



# Higher Education Provider Guidelines 2023

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I, Jason Clare, Minister for Education, make the following Guidelines.

Dated                    31 March 2023

Jason Clare  
Minister for Education

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# Chapter 1—Preliminary

## 1 Name

This instrument is the *Higher Education Provider Guidelines 2023*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under section 238-10 of the *Higher Education Support Act 2003*.

## 4 Definitions

Note: A number of expressions used in this instrument are defined in Schedule 1 to the Act, including the following:

- (a) affected unit;
- (b) census date;
- (c) course of study;
- (d) enrolled;
- (e) higher education provider;
- (f) overseas student;
- (g) replacement course;
- (h) replacement unit;
- (i) student; and
- (j) unit of study.

In this instrument:

***academic matters*** includes those matters which relate to student progress, assessment, curriculum and awards in a course of study.

***accounting standards*** has the same meaning as in the *Corporations Act 2001*.

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*Act* means the *Higher Education Support Act 2003*.

*consolidated entity* has the same meaning as in the *Corporations Act 2001*.

*defaulting provider* means a higher education provider which defaulted in relation to the person and the affected unit which the replacement unit replaces.

*general purpose financial statement* has the meaning given by the accounting standards.

*Guidelines* means these *Higher Education Provider Guidelines 2023*.

*non-academic matters* includes those matters which do not relate to student progress, assessment, curriculum and awards in a course of study and includes complaints in relation to personal information that the provider holds in relation to the student, and about the administration of the Commonwealth Scholarships Program.

*qualified accountant* has the same meaning as in the *Corporations Act 2001*.

*special purpose financial statement* means a financial statement that is not a general purpose financial statement.

*victimise* means to act or omit to act towards a person in a way which is intended to cause disadvantage to that person because they have made a complaint, or may make a complaint, or may be or are the subject of a complaint.

## 5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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## Chapter 2—The tuition protection requirements

### 6 Overview

This chapter specifies the tuition protection requirements for the purposes of paragraph 16-30(b) of the Act. In accordance with section 16-30 of the Act, the tuition protection requirements are the requirements set out in Part 5-1A of the Act and this chapter of the Guidelines.

Note: The Minister must be satisfied that a body will meet the tuition protection requirements (if applicable) in order to be approved as a higher education provider under paragraph 16-25(1)(c) of the Act.

### 7 Application of tuition protection requirements

For the purposes of paragraph 16-5(1)(b) of the Act, Part 5-1A of the Act does not apply to a provider if the provider is:

- (a) owned by the Commonwealth, a State or a Territory; or
- (b) established under one of the following:
  - (i) the *Technical and Further Education Commission Act 1990* (NSW);
  - (ii) the *Education and Training Reform Act 2006* (Vic.);
  - (iii) the *TAFE Queensland Act 2013* (Qld);
  - (iv) the *Vocational Education and Training Act 1996* (WA);
  - (v) the *TAFE SA Act 2012* (SA);
  - (vi) the *Training and Workforce Development Act 2013* (Tas.);
  - (vii) the *Canberra Institute of Technology Act 1987* (ACT).

### 8 Notice of amount of HELP tuition protection levy

- (1) For the purposes of paragraphs 19-66A(3)(a) and (b) of the Act, the Higher Education Tuition Protection Director must give a written notice to each higher education provider who is liable to pay the HELP tuition protection levy, which specifies:
  - (a) the year to which the levy relates;
  - (b) the amount of each component of the provider's levy;
  - (c) the total amount of the provider's levy;
  - (d) an explanation of how each component of the provider's levy was calculated;
  - (e) the day by which the levy is due and payable by the provider, which must be at least 30 days after the day the notice is given; and
  - (f) the method or methods by which the provider must pay the levy.
- (2) A failure to give a higher education provider the notice under subsection (1) does not affect the liability of the provider to pay the HELP tuition protection levy.

Note 1: HELP tuition protection levy is imposed, for a year, on a higher education provider to whom Part 5-1A of the Act applies but does not include a provider covered by subsection 5(1A) of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*.

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Note 2: Paragraph 19-66A(2)(a) of the Act requires a higher education provider to pay the HELP tuition protection levy when it is due and payable.

- (3) A notice under subsection (1) does not need to be given if the liability to pay the HELP tuition protection levy is waived under section 10.

## 9 Overdue notice

- (1) For the purposes of paragraph 19-66A(3)(a) of the Act, the Higher Education Tuition Protection Director may give a written overdue notice to the higher education provider to comply with a notice issued under subsection 8(1) after the date the HELP tuition protection levy is due and payable.
- (2) The overdue notice must specify:
- (a) the amount of HELP tuition protection levy that the higher education provider still owes;
  - (b) information about consequences of the late payment; and
  - (c) the day the amount must be paid by the provider.

## 10 Waiver

For the purposes of paragraph 19-66A(3)(f) of the Act, a higher education provider's liability to pay the HELP tuition protection levy is waived if:

- (a) the provider's approval is revoked under the Act; or
- (b) the provider's registration is cancelled under the *Tertiary Education Quality and Standards Agency Act 2011*; or
- (c) the provider is no longer in operation

prior to the time the Higher Education Tuition Protection Director issues a notice under subsection 8(1).

