Commonwealth of Australia

Higher Education Support Act 2003

HIGHER EDUCATION PROVIDER GUIDELINES

Revocation and making of Guidelines made pursuant to section 238-10 of the Higher Education Support Act 2003

I, BRENDAN NELSON, Minister for Education, Science and Training, revoke all previous Higher Education Provider Guidelines and, pursuant to section 238-10 of the Higher Education Support Act 2003 ("the Act"), make the attached Higher Education Provider Guidelines for the purposes of Part 2-1 of the Act.

Dated this..................5..................day of..........September........2005.

BRENDAN NELSON
Minister for Education, Science & Training
COMMONWEALTH OF AUSTRALIA

Higher Education Support Act 2003

HIGHER EDUCATION PROVIDER GUIDELINES

(i) CITATION

These guidelines may be cited as the Higher Education Provider Guidelines.

(ii) AUTHORITY

These guidelines are made under section 238-10(1) of the Higher Education Support Act 2003 (the Act).

(iii) DATE OF EFFECT

These guidelines shall come into effect on the date they are registered on the Federal Register of Legislative Instruments, which is established under the Legislative Instruments Act 2003, and are subject to any disallowance under that Act by a House of the Parliament of the Commonwealth of Australia.
COMMONWEALTH OF AUSTRALIA

Higher Education Support Act 2003

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CHAPTER 1    INTRODUCTION

1.1    PURPOSE

1.1.1 These guidelines set out the tuition assurance requirements which a body corporate must fulfil to be approved by the Minister as a higher education provider under the Act and with which higher education providers other than Table A providers must comply in order to maintain their approval as higher education providers under the Act.

1.1.5 These guidelines set out the grievance procedures which a body corporate must be willing and able to meet in order to be approved as a higher education provider under the Act and with which higher education providers other than Table A providers must comply in order to maintain their approval as higher education providers under the Act.

1.1.10 These guidelines set out procedures to be followed by review officers reviewing reviewable decisions under Chapter 3 of the Act.

1.1.15 These guidelines name the quality auditing body which will audit higher education providers.

1.1.19 These guidelines specify periods under subsections 19-87(1) and 19-95(1) of the Act;

1.1.20 These guidelines specify the date by which a higher education provider must publish the schedule of the student contribution amounts for places and tuition fees for a particular period under paragraph 19-95(2)(b) of the Act.

1.1.21 These guidelines specify the date before which a variation to a:
   – student contribution amount must be made under subparagraph 19-87(3)(a)(i) of the Act; and
   – fee must be made under subparagraph 19-90(4)(a)(i) of the Act.

1.1.22 These guidelines specify the circumstances in which a:
   – student contribution may be varied under subparagraph 19-87(3)(a)(ii) of the Act; and
   – fee may be varied under subparagraph 19-90(4)(a)(ii) of the Act.

1.1.23 These guidelines specify the date by which information on student contribution amounts for places in units, or tuition fees, to apply to students in student cohorts must be published and made publicly available under subsection 19-97(2) of the Act.

1.1.24 These guidelines specify the kind of conditions that a higher education provider may determine for a student cohort that are to apply in relation to the:
   – student contribution amount for a place in the unit under subsection 19-88(5) of the Act; and
   – fee for the unit under subsection 19-91(5) of the Act.

1.1.25 These guidelines set out the information that must be provided to an applicant upon approval as a higher education provider.
1.5 INTERPRETATION

1.5.1 Unless the contrary intention appears, the terms within these Guidelines have the same meaning as in the *Higher Education Support Act 2003*.

1.5.5 In these Guidelines, unless the contrary intention appears:

*the Act* means the *Higher Education Support Act 2003*.

*victimise* means to act or omit to act towards a person in a way which is intended to cause disadvantage to that person because they have made a complaint, or may make a complaint, or may be or are the subject of a complaint.

