

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

***Higher Education Support (Other Grants) Amendment (Disability Support Programs)
Guidelines 2025***

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 (Disability Support Programs) Guidelines 2025* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The Amendment Instrument amends the Principal Instrument to reflect increased funding amounts for the Disability Support Programs in 2025 and future years, expand the activities on which grants under the Disability Support Fund may be spent, and amends the amount of support necessary for a student to be a student with disability and high-cost needs. It also amends the method to calculate grants under the Disability Support Fund.

The Amendment Instrument also updates the Principal Instrument to specify the Capacity Building Fund as a new Disability Support Program.

These amendments reflect the Australian Government's 2024 Mid-Year Economic and Fiscal Outlook commitment to increase the total amount of funding available for eligible providers under the Disability Support Fund. The amendments also reflect the 2023-24 Budget commitment to establish the Capacity Building Fund, which will support a higher education provider leading cross-sector implementation of targeted initiatives that support students with disability in higher education as part of the Disability Support Programs.

IMPACT ANALYSIS

The Office of Impact Analysis has advised no Impact Analysis is required as the Amendment Instrument is unlikely to have more than a minor regulatory impact (OIA24-08558).

COMMENCEMENT

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

CONSULTATION

In 2024, the Department of Education (the department) undertook targeted consultation with higher education and disability stakeholders on the design and implementation of higher education reforms announced in the 2024–25 Budget.

From April 2024, the department's Higher Education Disability Roundtable met eight times to discuss implementation of the reforms, including increases to the Disability Support Fund and expansion of eligible expenses. The Roundtable is a forum convened and chaired by the department and consists of senior disability and equity stakeholders, university staff and students with disability, disability practitioners, and representatives from Disability Representative Organisations, the Australian Human Rights Commission, Universities Australia, and the National Union of Students.

The department continues to meet regularly with these and other disability advocates to seek their advice on funding and other related reform.

Stakeholders have been supportive of proposed increases to the Disability Support Fund and the establishment of the Capacity Building Fund.

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 (Disability Support Programs) Guidelines 2025

The *Higher Education Support (Other Grants) Amendment (Disability Support Programs) Guidelines 2025* (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 the *Higher Education Support (Other Grants) Guidelines 2022* (the Principal Instrument) to reflect increased funding amounts for the Disability Support Programs in 2025 and future years, expand the activities on which grants under the Disability Support Fund may be spent, and amends the amount of support necessary for a student to be a student with disability and high-cost needs. It also amends the method to calculate grants under the Disability Support Fund.

The Amendment Instrument also updates the Principal Instrument to specify the Capacity Building Fund as a new Disability Support Program.

These amendments reflect the Australian Government's 2024 Mid-Year Economic and Fiscal Outlook commitment to increase the total amount of funding available under the Disability Support Fund for eligible providers. The amendments also reflect the 2023-24 Budget commitment to establish the Capacity Building Fund, which will support a higher education provider leading cross-sector implementation of targeted initiatives that support students with disability in higher education as part of the Disability Support Programs.

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) and the rights of people with disability to education in Article 24 of the Convention of the Rights of Persons with Disabilities (CRPD).

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 increases the funding available to the Disability Support Programs in 2025 and future years and specifies additional activities on which grant funding may be spent to better reflect the range of activities providers may engage in to support students with disabilities. The Amendment Instrument specifies a new grant program (the

Capacity Building Fund) which will fund a higher education provider to provide capacity building support to other higher education providers, to assist those providers to strengthen their internal skills, abilities, processes and resources to support students with disability to access, participate and succeed in higher education.

These amendments support the right to education as they mean students with disability will be given more support to participate in higher education.

Rights of people with disabilities

Article 24 of the CRPD provides State Parties must ensure the realisation of the right of persons with disabilities to education through an inclusive education system at all levels, including tertiary education, for all students, including people with disabilities, without discrimination and on equal terms with others.

Article 24 also sets out the aims of an inclusive education system as being to promote the full development of human potential and sense of dignity and self-worth, by strengthening respect for human rights, fundamental freedoms, and diversity, to foster the personality, talents and creativity of people with disabilities, as well as their mental and physical abilities, to their fullest potential and to enable people with disabilities to participate effectively in society.

The Amendment Instrument supports the rights of people with disabilities by providing funding to assist higher education providers to support students with disability to access, participate and succeed in higher education. This supports the ability of people with disabilities to engage and participate in higher education.

Conclusion

The Amendment Instrument is compatible with human rights because it supports the right to education and the rights of people with disabilities.

Minister for Education, the Hon Jason Clare MP

HIGHER EDUCATION SUPPORT (OTHER GRANTS) AMENDMENT (DISABILITY SUPPORT PROGRAMS) GUIDELINES 2025

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the *Higher Education Support (Other Grants) Amendment (Disability Support Programs) Guidelines 2025* (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 inserts new definitions of CAST, Universal Design for Learning and UDL Guidelines 3.0 into the definitions section of the Principal Instrument. These definitions support the new wording of paragraph 41(2)(c), which provides that Disability Support Fund grant funding may be spent on the implementation of Universal Design for Learning in accordance with the UDL Guidelines 3.0.
6. The UDL Guidelines 3.0 is a document created by CAST that is freely available online at <https://udlguidelines.cast.org/more/downloads/> and applies as that document was in force at the time the Amendment Instrument was made. It is necessary to incorporate this document by reference as it is integral to understanding Universal Design for Learning, and, as such, is integral to understanding some of the activities on which Disability Support Fund grant funding may be spent.