Note 1: Liability to pay the HELP tuition protection levy was waived for all higher education providers for the calendar years 2020 and 2021.

## 11 Internal review of notice issued under subsection 8(1)

- (1) For the purposes of paragraph 19-66A(3)(g) of the Act, a higher education provider may request the Higher Education Tuition Protection Director to reconsider a notice issued under subsection 8(1) in relation to the determination of any components of the HELP tuition protection levy (*decision*).
- (2) The higher education provider's request must be in writing and given to the Higher Education Tuition Protection Director within 14 days after the day on which the provider received the notice.
- (3) After receiving the request, the Higher Education Tuition Protection Director must reconsider the decision and:
- (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.



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- (4) The Higher Education Tuition Protection Director must ensure written notice of the Director's decision (*internal review decision*) under subsection (3) is given to the higher education provider.
  - (5) The notice of the internal review decision must:
    - (a) be given within 7 days after the internal review decision is made;
    - (b) contain a statement of the reasons for the internal review decision; and
    - (c) if the decision is varied or set aside and a new decision substituted, include a new notice under subsection 8(1) with a due date at least 30 days after the date the provider is notified of the internal review decision.
  - (6) For the purposes of paragraph 19-66A(3)(g) of the Act, an application may be made to the Administrative Appeals Tribunal for the review of the internal review decision.

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

- (1) For the purposes of subsection 166-10(3) of the Act, a higher education provider defaults in relation to a student if the following circumstances apply in relation to the provider and the student:
  - (a) the student is enrolled in a course of study with that provider and is not enrolled in any units of study within that course; and
  - (b) 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; and
  - (c) unless subsection (2) applies in relation to the student, either:
    - (i) the student was previously enrolled in one or more units of study for that course and the census date for each of those units of study was 24 months or less before the date on which the provider fails to commence the course or ceases to provide the course; or
    - (ii) the student was not enrolled in any prior units of study within that course and the date on which the student enrolled in the course was 24 months or less before the date on which the provider fails to commence the course or ceases to provide the course.
- (2) This subsection applies in relation to the student where:
  - (a) the student was unable to enrol in any units of study in the applicable 24 month period referred to in paragraph (1)(c) because of the student's personal circumstances, including but not limited to the student's medical, financial or employment circumstances; or
  - (b) the student was unable to enrol in any units of study in the applicable 24 month period referred in paragraph (1)(c) because of the circumstances of the student's family, including but not limited to the family's medical, financial or employment circumstances.

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

- (1) For the purposes of paragraph 166-15(3)(b) of the Act, the written notice given to the Higher Education Tuition Protection Director under subsection 166-15(3)

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of the Act must specify for each student in relation to each unit of study and course of study that the student was enrolled in at the time of the default:

- (a) the student's residential address, phone number and email address;
  - (b) whether the student was studying part-time or full-time;
  - (c) the mode of delivery of each unit or course and if the student did not study online, the location (campus, suburb and postcode) where each unit or course was primarily delivered;
  - (d) unit and course description outlines, including outlines for completed units;
  - (e) whether the student has withdrawn from the course and the date of withdrawal;
  - (f) whether the student has deferred from any units or the course, the date of the deferral and the date the student is expected to re-commence study;
  - (g) the unit of study status and unit completion date for each unit, including whether the status is withdrawn, ongoing, passed or failed;
  - (h) any work integrated learning and internship requirements for each unit;
  - (i) information about any scholarship arrangements or any payment arrangements made for the student by a third party for the student's tuition fees; and
  - (j) the total of other fees that are not tuition fees paid for the student for the unit or course received by the higher education provider.
- (2) For the purposes of subsection 166-15(5) of the Act, the notice given to the Higher Education Tuition Protection Director under subsection 166-15(2) of the Act must include information about the number of students in relation to whom the higher education provider has defaulted.
  - (3) The information required under subsection 166-15(3) of the Act must be given to the Higher Education Tuition Protection Director in a manner and form approved by the Director.

#### **14 Requirements of notice to student**

- (1) For the purposes of subsection 166-20(3) of the Act, the higher education provider must specify in its notice of default to students in relation to whom it has defaulted:
  - (a) the name of the course of study and units of study that the student was enrolled in at the time of the default;
  - (b) the date of the default;
  - (c) a copy of the student's transcript for units already completed;
  - (d) evidence of any amounts of up-front payments received; and
  - (e) details of where to get information from the responsible Australian Government Department about tuition protection.
- (2) The higher education provider must send the notice in one of the following ways:
  - (a) to the student's personal email address as advised by the student;
  - (b) to the student's postal address as advised by the student; or
  - (c) to the student by another method agreed to by the student.

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

For the purposes of subsection 166-26A(3) of the Act, the higher education provider must include in its written notice to the Higher Education Tuition Protection Director evidence of the arrangement between the student and replacement provider, including any payment arrangements relating to tuition fees, if the provider arranged a replacement unit or replacement course.

