

EXPLANATORY STATEMENT

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

Higher Education Support Act 2003

Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022

AUTHORITY

The *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022* ('the Guidelines') are made by the Minister for Employment, Workforce, Skills, Small and Family Business under section 238-10 of the *Higher Education Support Act 2003* ('HESA').

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 repeal of the *Student Services, Amenities, Representation and Advocacy Guidelines* ('the Former Guidelines') by Schedule 1 to this instrument relies on that provision.

PURPOSE AND OPERATION

The Guidelines are made for the purpose of providing the requirements for student services and representation as set out in section 19-67 of HESA. Section 19-67 of HESA sets out requirements for providing students with information about services that are not of an academic nature and that support students, the requirements for providing students with access to such services and the requirements relating to the representation and advocacy of the interests of students.

The Guidelines are largely a remake of the Former Guidelines. The Former Guidelines will sunset on 1 April 2022 and these Guidelines are made to ensure that the requirements for student services and representation placed on higher education providers will continue to be in place.

A minor amendment has been made to increase transparency and consistency around the student services and amenities fee (SSAF) allocation of funds and expenditure reporting. Under the Former Guidelines, higher education providers were already required to provide a publicly available report on actual SSAF expenditure for the year at the completion of the budget cycle. These Guidelines continue this obligation and require the SSAF allocation and expenditure to be reported in a form approved by the Minister.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has been consulted and advised that the Guidelines are unlikely to have a more than minor regulatory impact and therefore the preparation of a Regulation Impact Statement is not required (OBPR ID: 22-01753).

COMMENCEMENT

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

CONSULTATION

No formal consultation was undertaken specifically in regard to the remaking of these guidelines. However, the Department of Education, Skills and Employment (the department) sought feedback in November 2021 from Table A and B providers, state auditors and an independent auditor about improving transparency through higher education providers' reporting requirements.

As part of this consultation process, the draft template, for the proposed form of reporting under subsection 19(5) of these Guidelines, was made available for comment. Feedback was received from higher education providers in regards to the content and lead time for reporting in accordance with the template. This feedback has been taken into account in refining the content and implementation of this form for reporting.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Higher Education Support (Student Services, Amenities, Representation and Advocacy)
Guidelines 2022*

The *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022* ('the 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

The Guidelines are made for the purposes of providing the requirements for student services and representation as set out in section 19-67 of the *Higher Education and Support Act 2003* (HESA). Section 19-67 of HESA sets out requirements for providing students with information about services that are not of an academic nature and that support students, the requirements for providing students with access to such services and the requirements relating to the representation and advocacy of the interests of students.

The Guidelines are largely a remake of the *Student Services, Amenities, Representation and Advocacy Guidelines* ('the Former Guidelines'). The Former Guidelines will sunset on 1 April 2022 and these Guidelines are made to ensure that the requirements for student services and representation placed on higher education providers will continue to be in place.

Human rights implications

The Guidelines engage the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

The Guidelines engage the right to education contained in Article 13 of the 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'.

The Guidelines will provide for requirements that must be met by Australian higher education providers. These requirements improve students' access to higher education by:

- ensuring that students have access to support services (such as health, welfare, advocacy and career services) that assist students in undertaking higher education studies;
- ensuring that higher education providers support student engagement and representation, and enabling students to be represented in decision making processes at their higher education provider;

- prescribing processes for consultation with students regarding the specific uses of the proceeds from any compulsory student services and amenities fees; and
- ensuring higher education providers report on Student Services and Amenities Fee allocation and expenditure in a consistent manner.

Therefore, the Guidelines promote the right to education.

Conclusion

The Guidelines are compatible with human rights because it promotes the right to education.

Minister for Employment, Workforce, Skills, Small and Family Business

***Higher Education Support (Student Services, Amenities, Representation and Advocacy)
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EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022* ('the Guidelines').

Section 2: Commencement

2. This section provides that the Guidelines commence the day after they are registered on the Federal Register of Legislation.

