

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support Amendment (FEE-FREE Uni Ready Courses) Guidelines 2024

AUTHORITY

Section 238-10 of the *Higher Education Support Act 2003* (HESA) provides that the Minister may make guidelines for the purposes of that Act. In particular, item 2 of the table at section 238-10 specifies that the Minister may make the Commonwealth Grant Scheme Guidelines in order to carry out, or give effect to, the matters set out in Part 2-2 of HESA. In addition, item 8 of the table specifies that the Minister may make the 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 HESA 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 bylaws), 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 *Commonwealth Grant Scheme Guidelines 2020* (the CGS Guidelines) and the *Higher Education Support (Other Grants) Guidelines 2022* (the Other Grants Guidelines) made by the *Higher Education Support Amendment (FEE-FREE Uni Ready Courses) Guidelines 2024* (the Instrument) rely on this provision.

PURPOSE AND OPERATION

The Instrument amends the CGS Guidelines and Other Grants Guidelines to reflect amendments to HESA made by the *Universities Accord (Student Support and Other Measures) Act 2024* (the Amendment Act). Relevantly, the Amendment Act amends HESA to rename 'enabling courses' for Commonwealth supported students to 'FEE-FREE Uni Ready courses', and to establish a new dedicated Commonwealth Grant Scheme funding cluster for those courses.

During the Accord Panel's consultations, stakeholders expressed the need to increase enrolments in Commonwealth supported places, particularly from under-represented groups, through enabling or 'preparatory' courses (now called 'FEE-FREE Uni Ready courses'), to support greater equity and access to higher education, and prepare those with interrupted educational journeys to qualify for higher education entry without having to return to school.

FEE-FREE Uni Ready, alongside other educational programs offered by VET providers, including foundation skills programs, by schools, by Adult Learning and Community Education, and by higher education providers, play an important role in supporting aspiration and access to higher education programs.

The Instrument amends the CGS Guidelines to include the new dedicated Commonwealth Grant Scheme funding cluster for FEE-FREE Uni Ready courses. Funding for FEE-FREE Uni Ready Courses under the Commonwealth Grant Scheme replaces the current mixed funding system for Commonwealth supported students in these courses. It will provide consistent and sufficient funding through a new funding cluster (at the equivalent amount of the Commonwealth Grant Scheme funding cluster 1, currently \$18,278) to deliver high quality FEE-FREE Uni Ready courses.

This will provide increased funding for higher education providers to provide those courses and more opportunities for people, especially those from under-represented backgrounds, to participate in tertiary education. FEE-FREE Uni Ready courses will create enabling pathways helping more students gain the academic skills they need to get into university and succeed.

Grants under the Enabling Loading Program, which is being replaced by FEE-FREE Uni Ready courses, will cease. The Instrument also amends the Other Grants Guidelines by repealing the Enabling Loading Program, while ensuring that conditions of grants under the Enabling Loading Program will continue to apply to those grants, notwithstanding that repeal.

IMPACT ANALYSIS

The Department of Education (the department) approached the Office of Impact Analysis (OIA) to seek advice if an Impact Analysis (IA) was required and provided an Australian Government Impact Analysis Preliminary Assessment Form for the *Higher Education Support Amendment (FEE-FREE Uni Ready Courses) Guidelines 2024*.

The OIA determined that a detailed IA was not required for the Guidelines (reference OIA24-08147).

COMMENCEMENT

The Instrument will commence immediately after the relevant amendments to HESA made by the Amendment Act commence, on 1 January 2025.

CONSULTATION

The Instrument gives operation to amendments made by the Amendment Act. The Instrument is mostly technical in nature and therefore, no consultation on the Instrument was conducted.

However, development of the measures on the FEE-FREE Uni Ready courses contained in the Amendment Act respond to Recommendation 12 of the Australian Universities Accord

Final Report. The Accord was a 12-month review of Australia's higher education system led by an expert Panel to drive lasting and transformational reform in the higher education sector. The Accord review considered a range of issues such as accessibility, affordability, quality, and sustainability to provide a long-term plan for higher education in Australia.

In making their recommendations the Accord Panel undertook extensive stakeholder consultation, including on development of the FEE-FREE Uni Ready measure contained in the Amendment Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support Amendment (FEE-FREE Uni Ready Courses) Guidelines 2024

The *Higher Education Support Amendment (FEE-FREE Uni Ready Courses) Guidelines 2024* (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 Instrument amends the *Commonwealth Grant Scheme Guidelines 2020* (the CGS Guidelines) and the *Higher Education Support (Other Grants) Guidelines 2022* (the Other Grants Guidelines) to reflect amendments to HESA made by the *Universities Accord (Student Support and Other Measures) Act 2024* (the Amendment Act). Relevantly, the Amendment Act amends HESA to rename ‘enabling courses’ for Commonwealth supported students to ‘FEE-FREE Uni Ready courses’, and to establish a new dedicated Commonwealth Grant Scheme funding cluster for those courses.

During the Accord Panel’s consultations, stakeholders expressed the need to increase enrolments in Commonwealth supported places, particularly from under-represented groups, through enabling or ‘preparatory’ courses (now called ‘FEE-FREE Uni Ready courses’), to support greater equity and access to higher education, and prepare those with interrupted educational journeys to qualify for higher education entry without having to return to school.

