

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support Amendment (Microcredential Courses and Other Matters) Guidelines 2023

AUTHORITY

Section 238-10 of the *Higher Education Support Act 2003* ('Act') provides that the Minister may make FEE-HELP Guidelines and Other Grants Guidelines to, amongst other things, provide for matters necessary or convenient to be provided in order to carry out, or give effect to, Part 3-3 and section 128-20 of the Act, and Part 2-3 of the Act, in relation to grants payable under that Part.

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 amendments to the *FEE-HELP Guidelines 2017* and the *Higher Education Support (Other Grants) Guidelines 2022* (together, the 'Principal Instruments') made by the *Higher Education Support Amendment (Microcredential Courses and Other Matters) Guidelines 2023* (the 'Amendment Instrument') rely on this provision.

PURPOSE AND OPERATION

The 'Amendment Instrument' amends the Principal Instruments to make consequential changes to address amendments made in Part 3 of Schedule 1 to the *Education Legislation Amendment (2022 Measures No. 1) Act 2022*. Those amendments added a definition of 'microcredential course' in the Act, which means a course of instruction that consists of one or more units of study, and that meets the requirements specified in the *FEE-HELP Guidelines 2017* ('FEE-HELP Guidelines').

The Amendment Instrument amends the *FEE-HELP Guidelines* to specify the requirements that a course of instruction must meet to be considered a 'microcredential course'. The Amendment Instrument also makes some consequential changes to the *Higher Education Support (Other Grants) Guidelines 2022* ('Other Grants Guidelines') to reflect that 'microcredential course' is now a defined term in the Act and that the requirements for such courses are now specified in the *FEE-HELP Guidelines*.

The Amendment Instrument also makes changes to the *Other Grants Guidelines* to remove conditions on Stage 1 grant recipients to grant licences to other higher education providers to use their microcredential course materials and make those course materials available to those other providers. The Amendment Instrument also amends the *Other Grants*

Guidelines to update the formulas used to calculate the maximum amount the provider can charge a student in a microcredential course, and the amount the provider will receive under Stage 2 and Stage 3 of the Microcredentials Pilot program, and makes amendments to also provide that indexation applies to those amounts.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has been consulted and advised that the Microcredentials Pilot program has a minor regulatory impact and that a Regulation Impact Statement is not required for this instrument (OBPR ID: 44281).

COMMENCEMENT

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

CONSULTATION

The Australian Government Department of Education engaged with key stakeholders and peak bodies from the higher education sector, industry and government as a part of the consultation process on extending FEE-HELP to microcredential courses.

Stakeholders were supportive of providing students undertaking microcredential courses access to FEE-HELP.

The department also consulted with providers on whether indexation should be applied to Stage 2 and Stage 3 grant amounts in the Microcredentials Pilot program. Providers were also supportive of the proposal to apply indexation to Stage 2 and Stage 3 grant amounts.

The department undertook further consultation with Universities Australia and Deputy Vice Chancellors Academic on the course material licensing requirements under the Microcredentials Pilot program. Feedback from stakeholders indicated some providers may have difficulty operationalising all aspects of the current licensing requirements within their existing IP policies. In part, this reflects differences in the size and scope of each university's operations and administrative capacities. In response, the conditions about licensing requirements have been removed from the Other Grants Guidelines and the Minister or his delegate will instead determine conditions in relation to the licensing requirements for course materials for grants under the Microcredentials Pilot program for each provider on an individual basis under subsection 41-25(2) of the Act. This would allow the department to address individual provider's circumstances.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support Amendment (Microcredential Courses and Other Matters) Guidelines 2023

The *Higher Education Support Amendment (Microcredential Courses and Other Matters) Guidelines 2023* ('Amendment Instrument') is 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 Amendment Instrument amends the *FEE-HELP Guidelines 2017* ('FEE-HELP Guidelines') and the *Higher Education Support (Other Grants) Guidelines 2022* ('Other Grants Guidelines') to make consequential changes to address amendments made in Part 3 of Schedule 1 to the *Education Legislation Amendment (2022 Measures No. 1) Act 2022*. Those amendments added a definition of 'microcredential course' in the *Higher Education Support Act 2003* ('Act') which means a course of instruction that consists of one or more units of study, and that meets the requirements specified in the FEE-HELP Guidelines.