Section 3: Authority

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

Section 4: Definitions

4. This section provides definitions for certain expressions used in the Guidelines, and notes that a number of expressions used in the Guidelines are defined in Schedule 1 of HESA.

Section 5: Schedule

5. This section clarifies that the instrument specified in the Schedule to the Guidelines is repealed.

Section 6: Outline

6. This section states that section 19-67 of HESA provides the basis for these Guidelines and sets out the content of subsections 19-67(1) to (4).
7. The outline clarifies that the Guidelines set out the requirements as referred to in subsection 19-67(2) of HESA. The outline also provides clarity about the structure of the Guidelines, clarifying that requirements relating to information and access to services that are not of an academic nature and that support students are set out in Part 2 of the Guidelines and that requirements relating to the representation and advocacy of the interests of students are set out in Part 3 of the Guidelines.

Part 2 – Requirements for providing students with information about, and access to, services

Section 7: Orientation

8. This section provides that higher education providers must provide an orientation program and orientation information for all students enrolled at the higher education provider. The section provides that the orientation program and information must be made accessible to all students and must be designed to assist students with transition to study.
9. Subsection 7(4) provides that as part of the orientation program, students must be provided with information about the student services and amenities fee, the services it enables and how students can access those services.
10. The note to the section provides that an orientation program may provide relevant information to students in a number of ways, including in written or oral form, or by electronic means such as through the higher education provider’s website, email, SMS broadcasts or podcasts.

Section 8: Services

11. Subsection 8(1) provides that higher education providers must ensure that all students enrolled are provided with information on how to access health services, welfare services, advocacy services and career services.
12. Subsection 8(2) provides that information may be provided to students about these services in a number of ways.
13. Subsections 8(3) and 8(4) provide that a higher education provider must not charge students for referral of services if the higher education provider makes a referral to an external provider, and that the higher education provider must not charge students for access to advocacy services.

Section 9: Provision of services

14. Subsection 9(1) provides that where higher education providers provide health, welfare, advocacy or career services directly to students enrolled at the higher education provider, the higher education provider must engage trained and qualified staff to provide those services.
15. Subsection 9(2) provides that where the services are provided by a third party engaged by the higher education provider, the higher education provider must ensure that the third party engages trained and qualified staff to provide those services.

Section 10: Advocacy officers

16. Subsection 10(1) provides that higher education providers must ensure that students enrolled at the higher education provider have access to advocacy officers for the provision of advocacy services referred to in paragraph 8(1)(c) of the Guidelines.

17. Subsections 10(1) and 10(2) provide that advocacy officers must act in the best interests of students, must be independent from the higher education provider's decision-makers and other staff who administer the higher education provider's academic and procedural rules and regulations, and must avoid potential or actual conflicts of interest in carrying out their duties.

Section 11: Reasonable and appropriate level of services

18. Subsection 11(1) provides that higher education providers must provide students with a reasonable and appropriate level of services that are not of an academic nature and that support students.
19. Subsections 11(2) and 11(3) provide that higher education providers must consider the varying and different circumstances of students enrolled and the composition of the student cohort in determining what would be a reasonable and appropriate level of services.

Part 3 – Requirements relating to the representation and advocacy of the interests of students

Section 12: General

20. This section outlines the general requirements relating to the representation and advocacy of the interests of students.
21. Subsection 12(1) provides that higher education providers must support student engagement and representation through the provision of clear consultative arrangements, including with student representatives and major student organisations recognised by the higher education provider where appropriate.
22. Subsection 12(2) provides that the requirements in this Part are not intended to preclude student representatives at a higher education provider forming an organisation that represents students.

Section 13: Process by which students are consulted

23. This section provides that higher education providers must establish and maintain a clearly defined and effective process by which students are consulted, and that process must be reviewed and approved annually by the governing body of the higher education provider after being made available to students for comment.

Section 14: Consultation about decision making processes

24. Subsection 14(1) provides that higher education providers must advise students of avenues available for students to be involved in decision making processes, including by publishing details of the consultation mechanisms on their website and in their annual report.
25. Subsection 14(2) provides that these consultation mechanisms must include consultation with democratically elected student representatives.

