

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Education**

***Higher Education Support Act 2003***

***Higher Education Support (STARTUP-HELP) Guidelines 2023***

### **AUTHORITY**

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make STARTUP-HELP Guidelines to, amongst other things, provide for matters necessary or convenient to be provided in order to carry out or give effect to Part 3-7 of the Act in relation to grants payable under that Part.

### **PURPOSE AND OPERATION**

The purpose of the *Higher Education Support (STARTUP-HELP) Guidelines 2023* (the Instrument) is to provide for matters relevant to the provision of STARTUP-HELP assistance in Part 3-7 of the Act. This includes providing for matters in relation to elections by students of which accelerator program course they would like to receive STARTUP-HELP assistance for, requirements for accelerator program courses, the selection of students for receipt of STARTUP-HELP assistance, and the requirements for audits in respect of accelerator program courses.

Accelerator program courses are a new educational offering supported by the Higher Education Loan Program (HELP), defined in the Act as a 'structured and integrated program of education and mentoring designed to develop a person's skills, capabilities, and connections for startup businesses.' The Instrument specifies additional requirements on and in relation to accelerator program courses and the provision of STARTUP-HELP assistance in order to ensure a consistent student experience and value for money across higher education providers, which was raised as a priority through the consultation process on the Startup Year initiative.

### **IMPACT ANALYSIS**

The Office of Impact Analysis (OIA) has advised, that based on the information provided, an Impact Analysis is not required as the Instrument is unlikely to have a more than minor impact, as the requirements placed on providers and students are minor (OIA23-05262).

### **COMMENCEMENT**

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

## CONSULTATION

The Department of Education (Department) undertook a six-week consultation process from September to November 2022 with key stakeholders from across higher education, industry, and the startup community in relation to introducing a new form of HELP that would address a current gap in the higher education accelerator system (STARTUP-HELP). This consultation process contributed to the development of the *Education Legislation Amendment (Startup Year and Other Measures) Act 2023*, which amended the Act to insert provisions relevant to the provision of STARTUP-HELP assistance. Feedback from this consultation process informed the requirements for accelerator program courses reflected in the Instrument, including the required capabilities and industry connections for students and further detail on what groups are underrepresented in the startup ecosystem.

The Department also undertook targeted consultation with university peak bodies and select universities on the Instrument. No major issues were raised through this targeted consultation, however minor changes to the Instrument were made in response to this consultation for example, to clarify the need for providers to identify where a course will be delivered and whether it will support startups in addressing regional and rural issues, and to remove a requirement about courses not duplicating existing courses which was seen by universities as unclear. The majority of stakeholders raised no issues or concerns about the Instrument.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

*Higher Education Support (STARTUP-HELP) Guidelines 2023*

The *Higher Education Support (STARTUP-HELP) Guidelines 2023* (the 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 purpose of the Instrument is to provide for matters relevant to the provision of STARTUP-HELP assistance in Part 3-7 of the *Higher Education Support Act 2003* (the Act). This includes providing for matters in relation to elections by students of which accelerator program course they would like to receive STARTUP-HELP assistance for, requirements for accelerator program courses, the selection of students for receipt of STARTUP-HELP assistance, and the requirements for audits in respect of accelerator program courses.

Accelerator program courses are a new educational offering supported by the Higher Education Loan Program (HELP), defined in the Act as a ‘structured and integrated program of education and mentoring designed to develop a person’s skills, capabilities, and connections for startup businesses.’ The Instrument specifies additional requirements on and in relation to accelerator program courses and the provision of STARTUP-HELP assistance in order to ensure a consistent student experience and value for money across higher education providers, which was raised as a priority through the consultation process on the Startup Year initiative.

### Human rights implications

The Instrument engages the following rights:

- the right to work in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- right to education in Article 13 of the ICESCR.

#### Right to work

Article 6(1) of the ICESCR recognises the ‘right of everyone to the opportunity to gain [their] living by work’ and that the State will ‘take appropriate steps to safeguard this right’. Article 6(2) cites ‘technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual’ as steps to be taken by a State Party to achieve the full realisation of the right contained in Article 6(1).

The Instrument specifies key parts of the framework which supports students receiving STARTUP-HELP assistance under the Act. This allows students to access Higher Education

Loan Program (HELP) assistance – a type of income contingent loan – to participate in higher education-based accelerator program courses which focus on teaching students business and entrepreneurial skills. These courses, and by extension, the Instrument, promote the right to work by equipping students with the skills necessary to follow an entrepreneurial career, and support participants’ ability to work in startup companies and other innovative workplaces.