*non-academic matters* includes those matters which do not relate to student progress, assessment, curriculum and awards in a course of study and includes complaints in relation to personal information that the provider holds in relation to the student, and about the administration of the Commonwealth Learning Scholarships Programme.

*tuition assurance scheme* means a scheme whose main objects include ensuring that students receive the course they have paid for.

1.5.10 Terms in these Guidelines that are in *italics* have the meaning stated in paragraph 1.5.5 of these Guidelines.
CHAPTER 2 THE TUITION ASSURANCE REQUIREMENTS

2.1.1 The purpose of this chapter is to set out the tuition assurance requirements. (See sections 16-30 and 19-40 of the Act.)

2.1.5 The tuition assurance requirements have two parts:

Part 1 Course Assurance

If a higher education provider other than a Table A provider or exempt provider should cease to be able to provide a course of study, a student is able to enrol in a similar course of study with another higher education provider and receive full recognition (that is full credit towards the same or a comparable qualification) from the second provider for any successfully completed units of study undertaken as part of that course of study.

Part 2 Contribution or Tuition Fee Repayment

If a higher education provider other than a Table A provider or exempt provider should cease to be able to provide a course of study, a student will be able to receive a payment equivalent to any student contribution amount or tuition fee paid for any undelivered unit of study. A refund need not be paid to a student where the higher education provider transfers to another provider the student’s student contribution amount or tuition fee for any uncompleted units of study.

2.1.10 A higher education provider other than a Table A provider or exempt provider must satisfy the Minister that it is able to meet both Part 1 (Course Assurance) and Part 2 (Contribution or Tuition Fee Repayment) of the tuition assurance requirements.

2.5 COURSE ASSURANCE REQUIREMENTS FOR RECOGNITION OF SUCCESSFULLY COMPLETED UNITS OF STUDY

2.5.1 A body-corporate or a higher education provider other than a Table A provider (the First Provider) fulfils or complies with the course assurance requirements if it provides documentary evidence that demonstrates to the satisfaction of the Minister that for each course of study it offers it has one or more of the following arrangements in place:

a) it is a member of a tuition assurance scheme (TAS) approved by the Minister for this purpose and the TAS undertakes that should the First Provider cease to be able to provide a course of study, it will arrange for students of the First Provider in that course of study to be able to enrol in a similar course offered by another higher education provider, with full credit for the units of study completed and leading to the same or a comparable qualification; or

b) it has entered into a legally-binding agreement with one or more higher education providers (the “Second Provider”) where the agreement provides that should the First Provider cease to be able to provide a course of study, the Second Provider will offer to enrol students of the First Provider in that course of study in a similar course, with full credit for the units of study completed and leading to the same or a comparable qualification; or

c) a legally-binding guarantee has been provided by a separate legal entity (not necessarily a higher education provider) with financial resources to fulfil such a
guarantee, where the separate legal entity guarantees that should the First Provider cease to be able to provide a course of study the separate legal entity will, if requested by students in that course of study, purchase places in a similar course of study, where the students will receive full credit for the units of study completed and the course of study leads to the same or a comparable qualification; or

d) where the Minister agrees that a course of study that the First Provider offers is of such a specialised nature, or contains components of such a specialised nature, that full credit transfer cannot be arranged, the First Provider may enter into arrangements as set out in 2.5.1, (a), (b) or (c), except that the arrangement shall be for an alternative course of study with as much credit as possible for the units of study completed.

2.5.5 The Second Provider does not have to be an approved higher education provider at the time of entering into the legally-binding agreement referred to in clauses 2.5.1(b) and (d), provided that the Second Provider obtains approval as a higher education provider within six calendar months of the First Provider obtaining approval.

2.5.10 If the First Provider is a Registered Provider within the meaning of the Education Services for Overseas Student Act 2000, the Course Assurance Requirements in clause 2.5.1 do not apply to overseas students enrolled in a course of study with the First Provider.