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

- (1) For the purposes of paragraph 167-10(1)(a) of the Act, if a student accepts an offer of a replacement unit or replacement course, the Higher Education Tuition Protection Director must ensure payment of such amounts that the Director considers appropriate is made to:
  - (a) the replacement provider; or
  - (b) another person in order to facilitate a student's placement in a replacement unit or replacement course.
- (2) In deciding whether to make a payment, and the amount of such a payment, the Higher Education Tuition Protection Director:
  - (a) must have regard to the sustainability of the Higher Education Tuition Protection Fund; and
  - (b) may have regard to any other matters the Director considers relevant.

## **17 Additional matters for notice by the Higher Education Tuition Protection Director where suitable replacement course available**

- (1) For the purposes of paragraph 166-26B(4)(g) of the Act, the Higher Education Tuition Protection Director must include in its written notice to the student:
  - (a) a statement that, if the student elects to have an amount equal to the amounts of FEE-HELP assistance or HECS-HELP assistance that the student received for the affected unit re-credited to the student's HELP balance, the student must notify the Director in writing within the period specified in subsection (2).
- (2) For the purposes of paragraph (1)(a), the period is:
  - (a) within 30 days after the Director gives notice under subsection 166-26B(4) of the Act; or
  - (b) if the Director considers that exceptional circumstances apply, any shorter or longer period (not exceeding 12 months) determined in writing by the Director.

## **18 Other tuition protection requirements—special circumstances**

*HECS-HELP assistance*

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- (1) For the purposes of subsection 36-20(4) of the Act, if the higher education provider determines that section 36-20 of the Act applies to a person and the person enrolled in the unit as a replacement unit, the defaulting provider must:
    - (a) pay the person an amount equal to the payment, or the sum of the payments, that the person made in relation to their student contribution amount for the affected unit; and
    - (b) pay to the Commonwealth an amount equal to any HECS-HELP assistance to which the person was entitled to for the affected unit.
  - (2) If the defaulting provider is unable to act for the purposes of paragraph (1)(a), the Higher Education Tuition Protection Director must ensure the person is paid an amount equal to the payment, or the sum of the payments, that the person made in relation to their student contribution amount for the affected unit.
  - (3) If subsection (2) applies, the defaulting provider must pay the Commonwealth for the purposes of the Higher Education Tuition Protection Fund an amount equal to the amount that the Higher Education Tuition Protection Director paid in relation to the person under subsection (2).

*FEE-HELP assistance*

- (4) For the purposes of subsection 110-5(1B) of the Act, if the circumstances at subsection 110-5(1A) of the Act 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.

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## Chapter 3—Higher education provider application fee

### 19 Higher education provider application fee

For the purposes of paragraph 16-40(2)(c) of the Act, the following table sets out the application fee for a year that must accompany a body corporate's application for approval as a higher education provider.

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Higher education provider application fee for a year		
Item	Year	Fee
1	2023	\$13,364
2	2024	\$13,577

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## Chapter 4—Grievance and review procedures

### 20 Requirements for grievance procedures

- (1) For the purposes of paragraphs 19-45(1)(a) and (b) and subsection 19-45(2) of the Act, a higher education provider, other than a Table A provider, must have a grievance procedure that meets the requirements specified in subsection (2) to ensure effective and fair handling of complaints:
  - (a) from the provider’s students, and from persons seeking to enrol in courses of study with the provider, relating to non-academic matters; and
  - (b) from the provider’s students, relating to academic matters.
- (2) These grievance procedures must contain the following elements:
  - (a) a formal arrangement for handling complaints which is easily accessible to students; is without charge, or at reasonable cost to students; and encourages timely resolution; and
  - (b) an arrangement for the internal investigation of complaints which remain unresolved by the process outlined at paragraph (2)(a) by an independent and impartial senior officer of the higher education provider nominated by the provider, or dedicated complaints committee or unit established by the provider; and
  - (c) a provision for external review of decisions made under paragraph (2)(b) by an independent person or body established or nominated by the higher education provider.
- (3) The higher education provider must:
  - (a) have a mechanism in place to implement the grievance procedures, including implementation of recommendations arising from any external review under paragraph (2)(c);
  - (b) ensure that the grievance procedures are complete, unambiguous and agreed to and ratified by the provider’s governing body;
  - (c) not victimise or discriminate against any complainant or respondent;
  - (d) make details of the grievance procedures publicly available;
  - (e) communicate the grievance procedures in writing to its staff and train its staff in their application;
  - (f) specify reasonable timelines for responses to each stage of the process;
  - (g) allow the complainant and/or respondent to be accompanied and assisted by a third party if desired;
  - (h) give reasons and full explanation in writing for decisions and actions taken as part of the procedures, if requested by the complainant and/or respondent;
  - (i) keep appropriate records of all grievances for at least five years, and allow parties to the complaint appropriate access to these records;
  - (j) ensure that such records are treated as confidential.
- (4) Students or persons seeking to enrol in a course of study with a higher education provider are entitled to access the grievance procedures as set out by that

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provider, regardless of the location of the campus at which the grievance has arisen, the student's place of residence or the mode in which they study.