#### 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’.

The Instrument supports the right to education as it provides for matters relevant to the provision of STARTUP-HELP assistance. STARTUP-HELP assistance will remove barriers for students participating in higher education-based accelerator program courses which focus on teaching students business and entrepreneurial skills. The courses, and by extension, the Instrument, support the right to education as they will lead to increased accessibility to further education that is targeted to entrepreneurial thinking, problem solving and skills associated with running a startup business.

#### **Conclusion**

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

**Minister for Education, The Hon Jason Clare MP**

## HIGHER EDUCATION SUPPORT (STARTUP-HELP) GUIDELINES 2023

### EXPLANATION OF PROVISIONS

#### Part 1 – Introduction

##### Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support (STARTUP-HELP) Guidelines 2023* (the 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* (the Act).

##### Section 4: Definitions

4. This section defines the terms used in the Instrument and notes that some terms used in the Instrument are defined in the Act (and have the same meaning as in the Act).

#### Part 2 – Elections by students

##### Section 5: Elections by students

5. Subsection 128B-5(1) of the Act provides that, where a student would be entitled to STARTUP-HELP assistance for 2 or more accelerator program courses in which the student was enrolled at the same time, the student is entitled to STARTUP-HELP assistance for only one course. Paragraph 128B-5(2)(a) of the Act also provides that the student can elect the course for which they would like to receive STARTUP-HELP assistance. Subsection 128B-5(3) of the Act provides that the Instrument may prescribe requirements and other matters in relation to the election by students for the purposes of paragraph (2)(a).
6. Section 5 prescribes the requirements in relation to elections by students for the election of the course for which they would like to receive STARTUP-HELP assistance.
7. Subsection 5(1) provides that if a student has enrolled at the same time in 2 or more accelerator program courses, the higher education provider delivering each course must collect from the student a written notice that specifies the accelerator program

course that the student is enrolled in, and the accelerator program course for which the student elects to be entitled for STARTUP-HELP assistance.

8. Subsections 5(2) and (3) set out the requirements in relation to the written notice that the higher education provider must collect from the student under subsection (1). Subsection (2) provides that the written notice must be provided within two weeks of the date the student enrolled in the accelerator program course and must be provided before the student completes a request for Commonwealth assistance in relation to the accelerator program course. Subsection (3) provides that the written notice must include specific details about the student.

### **Section 6: Requirements on providers in relation to elections by students**

9. Section 6 prescribes the requirements on providers in relation to elections by students.
10. This section provides that if the provider has received a written notice from a student under section 5, the provider must provide to the student the request for Commonwealth assistance document described in subsection 128B-1(6) of the Act in relation to the elected accelerator program course, and maintain records of each student and their elected accelerator program course.

### **Part 3 – Requirements for accelerator program courses**

#### **Section 7: Requirements for an accelerator program course**

11. Paragraph 128B-25(2)(c) of the Act provides that an accelerator program course must meet any requirements set out in the Instrument.
12. Section 7 sets out the requirements for accelerator program courses.
13. Subsection 7(1) sets out the requirements for accelerator program courses, and paragraph 7(1)(f) provides that one of the requirements for an accelerator program course is that the course is designed to develop a person's skills, capabilities, and connections for the purposes of startup businesses.
14. Subsection 7(2) provides further detail in relation to the requirement in paragraph 7(1)(f), and provides that an accelerator program course meets the requirement in paragraph 7(1)(f) where the course develops financial literacy skills, communication, resilience, understanding business and markets, intellectual property management and understanding of the domestic and international environments for startup success. Subsection 7(2) also provides that, in order to meet the requirement in paragraph 7(1)(f), an accelerator program course must create industry connections for the student, including through at least one of the following: mentoring, work integrated learning or access to networks.
15. Subsection 7(3) also addresses the requirement in subsection 128B-25(5) of the Act, which requires the Instrument to provide that higher education providers providing

accelerator program courses have arrangements in place to ensure that, in circumstances where a student creates intellectual property through undertaking the course, the student owns the intellectual property unless there is an agreement that provides otherwise in place between the student and the provider. This subsection is intended to protect the intellectual property of students undertaking accelerator program courses.

