EXPLANATORY STATEMENT

Guidelines issued under subsection 238-10 of the Higher Education Support Act 2003

ADMINISTRATION GUIDELINES

Issued by the authority of the Minister for Education, Science and Training

Subject: Higher Education Support Act 2003
        Amendment No. 1 to the Administration Guidelines

Authority

Section 238-10 of the Higher Education Support Act 2003 (the Act) provides that the Minister may make guidelines for the purposes of the Act. In particular, section 238-10 specifies that the Minister may make Administration Guidelines to give effect to matters set out in Chapter 5 of the Act.

Division 174 in Part 5-3 of Chapter 5 of the Act provides that certain documents that are required or permitted to be given between students and higher education providers may be transmitted electronically.

Division 174 of the Act was recently amended by the Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006 which allowed the Act and the Administration Guidelines (made under the Act) to operate without the need for an exemption under the Electronic Transactions Act 1999. The Act allows for the Administration Guidelines to specify requirements relating to electronic communication between higher education providers and students.

Background

- The Administration Guidelines were registered and commenced on 13 September 2005.
- The Administration Guidelines are being amended as a result of the commencement of the Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006 (No. 121, 2006).

Consultation

No consultation was undertaken with the sector as these amendments are not intended to alter the current arrangements for electronic communication between providers and students.

Overview

Division 174 of the Act was recently amended by the Higher Education Legislation Amendment (2006 Budget and Other Measures) Act 2006 to provide for the operation of the Act without the need for an exemption under the Electronic Transactions Act 1999 (ETA). Part 5-3 was amended
to provide for the Administration Guidelines to set out requirements for the electronic communication of notices and documents.

ETA provides that where a person is required or permitted to give information in writing to a Commonwealth entity, or an entity acting on the Commonwealth’s behalf, that requirement is fulfilled by an electronic communication of that information.

ETA also provides that exemptions from its provision may be granted to a law of the Commonwealth. The *Higher Education Funding Act 1988* (HEFA) was granted an exemption from the provisions of the ETA. It was originally intended that the Act would operate with an exemption from the ETA.

The relevant subsections of the ETA (9(3), 10(2) and 11(4)) do not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring or permitting the electronic communication of information in accordance with particular information technology requirements. The Act and Administration Guidelines therefore, as a law of the Commonwealth, may make provision for the electronic communication of information. Accordingly in November 2006, Division 174 of Part 5-3 of the Act was amended to provide for the Administration Guidelines to set out the requirements for the electronic transmission of information.

Chapter 5 of the Administration Guidelines, *Electronic Communication*, has been deleted and replaced. The new Chapter 5 gives effect to the changes to the Act passed in November 2006. Minor consequential changes have been made to Chapter 1 *Introduction*.

The effect of the amendments is that:
• when higher education providers are receiving information or documents required or allowed under the Act electronically (including, where applicable, electronic signatures) they will need to comply with the provisions in paragraphs 5.5 and 5.10 of the Administration Guidelines; and
• where notices or documents are to be given by higher education providers to students electronically, the information must be given in accordance with requirements in paragraph 5.5 of the Administration Guidelines.

**Detail of the Amendments**

**Chapter 1**
Chapter 1, *Introduction*, has been amended under the subheading *Purpose* to insert relevant information to describe the changed content of Chapter 5 of the Administration Guidelines.

**Chapter 5**
Chapter 5, *Electronic Communication*, has been deleted and replaced with a new Chapter 5 which gives effect to changes to the Act passed in November 2006. It contains the following details:
• 5.5 sets out the *Information technology requirements* of electronic communication of notices or other documents required or permitted to be given pursuant to the Act;
• 5.5.1 specifies requirements of the information system to communicate notices or documents electronically from students to higher education providers. It includes details of the kinds of electronic communications and the requirements of the information system regarding accessibility, security, storage, unique identification where required and printable receipt verification;
• 5.5.2 specifies requirements relating to the electronic communication of notices or other documents given by a higher education provider to a student. It includes details of the kinds of electronic communications and provisions for students to be informed and given authority to use the system and for storage and accessibility of the notices or documents.

• 5.10 sets out the requirements relating to methods higher education providers must put in place to be used by students to identify themselves and indicate their approval of documents. This requires providers to ensure that where a student is enabled to provide a signed communication electronically that it must be done by a method that includes an identification that is unique to the student.

Commencement

These guidelines will commence on the day after the day on which they are registered on the Federal Register of Legislative Instruments.