Item 2

7. Item 2 repeals subsection 39(1) and substitutes a new subsection 39(1).
8. Old subsection 39(1) set out the total amount of grant funds available for the Disability Support Programs (which previously consisted of the Disability Support Fund and the Australian Disability Clearinghouse on Education and Training).
9. New subsection 39(1) sets out the total amount of grant funds available for the three Disability Support Programs (the Disability Support Fund, the Australian Disability Clearinghouse on Education and Training, and the Capacity Building Fund). This reflects amendments to the Principal Instrument to specify the Capacity Building Fund as a new Disability Support Program.
10. The item also updates the amounts in the subsection to remove the 2023 and 2024 amounts (as grants for 2023 and 2024 have already been paid), to reflect increased funding for 2025, to indicate that the 2026 amount will be obtained by indexing a specified amount, and to provide that the amount for future years is the 2026 amount indexed under section 40 of the Principal Instrument.

Item 3

11. Item 3 repeals subsection 39(2) and substitutes a new subsection 39(2).
12. Old subsection 39(2) set out the total amount of funding available for the Disability Support Fund, and provided that the total amount of funding available for 2023 and future years was the relevant amount set out in subsection 39(1) less the amount allocated to the Australian Disability Clearinghouse on Education and Training under section 45 for the relevant year (the ADCET amount).
13. New subsection 39(2) still sets out the total amount of funding available for the Disability Support Fund but removes the amounts for 2023 and 2024 (as grants for 2023 and 2024 have already been paid) and provides that the total amount of funding available for 2025 and future years is the relevant amount set out in subsection 39(1) less the ADCET amount and the amount allocated to the Capacity Building Fund under section 45D for the relevant year.

Item 4

14. Item 4 amends paragraph 39(5)(a) to omit “\$10,631 in 2023” and substitute “\$5,000 in 2024”.
15. Paragraph 39(5)(a) defines “*student with disability and high-cost needs*” by reference to an amount the student has received from the provider in educational support and equipment related to their disability in a calendar year. The amount for students with disability with high-cost needs is a factor in determining the grant amount under the Disability Support Fund for a provider, as set out in subsection 39(3). This item amends this definition to reduce the amount specified in the definition from \$10,631 in 2023 to \$5,000 in 2024. This change would apply to the calculation of 2025 grant amounts, noting the calculation of grant amounts for each grant year is based on data reported by higher education providers for student enrolments in the previous calendar year.
16. The amendment of the amount required to be spent by the provider on educational support and equipment for a student to be considered a student with disability and

high-cost needs reflects a commitment to support a wider range of students with disabilities through Disability Support Fund funding.

Item 5

17. Item 5 inserts a new subsection 39(5A) after subsection 39(5).
18. Existing subsection 39(6) provides for how an 'amount for students with disability with high-cost needs' is calculated, for the purposes of calculating a provider's grant under the Disability Support Fund program. Existing subsection 39(5) sets out the meaning of the terms 'student with disability and high-cost needs' and 'a claim for education support and equipment', which are terms used in existing subsection 39(6).
19. New subsection 39(5A) provides that, for the purposes of paragraph 39(5)(b), a 'claim for educational support and equipment' does not include a claim for amounts spent by the provider that have been sourced from grant amounts received under Part 3 of the Principal Instrument.
20. The changes made by item 5 will provide greater clarity for higher education providers around the requirements when claiming expenses under the Disability Support Fund.

Item 6

21. Item 6 amends section 40 to replace the reference to paragraph 39(1)(d) with paragraph 39(1)(c). This is a technical amendment to reflect the changes made by item 2 i.e. that it is the amount specified in paragraph 39(1)(c) that will be indexed under section 40.

Item 7

22. Item 7 repeals subsection 41(2) and substitutes it with a new subsection.
23. Subsection 41(2) sets out the activities on which grant amounts under the Disability Support Fund can be spent. The content of old subsection 41(2) is preserved, in paragraphs (a), (b), and (c). Item 7 adds additional activities on which this funding may be spent (new paragraphs (e) and (f)) and clarifies one existing activity in paragraph (c).
24. New paragraph 41(2)(c) adds wording to indicate that making modifications to course content, teaching materials and delivery methods to better meet the needs of students with disability may include implementation of Universal Design for Learning in accordance with the UDL Guidelines 3.0 created by CAST. This recognises a commitment in the disability support space to the use of Universal Design for Learning.
25. New paragraphs (e) and (f) expand the activities on which grant amounts may be spent to include salaries for staff whose only duties involve supporting students with disability, and the purchase of information and communication technology licences in bulk to support students with disability. The addition of these activities reflects an updated understanding of how Disability Support Fund funding is best used by higher education providers.

Item 8

26. Item 8 inserts a new Division 3 after section 45 in the Principal Instrument.
27. New Division 3 specifies the Capacity Building Fund as a new Disability Support Program, and outlines the program objectives, the method by which the amount of grants under the program are determined, and other details about the grant.
28. New section 45A sets out the program objectives. Subsection 45A(1) provides that the Capacity Building Fund 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. Subsection 45A(2) provides that the objective of the Capacity Building Fund is to promote equality of opportunity in higher education by providing grant funding to a higher education provider to provide capacity building support to other higher education providers to assist those providers with strengthening their internal skills, abilities, processes and resources to support students with disability to access, participate and succeed in higher education.
29. New section 45B provides that there are no specified bodies corporate or extra conditions of eligibility for the Capacity Building Fund.
30. New section 45C provides that grants under the Capacity Building Fund are in respect of a project.
31. New section 45D sets out the method by which the amount of grants under the program are determined and applicable conditions of grant. New subsection 45D(1) provides that a grant under this program will be made to a specific provider chosen to deliver the capacity building support described in subsection 45A(1). New subsection 45D(2) provides that the Minister will determine the conditions that apply to grant funds under this program, and the grant amount, under paragraphs 41-25(1)(c) and 41-30(b) of the Act.