The Amendment Instrument amends the FEE-HELP Guidelines to specify the requirements that a course of instruction must meet to be considered a 'microcredential course'. The Amendment Instrument also makes some consequential changes to the Other Grants Guidelines to reflect that 'microcredential course' is now a defined term in the Act and that the requirements for such courses are now specified in the FEE-HELP Guidelines.

The Amendment Instrument also makes changes to the Other Grants Guidelines to remove conditions on Stage 1 grant recipients to grant licences to other higher education providers to use their microcredential course materials and make those course materials available to those other providers. The Amendment Instrument also amends the Other Grants Guidelines to update the formulas used to calculate the maximum amount the provider can charge a student in a microcredential course, and the amount the provider will receive under Stage 2 and Stage 3 of the Microcredential program, and makes amendments to also provide that indexation applies to those amounts.

Human rights implications

The Amendment Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

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'.

Amendments to the Act made in Part 3 of Schedule 1 to the *Education Legislation Amendment (2022 Measures No. 1) Act 2022* enable students studying a ‘microcredential course’ (as defined under the Act) to receive FEE-HELP assistance and defer payment of their tuition fees (if they meet all the other relevant eligibility criteria). The Amendment Instrument amends the FEE-HELP Guidelines to specify requirements that a course of instruction must meet to be considered a ‘microcredential course’ for the purposes of the Act. The Amendment Instrument supports the right to education as it assists with clarifying what a ‘microcredential course’ is, and therefore assists students to pay for their studies by enabling their access to a FEE-HELP loan.

The amendment to the Other Grants Guidelines also supports the right to education as it provides that amounts used to calculate grants in Stage 2 and Stage 3 will be subject to indexation, which provides additional funding each year to providers delivering microcredential courses.

Conclusion

The Amendment Instrument is compatible with human rights because it supports the right to education.

Minister for Education, The Hon Jason Clare MP

HIGHER EDUCATION SUPPORT AMENDMENT (MICROCREDENTIAL COURSES AND OTHER MATTERS) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support Amendment (Microcredential Courses and Other Matters) Guidelines 2023* ('Instrument').

Section 2: Commencement

2. This section provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

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

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments to the FEE-HELP Guidelines 2017

FEE-HELP Guidelines 2017.

Item 1

5. Item 1 inserts a new definition in paragraph 1.1.5 of the *FEE-HELP Guidelines 2017* ('FEE-HELP Guidelines'), to define 'digital badge' to mean an icon that is linked to an individual and recognises their completion of a microcredential course.

Item 2

6. Item 2 inserts a new Chapter in the FEE-HELP Guidelines to specify the requirements that a course of instruction must meet to be a microcredential course for the purposes of subclause 1(1) of Schedule 1 to the Act.

7. New section 4.2 provides that, for the purposes of subclause 1(1) of Schedule 1 to the Act, a course of instruction is a 'microcredential course' where the course of instruction has the value of 0.25 to 0.49 EFTSL, is assessable for credit towards an Australian Qualifications Framework (AQF) qualification, will lead to the award of a digital badge upon successful completion, has a census date, and is delivered to a student using funding the provider received for the delivery of the microcredential course to the student under subsection 77(2) in Part 12 of the *Higher Education Support (Other Grants Guidelines) 2022* ('Other Grants Guidelines').
8. The requirements for a microcredential course have been developed in response to the *University-Industry Collaboration in Teaching and Learning Review* (the Review), released on 7 December 2021. The Review recommended a systematic approach to microcredential courses, including the size of courses, credit recognition pathways towards formal qualifications in the AQF, and using digital badges to define the skills learned. The Review also recommended that students enrolled in Government funded microcredential courses should have access to FEE-HELP assistance.

