

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

***Higher Education Support (Student Services, Amenities, Representation and Advocacy)
Amendment (Student Led Organisations) 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 the Act. In particular, item 10A of the table at section 238-10 specifies that the Minister may make the Student Services, Amenities, Representation and Advocacy Guidelines in order to carry out, or give effect to, the matters set out in sections 19-39, 19-40 and 1967 of HESA.

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 *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022* (the Student Services Guidelines) made by the *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Amendment (Student Led Organisations) Guidelines 2024* (the Instrument) rely on this provision.

PURPOSE AND OPERATION

The Instrument amends the Student Services Guidelines to support amendments made by the *Universities Accord (Student Support and Other Measures) Act 2024* (the Amendment Act). Relevantly, the Amendment Act amended HESA to require higher education providers to allocate a minimum of 40 per cent of their Student Services and Amenities Fees (SSAF) revenue to student-led organisations. This ensures that organisations led by students benefit from a consistent and predictable stream of SSAF revenue to plan and commit to long-term student support services and support students to succeed in their studies.

The Amendment Act also provides for transition arrangements to be agreed by the Secretary of the Department of Education (or their delegate) that would permit a higher education provider to allocate less than 40 per cent of their SSAF revenue to student-led organisations, for up to three years for Table A providers and up to five years for other providers. This recognises the diverse ways in which services are currently delivered to students and how they may need to be adjusted to meet the new requirements.

The Instrument amends the Student Services Guidelines to prescribe additional requirements that must be met by a student-led organisation before it can be considered by

the higher education provider as an organisation whose revenue can be counted towards satisfying the requirement for the provider to allocate at least 40 per cent of its SSAF revenue to student-led organisations. These requirements are aimed at ensuring the student-led organisation is independent and has good governance arrangements in place.

The Instrument also amends the Student Services Guidelines to prescribe the period in which a higher education provider must make an application in relation to transitional arrangements.

IMPACT ANALYSIS

The Department of Education approached the Office of Impact Analysis (OIA) to seek advice on whether an Impact Analysis was required and provided an Australian Government Impact Analysis Preliminary Assessment Form for the Instrument.

The OIA determined that a detailed Impact Analysis was not required for the Instrument (reference OIA24-07150).

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 introduced in the Amendment Act. These measures were developed in response to Recommendation 19 of the Australian Universities Accord, which conducted extensive stakeholder consultation throughout its review.

Following introduction of the Amendment Act, the key principles to be included in the Instrument were discussed with key stakeholders during consultation sessions held in July and August 2024.

Consultations have included:

- a collective meeting with all SSAF providers (who wished to attend the meeting);
- individual engagement with 16 separate providers or student associations that raised concerns with the proposal prior to the introduction of the Amendment Act, and another 13 individual meetings after introduction;
- consultation with Western Australian universities; and
- individual meetings with peak representative bodies including Universities Australia, the National Tertiary Education Union, the Student Engagement Network and the National Union of Students.

There have been many opportunities for sector feedback, including responding to the initial concerns raised by the Australian Universities Accord in its interim report in July 2023, and the subsequent recommendation in February 2024.

Issues raised by stakeholders, particularly around time to adjust and implement the new arrangements and governance, have been addressed in 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 (Student Services, Amenities, Representation and Advocacy) Amendment (Student Led Organisations) Guidelines 2024

The *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Amendment (Student Led Organisations) 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 *Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022* (the Student Services Guidelines) to support amendments made to the *Higher Education Support Act 2003* (HESA) by the *Universities Accord (Student Support and Other Measures) Act 2024* (the Amendment Act). Relevantly, the Amendment Act amended HESA to require higher education providers to allocate a minimum of 40 per cent of their Student Services and Amenities Fees (SSAF) revenue to student-led organisations. This ensures that organisations led by students benefit from a consistent and predictable stream of SSAF revenue to plan and commit to long-term student support services and support students to succeed in their studies.

The Amendment Act also provides for transition arrangements to be agreed by the Secretary of the Department of Education (or their delegate) that would permit a higher education provider to allocate less than 40 per cent of their SSAF revenue to student-led organisations, for up to three years for Table A providers and up to five years for other providers. This recognises that some higher education providers need time to adjust to and implement the new requirements.

There is complexity and a diversity of capability across student-led organisations in both how they are established and governed. The Instrument aims to accommodate these complexities and differences across all providers and student-led organisations.

The Instrument amends the Student Services Guidelines to prescribe additional requirements that must be met by a student-led organisation before it can be considered by the higher education provider as an organisation whose revenue can be counted towards satisfying the requirement for the provider to allocate at least 40 per cent of its SSAF revenue to student-led organisations. These requirements are aimed at ensuring the student-led organisation is independent and has good governance arrangements in place.