2.10 STATEMENT OF COURSE ASSURANCE

2.10.1 A higher education provider other than a Table A provider or exempt provider is required to publish to all enrolling students a ‘statement of course assurance’ explaining the course assurance requirements and the method by which the requirements have been met in the course concerned. The higher education provider must ensure that upon enrolment each student is provided with clear information about where this statement may be obtained.

2.10.5 The method of publication to be used is to be determined by the higher education provider and may include printed handbooks; the higher education provider’s web site; or any other method determined by the higher education provider which would bring the information to the attention of students and prospective students.

2.20 CONTRIBUTION OR TUITION FEE REPAYMENT REQUIREMENT

2.20.1 A body corporate or higher education provider other than a Table A provider (the Provider) fulfils or complies with the contribution or tuition fee repayment requirements if it provides documentary evidence that demonstrates to the satisfaction of the Minister that for each course of study it offers it has one or more of the following contribution or tuition fee repayment arrangements in place:

   a) membership of a tuition assurance scheme (TAS) which has been approved by the Minister for this purpose, under which the TAS guarantees to refund to the student any student contribution amount or tuition fee received by the Provider for any uncompleted units of study where:

      i) the Provider ceases to be able to provide a course of study; and
      ii) the Provider has not transferred to another provider with whom the student has enrolled, the student’s student contribution amount or tuition fee.
b) a ‘tuition fees in arrears’ agreement is offered by the Provider to students under which students enrol on the basis that tuition fees for each unit of their course of study is paid in arrears; or

c) a legally binding guarantee has been provided by a separate legal entity (not necessarily a higher education provider) with financial resources to fulfil such a guarantee, under which the separate legal entity guarantees to refund to the student the student contribution amount or tuition fee received by the Provider for any uncompleted units of study where:

i) the Provider ceases to be able to provide a course of study; and

ii) the Provider has not transferred to another provider with whom the student has enrolled, the student’s student contribution amount or tuition fee.

2.20.5 If the Provider is a Registered Provider within the meaning of the *Education Services for Overseas Student Act 2000*, the contribution or tuition fee repayment requirements in clause 2.20.1 do not apply to overseas students enrolled in a course of study with the Provider.

2.25 **EXEMPTION**

2.25.1 Any body corporate seeking to be approved by the Minister as a higher education provider or any higher education provider other a Table A provider which considers that adequate grounds exist for it to be exempted from the requirements for tuition assurance as set out in these guidelines (Course Assurance, Contribution and Tuition Fee Repayment, or both parts), should apply to the Minister in writing setting out those grounds. (See sections 16-30(2) and 19-40(2) of the Act.)
CHAPTER 3  GRIEVANCE AND REVIEW PROCEDURES

3.1  The purpose of this chapter is:

a) to ensure that all higher education providers other than those listed on Table A of the Act have a grievance procedure in place to ensure effective and fair handling of complaints about non-academic matters. (See sections 19-45(1)(a) and 19-45(2) of the Act.); and

b) to set out procedures that review officers must follow when reviewing reviewable decisions of higher education providers under chapter 3 of the Act. (See sections 19-45(4) of the Act.)

3.5  REQUIREMENTS FOR GRIEVANCE PROCEDURES

3.5.1  A higher education provider other than a Table A provider must have grievance procedures to deal with complaints relating to non-academic matters from the provider’s students and from persons seeking to enrol in courses of study with the provider, which must contain the following elements:

a) an arrangement for handling complaints which is easily accessible to students; is without charge, or at reasonable cost to students; and encourages timely resolution; and

b) an arrangement for the internal investigation of complaints which remain unresolved by the process outlined at (a) by an independent and impartial senior officer of the provider nominated by the provider, or dedicated complaints committee or unit established by the provider; and

c) a provision for external review of its decisions by an independent person or body established or nominated by the higher education provider.

