

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support (OS-HELP) Guidelines 2023

AUTHORITY

The *Higher Education Support (OS-HELP) Guidelines 2023* (the Guidelines) are made under section 238-10 of the *Higher Education Support Act 2003* (the Act) to provide for matters required or permitted by the Act. In particular, item 7 of the table in subsection 238-10(1) of the Act specifies that the Minister for Education (the Minister) may make OS-HELP Guidelines providing for matters in Part 3-4 of the Act.

Part 3-4 of the Act establishes OS-HELP assistance for eligible students based in Australia to do part of their course of study overseas. A student's higher education provider must select them for OS-HELP assistance. The student may also be entitled to a supplementary amount for Asian language study where the student undertakes intensive study in an Asian language in preparation for undertaking that overseas study in Asia. The Commonwealth pays the assistance to the relevant higher education provider to pay to students on the Commonwealth's behalf.

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 *OS-HELP Guidelines 2013* (the Former Guidelines) by the Schedule to the Guidelines relies on that provision.

PURPOSE AND OPERATION

The Guidelines set out:

- principles and procedures that higher education providers must follow in deciding whether to select students for receipt of OS-HELP assistance and supplementary amounts for Asian language study (for the purposes of subsection 118-15(1) of the Act);
- requirements for determining the number of students a higher education provider may select to receive OS-HELP assistance or supplementary amounts for Asian language study (for the purposes of paragraph 118-15(4)(a) of the Act); and
- whether overseas study undertaken at a particular place is undertaken in Asia (for the purposes of subsection 121-5(2) of the Act).

The purpose of the Guidelines is to repeal and replace the Former Guidelines, which were due to sunset on 1 October 2023. The Guidelines are largely the same as the Former Guidelines and are made to ensure that the above requirements will continue to be in place.

Some changes have been made to the Guidelines to:

- specify information that must be included in a higher education provider's OS-HELP assistance policy – this information is currently included in the [Higher Education Administrative Information for Providers – Department of Education, Australian Government](#) (AIP) which is an administrative document that assists providers to comply with their obligations under the Act and the Guidelines. It is appropriate to also include this information in the Guidelines to ensure these obligations on providers have a clear legal basis;
- clearly set out the administrative procedures a higher education provider must follow when selecting students for receipt of OS-HELP assistance by removing Chapter 4 in the Former Guidelines and inserting the requirements into Chapter 2 in these Guidelines. It was unnecessary for the administrative procedures, related to selecting students, to be set out in their own chapter, noting they are related to the matters already set out in Chapter 2;
- clarify the importance of ensuring that students must complete the OS-HELP debt confirmation form prior to a higher education provider making a payment of OS-HELP assistance and including requirements on providers relating to these forms – information about the OS-HELP debt confirmation form is currently only included in the AIP and it is appropriate to include these requirements in the Guidelines noting the importance of the OS-HELP debt confirmation form for students and providers; and
- list the countries where a student will be determined to be undertaking overseas study in Asia, instead of referencing the Australian Bureau of Statistics' Standard Australian Classification of Countries.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has been consulted and advised the Former Guidelines in its operation has a more than minor impact and requires an Impact Analysis. The Department of Education has self-assessed that the Former Guidelines are operating efficiently and effectively in lieu of an Impact Analysis. The certification of the assessment will be published on OIA's website (Office of Impact Analysis reference number: OIA23-05205).

COMMENCEMENT

The Guidelines commence on the day after they are registered on the Federal Register of Legislation.

CONSULTATION

The Guidelines are largely the same as the Former Guidelines and only minor changes were made to clarify and include additional procedural and administrative matters. Feedback from higher education providers over the course of business-as-usual communication with the Department of Education was considered in making the Guidelines. Their feedback affirmed that the Former Guidelines were effectively serving their intended purpose, with some written feedback received resulting in minor refinements being incorporated in the remake of the Guidelines.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support (OS-HELP) Guidelines 2023

The *Higher Education Support (OS-HELP) Guidelines 2023* (the Guidelines) 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 Guidelines set out:

- principles and procedures that higher education providers must follow in deciding whether to select students for receipt of OS-HELP assistance and supplementary amounts for Asian language study (for the purposes of subsection 118-15(1) of the Act);
- requirements for determining the number of students a higher education provider may select to receive OS-HELP assistance or supplementary amounts for Asian language study (for the purposes of paragraph 118-15(4)(a) of the Act); and
- whether overseas study undertaken at a particular place is undertaken in Asia (for the purposes of subsection 121-5(2) of the Act).