- (5) The procedures set out in the grievance procedures document do not replace or modify procedures or any other responsibilities which may arise under other higher education provider policies or under statute or any other law.

## **21 Requirements for reviewing decisions of a higher education provider in relation to assistance under Chapter 3 of the Act**

- (1) For the purposes of subparagraph 19-45(1)(c)(ii), subsection 19-45(3) and paragraph 19-45(4)(b) of the Act, a review officer of a higher education provider must follow these procedures and comply with the requirements of this section and of Division 209 of the Act when reviewing reviewable decisions made under Chapter 3 of the Act.
- (2) The higher education provider must acknowledge receipt of an application for review of a reviewable decision in writing and inform the applicant that, if the reviewer has not advised the applicant of a decision within 45 days of receiving the application for review, the reviewer is taken to have confirmed the original decision.
- (3) The reviewer of a reviewable decision must inform applicants of their right to apply to the Administrative Appeals Tribunal for a review of the reviewable decision that has been confirmed, varied or set aside under section 209-5 or 209-10 of the Act, and provide the contact details of the closest Administrative Appeals Registry and the approximate costs of lodging an appeal with the Administrative Appeals Tribunal.

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## **Chapter 5—Requirements for student contribution amounts and tuition fees**

### **22 Period in which a higher education provider provides or proposes to provide a unit of study**

For the purposes of subsections 19-87(1), 19-90(1) and 19-95(1) of the Act, the period commences on the earliest enrolment date for the unit of study as determined by the higher education provider and ends on the completion date for the unit of study as determined by the provider.

### **23 Date by which, and manner by which, a higher education provider must publish the schedule of student contribution amounts for places and tuition fees for a particular period**

For the purposes of paragraph 19-95(2)(b) of the Act, a higher education provider must publish a schedule of student contribution amounts for places and tuition fees on the provider's website on or before the earliest enrolment date for the unit of study as determined by the provider.

### **24 Matters to which a provider must not have regard to when determining more than one student contribution amount or tuition fee**

When determining a student contribution amount under subsection 19-87(2A) or a tuition fee under subsection 19-90(3) of the Act for a unit, a higher education provider must not have regard to any matter related to the manner or timing of:

- (a) any student's payment of the student contribution amount or tuition fee to the provider; or
- (b) the Commonwealth's payment to the provider:
  - (i) of any amount lent to any student in discharge of the student's liability to pay the student contribution amount or tuition fee; or
  - (ii) of any HECS-HELP discount for the unit.

### **25 Varying a student contribution amount or tuition fee**

- (1) For the purposes of paragraph 19-87(3)(a) and paragraph 19-90(4)(a) of the Act, a higher education provider may only vary a published student contribution amount or tuition fee, respectively, if the variation occurs prior to the published census date for the unit of study, and:
  - (a) the variation does not disadvantage a student enrolled, or a person seeking to enrol; and
  - (b) the variation is necessary to correct the published student contribution amount or tuition fee due to administrative error or circumstances that did not apply at the time the student contribution amount or tuition fee was determined.



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- (2) Without limiting the generality of paragraph (1)(a), a student will be disadvantaged by a variation that increases the student contribution amount or tuition fee.
  - (3) In relation to replacement schedules under subsection 19-95(3) to the Act, the method by which a higher education provider must withdraw the previous schedule, inform the Minister of the variation and give the Minister a replacement schedule incorporating the variation is by publishing the replacement schedule on the provider's website as soon as practicable after making that decision.

## **26 The form in which a higher education provider must give the Minister a schedule of student contribution amounts for places and tuition fees**

For the purposes of subsection 19-95(1) of the Act, a higher education provider gives the Minister a schedule of student contribution amounts for places and tuition fees by publishing the schedule on the provider's website.

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## Chapter 6—Fees in respect of overseas students