3.5.5  The higher education provider must:

a) have a mechanism in place to implement the grievance procedure;

b) ensure that the grievance procedure is agreed to and ratified by the provider’s governing body;

c) not victimise or discriminate against any complainant or respondent;

d) make details of the procedures publicly available;

e) communicate the procedures in writing to its staff and train its staff in their application;

f) specify reasonable timelines for responses to each stage of the process;

g) allow the complainant and/or respondent to be accompanied and assisted by a third party if desired;
h) give reasons and full explanation in writing for decisions and actions taken as part of the procedures, if requested by the complainant and/or respondent;

i) keep appropriate records of grievances for at least five years, and allow parties to the complaint appropriate access to these records;

j) ensure that such records are treated as confidential.

3.5.10 Students or persons seeking to enrol in course of study with a provider are entitled to access the grievance procedure as set out by that provider, regardless of the location of the campus at which the grievance has arisen, the student’s place of residence or the mode in which they study.

3.5.15 The procedures set out in this document do not replace or modify procedures or any other responsibilities which may arise under other higher education provider policies or under statute or any other law.

3.10 REQUIREMENTS FOR REVIEWING DECISIONS OF A HIGHER EDUCATION PROVIDER IN RELATION TO ASSISTANCE UNDER CHAPTER 3 OF THE ACT

3.10.1 The higher education provider must acknowledge receipt of an application for review of a reviewable decision in writing and inform the applicant that, if the reviewer has not advised the applicant of a decision within 45 days of receiving the application for review, the reviewer is taken to have confirmed the original decision.

3.10.5 The reviewer of a reviewable decision must inform applicants of their right to apply to the Administrative Appeals Tribunal for a review of the decision; and provide the contact details of the closest Administrative Appeals Tribunal Registry, and the approximate costs of lodging an appeal with the Administrative Appeals Tribunal.
CHAPTER 4 QUALITY AUDITING BODY

4.1 The purpose of this chapter is to name the body which will undertake quality audits of:

a) a Table A provider (See section 19-27 of the Act); and

b) a higher education provider other than a Table A provider. (See section 19-25 of the Act.)

4.5 The quality auditing body is the Australian Universities Quality Agency.
CHAPTER 5 INFORMATION REQUIREMENTS FOR HIGHER EDUCATION PROVIDERS

5.1 The purpose of this chapter is to set out the information that will be provided to a higher education provider upon gaining approval. (See section 16-50 (4) of the Act.) The notice of the Minister’s approval sent to the provider must contain information as to the obligations higher education providers will be required to meet, as set out below.

5.5 QUALITY AND ACCOUNTABILITY REQUIREMENTS

5.5.1 A higher education provider must be provided with information regarding the provider’s obligations in relation to the quality and accountability requirements. These consist of:

a) information regarding the provider’s obligations under the financial viability requirements as contained in Subdivision 19-B of the Act;

b) information regarding the provider’s obligations under the quality requirements as contained in Subdivision 19-C of the Act and these Guidelines;

c) information regarding the provider’s obligations under the fairness requirements as contained in Subdivision 19-D of the Act and these Guidelines;

d) information regarding the provider’s obligations under the compliance requirements as contained in Subdivision 19-E of the Act and related Guidelines; and

e) information regarding the provider’s obligations under the contribution and fee requirements as contained in Subdivision 19-F of the Act, and related Guidelines.
CHAPTER 6  PUBLICATION REQUIREMENTS FOR STUDENT CONTRIBUTION AMOUNTS AND TUITION FEES

6.1 PURPOSE

6.1.1 The purpose of this chapter is to specify the:

a) periods under subsections 19-87(1) and 19-95(1) of the Act;

b) date by which a higher education provider must publish the schedule of student contribution amounts for places and tuition fees for a particular period under paragraph 19-95(2)(b) of the Act;

c) date before which a variation to a:

i) student contribution amount must be made under subparagraph 19-87(3)(a)(i) of the Act; and

ii) fee must be made under subparagraph 19-90(4)(a)(i) of the Act;

d) circumstances in which a:

i) student contribution may be varied under subparagraph 19-87(3)(a)(ii) of the Act; and

ii) fee may be varied under subparagraph 19-90(4)(a)(ii) of the Act; and

e) date by which information on student contribution amounts for places in units, or tuition fees, to apply to students in student cohorts must be published and made publicly available under subsection 19-97(2) of the Act.

