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. 2 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.

**Background**

- The Administration Guidelines were registered and commenced on 13 September 2005.
- Amendment No. 1 to the Administration Guidelines was registered on 21 May 2007 and commenced on 22 May 2007.
- A compilation of the Administration Guidelines was registered on 22 June 2007.
- The Administration Guidelines are being amended to reflect changes to requirements for varying published census dates and Equivalent Full-Time Student Load (EFTSL) values.

**Consultation**

The higher education sector was consulted extensively on the amendment to Chapter 4 of the Administration Guidelines. On 27 August 2007, the draft amendment was sent to the Australian Vice-Chancellors’ Committee (now Universities Australia), the Australian Technology Network, Innovative Research Universities Australia, the Council of Private Higher Education and the Australian Council for Private Education and Training for comment. Comments on the draft amendment were then sought from the sector more broadly through the *Backing Australia’s Future - Realising Our Potential* Newsletter No. 28 in September 2007. The responses received were favourable.

**Overview**

Section 169-25 of the Act sets out requirements for higher education providers to determine census dates and EFTSL values for each unit of study they intend to provide. Section 169-25 of the Act provides that the Administration Guidelines may specify the periods for which census dates and EFTSL values must be determined and the date by which a provider must publish that information.

Section 169-25 of the Act also includes provisions which allow providers to vary published information by dates and in circumstances specified in the Administration Guidelines.
Chapter 4 of the current Guidelines specifies that a variation to a published census date or EFTSL value must occur before the earlier of 2 months before the commencement of the unit or the last day to enrol without incurring a late enrolment fee. The current Chapter 4 also specifies that the circumstances in which the variation can be made are where the reason for the variation were unforeseen and beyond the provider’s control and the provider has notified the Department of Education, Science and Training (the Department) of the change.

The effect of the amendment is that:
- a variation is required to be made before the date specified in paragraph 4.15.1 only if it will disadvantage students; and
- disadvantage will include a variation that brings forward the census date or reduces the EFTSL value for a unit of study.

Details of the Amendment

Chapter 4

- 4.15.1 has been deleted and a new paragraph 4.15.1 inserted. Paragraph 4.15.1 sets out the dates before which a variation to a census date or EFTSL value must be made under subsection 169-25(4) of the Act. The new paragraph 4.15.1 limits the effect of its provisions to variations to which the circumstances in the new paragraph 4.20.1 (c) apply.

- 4.20.1 has been deleted and a new paragraph 4.20.1 inserted. Paragraph 4.20.1 sets out the circumstances which much exist for a provider to be allowed to vary a census date or EFTSL value under subsection 169-25(4) of the Act. Paragraph 4.20.1 specifies that the circumstances must be that:
  - the reasons for the variation did not apply at time the original determination was made;
  - that the Department has been notified 5 days prior to the variation; and
  - if students will be disadvantaged that the variation is made before the dates ascertained in accordance with paragraph 4.15.1.

- 4.20.5 has been deleted and a new paragraph 4.20.5 inserted. Paragraph 4.20.5 specifies that when considering disadvantage under paragraph 4.20.1(c) a student will be considered to be disadvantaged where a variation reduces an EFTSL value or brings forward a census date for a unit of study. Paragraph 4.20.5 does not limit disadvantage under 4.20.1(c) to these cases.

- 4.20.10 has been deleted.

- 4.25.5 has been deleted and a new paragraph 4.25.5 inserted. Paragraph 4.25.5 specifies that when a census date or EFTSL value has been varied in accordance with paragraphs 4.15 and 4.20 it must be published within 2 weeks of the variation.

Commencement

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