### 27 Requirements for determining fees for overseas students

- (1) For the purposes of paragraph 19-102(3)(d) of the Act, when determining the fee for an overseas student, a higher education provider must meet the following requirements in respect of all overseas students other than those students excluded under subsection 28(1):
  - (a) the provider must charge as a minimum, a fee sufficient to recover the full cost of providing a course to an overseas student. Without limiting the meaning of full cost, it includes:
    - (i) full operating costs, including equipment costs. Account should be taken not only of directly associated staff costs, but also all overheads (including but not limited to, utilities, rent and marketing costs) and common services costs (including but not limited to, libraries and the provision of services required under the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students and the *Education Services for Overseas Students Act 2000*); and
    - (ii) full capital costs. For fee calculation purposes, the current average cost per place of providing capital facilities for the course in question should be determined by the provider. A capital component of the fee will not need to be taken into account where the necessary capital facilities are provided by a third party.
  - (b) The fee must be no less than those shown for the relevant category of courses in the schedule of minimum indicative course fees, which forms part of these Guidelines, except where:
    - (i) a course is provided wholly off-shore and students will not at any stage enter Australia for study; or
    - (ii) approval has been given by the Department to charge less than the minimum indicative fee for a course.
  - (c) Where the requirements of subparagraph (1)(b)(i) or subparagraph (1)(b)(ii) are satisfied in relation to a course no minimum indicative fee will apply. However, the higher education provider must be able to demonstrate to the Department that the fee proposed will recover at least the full cost of providing the course in accordance with paragraph (1)(a).
  - (d) For the purposes of paragraph (1)(b), the minimum indicative course fee for the relevant category of course is:
    - (i) where, in accordance with subparagraph (1)(a)(ii), the capital component of the fee is not taken into account because the necessary capital facilities are provided by a third party, the amount in the column headed Total without capital component; or
    - (ii) in all other circumstances, the amount in the column headed Total with capital component.

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## **28 Circumstances in which the requirements for determining fees for overseas students do not apply**

- (1) A higher education provider is not required to comply with the requirements of subsection 27(1) when determining the fee for the following classes of overseas students:
  - (a) overseas students undertaking study in Australia as part of a formal exchange program; and
  - (b) overseas students undertaking study in Australia towards a research Masters degree or a research Doctoral degree who have been awarded a scholarship for that study on the basis of merit following a competitive application process.
- (2) For the purposes of paragraph (1)(a), a formal exchange program is a program established under a formal agreement between an Australian higher education provider and an overseas higher education institution (“overseas institution”) that provides for:
  - (a) students of the Australian higher education provider to undertake study at the overseas institution, where the study at the overseas institution contributes to the requirements of a course of study being undertaken by the students with the Australian higher education provider;
  - (b) students of the overseas institution to undertake study at the Australian higher education provider, where the study at the Australian higher education provider contributes to the requirements of a course of study being undertaken by the students with the overseas institution; and
  - (c) the exchange of students between the Australian higher education provider and the overseas institution to be reciprocal over time.
- (3) All students of the Australian higher education provider undertaking study in accordance with paragraph (2)(a) are charged student contribution amounts and tuition fees in accordance with the Act and are not charged fees at the overseas institution.
- (4) All students of the overseas institution undertaking study in accordance with paragraph (2)(b) are charged fees in accordance with the practices of that overseas institution and are not charged fees at the Australian higher education provider.

## **29 Minimum indicative course fees**

- (1) For the purposes of paragraph 19-102(3)(d) of the Act and paragraph 27(1)(b), the schedule of minimum indicative course fees for 2023 is as follows:

<b>COURSE CATEGORIES</b>		<b>Total without capital component</b>	<b>Total with capital component</b>
<b>ON CAMPUS</b>			
		<b>Fees weekly</b>	
<b>1.</b>	ELICOS	\$332	\$364
		<b>Fees per year (Equivalent Full-time)</b>	
<b>2.</b>	Law, Economics, Business, Humanities, Maths/Statistics, Social Science, Education, Computing, Architecture, Design, Nursing, Arts, Science (non-lab-based)	\$11,629	\$13,874
<b>3.</b>	Science (lab-based), Paramedical, Engineering, Pharmacy, Agriculture	\$17,559	\$20,752
<b>4.</b>	Medicine, Dentistry, Veterinary Science	\$24,485	\$28,583
<b>EXTERNAL</b>			
		<b>Fees weekly</b>	
<b>E1.</b>	ELICOS (fees/weekly)	\$332	\$364
		<b>Fees per year (Equivalent Full-time)</b>	
<b>E2.</b>	Law, Economics, Business, Humanities, Maths/Statistics, Social Science, Education, Computing, Architecture, Design, Nursing, Arts, Science (non-lab-based)	\$11,629	\$12,255
<b>E3.</b>	Science (lab-based), Paramedical, Engineering, Pharmacy, Agriculture	\$17,559	\$18,413

- (2) Amounts in subsection (1) will be indexed each year after 2023 in accordance with the method of indexation set out in Division 198 of Part 5-6 of Chapter 5 of the Act.

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## Chapter 7—Fees for goods and services incidental to studies

### **30 Fee of a kind that is incidental to studies that may be undertaken with a higher education provider**

For the purposes of paragraph 19-102(3)(f) of the Act, provided that its payment is in accordance with the Act, a fee is of a kind that is incidental to studies that may be undertaken with a higher education provider if it falls into any one or more of the following categories:

- (a) it is a charge for a good or service that is not essential to the course of study;
- (b) it is a charge for an alternative form, or alternative forms, of access to a good or service that is an essential component of the course of study but is otherwise made readily available at no additional fee by the provider;
- (c) it is a charge for an essential good or service that the student has the choice of acquiring from a supplier other than the provider and is for:
  - (i) equipment or items which become the physical property of the student and are not consumed during the course of study; or
  - (ii) food, transport and accommodation costs associated with the provision of field trips that form part of the course of study;
- (d) it is a fine or a penalty, provided it is imposed by the provider principally as a disincentive and not in order to raise revenue or cover administrative costs.