The purpose of the Guidelines is to repeal and replace the *OS-HELP Guidelines 2013* (the Former Guidelines), which were due to sunset on 1 October 2023. The Guidelines are largely the same as the Former Guidelines and are made to ensure that the above requirements will continue to be in place.

Some changes have been made to the Guidelines to:

- specify information that must be included in a higher education provider's OS-HELP assistance policy – this information is currently included in the [Higher Education Administrative Information for Providers – Department of Education, Australian Government](#) (AIP) which is an administrative document that assists providers to comply with their obligations under the Act and the Guidelines. It is appropriate to also include this information in the Guidelines to ensure these obligations on providers have a clear legal basis;
- clearly set out the administrative procedures a higher education provider must follow when selecting students for receipt of OS-HELP assistance by removing Chapter 4 in the Former Guidelines and inserting the requirements into Chapter 2 in these Guidelines. It was unnecessary for the administrative procedures, related to selecting students, to be set out in their own chapter, noting they are related to the matters already set out in Chapter 2;
- clarify the importance of ensuring that students must complete the OS-HELP debt confirmation form prior to a higher education provider making a payment of

OS-HELP assistance and including requirements on providers relating to these forms – information about the OS-HELP debt confirmation form is currently only included in the AIP and it is appropriate to include these requirements in the Guidelines noting the importance of the OS-HELP debt confirmation form for students and providers; and

- list the countries where a student will be determined to be undertaking overseas study in Asia, instead of referencing the Australian Bureau of Statistics’ Standard Australian Classification of Countries.

Human rights implications

The Guidelines engage:

- the right to education under Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- the right to take part in cultural life under Article 15 of the ICESCR.

Right to education

The Guidelines engage the right to education in Article 13 of the ICESCR. Article 13(2)(c) of the ICESCR provides that ‘higher education shall be made equally accessible for all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education’.

The Guidelines promote the right to education by providing an opportunity and incentive for Australian students to undertake part of their higher education studies overseas, particularly in Asia. The Guidelines also enhance Australian students’ access to education by allowing students to receive OS-HELP assistance for Asian language study taken in preparation for overseas study in Asia.

Right to take part in cultural life

The Guidelines also engage the right of everyone to take part in cultural life, in so far as it relates to the right to education under Article 13 of the ICESCR. Article 15 of the ICESCR provides that the right to participate in cultural life includes ‘the benefits to be derived from encouragement and development of international contacts and co-operation in the cultural fields’.

The Guidelines provide increased opportunity for university students to undertake part of their course of study overseas, thereby encouraging the development of greater international contacts and cultural co-operation between Australia and the countries of Asia.

Conclusion

The Guidelines are compatible with human rights because it promotes the protection of human rights.

Minister for Education, The Hon Jason Clare MP

HIGHER EDUCATION SUPPORT (OS-HELP) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Chapter 1 – Preliminary

Section 1: Name

1. This is a formal provision specifying the name of the instrument, *Higher Education Support (OS-HELP) Guidelines 2023* (Guidelines).

Section 2: Commencement

2. This section provides that the Guidelines commence on the day after the Guidelines 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* (the Act).

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 already defined in Schedule 1 to the Act.

Section 5: Schedule

4. This section provides that the instrument that is specified in the Schedule (*OS-HELP Guidelines 2013* (the Former Guidelines)) is repealed.

Chapter 2 – Principles and procedures for selecting students

Section 6: Purpose

5. This section specifies the purpose of the chapter which is to set out principles and procedures that higher education providers must follow in deciding whether to select students for receipt of OS-HELP assistance and supplementary amounts for Asian language study, for the purposes of subsection 118-15(1) of the Act.

