(1) of HESA, the provider must re-credit one or more of the person's ordinary SLE amount, additional SLE amount and

lifelong SLE amount to reverse (that is, “un-do”) the previous reduction of those amounts under section 13.

35. The intention is for the type of SLE that was reduced under section 13 of the SLE Guidelines to be re-credited under section 15.
36. The example under section 15 illustrates this. In that example, Jack enrolled in his last unit of study as part of a Bachelor of Commerce at a higher education provider. The EFTSL value of that unit of study was 0.5. Immediately before the census date for that unit of study: (a) the amount of ordinary SLE Jack had was 0.25; (b) the amount of additional SLE Jack had was 0.25; (c) Jack had no lifelong SLE. In accordance with section 13, to take account of the reduction of Jack’s SLE amount under subsection 76-1(1) of HESA, the provider: (1) reduced Jack’s ordinary SLE amount to zero; and (2) reduced Jack’s additional SLE amount to zero. Subsequently, under subsection 79-1(1) of HESA, the provider re-credits 0.5 to Jack’s SLE amount. To take account of the re-credit under subsection 79-1(1) of HESA and having regard to how Jack’s amounts of ordinary SLE and additional SLE were reduced under section 13 for that unit of study, the provider must re-credit 0.25 to Jack’s ordinary SLE and 0.25 to Jack’s additional SLE.

Part 6 – Special circumstances

Section 16 – Purpose

37. As noted above, section 79-1 of HESA deals with the re-crediting of a person’s SLE amount if special circumstances apply.
38. Subsection 79-5(1) of HESA describes when special circumstances apply to a person, namely if the higher education provider is satisfied that circumstances apply to the person that:
- (a) are beyond the person’s control; and
 - (b) do not make their full impact on the person until on or after the census date for the unit of study in question; and
 - (c) make it impracticable for the person to complete the requirements for the unit in the period during which the person undertook, or was to undertake, the unit.
39. Subsection 79-5(2) of HESA enables the SLE Guidelines to specify circumstances in which a higher education provider will be satisfied of a matter referred to in paragraph 79-5(1)(a), (b) or (c). It further provides that a decision under subsection 79-5(1) must be in accordance with the SLE Guidelines.

40. For the purposes of subsection 79-5(2) of HESA, the purpose of Part 6 of the SLE Guidelines is to specify the circumstances in which a higher education provider will be satisfied of the matters listed in subsection 79-5(1) of HESA as referred to above.
41. Part 6 of the SLE Guidelines operates in a similar way to Chapter 3 of the *Administration Guidelines 2012*, which are also made under section 238-10 of HESA.

Section 17 – Circumstances beyond the person’s control

42. Section 17 does not specify any specific circumstances, referring instead to a general description of the term “control” in order to leave open a broad discretion. Subsection 17(1) provides that a higher education provider will be satisfied that a person’s circumstances are beyond that person’s control if a situation occurs which a reasonable person would consider is not due to the person’s action or inaction, either direct or indirect, and for which the person is not responsible. Subsection 17(2) requires the situation referred to in subsection 17(1) to be unusual, uncommon or abnormal.

Section 18 – Circumstances that did not make their full impact until on or after the census date

43. Section 18 provides a general description of when circumstances “do not make their full impact” (again to leave open a broad discretion) and provides that a higher education provider will be satisfied that a person’s circumstances did not make their full impact on the person until on or after the census date for the unit of study in question if the person’s circumstances occur:
- (a) before the census date, but worsen after that day; or
 - (b) before the census date, but the full effect or magnitude does not become apparent until on or after that day; or
 - (c) on or after the census date.

Section 19 – Circumstances that make it impracticable for the person to complete the requirements

44. Subsection 19(1) provides that a higher education provider will be satisfied that a person’s circumstances make it impracticable for the person to complete the requirements for the unit of study during the period which the person undertook, or was to undertake, the unit if circumstances such as the following occur:
- (a) medical circumstances, such as where the person’s medical condition has changed to such an extent that they are unable to continue studying; or
 - (b) family personal circumstances, such as death or severe medical problems within a family, or unforeseen family financial difficulties, so that it is unreasonable to expect a person to continue their studies; or

- (c) employment related circumstances, such as where the person's employment status or arrangements have changed so the person is unable to continue their studies, and this change is beyond the person's control; or
- (d) course related circumstances, such as where the provider has changed the requirements of the unit of study in question and the person is disadvantaged by either not being able to complete the requirements of the unit, or not being given credit towards another unit of study or course of study.

45. Subsection 19(2) provides that a person is unable to complete the requirements for a unit of study if the person is unable to:

- (a) undertake the necessary private study required, or attend sufficient lectures or tutorials or meet other compulsory attendance requirements in order to meet their compulsory course requirements;
- (b) complete the required assessable work;
- (c) sit the required examinations; or
- (d) complete any other course requirements because of the inability referred to in paragraphs (a), (b) and (c).