

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

FEE-HELP Amendment (Course of Study in Aviation) Guidelines 2023

AUTHORITY

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister for Education (Minister) may make guidelines for the purposes of the Act. In particular, item 4 of section 238-10 specifies that the Minister may make FEE-HELP Guidelines to give effect to matters set out in Part 3-3 and section 128-20 of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendments to the *FEE-HELP Guidelines 2017* (the Principal Instrument) made by the *FEE-HELP Amendment (Course of Study in Aviation) Guidelines 2023* (the Amendment Instrument) rely on that provision.

PURPOSE AND OPERATION

Section 128-20 of the Act specifies that the HELP loan limit applicable to a person is \$106,319, indexed each year under Part 5-6 of the Act. The HELP loan limit is a cap on how much HECS-HELP assistance, FEE-HELP assistance, VET FEE-HELP assistance and VET student loans a person can borrow under the Act. Paragraph 128-20(1)(b) of the Act provides for a higher HELP loan limit of \$152,700 (indexed each year under Part 5-6 of the Act), which applies to a person who is enrolled in a course of study in medicine, dentistry, veterinary science and, relevantly, aviation.

Subsection 128-20(2) of the Act defines a course of study in aviation as a course of study, or an approved course (within the meaning of the *VET Student Loans Act 2016*), specified in the FEE-HELP Guidelines for the purposes of this subsection.

The purpose of the Amendment Instrument is to specify additional courses of study in aviation for the purposes of subsection 128-20(2) of the Act and to remove superseded aviation courses from the Principal Instrument.

Additional courses have been added to the list of courses of study in aviation offered by higher education providers under paragraph 1.2.1 of the Principal Instrument. These are the Bachelor of Aviation (Flight) and the Associate Degree of Aviation. Both courses are provided by the higher education provider Holmes Institute Pty Ltd as Trustee for Holmes Institute Trust (Holmes Institute).

Additional courses are also added to the list of courses of study in aviation offered by vocational education and training (VET) providers under paragraph 1.2.2 of the Principal Instrument:

- Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50222); and
- Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50322).

Courses offered by VET providers under paragraph 1.2.2 of the Principal Instrument which have been superseded or are no longer available have been removed:

- Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50215);
- Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50315);
- Diploma of Aviation (Instrument Rating) (course code AVI50415);
- Diploma of Aviation (Flight Instructor) (course code AVI50516); and
- Advanced Diploma of Aviation (Pilot in Command) (course code AVI60216).

The following courses offered by VET providers remain in paragraph 1.2.2 of the Principal Instrument as courses of study in aviation for the purposes of subsection 128-20(2) of the Act:

- Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50219);
- Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50319);
- Diploma of Aviation (Instrument Rating) (course code AVI50519);
- Diploma of Aviation (Flight Instructor) (course code AVI50419); and
- Advanced Diploma of Aviation (Pilot in Command) (course code AVI60219).

The amendments will allow students enrolled in these courses to access the higher HELP loan limit, which means that student pilots can defer their tuition fees, up to the limit, in order to obtain the licenses and ratings required by the Civil Aviation Safety Authority suitable for commercial employment.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) was initially consulted regarding the courses of study in aviation offered by higher education providers and advised that an Impact Analysis is not required for the Amendment Instrument (OIA23-05347).

OIA was consulted again regarding the additional amendments to the Principal Instrument for courses of study in aviation offered by VET providers and maintained their previous advice.

COMMENCEMENT

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

CONSULTATION

The addition of two courses of study of aviation to paragraph 1.2.1 of the Principal Instrument was in response to a request from Holmes Institute for students to access the higher HELP loan limit after the two accredited aviation courses were added to their course offerings.

Holmes Institute first informed the Department of Education (department) of their intention to offer courses of study in aviation in 2022. The department responded to Holmes Institute to ask that they make a formal request to have their aviation courses assessed as eligible for the higher HELP loan limit, requesting detailed information on their course offerings, including evidence of the Tertiary Education Quality and Standards Agency's (TEQSA) registration of the course. Holmes Institute responded to this request in March 2023 after their aviation courses were approved by TEQSA. The department did not consult further with TEQSA in this process.

Concurrently, the department consulted with the Department of Employment and Workplace Relations (DEWR), for advice on whether the courses of study in aviation offered by VET providers under paragraph 1.2.2 of the Principal Instrument required any amendments DEWR responded to the department's request to advise on the changes to the list of courses of study in aviation under paragraph 1.2.2 of the Principal Instrument which have been included in the Amendment Instrument.