The Instrument also amends the Student Services Guidelines to prescribe the period in which a higher education provider must make an application in relation to transitional arrangements.

Human rights implications

This Instrument does not engage any of the applicable rights or freedoms.

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 (STUDENT SERVICES, AMENITIES, REPRESENTATION AND ADVOCACY) AMENDMENT (STUDENT LED ORGANISATIONS) 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 (Student Services, Amenities, Representation and Advocacy) Amendment (Student Led Organisations) Guidelines 2024*.

Section 2: Commencement

2. This section provides that the Instrument commences immediately after Schedule 2 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

Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022

Item 1: Section 6

5. This item replaces the Outline in section 6 of the Student Services Guidelines.
6. The new Outline largely replicates the previous Outline but provides additional explanation on the new power to make Guidelines to provide for matters required or permitted by the new sections 19-39 and 19-40 which were introduced in the

Amendment Act, and to provide a brief overview of the requirements being introduced into the Student Services Guidelines.

Item 2: Subsection 19(5)

7. This item replaces the current subsection 19(5) of the Student Services Guidelines with a new subsection 19(5). The current subsection 19(5) requires higher education providers to provide a publicly available report on student services and amenities fee allocations and actual expenditure as part of the annual reporting. The new subsection 19(5) replicates the operation of the current subsection, with the addition of a requirement for the higher education provider to provide the report to the Department.

Item 3: After section 19

8. This item inserts new Part 4 at the end of the Student Services Guidelines, which is titled 'Requirements relating to student led organisations'. The new Part contains provisions that prescribes the additional requirements that a higher education provider must be satisfied of in order to consider whether a student led organisation is eligible to receive the mandated 40 per cent (or part thereof) of SSAF revenue.
9. This item complements the definition of a 'student led organisation' in subsection 19-39(3) of HESA, as inserted by the Amendment Act. The definition provides that an organisation is a student led organisation if:
 - the majority of the persons constituting the governing body are either students enrolled in a course of study with the higher education provider, or who have been enrolled in a course of study with the higher education provider during any of the 3 immediately preceding calendar years;
 - the majority of the persons constituting the governing body have been democratically elected by students enrolled in a course of study with the higher education provider; and
 - the organisation satisfies the requirements (if any) specified in the Student Services Guidelines.
10. Section 20 of the new Part 4 prescribes the additional requirements for and organisation to be a student led organisation (and hence whose receipt of SSAF revenue can be counted towards the higher education provider's requirement to allocated at least 40 per cent of its SSAF revenue to student led organisations).

11. New paragraph 20(a) provides that, in order for an organisation to be a student led organisation, the higher education provider must be satisfied that the organisation has appropriate governance arrangements in place, including that:
 - the governing body of the organisation makes decisions independently from the higher education provider; and
 - the organisation keeps audited accounts that record its income and expenditure, including in relation to transactions between the relevant higher education provider and the organisation; and
 - the organisation has in place, and complies with, policies and procedures relating to record keeping, risk management, fraud prevention and financial controls.
12. New paragraph 20(b) also provides that, in order for an organisation to be a student led organisation, it will provide the student services prescribed in subsection 19-38(4) of HESA (e.g., providing food or drink to students on a campus) using the SSAF revenue allocated in a calendar year.
13. As the responsible party under HESA, the provider is required to have appropriate oversight of the arrangements within student-led organisations and SSAF expenditure to ensure compliance with HESA and the Instrument.
14. This item also inserts new section 21 titled 'Period in which the higher education provider must make application in relation to transitional arrangements for student led organisations'.
15. Subsection 19-40(3) of HESA, as inserted by the Amendment Act, provides that the Secretary must not agree to a transitional arrangement to allow for a higher education provider to adjust to and implement the new requirement in section 19-39, unless the relevant provider has a transition plan that will enable it to comply with section 19-39 after the end of the transitional arrangement. Transition plans for a Table A provider can be for a period of up to three consecutive years, while those for other higher education providers can be up to five consecutive years.
16. New section 21 of the Student Services Guidelines provides that a higher education provider must make an application in relation to transitional arrangements for student led organisations for 2026 and beyond in the first six months of the calendar year that precedes the calendar year that the provider wants the transitional arrangements to start.
17. The timing prescribed reflects the understanding that forward planning and decision making by higher education providers for SSAF allocations occurs up to six months

before the calendar year in which the SSAF funding is expensed by organisations and collected by the provider.