6.5 PERIODS

6.5.1 For the purposes of subsections 19-87(1) and 19-95(1) of the Act:

(a) the first period of a year commences on the 1st of January and ends on the 30th of June of that year.

(b) the second period of a year commences on the 1st of July and ends on the 31st of December of that year.

6.5.5 The periods specified in paragraph 6.5.1 of these guidelines are relevant only for the purposes of subsections 19-87(1) and 19-95(1) of the Act and paragraph 6.10.1 of these guidelines.

6.10 DATE BY WHICH A HIGHER EDUCATION PROVIDER MUST PUBLISH THE SCHEDULE OF STUDENT CONTRIBUTION AMOUNTS FOR PLACES AND TUITION FEES FOR A PARTICULAR PERIOD

6.10.1 A higher education provider must publish a schedule of student contribution amounts for places and tuition fees by:

a) the 1st of April of a year for units of study with a census date in the second period of the same year; and
b) the 1st of October of a year for units of study with a census date in the first period of the subsequent year.

6.15 DATE BEFORE WHICH A VARIATION TO A STUDENT CONTRIBUTION AMOUNT OR FEE MUST BE MADE

6.15.1 If the circumstances covered in section 6.20 of these guidelines prevail, a higher education provider may vary a student contribution amount or fee for a unit of study up to two months before the earlier of:

a) the date of commencement of the unit of study; and

b) the last date that a student can enrol in the unit of study without incurring a late enrolment fee.

6.20 CIRCUMSTANCES IN WHICH A STUDENT CONTRIBUTION AMOUNT OR FEE MAY BE VARIED

6.20.1 A higher education provider may only vary a student contribution amount or fee if:

a) the reason for the change was unforseen at the time the student contribution amount or fee was determined; and

b) the reason for the change was beyond the higher education provider’s control; and

c) the higher education provider has advised the Department of Education, Science and Training, in writing, of its intention to vary, and its reasons for varying, the student contribution amount or fee.

6.20.5 For circumstances to be considered unforseen under paragraph 6.20.1(a) of these guidelines, the circumstances must be unusual, uncommon or abnormal.

6.20.10 For the circumstances to be considered beyond a higher education provider’s control under paragraph 6.20.1(b) of these guidelines, the circumstances must be such that a reasonable person would consider the circumstances to not be due to the higher education provider’s action or inaction, either direct or indirect.

6.25 DATE BY WHICH STUDENT COHORT INFORMATION MUST BE PUBLISHED

6.25.1 Sufficient information to enable a person in a student cohort to work out his or her student contribution amount and tuition fee for each unit of study that the provider provides or is to provide as part of the cohort’s course of study, and any conditions that are to apply in relation to the amount or fee for each unit of study for each cohort, must be published and made publicly available by 1 October in the year preceding the year in which the student cohort commences its course of study.
CHAPTER 7 CONDITIONS FOR A STUDENT COHORT

7.1 PURPOSE

7.1.1 The purpose of this chapter is to specify the kind of conditions that a higher education provider may determine for a student cohort that are to apply in relation to the:

a) student contribution amount for a place in the unit under subsection 19-88(5) of the Act; and

b) fee for the unit under subsection 19-91(5) of the Act.

7.5 THE KIND OF CONDITIONS THAT MAY BE DETERMINED

7.5.1 A higher education provider may only determine a condition that specifies the period of time that students in a student cohort are subject to the:

a) student contribution amount for a place in a unit of study determined under 19-88(2) of the Act; and

b) fee for a unit of study determined under 19-91(2) of the Act.