Schedule 2 – Amendments to the *Higher Education Support (Other Grants Guidelines) 2022*

Higher Education Support (Other Grants Guidelines) 2022

Item 1

1. Item 1 repeals the definition of 'digital badge' as 'digital badge' is no longer used in the Instrument due to the repeal of subsection 76(8).

Items 2 to 4

2. Items 2 to 4 amend paragraphs 73(2)(a) and 74(1)(c) to remove references to 'the requirements of a microcredential course in subsection 76(8)' as 'microcredential courses' are now defined in the Act and the 'requirements of a microcredential course' are now set out in the FEE-HELP Guidelines.

Item 5

3. Item 5 repeals subsections 76(2) and (3) to remove the requirement that Stage 1 grant recipients must grant to any other higher education provider that applies for a grant under Stage 2 a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to use course material for a microcredential course developed in Stage 1, and the requirement that the Stage 1 grant recipient must also make any such course material available to those providers.

4. This change has been made as a result of consultation with the higher education sector and reflects that the licensing requirements on higher education providers should be considered and imposed on an individual basis, taking into consideration each provider's individual circumstances. The Minister (or the Minister's delegate) will consider each higher education provider's circumstances and impose, in writing, licensing requirements appropriate to each Stage 1 grant recipient in the form of conditions on each grant under subsection 41-25(2) of the Act.

Item 6

5. Item 6 repeals subsection 76(8) and replaces it with a new subsection 76(8). The changes made in this subsection reflect that the term 'microcredential course' is now defined in the Act and that the requirements of a microcredential course are now set out in the FEE-HELP Guidelines. Paragraph 13(1)(b) of the *Legislation Act 2003* provides that expressions used in instruments have the same meaning as in the enabling legislation as in force from time to time. Therefore, item 6 removes the unnecessary definition of 'microcredential course' in subsection 76(8) of the Other Grants Guidelines.
6. Subsection 76(8) still provides it is a condition of funding that microcredential courses in the Microcredentials Pilot program must be in a national priority field of education outlined in the conditions of grant determined by the Minister in writing under subsection 41-25 of the Act.

Item 7

7. Item 7 repeals subsection 76(9) and inserts a new subsection 76(9).
8. New subsection 76(9) provides a new formula to work out the maximum amount a higher education provider can charge a student in a microcredential course and updates the amounts in the third column of the table that were previously in subsection 76(9) to reflect new amounts for 2023.

Item 8

9. Item 8 repeals subsection 77(2) and inserts a new subsection 77(2).
10. New subsection 77(2) updates the amounts in the table in old subsection 77(2) to reflect new amounts for 2023.
11. Item 8 also updates the formula in subsection 77(2). The formula in subsection 77(2) calculates the grant amount to a higher education provider for Stage 2 and Stage 3 of the Microcredentials Pilot program. The old formula provided that the grant amount was calculated by multiplying the Commonwealth payment set out in the table by the EFTSL value of the microcredential course and the total number of students enrolled in the microcredential course. The new formula instead provides that the grant amount is calculated by multiplying the Commonwealth payment with

the EFTSL value of the microcredential course and either: the number of students actually enrolled in microcredential courses with the provider immediately after the census date; or, if the Minister has specified a maximum number of students for which the provider can receive funding under Stage 2 and Stage 3 in writing under subsection 41-25(2) of the Act, the lesser of, the number of students actually enrolled and the maximum number of students specified by the Minister in writing.

Item 9

12. Item 9 inserts new section 78.
13. New section 78 provides that the amounts specified in the third column of the tables in subsections 76(9) and 77(2) are specified for the year 2023 and indexed for subsequent years using the method of indexation set out in Part 5-6 of the Act.