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## Chapter 8—Quality, accountability and other administrative requirements

### 31 Overview

This chapter specifies additional quality, accountability and other administrative requirements that apply to higher education providers.

### 32 Financial statements

- (1) This section is made for the purposes of paragraph 19-10(2)(ab) of the Act and only applies to higher education providers approved under section 16-25 of the Act.
- (2) If the higher education provider is a for-profit private sector entity, the financial statements for the annual financial reporting period must:
  - (a) be either a general purpose or special purpose financial statement that complies with the applicable accounting standards; and
  - (b) be prepared by a qualified accountant in accordance with the applicable accounting standards; and
  - (c) include a declaration by a qualified accountant or appropriate senior authorising officer (such as a Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or financial manager) that the provider has, as at the date of the declaration, complied with all statutory obligations relating to the payment of:
    - (i) Commonwealth, State and Territory taxes; and
    - (ii) the superannuation guarantee charge in relation to employees of the provider.
- (3) If the higher education provider is a not-for-profit private sector entity and had total revenue of \$10 million or more for the previous annual financial reporting period, the financial statement for the annual financial reporting period must:
  - (a) be a general purpose financial statement that complies with the applicable accounting standards; and
  - (b) be prepared by a qualified accountant in accordance with the applicable accounting standards; and
  - (c) include a declaration by a qualified accountant or appropriate senior authorising officer (such as a Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or financial manager) that the provider has, as at the date of the declaration, complied with all statutory obligations relating to the payment of:
    - (i) Commonwealth, State and Territory taxes; and
    - (ii) the superannuation guarantee charge in relation to employees of the provider.

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- (4) If the higher education provider is a not-for-profit private sector entity and had total revenue of less than \$10 million for the previous annual financial reporting period, the financial statement for the annual financial reporting period must be either:
- (a) a special purpose financial statement that complies with the following accounting standards:
    - (i) AASB 101, Presentation of Financial Statements;
    - (ii) AASB 107, Statement of Cash Flows;
    - (iii) AASB 108, Accounting Policies, Changes in Accounting Estimates and Errors;
    - (iv) AASB 1048, Interpretation of Standards;
    - (v) AASB 1054, Australian Additional Disclosures; or
  - (b) a general purpose financial statement that complies with the applicable accounting standards.
- (5) If the higher education provider is part of a consolidated entity, the financial statement for the annual financial reporting period must be accompanied by:
- (a) a copy of the most recent consolidated financial statements for the entity prepared in accordance with applicable accounting standards; and
  - (b) such additional information related to the consolidated entity as is determined, in writing, by the Minister.

### 33 Financial viability

For the purposes of paragraph 19-12(b) of the Act, the Minister must have regard to the following matters when determining whether a higher education provider approved under section 16-25 of the Act is financially viable, and likely to remain so:

- (a) the provider generates sufficient income to meet operating payments, debt commitments and, where applicable, to allow growth while delivering quality higher education;
- (b) the provider's total assets exceed the provider's total liabilities (the provider has a positive equity position), and there is no evidence to suggest that this might change;
- (c) if the provider has been operating for 3 years or more—the provider has operated at a profit for at least 2 of the 3 most recent financial years for the provider;
- (d) if the provider has at least 100 enrolments in courses of study that lead to higher education awards—at least 20% of the provider's revenue for the previous financial year came from sources other than payments that gave rise to FEE-HELP debts;
- (e) the provider has a net positive cash position from operating activities (determined in accordance with the accounting standards);
- (f) the provider is not providing guarantees, loans, dividends or loan repayments that could have a material effect on the provider's finances;
- (g) the provider is not providing its assets as security other than under a commercial loan arrangement with an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*).

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### **34 Offering certain inducements**

For the purposes of subsection 19-36A(2) of the Act, subsection 19-36A(1) of the Act does not apply to the following specified benefits:

- (a) the content and quality of the unit of study;
- (b) the amount of the tuition fees for the unit of study;
- (c) the availability of FEE-HELP assistance and HECS-HELP assistance for the unit of study;
- (d) marketing merchandise up to the total value of \$30 per person;
- (e) the offering of money in the form of scholarships or bursaries.

### **35 Use of third party contact lists**

- (1) For the purposes of subsection 19-36C(3) of the Act, subsection 19-36C(2) of the Act does not apply if the student has given express consent to being contacted by the higher education provider.
- (2) However, subject to subsection (3), a student cannot be taken to have provided express consent unless:
  - (a) information in the request for consent was presented clearly, and set out the specific purpose for which the student's personal information would be used if consent were given; and
  - (b) the request was prominent; and
  - (c) the student was able to give consent in a separate optional tick box from other consents; and
  - (d) the request was not a required field to be answered in order for a person to submit other information; and
  - (e) the request did not include a default tick for consent; and
  - (f) the request named the provider; and
  - (g) the request detailed any referral fee or other fee that would be paid to the person who made the request and any other benefit that would be provided to the person who made the request.
- (3) The student is taken to have provided express consent if the student initiates contact with a third party for the purpose of:
  - (a) giving information relating to education and training to the higher education provider; or
  - (b) obtaining information relating to higher education from the provider.

