

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support (Other Grants) Amendment (Higher Education Continuity Guarantee) Guidelines 2023

AUTHORITY

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

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendments to the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) made by the *Higher Education Support (Other Grants) Amendment (Higher Education Continuity Guarantee) Guidelines 2023* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The Amendment Instrument amends provisions of the Principal Instrument relating to the calculation of Higher Education Continuity Guarantee (HECG) grants for the 2023 grant year.

The amendments change the formula for calculating HECG grants for the 2023 grant year to clarify the funding that higher education providers will receive for 2023. The amendments provide that a higher education provider will not receive a HECG grant payment in relation to higher education courses where a Table A provider has used all of the funding allocated as their Base MBGA for higher education courses of study in their funding agreement, or where a non-Table A provider has used all of their Maximum Basic Grant Amount minus any funding the provider was entitled to be paid for 'equity places', 'national priority places' and 'innovative places' as set out in the provider's funding agreement.

The changes will also ensure that funding allocated to providers for 'equity places' is not included in the calculation of HECG grants for the 2023 grant year. The previous formula for the calculation of HECG grants for the 2022 and 2023 grant year only excluded the funding allocated for 'short courses', 'national priority places' and innovative places'. The change to the formula for calculating HECG grants for the 2023 grant year is required to reflect the introduction of 'equity places' in 2023 and that no funding has been allocated to providers

for 'short courses' for 2023. This reflects the policy intention that funding allocated to providers for 'equity places' should not be included in the calculation of HECG grants.

IMPACT ANALYSIS

The Office of Impact Analysis has been consulted and advised that the Amendment Instrument has a minor regulatory impact and that an Impact Analysis is not required (ID: OIA23-04884).

COMMENCEMENT

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

CONSULTATION

Higher education providers were notified that HECG grant amounts for 2023 would exclude funding allocated to the providers for 'equity places'. This notification was given in the '20,000 additional Commonwealth Supported places Program Guidelines' (the Program Guidelines) in relation to the delivery of the 'equity places' and frequently asked question documents published on 17 August 2022 to support the application process for 'equity places'.

The Program Guidelines and frequently asked question documents in relation to the delivery of the 'equity places' can be found at the following links:

<https://www.education.gov.au/higher-education-funding/resources/20000-additional-commonwealth-supported-places-program-guidelines> and

<https://www.education.gov.au/higher-education-funding/resources/20000-additional-csps-fags-providers>.

Universities Australia were also advised of these amendments to the Principal Instrument and did not raise concerns.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support (Other Grants) Amendment (Higher Education Continuity Guarantee) Guidelines 2023

The *Higher Education Support (Other Grants) Amendment (Higher Education Continuity Guarantee) Guidelines 2023* (the Amendment Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Amendment Instrument amends provisions of the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) relating to the calculation of Higher Education Continuity Guarantee (HECG) grants for the 2023 grant year.

The amendments change the formula for calculating HECG grants for the 2023 grant year to clarify the funding that higher education providers will receive for 2023. The amendments provide that a higher education provider will not receive a HECG grant payment in relation to higher education courses where a Table A provider has used all of the funding allocated as their Base MBGA for higher education courses of study in their funding agreement, or where a non-Table A provider has used all of their Maximum Basic Grant Amount minus any funding the provider was entitled to be paid for 'equity places', 'national priority places' and 'innovative places' as set out in the provider's funding agreement.

The changes will also ensure that funding allocated to providers for 'equity places' is not included in the calculation of HECG grants for the 2023 grant year. The previous formula for the calculation of HECG grants for the 2022 and 2023 grant year only excluded the funding allocated for 'short courses', 'national priority places' and innovative places'. The change to the formula for calculating HECG grants for the 2023 grant year is required to reflect the introduction of 'equity places' in 2023 and that no funding has been allocated to providers for 'short courses' for 2023. This reflects the policy intention that funding allocated to providers for 'equity places' should not be included in the calculation of HECG grants.

Human rights implications

The Amendment Instrument does not engage any of the applicable rights or freedoms. The Amendment Instrument makes some changes to clarify how HECG grants should be calculated for the 2023 year. This is largely a mechanical change which does not engage any applicable human rights.

Conclusion

The Instrument is compatible with human rights because it does not raise any human rights issues.

Minister for Education, the Hon Jason Clare MP

HIGHER EDUCATION SUPPORT (OTHER GRANTS) AMENDMENT (HIGHER EDUCATION CONTINUITY GUARANTEE) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the *Higher Education Support (Other Grants) Amendment (Higher Education Continuity Guarantee) Guidelines 2023* (the Amendment Instrument).