The Instrument amends the CGS Guidelines to create the new dedicated Commonwealth Grant Scheme funding cluster for FEE-FREE Uni Ready courses. Funding for FEE-FREE Uni Ready Courses under the Commonwealth Grant Scheme replaces the current mixed funding system for Commonwealth supported students in these courses. It will provide consistent and sufficient funding through a new funding cluster (at the equivalent amount of the Commonwealth Grant Scheme funding cluster 1, currently \$18,278) to deliver high quality FEE-FREE Uni Ready courses.

This will provide a greater amount of funding for higher education providers to provide those courses, which will provide greater opportunities for more people, especially those from under-represented backgrounds, to participate in tertiary education by delivering FEE-FREE Uni Ready courses. These free courses will create enabling pathways which will help more students to gain the academic skills they need to get into university and to succeed.

Grants under the Enabling Loading Program, which is being replaced by FEE-FREE Uni Ready courses, will cease. The Instrument also amends the Other Grants Guidelines by repealing the Enabling Loading Program, while ensuring that conditions of grants under the Enabling Loading Program will continue to apply to those grants, notwithstanding that repeal.

Human rights implications

The Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

Article 13 of the ICESCR recognises the important personal, societal, economic and intellectual benefits of education. Article 13 also provides that secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means. Article 13(2) 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 promotes this right by increasing accessibility to tertiary education by making tertiary education more affordable for students.

The Instrument amends the Commonwealth Grant Scheme Guidelines to create a new dedicated funding cluster for FEE-FREE Uni Ready courses. This will provide a greater amount of funding for higher education providers to provide those courses, which will result in more students being able to access FEE-FREE Uni Ready courses and allow them to develop the academic skills they need to get into university.

Improving access to FEE-FREE Uni Ready courses supports the right to education, as FEE-FREE Uni Ready courses are directed to supporting people, especially those from disadvantaged or under-represented backgrounds. It helps them develop skills to enter, and succeed, at university, and supports the provision of higher education.

Conclusion

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

Minister for Education, the Hon Jason Clare MP

**HIGHER EDUCATION SUPPORT AMENDMENT
(FEE-FREE UNI READY COURSES) GUIDELINES 2024**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the instrument. It specifies that the name of the instrument is the *Higher Education Support Amendment (FEE-FREE Uni Ready Courses) Guidelines 2024* (the Instrument).

Section 2: Commencement

2. This section provides that the Instrument commences immediately after Schedule 3 to the *Universities Accord (Student Support and Other Measures) Act 2024*. The note to the section explains that this will occur on 1 January 2025.

Section 3: Authority

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

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the 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 to the *Commonwealth Grant Scheme Guidelines 2020*

Commonwealth Grant Scheme Guidelines 2020

Item 1: Section 14

5. This item repeals section 14 of the CGS Guidelines and substitutes a new section 14.
6. The table in section 14 determines the funding cluster or part or subpart of a funding cluster in which units of study are included for the purposes of HESA.
7. The principal purpose of the replacement of section 14 is to add a new funding cluster (cluster 5) to the table for FEE-FREE Uni Ready Courses. The new table in section 14

provides that all units of study and all Field of Education (FOE) codes for FEE-FREE Uni Ready Courses are in cluster 5.

8. This has the effect of replacing the variable cluster funding rates (which depended on which discipline the course was in) and allowing the FEE-FREE Uni Ready cluster rate to include multiple FOE codes.
9. The opportunity has also been taken to clarify the table that sets out the funding clusters and parts and subparts of clusters that units of study are included in. New paragraph (b) picks up the content of the replaced paragraphs (d), (e) and (f), clarifying that the references in the table in paragraph (a) to units of study referred to in subparts of cluster 2 are to particular units of study in particular courses leading to specified qualifications or accreditation.
10. New paragraph (c) replicates the effect of the replaced paragraphs (a), (b) and (c), the effect of which is to provide that a units of study with a 6 digit FOE code that begins with the 4 digit FOE code of a unit of study set out in the in the table are included in the same funding cluster, and the same part or subpart of the funding cluster, as the unit with the 4 digit FOE code – except for those units of study with 6 digit FOE codes mentioned in new paragraph (b).

Schedule 2—Amendments to the *Higher Education Support (Other Grants) Guidelines 2022*

Higher Education Support (Other Grants) Guidelines 2022

Item 1: After section 6B

11. This item inserts new section 6C after section 6B in the Other Grants Guidelines.
12. Item 2 of this Schedule repeals Division 5 of Part 2 of the Other Grants Guidelines, hence repealing the Enabling Loading Program as a program under which grants can be made to higher education providers. The Enabling Loading Program is replaced by Commonwealth Grant Scheme funding under the new FEE-FREE Uni Ready Courses funding cluster.
13. Decisions and grants already made under the Enabling Loading Program aren't affected by the repeal of that Program (see section 7 of the *Acts Interpretation Act 1901*). There will be no interruption to existing students studying under the Enabling Loading Program.

14. The purpose of the new section 6C is to ensure that conditions of the existing grants under the Enabling Loading Program continue in effect after the repeal according to their terms. This will ensure that higher education providers must continue to administer those grants in accordance with their existing obligations and requirements.

Item 2: Division 5 of Part 2

15. This item repeals Division 5 of Part 2 of the Other Grants Guidelines, which relates to the Enabling Loading Program.
16. FEE-FREE Uni Ready courses for Commonwealth supported students established by the new dedicated Commonwealth Grant Scheme funding cluster replaces the Enabling Loading Program.