### **36 Keeping records**

- (1) For the purposes of section 19-72 of the Act, a higher education provider must keep records relating to:
  - (a) how the provider assessed a student as academically suited to undertake a unit of study before enrolling the student in the unit of study being undertaken as part of a course of study; and
  - (b) if the provider is satisfied that special circumstances apply to a student for the purposes of section 104-1A of the Act—the grounds on which the provider is so satisfied; and



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- (c) if the provider determines 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)—the grounds on which the provider made such a determination.

Note 1: The requirement to undertake the assessment mentioned in paragraph (1)(a) is imposed under section 19-42 of the Act.

Note 2: For when special circumstances apply to a person, see section 104-30 of the Act.

- (2) The records must be kept in a manner so that they can be readily provided upon request to the student concerned, the Minister or the Secretary.
- (3) A record required to be kept by a higher education provider under this section must be kept by the provider for the period of 7 years, starting from when the record was made by the provider.

### **37 Publishing information**

- (1) For the purposes of section 19-73 of the Act, a higher education provider must publish the following information in relation to each unit of study offered by the provider:
- (a) the mode of delivery of the unit of study;
  - (b) whether the unit of study will be delivered by the provider or by a third party;
  - (c) whether FEE-HELP assistance or HECS-HELP assistance is available for the unit of study and whether a person can be a Commonwealth supported student in relation to the unit of study;
  - (d) whether there are any limits or conditions on the FEE-HELP assistance or HECS-HELP assistance available for the unit of study imposed on the provider's approval as a higher education provider.
- (2) The information must be published by the higher education provider prominently on its website, and in a manner that is easily accessible without provision of login or contact information.
- (3) The information must:
- (a) be published before the earliest day for enrolment in the unit of study; and
  - (b) must remain published at least until the end of the period in which the unit can be undertaken.

### **38 Withdrawal from units of study**

- (1) For the purposes of section 169-17 of the Act, a higher education provider must have processes and procedures that include:
- (a) procedures for a student to withdraw from a unit of study or a course of study; and
  - (b) a procedure for a student to enrol in a unit of study that was part of a course of study with the provider in circumstances where the student had earlier withdrawn from a unit of study of that course undertaken with the provider.

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- (2) The procedures for a student to withdraw from a unit of study or a course of study, on or before a census date for the unit or course, must not involve financial, administrative or other barriers to the withdrawal.
  - (3) If a student withdraws from a unit of study or a course of study, the higher education provider must not, after the withdrawal, enrol the student in a unit of study or course of study without the written permission of the student (which must be given after the withdrawal).

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## **Chapter 9—Determining whether a student is a genuine student**

### **39 Genuine student**

For the purposes of subsections 36-5(6) and 104-1(1AB) of the Act, in determining whether a student is a genuine student in relation to a unit of study being undertaken as part of a course of study, regard must be had to the following matters:

- (a) whether the student is reasonably engaged in the course;
- (b) whether the student has been provided with information about the requirements for the course, and the cost and duration of the course;
- (c) whether the student has satisfied course requirements for the course or participated in assessment activities for the course;
- (d) if the course is an online course—the number of occasions on which the student has logged in to the course is not insignificant;
- (e) whether the student has provided up-to-date contact details that enable the Department to contact the student to verify the student’s enrolment in the course; and
- (f) if the student is enrolled in another course—the number of the enrolments and associated course loads would not make successful completion of a course by the student impossible or highly improbable.

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## Chapter 10—Collection and recovery of higher education provider charge

### 40 Overview

This chapter specifies various matters in relation to the collection and recovery of higher education provider charge for the purposes of subsection 19-66(2) of the Act.

Note 1 Higher education provider charge is imposed by the *Higher Education Support (Charges) Act 2019*. The charge is imposed on a body, for a year starting on or after 1 January 2020, if the body is a higher education provider (within the same meaning of the Act) at any time during that year.

### 41 Notice of amount of higher education provider charge

- (1) For the purposes of paragraphs 19-66(2)(a), (b) and (h) of the Act, the Secretary must give a written notice to each higher education provider who is liable to pay higher education provider charge, which specifies:
- (a) the year to which the charge relates;
  - (b) the total amount of the provider's charge;
  - (c) an explanation of how the provider's charge was calculated;
  - (d) the day by which the charge is due and payable by the provider, which must be at least 30 days after the day the notice is given;
  - (e) the method or methods by which the provider must pay the charge; and
  - (f) information about the consequences of a late payment.

Note 1 A failure to give a higher education provider the notice under subsection (1) does not affect the liability of the provider to pay higher education provider charge.

- (2) A notice under subsection (1) does not need to be given if:
- (a) the liability to pay higher education provider charge is waived in accordance with section 45; or
  - (b) the amount of higher education charge for a higher education provider for the year is nil.

