

## **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 2024***

### **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 2024* (the Amendment Instrument) rely on this provision.

### **PURPOSE AND OPERATION**

The Amendment Instrument amends Part 8 of the Principal Instrument to specify two Higher Education Continuity Guarantee (HECG) programs – the Higher Education Continuity Guarantee – Quality program (HECG Quality) and the Higher Education Continuity Guarantee – Equity program (HECG Equity). The HECG Quality program is the existing HECG program that provided grants under Part 2-3 of the Act to higher education providers for 2021, 2022 and 2023 for the purposes of assuring and enhancing the quality of Australia’s higher education sector. The HECG Equity program is the extension of the HECG for 2024 and 2025.

The amendments made to Part 8 will specify the HECG Equity program as a program for the purpose of promoting equality of opportunity in higher education, and set out the program objectives, the extra conditions of eligibility, method by which the amount of grants under the program are determined and the conditions that apply to grants made under the program.

The amendments made by the Amendment Instrument have been made in response to the Interim Report released by the Australian Universities Accord (the Accord). The Accord was a review of the higher education sector, and its Interim Report recommended the extension of the HECG program for 2024 and 2025, to minimise the risk of unnecessary structural

adjustment to the sector until the outcomes of the Accord are known. The Interim Report also recommended that higher education providers direct the HECG grants to support greater equity outcomes.

### **IMPACT ANALYSIS**

The Office of Impact Analysis has been consulted and advised that the Amendment Instrument does not require an Impact Analysis (ID: OIA24-07734).

### **COMMENCEMENT**

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

### **CONSULTATION**

In October 2023, the Department of Education (Department) completed an initial consultation process with eight higher education providers (which were identified as most likely to benefit from the measure) and relevant peak bodies. The focus of this initial consultation was to obtain feedback on the types of initiatives that HECG Equity grants could support. Specific issues raised by those higher education providers included:

- whether individual initiatives at the higher education provider could be funded under the HECG Equity program;
- the potential timeframe for spending HECG Equity grants; and
- whether HECG Equity grant funds must be used to establish new initiatives (as opposed to supporting pre-existing initiatives).

In March 2024, the Department engaged with the higher education sector on implementation matters relating to the HECG Equity program. An email was sent to universities and eligible higher education providers requesting feedback on the proposed conditions to be imposed on the HECG Equity program, and on the substance of the draft Amendment Instrument. Providers that responded were supportive of the HECG Equity program.

On 30 April 2024, the department held an information session with providers to consult further on the HECG Equity program. The session was attended by 112 provider and stakeholder representatives. Providers did not express particular views on the merits of the HECG Equity program through this particular forum.

## 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 2024

The *Higher Education Support (Other Grants) Amendment (Higher Education Continuity Guarantee) Guidelines 2024* (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 Part 8 of the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) to specify two Higher Education Continuity Guarantee (HECG) programs – the Higher Education Continuity Guarantee – Quality program (HECG Quality) and the Higher Education Continuity Guarantee – Equity program (HECG Equity). The HECG Quality program is the existing HECG program that provided grants under Part 2-3 of the *Higher Education Support Act 2003* (the Act) to higher education providers for 2021, 2022 and 2023 for the purposes of assuring and enhancing the quality of Australia’s higher education sector. The HECG Equity program is the extension of the HECG for 2024 and 2025.

The amendments made to Part 8 will specify the HECG Equity program as a program for the purpose of promoting equality of opportunity in higher education, and set out the program objectives, the extra conditions of eligibility, method by which the amount of grants under the program are determined and the conditions that apply to grants made under the program.

The amendments made by the Amendment Instrument have been made in response to the Interim Report released by the Australian Universities Accord (the Accord). The Accord was a review of the higher education sector, and its Interim Report recommended the extension of the HECG program for 2024 and 2025, to minimise the risk of unnecessary structural adjustment to the sector until the outcomes of the Accord are known. The Interim Report also recommended that higher education providers direct the HECG grants to support greater equity outcomes.

#### **Human rights implications**

The Amendment 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(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 Amendment Instrument amends the Principal Instrument to specify a new grant program (the HECG Equity program) which will provide grants to assist higher education providers with attracting and providing support to under-represented cohorts to assist them with participating and succeeding in higher education.