Section 15: Consultation about proceeds from compulsory student services and amenities fees

26. Section 15 provides that higher education providers must consult with students regarding the specific uses of proceeds from any compulsory student services and amenities fees, as outlined in section 19.

Section 16: Consultation with student representatives from independent student organisations

27. Subsection 16(1) provides that where a higher education provider recognises independent student organisations that have student representatives that are democratically elected by students, students in relevant elected positions must be invited to participate in the higher education provider's normal consultative arrangements.

28. Subsection 16(2) provides that students in these positions must also be invited to participate in the consultation process about decision making processes and proceeds from compulsory student services and amenities fees as set out in sections 14 and 15.

Section 17: Consultation with students in democratically elected positions

29. Subsection 17(1) provides that where a higher education provider has, in their establishing legislation, provision for democratically elected student representation on governing and related bodies, students in relevant positions must, subject to any contrary intention in the legislation, be invited to participate in the consultation about decision making processes set out in section 14, provided that these students are representative of the composition of students enrolled at the higher education provider.

30. Subsection 17(2) provides that students in these positions must, subject to any contrary intention in their establishing legislation, be invited to participate in the consultation process about proceeds from compulsory student services and amenities fees as set out in section 15, provided that their election envisaged this role.

Section 18: Provision for student representatives

31. Subsection 18(1) provides that where sections 16 and 17 do not apply to the higher education provider (that is, the higher education provider does not recognise independent student organisations that have student representatives who are democratically elected by students or the higher education provider does not have provision in their establishing legislation for democratically elected student representation on governing and related bodies), the higher education provider must provide for student representatives to be democratically elected for the purposes of meeting the consultation requirements set out in section 14 about consultation about decision making processes.

32. Subsection 18(1) provides that at least one representative must be elected from the following categories:

- students enrolled in an undergraduate course of study
- students enrolled in a postgraduate course of study
- overseas students.

33. Subsections 18(2) and 18(3) provide that in meeting the requirements to provide democratically elected student representation under section 17 or subsection 18(1), a higher education provider must meet the necessary and reasonable costs of conducting democratic, valid and transparent polls and provide adequate and reasonable support, resources and infrastructure for democratically elected student representatives to carry out their functions on behalf of students enrolled at the higher education provider.

34. Note 1 to this section provides that nothing in this section is intended to limit a higher education provider using additional mechanisms for student consultation as appropriate or intended to limit a higher education provider from providing support for other student representatives elected as part of the higher education provider's approved consultation mechanisms.
35. Note 2 to this section provides examples of resources and infrastructure that a higher education provider could provide to democratically elected student representatives to carry out their functions.

Section 19: Use of compulsory student services and amenities fees

36. Subsection 19(1) provides that higher education providers must establish and maintain a clearly defined and effective process by which students enrolled are consulted on the specific uses of the proceeds from any compulsory student services and amenities fee. Subsection 19(1) also provides that the process must be reviewed and approved annually by the governing body of the higher education provider.
37. Subsection 19(2) provides that consultation with students must be undertaken through a formal process of engagement with the democratically elected representatives identified in sections 16, 17 or 18.
38. Subsection 19(3) provides that consultation with students must be timely, form part of the higher education provider's annual financial planning, and must include notifying students enrolled at the higher education provider and democratically elected student representatives of:
 - the purpose of the student services and amenities fee
 - the amount of revenue anticipated
 - the mechanisms to establish priorities for expenditure, and
 - the timing and mechanism available to comment on the proposed priorities.
39. Subsection 19(4) provides that once consultation has been undertaken, and the higher education provider has determined through consultation how the revenue will be spent, information on the established priorities, proposed heads of expenditure and projects to be funded must be made publicly available to students.
40. Subsection 19(5) provides that higher education providers must provide a publicly available report on student services and amenities fee allocations and actual expenditure for the year as part of their annual report and in the form approved by the Minister.