### 42 When higher education provider charge due for payment in the event of revocation of approval

For the purposes of paragraph 19-66(2)(b) of the Act, if, before the end of the year to which higher education provider charge relates, a higher education provider's approval is revoked under Division 22 of Part 2-1 of the Act, the amount of higher education provider charge may be due and payable on a day that is after the date that the revocation takes effect and either before or after the end of the year.

### 43 Extension notice

For the purposes of paragraph 19-66(2)(c) of the Act, the Secretary may, at any time after giving a higher education provider a notice under subsection 41(1),

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give the provider a written extension notice that specifies a day that is later than the day specified in subsection 41(1) as the day on which higher education provider charge is due and payable. The extension notice has effect according to its terms.

#### **44 Late payment penalty**

- (1) For the purposes of paragraph 19-66(2)(d) of the Act, if an amount of higher education provider charge payable by a higher education provider remains unpaid after the day on which it is due and payable, the provider is liable to pay a penalty worked out using the formula:

$$\frac{0.2 \times \text{unpaid amounts} \times \text{days overdue}}{365}$$

where:

**unpaid amount** is the amount of higher education provider charge that has not been paid.

**days overdue** is the number of days after the higher education provider charge is due and payable that elapse before the day on which the charge is paid.

- (2) To avoid doubt a late payment penalty that a provider is liable to pay is due and payable immediately.

#### **45 Waiver of higher education provider charge and late payment penalty**

- (1) For the purposes of paragraph 19-66(2)(f) of the Act, the Secretary may, on behalf of the Commonwealth, waive the payment of the whole or a part of an amount of higher education provider charge or late payment penalty (or both) that is payable by a higher education provider.
- (2) The Secretary may do so on his or her initiative or on written application by the higher education provider.

#### **46 Recovery of higher education provider charge and late payment penalty**

For the purposes of paragraph 19-66(2)(f) and (h) of the Act, the following amounts may be recovered by the Secretary, on behalf of the Commonwealth, from a higher education provider as debts due to the Commonwealth:

- (a) an amount of higher education provider charge that is due and payable by the provider;
- (b) a late payment penalty that is due and payable by the provider.

#### **47 Refund of higher education provider charge and late payment penalty**

- (1) For the purposes of paragraph 19-66(2)(f) of the Act, the Secretary may, on behalf of the Commonwealth, refund the whole or a part of an amount of higher education provider charge or late payment penalty (or both) paid by a higher education provider if the Secretary is satisfied that special or unusual

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circumstances exist that cause the charge or late payment penalty to be unreasonable or inequitable.

- (2) The Secretary may do so on his or her initiative or on written application by the higher education provider.

#### **48 Reviewable decisions**

For the purposes of paragraph 19-66(2)(g) of the Act, the following are reviewable decisions for the purposes of this chapter:

- (a) a decision to issue a notice under subsection 41(1) in relation to the determination of higher education provider charge;
- (b) a decision not to waive the payment of the whole or a part of an amount of higher education provider charge or late payment penalty under subsection 45(1) following an application by a higher education provider;
- (c) a decision not to refund the payment of the whole or a part of an amount of higher education provider charge or late payment penalty under subsection 47(1) following an application by a higher education provider.

#### **49 Internal review**

- (1) For the purposes of paragraph 19-66(2)(g) of the Act, a higher education provider may request the Secretary to reconsider a reviewable decision.
- (2) The higher education provider's request must be in writing and given to the Secretary within 14 days, or such longer period as the Secretary allows, after the day on which the provider received the notice issued under subsection 41(1) or notice of the decision under subsections 45(1) or 47(1).
- (3) After receiving the request, the Secretary must reconsider the reviewable decision and:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (4) Without limiting the obligation that the Secretary has under section 27A of the *Administrative Appeals Tribunal Act 1975*, the Secretary must give a notice of the Secretary's decision (**internal review decision**) under subsection (3).
- (5) The notice under subsection (4):
  - (a) must be given within 14 days after the internal review decision is made; and
  - (b) must contain a statement of the reasons for the internal review decision; and
  - (c) if the internal review decision relates to a notice issued under subsection 41(1) and the reviewable decision is varied or set aside and a new decision substituted, include a new notice under subsection 41(1) with a due date at least 30 days after the date the higher education provider is notified of the internal review decision.

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- (6) For the purposes of paragraph 19-66(2)(g) of the Act, an application may be made to the Administrative Appeals Tribunal for the review of a decision that has been confirmed, varied or set aside under subsection (3).

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## Chapter 11—Application, saving and transitional provisions

### 50 Things done under the *Higher Education Provider Guidelines 2012*

- (1) If:
- (a) a thing was done for a particular purpose under the *Higher Education Provider Guidelines 2012* as in force immediately before that instrument was repealed; and
  - (b) the thing could be done for that purpose under this instrument;

the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.

- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.



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## **Schedule 1—Repeals**

### *Higher Education Provider Guidelines 2012*

#### **1 The whole of the instrument**

Repeal the instrument.