As such, the Amendment Instrument supports the right to 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 (OTHER GRANTS) AMENDMENT (HIGHER EDUCATION CONTINUITY GUARANTEE) GUIDELINES 2024

## 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 2024* (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, being the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal 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 repeals and replaces the heading to Part 8 of the Principal Instrument, to reflect that grants under that Part can be made both for the purposes of promoting equality of opportunity in higher education, and to assure and enhance the quality of Australia's higher education sector.

#### Item 2

6. Item 2 inserts a new heading to reflect that Part 8 is now split into two divisions. Item 2 inserts a new heading to reflect that the following sections are under Division 1, and Division 1 of Part 8 will set out provisions in relation to the Higher Education Continuity Guarantee – Quality (HECG Quality) program.

### Items 3 to 5

7. Items 3 to 5 amend subsections 60(1) and (2) and section 62 in Division 1 of Part 8 of the Principal Instrument, to reflect that the existing 'Higher Education Continuity Guarantee' program has been renamed to the 'Higher Education Continuity Guarantee – Quality' program. There have been no other changes made to the HECG Quality program.

### Item 6

8. Item 6 inserts a new Division 2 in Part 8 of the Principal Instrument.
9. New Division 2 specifies the Higher Education Continuity Guarantee – Equity (HECG Equity) program, and outlines the program objectives, the method by which the amount of grants under the program are determined, the conditions that apply to grants under the program, and other details about the grant.
10. New section 63A sets out the program objectives. Subsection 63A(1) provides that the HECG Equity program is specified as a program for the purposes of promoting equality of opportunity in higher education under item 1 of the table in subsection 41-10(1) of the Act.
11. Subsection 63A(2) provides that the objective of the HECG Equity program is to provide grants to assist higher education providers with attracting and providing support to students from low socio-economic backgrounds, students from regional and remote areas of Australia, students who are the first in their family to access higher education, Indigenous persons, and students with disability, to support those students with participating and succeeding in higher education.
12. New section 63B sets out the specified bodies corporate who are eligible for grants under the HECG Equity program, and the extra conditions of eligibility for the program. Subsection 63B(1) provides that bodies corporate that have entered into a funding agreement under section 30-25 of Part 2-2 of the Act are specified as a body corporate eligible for a grant under this program.
13. Subsection 63B(2) provides that a Table A provider must have entered into a funding agreement under section 30-25 of Part 2-2 of the Act for 2024 and 2025, to be eligible for a grant under the program.
14. Subsection 63B(3) provides that a Table A provider, or a body corporate referred to in subsection 63B(1), must have developed an 'Equity Plan' as described in the relevant funding agreements referred to in subsections 63B(1) and (2).
15. New section 63C sets out that grants under the HECG Equity program are made in respect of projects.
16. New section 63D sets out the method by which the amount of grants under the program are determined; providing that the Minister will determine the grant amount for a higher education provider in writing under paragraph 41-30(b) of the Act.
17. New section 63E sets out the conditions that apply to grants under the HECG Equity program. Subsections 63E(1) and (2) provide that the grant must be used to achieve the program objectives set out in subsection 63A(2) and must be used to support

and fund initiatives that support equity cohorts. Subsection 63E(3) provides that for the purposes of subsection 63E(2), the initiatives that support equity cohorts include but are not limited to the initiatives outlined in that subsection.

18. One of the initiatives listed in subsection 63E(3), as an initiative that supports equity cohorts, is outreach and pre-access activities aimed at attracting equity cohorts to enrol and participate in higher education. Pre-access activities refer to activities with communities and schools with the purpose of building a pipeline of higher education students.
19. Subsection 63E(4) clarifies that an initiative is not an initiative that supports equity cohorts if the initiative has been funded using grant amounts received by the grant recipient under Part 2-3 of the Act.
20. Subsection 63E(5) requires that the grant recipient seek approval from the Department if the recipient is seeking to use funds for initiatives that support equity cohorts that are not listed in subsection 63E(3).
21. Subsection 63E(6) provides that grant funds for a project under the program must be fully expended by the grant recipient on the initiatives by the end of the following calendar year after the last grant payment for the project was made.
22. Subsection 63E(7) provides that the grant recipient must provide reports to the Department, if required by conditions imposed under subsection 41-25(2) of the Act. The note to this subsection provides that the Minister has the power under subsection 41-25(2) of the Act to impose further conditions on grant, including conditions on reporting.