Given that the Amendment Instrument makes no impact on other stakeholders, no further consultation was undertaken.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

FEE-HELP Amendment (Course of Study in Aviation) Guidelines 2023

The *FEE-HELP Amendment (Course of Study in Aviation) 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

Section 128-20 of the Act specifies that the HELP loan limit applicable to a person is \$106,319, indexed each year under Part 5-6 of the Act. The HELP loan limit is a cap on how much HECS-HELP assistance, FEE-HELP assistance, VET FEE-HELP assistance and VET student loans a person can borrow under the Act. Paragraph 128-20(1)(b) of the Act provides for a higher HELP loan limit of \$152,700 (indexed each year under Part 5-6 of the Act), which applies to a person who is enrolled in a course of study in medicine, dentistry, veterinary science courses and also, relevantly, a course of study in aviation.

Subsection 128-20(2) of the Act defines a course of study in aviation as a course of study, or an approved course (within the meaning of the *VET Student Loans Act 2016*), specified in the FEE-HELP Guidelines for the purposes of this subsection.

The purpose of the Amendment Instrument is to specify additional courses of study in aviation for the purposes of subsection 128-20(2) of the Act and to remove superseded aviation courses from the Principal Instrument.

The amendments will allow students enrolled in these courses to access the higher HELP loan limit, which means that student pilots can defer their tuition fees, up to the limit, in order to obtain the licenses and ratings required by the Civil Aviation Safety Authority suitable for commercial employment.

Human rights implications

The Amendment Instrument engages the following human rights:

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

The right to work

Article 6(1) of the ICESCR recognises the right to work, which includes the right of everyone to the opportunity to gain their living by work that they freely choose or accept. Article 6(2) provides that the steps to be taken by States Parties to achieve the full realisation of this

right include providing technical and vocational education programs to promote employment.

The Amendment Instrument promotes the right to work by enabling these students to access the higher HELP loan limit, so that the cost of study is not a barrier or deterrent to considering a career as a commercial pilot. The amendment will improve employment outcomes and opportunities for these students.

The 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 Amendment Instrument promotes the right to education by enabling these students to have sufficient loan entitlement to defer tuition costs for aviation courses required to meet the licensing requirements to obtain a Commercial Pilot Licence.

Conclusion

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

Minister for Education, The Hon Jason Clare MP

FEE-HELP AMENDMENT (COURSE OF STUDY IN AVIATION) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument.

Section 2: Commencement

2. This section provides that the *FEE-HELP Guidelines Amendment (Course of Study in Aviation) 2023* (the Amendment Instrument) commences on the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section 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 section provides that 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.

Schedule 1 – Amendments

FEE-HELP Guidelines 2017

Item 1: Paragraph 1.2.1 (after table item 17)

1. This item inserts two additional courses in the *FEE-HELP Guidelines 2017* (the Principal Instrument) that are courses of study in aviation for the purposes of subsection 128-20(2) of the Act. These two courses, provided by the higher education provider Holmes Institute Pty Ltd as Trustee for Holmes Institute Trust, are the Bachelor of Aviation (Flight) (at table item 18) and the Associate Degree of Aviation (at table item 19).

Item 2: Subparagraphs 1.2.2(a) to (j)

1. This item repeals the list of courses from the Principal Instrument and replaces it with a revised list of courses offered by VET providers. Specifically, the following courses

are removed from the list as they are no longer being offered by VET providers because they have been superseded:

- Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50215);
- Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50315);
- Diploma of Aviation (Instrument Rating) (course code AVI50415);
- Diploma of Aviation (Flight Instructor) (course code AVI50516); and
- Advanced Diploma of Aviation (Pilot in Command) (course code AVI60216).

2. The following courses remain on the list as courses of study in aviation for the purposes of subsection 128-20(2) of the Act:

- Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50219) – at subparagraph 1.2.2(a);
- Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50319) – at subparagraph 1.2.2(c);
- Diploma of Aviation (Instrument Rating) (course code AVI50519) – at subparagraph 1.2.2(e);
- Diploma of Aviation (Flight Instructor) (course code AVI50419) – at subparagraph 1.2.2(f); and
- Advanced Diploma of Aviation (Pilot in Command) (course code AVI60219) – at subparagraph 1.2.2(g).

3. Two courses are added to the list as courses of study in aviation for the purposes of subsection 128-20(2) of the Act:

- Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50222) – at subparagraph 1.2.2(b); and
- Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50322) – at subparagraph 1.2.2(d).

4. The Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50219) is superseded by the Diploma of Aviation (Commercial Pilot Licence – Aeroplane) (course code AVI50222). However, it remains on the list as there are students currently enrolled in the course and the higher HELP loan limit continues to apply to these students. The Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50315) is superseded by the Diploma of Aviation (Commercial Pilot Licence – Helicopter) (course code AVI50322).