Section 2: Commencement

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

Section 3: Authority

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

Section 4: Schedules

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

Schedule 1 – Amendments

Higher Education Support (Other Grants) Guidelines 2022

Item 1

5. Item 1 inserts a new Part 1A dealing with application, saving and transitional provisions.
6. New section 6A moves the transitional provision previously found in Schedule 2 of the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) into this new Part 1A.
7. New section 6B provides that the amendments made by the Amendment Instrument apply in relation to grants made under the Higher Education Continuity Guarantee (HECG) program for the 2023 grant year.

Items 2 and 3

8. Section 63 provides the current method by which the amount of grants under the HECG program are determined for a provider. Items 2 and 3 amend subsections

63(1) and (2) to provide that the formula in those subsections only applies to grants determined for the 2022 grant year.

Item 4

9. Item 4 inserts new subsections 63(4) and 63(5). The new subsections provide the method to calculate the amount of grants under the HECG program for Table A providers and non-Table A providers for the 2023 grant year.
10. New subsection 63(4) provides the formula to calculate the amount of grant for a Table A provider under the HECG program. It provides that a grant under the program for a Table A provider for 2023 is to be calculated by taking away the amount of 'CGS Payments' from the 'Max'.
11. The 'Max' for a Table A provider for 2023 is defined, for the purposes of subsection 63(4), to mean the sum of funding allocated to the provider and specified as the provider's 'Base MBGA' for higher education courses in the provider's funding agreement under section 30-25 of Part 2-2 of the Act, the provider's Maximum Basic Grant Amount for designated higher education courses and amounts for a provider under subparagraph 33-1(1)(b)(ii) of the Act.
12. 'CGS Payments' for a Table A provider for 2023 is defined, for the purposes of subsection 63(4), to be the sum of either the amount a provider is entitled to be paid for higher education courses or the funding allocated to the provider and specified as the provider's 'Base MBGA' for higher education courses of study in the provider's funding agreement under section 30-25 of Part 2-2 of the Act (whichever is less); the amount a provider is entitled to be paid for designated higher education courses; and the amount a provider is entitled to be paid under paragraph 33-1(1)(b)(ii) of the Act.
13. The notes to subsection 63(4) provide two examples to illustrate how the formula would apply to Table A providers.
14. New subsection 63(5) provides the formula to calculate the amount of grant for a non-Table A provider under the HECG program. It provides that a grant under the program for a non-Table A provider for 2023 is to be calculated by taking away the amount of 'CGS Payments' from the 'Max'.
15. The 'Max' for a non-Table A provider for 2023 is defined, for the purposes of subsection 63(5), to mean the sum of the provider's Maximum Basic Grant Amount minus any funding allocated to the provider for 'equity places', 'national priority places' and 'innovative places' as set out in the provider's funding agreement under section 30-25 of Part 2-2 of the Act, and amounts for a provider under subparagraph 33-1(1)(b)(ii) of the Act.
16. 'CGS Payments' for a non-Table A provider for 2023 is defined for the purposes of subsection 63(5) to be the sum of the amount a provider is entitled to be paid under subsection 33-5(7) of the Act minus any funding the provider is entitled to be paid for 'equity places', 'national priority places' and 'innovative places'; and the amount a provider is entitled to be paid under paragraph 33-1(1)(b)(ii) of the Act.
17. The different methodologies for calculating grant amounts for Table A and non-Table A providers reflect the differences in how Maximum Basic Grant Amount(s) are

specified in funding agreements and different limitations on their use. For instance, a non-Table A provider's funding agreement has a single Maximum Basic Grant Amount, inclusive of any funding allocated for 'equity places', 'national priority places' and 'innovative places'. Their entitlement to this funding under subsection 33-5(7) of Part 2-2 of the Act is also limited by the number of places allocated within each funding cluster. By contrast, Table A providers' funding agreements specify a 'Base MBGA' for higher education courses exclusive of any funding allocated for 'equity places', 'national priority places' and 'innovative places'. In addition, entitlement to this funding is not limited by places or funding clusters under subsection 33-5(2) of Part 2-2 of the Act. These differences mean that, for the purposes of the formula for calculating a non-Table A provider's grant amount, it is necessary to discount any funding allocations and entitlements for 'equity places', 'national priority places' and 'innovative places'.

18. The notes to subsection 63(5) provide an example to illustrate how the formula would apply to non-Table A providers.

Item 5

19. Item 5 repeals Schedule 2 of the Principal Instrument, which previously held the transitional provision which has been moved to Part 1A of the Principal Instrument (see item 1 above).