16. Subsection 7(4) provides further detail on the requirement set out in paragraph 7(1)(h) of the Act. Paragraph 7(1)(h) of the Act provides that a requirement of an accelerator program course is that the course includes content designed to facilitate the participation of, and to support the learning of, groups that are underrepresented in the startup ecosystem. Subsection 7(4) clarifies that, for the purposes of paragraph 7(1)(h), groups that are underrepresented in the startup ecosystem include, but are not limited to, First Nations Australians, people with disability and women.

#### **Part 4 – Selecting students**

##### **Section 8: Principles and procedures that a higher education provider must follow in selecting students for receipt of STARTUP-HELP assistance**

17. Section 8 sets out the principles and procedures that a higher education provider must follow in selecting students for receipt of STARTUP-HELP assistance.
18. Paragraphs 8(1)(a) to (c) provide that the higher education provider must maintain a STARTUP-HELP policy and select students in accordance with that policy, and requires that the STARTUP-HELP policy facilitates open, fair and transparent selection of students and facilitate the participation of underrepresented groups.
19. Paragraph 8(1)(d) provides that the higher education provider must be responsible for its own application and selection process and must be the first point of contact for students interested in applying for STARTUP-HELP assistance.
20. Paragraph 8(1)(e) provides that the higher education provider must make information about the application, selection and offer processes, selection policy and conditions of STARTUP-HELP assistance available to all students who may be interested in applying for such assistance.
21. Paragraph 8(1)(f) provides that the higher education provider must ensure that the student selected for receipt for STARTUP-HELP assistance will not receive FEE-HELP assistance for the accelerator program course.
22. Subsection 8(2) provides that the STARTUP-HELP policy maintained by the provider must be publicly available and consistent with the Instrument and Subdivision 19-D of the Act.

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

23. Section 9 sets out the requirements that a higher education provider must comply with when selecting students for STARTUP-HELP assistance.
24. Section 9 provides that a higher education provider, when selecting students for STARTUP-HELP assistance, must not exceed the number allocated to that higher education provider by the department, and must submit an expression of interest to be allocated places for its accelerator program course in the time and format determined by the department. That expression of interest must include certain information about the accelerator program course.
25. The notes in section 9 provide further background on the process for allocating places for accelerator program courses to higher education providers. The notes provide that the total number of places allocated to all higher education providers for a year will not exceed 2000, and that the department will allocate places based on a yearly expression of interest that will be assessed by a panel.

**Section 10: Principles and procedures for allocating STARTUP-HELP assistance**

26. Subsection 128B-40(1) of the Act provides that the Instrument must include principles and procedures for ensuring, so far as reasonably practicable, that at least 25% of the persons selected for receipt of STARTUP-HELP assistance are students enrolled in an accelerator program course at a regional university.
27. Subsection 10(1) provides that, when allocating places for accelerator program courses to regional and non-regional universities, the department will have regard to course quality and the value proposition for students, and consider the spread of students across Australian states and territories.
28. Paragraph 10(2)(a) provides that, when allocating places for students in accelerator program courses, the department must conduct an expression of interest process that identifies regional universities and non-regional universities with capability to deliver accelerator program courses.
29. Paragraphs (2)(b) and (c) provide that universities applying for places in accelerator program courses must identify the geographic location of proposed courses in their application in order to determine the level of regional delivery and geographic spread, and that in allocating places to higher education providers, the department must establish a panel that includes representatives with industry, startup or venture capital experience to assess the expressions of interest referred to in paragraph (2)(a) and the views of the panel will be considered in allocating places to higher education providers.



## **Part 5 – Requirements in relation to audits**

### **Section 11: Requirements in relation to audits in respect of accelerator program courses**

30. Subsection 128E-40(1) of the Act provides that an amount of STARTUP-HELP assistance that a person received for an accelerator program course is reversed if a report of an audit conducted in accordance with subsection 128E-40(2) of the Act finds that there is any material non-compliance with respect to the course.
31. Subsection 128E-40(2) of the Act provides that the Instrument must prescribe circumstances in which audits must be conducted or arranged, and requirements in relation to when and how audits must be conducted or arranged and reported on.
32. Section 11 prescribes the requirements in relation to audits in respect of accelerator program courses.
33. Subsection 11(1) provides that an audit must be conducted or arranged in respect of accelerator program courses where 20 percent of students in an accelerator program course have made a complaint about that course to the university or requested an audit of the accelerator program course, and those complaints were made within 12 months of the end date of the course.
34. Subsection 11(2), for the purposes of paragraph 128E-40(2)(b) of the Act, prescribes the requirements in relation to when and how audits must be conducted or arranged and reported on.