Section 7: Principles and procedures for selecting students for receipt of OS-HELP assistance

6. This section sets out the general principles and procedures a higher education provider must follow in deciding whether to select students for receipt of OS-HELP assistance.
7. Subsections 7(1) to (5) specify requirements relating to a higher education provider's OS-HELP assistance policy.
8. Subsection 7(1) provides that a higher education provider must maintain an OS-HELP assistance policy, which is publicly available and accords with the Guidelines and the fairness requirements in subdivision 19-D of Part 2-1 of the Act as in force from time to time.
9. Subsection 7(2) provides that a higher education provider's OS-HELP assistance policy must include information on:
 - a. how students may apply for OS-HELP assistance, including application opening and closing dates, and what information a student must provide in support of their application to meet the eligibility criteria in the Act and the assessment criteria in the provider's policy;
 - b. the criteria the provider will use to assess students' applications for OS-HELP assistance and to establish an order of merit for receipt of OS-HELP assistance;
 - c. how the provider will determine the amount of OS-HELP assistance to be paid to each selected student, including, if applicable, the minimum amount of OS-HELP assistance a student may receive;
 - d. how and when payments of OS-HELP assistance will be made to selected students, including any restrictions on payment dates;
 - e. requirements relating to the OS-HELP debt confirmation form, including what information must be given by selected students in the form and when the form must be signed and given by students to the provider; and
 - f. whether any conditions will apply to students in receipt of OS-HELP assistance and how and when selected students will be informed of these conditions.
10. Subsection 7(3) provides that a higher education provider must select students in accordance with its OS-HELP assistance policy.
11. Subsection 7(4) provides that a higher education provider must be responsible for its own application and selection processes and must be the first point of contact for students interested in applying for OS-HELP assistance.
12. Subsection 7(5) provides that a higher education provider must make information about OS-HELP assistance available to interested students.
13. Subsections 7(6) to (8) set out requirements for higher education providers to follow relating to the OS-HELP debt confirmation form, which must be completed by a student prior to the provider making a payment of OS-HELP assistance.
14. Subsection 7(6) provides that a higher education provider must require a student selected to receive OS-HELP assistance to give the provider a signed and completed

OS-HELP debt confirmation form, prior to the provider making any payments of OS-HELP assistance to the student. The provider must require the student to complete the form at the time specified in its OS-HELP assistance policy.

15. Subsection 7(7) provides that a higher education provider must require a selected student to give the following information in the OS-HELP debt confirmation form:
 - a. the amount of OS-HELP assistance the student will receive;
 - b. the commencement date for the period of six months in relation to which the student is entitled to receive OS-HELP assistance;
 - c. the date on which the student will begin overseas study; and
 - d. any other information specified in the provider's OS-HELP assistance policy.
16. Subsection 7(8) provides that a higher education provider must ensure that a student does not specify a commencement date in their OS-HELP debt confirmation form that is before the date on which the student begins overseas study.
17. Subsections 7(9) to (11) set out requirements on higher education providers for students undertaking a second six-month study period that is a continuation of a six-month period.
18. Subsection 7(9) provides that a higher education provider must not select a student to receive OS-HELP assistance in relation to a six month period that overlaps with another six month period for which the student has received OS-HELP assistance. The example explains that if a student has received OS-HELP assistance on 1 January, the student may not then be selected to receive assistance before 2 July of that year.
19. Subsection 7(10) requires a higher education provider to determine that the six month period in relation to which a student is entitled to receive OS-HELP assistance begins on the commencement date specified by the student in their OS-HELP debt confirmation form.
20. Subsection 7(11) provides that where there is a six month period that is a continuation of a six month period for which the student has already received OS-HELP assistance, a higher education provider must not determine that the student meets the requirements for entitlement to OS-HELP assistance in section 118-1 of the Act more than six weeks before the commencement of the second six month period.
21. Subsections 7(12) to (17) set out administrative procedures that a higher education provider must follow when selecting students for receipt of OS-HELP assistance.
22. Subsection 7(12) requires higher education providers to notify students who have applied for OS-HELP assistance of the outcome of the selection process, in writing, either within two months of receiving the application or within two months of the application closing date, whichever is later.
23. Subsection 7(13) requires higher education providers to advise selected students, in writing, of the OS-HELP assistance offer and the conditions of receiving the assistance.

24. Subsection 7(14) provides that where a higher education provider subsequently determines that a student is not entitled to OS-HELP assistance under section 118-1 of the Act, the provider must withdraw the offer of OS-HELP assistance if the student has not yet been paid and notify the student of the withdrawal in writing.
25. Subsection 7(15) provides that where a higher education provider knows or suspects that a student in receipt of OS-HELP assistance has provided false or misleading information on their application for assistance, the provider must immediately notify the Department of Education (Department) and provide the student's application and any other relevant information or material requested by the Department.
26. Subsection 7(16) requires a higher education provider to pay the amount of OS-HELP assistance in a single payment, unless the student is also eligible to receive a supplementary amount of Asian language study, then the provider may pay that supplementary amount in another payment.
27. Subsection 7(17) provides that a higher education provider must not pay OS-HELP assistance to a selected student more than six months earlier than the commencement of the six month period to which the OS-HELP assistance relates.

Section 8: Principles and procedures for selecting students for receipt of supplementary amounts for Asian language study

28. This section sets out the general principles and procedures that a higher education provider must follow in deciding whether to select students for receipt of supplementary amounts for Asian language study.
29. Subsection 8(1) provides that a higher education provider must not select a student who is taking Asian language study as part of a course of study leading to a higher education award in respect of which the student is Commonwealth supported or in receipt of FEE-HELP assistance.
30. Subsection 8(2) provides that a higher education provider must be satisfied that the Asian language study is appropriate preparation for the student's overseas study in Asia with respect to course requirements and the skills and knowledge the student will need to allow them to successfully complete their overseas study.
31. Subsection 8(3) provides that a higher education provider must only select a student for receipt of supplementary amounts for Asian language study if the language study the student is undertaking relates to the overseas study in Asia for which the student is receiving OS-HELP assistance.
32. Subsection 8(4) provides that where a student's Asian language study is not undertaken at the higher education provider through which the student receives the OS-HELP assistance, the provider must require the student to provide evidence that they are undertaking the Asian language study at another higher education provider. Evidence could include:
 - a. proof of the student's enrolment in the language course;

- b. proof of the student's application for enrolment in the language course;
- c. a signed declaration from the student detailing the language study that the student is undertaking.

Section 9: Number of students a higher education provider may select for receipt of OS-HELP assistance in a year

33. This section provides that a higher education provider must not, in a year, select a number of students for receipt of OS-HELP assistance in excess of the number of loans for overseas study as advised in writing to the provider by the Department. This number does not include supplementary amounts for Asian language study, as the supplementary amount is not considered to be a separate loan.
34. The note specifies that the total number of loans for overseas study for a year will not exceed 20,000 for all higher education providers.

Chapter 3 – Definition of Asia

Section 10: Determining whether overseas study is undertaken in Asia

35. This section provides that, for the purposes of subsection 121-5(2) of the Act, a student is undertaking overseas study in Asia if the student is undertaking study in one of the following countries:
- a. Bangladesh;
 - b. Bhutan;
 - c. Brunei Darussalam;
 - d. Cambodia;
 - e. China;
 - f. Hong Kong (Special Administrative Region (SAR) of China);
 - g. India;
 - h. Indonesia;
 - i. Japan;
 - j. Korea, Democratic People's Republic of (North);
 - k. Korea, Republic of (South);
 - l. Laos;
 - m. Macau (SAR of China);
 - n. Malaysia;
 - o. Maldives;
 - p. Mongolia;
 - q. Myanmar;
 - r. Nepal;
 - s. Pakistan;

- t. Philippines;
- u. Singapore;
- v. Sri Lanka;
- w. Taiwan;
- x. Thailand;
- y. Timor-Leste; and
- z. Vietnam.

36. The note explains that the countries are listed as described in the Australian Bureau of Statistics' Standard Australian Classification of Countries.

Schedule 1 – Repeals

Item 1: The whole of the instrument

1. This item repeals the Former Guidelines because it is being replaced by the Guidelines.