

EXPLANATORY STATEMENT

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

OS-HELP Guidelines 2013

Issued by the authority of the Minister for Higher Education

Subject: *Higher Education Support Act 2003*
OS-HELP Guidelines 2013

Authority

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines providing for matters required or permitted by the Act necessary or convenient to be provided in order to carry out or give effect to the Act. In particular item 7 of the table in section 238-10 specifies that the Minister may make OS-HELP Guidelines to give effect to matters set out in Part 3-4 of the Act.

Purpose and operation

The purpose of this instrument is to revoke the *OS-HELP Guidelines 2007* made on 23 January 2007 (the Former Guidelines) and all subsequent amendments and make the *OS-HELP Guidelines 2013* (the Guidelines).

The principal changes between the Former Guidelines and the Guidelines are intended to implement the legislative reforms resulting from by the passage of the *Higher Education Support Amendment (Asian Century) Act 2013*, which give effect to measures outlined as part of the Government's response to the Australia in the Asian Century White Paper.

The legislative amendments expand eligibility for OS-HELP assistance and provide additional incentives for university students to undertake part of their course of study in Asia from 1 January 2014 by:

- increasing the maximum loan amount for students undertaking overseas study in Asia to \$7,500 (\$1,250 more than for other destinations); and
- providing for a supplementary loan amount of up to \$1,000 for students undertaking intensive Asian language study in preparation for overseas study in Asia.

Changes to the Guidelines include the following:

- setting out principles and procedures for selecting students for receipt of supplementary amounts for Asian language study;
- specifying which countries are considered to be in Asia;
- allowing students receiving OS-HELP assistance for both Asian language study and for overseas study to be paid in two separate payments;
- removing the provisions on determining whether a student meets the overseas study requirements, as the Act now simply requires that the overseas study will

count towards the course requirements of the course of study the student is enrolled in with their home provider;

- clarifying what is meant by a six month period in relation to eligibility for OS-HELP assistance; and
- simplifying the provisions for determining the number of students selected for receipt of OS-HELP assistance.

Unlike the Former Guidelines, the OS-HELP Guidelines 2013 do not include provisions for determining whether a student meets overseas study requirements, as the Act now provides for this requirement. Under these new arrangements, students will be able to receive OS-HELP assistance for a wider range of overseas study experiences, including clinical and professional placements and study tours.

Overview of the OS-HELP Guidelines 2013

Chapter 1 Introduction

- 1.1 Outlines the purpose of the Guidelines which is to set out principles and procedures that all higher education providers must follow in selecting successful students for receipt of OS-HELP assistance and in administering the OS-HELP program. In accordance with subsection 121-5(2) the Guidelines also specify whether overseas study undertaken at a particular place is undertaken in Asia.
- 1.5 Sets out defined terms used in the Guidelines and directs interpretation of the Guidelines.

Chapter 2 Selecting Students

- 2.1 Outlines the purpose of the chapter which is to set out procedures that higher education providers must follow in deciding whether to select students for OS-HELP assistance.
- 2.5 Sets out the general principles and procedures a higher education provider must follow in deciding whether to select students for receipt of OS-HELP assistance. This involves providers: maintaining an OS-HELP policy, making information available to students, and being responsible for application and selection processes. A student is selected for OS-HELP assistance in relation to a six month period which cannot overlap with another six month period for which the student receives OS-HELP assistance. The six month period commences on the date specified by the student in their OS-HELP debt confirmation form, and must not be before the date on which the student commences their overseas study.

- 2.10 Sets out the principles and procedures a higher education provider must follow when selecting students for receipt of supplementary amounts for Asian language study. This involves providers being satisfied that the language study is appropriate preparation for the student's overseas study in Asia, and that the language study does not form part of a higher education course for which the student is Commonwealth supported or receiving FEE-HELP assistance.
- 2.15 Specifies that the Department will notify each provider in writing of the maximum number of loans for overseas study that the provider may make in a year. This number does not include supplementary amounts for Asian language study, as the supplementary amount is not considered to be a separate loan. The total number of loans for overseas study for all providers is capped at 20,000 loans per year.

Chapter 3 Definition of Asia

- 3.1 Outlines the purpose of the chapter which is to specify the countries that are considered to be in Asia for the purpose of determining whether a student's overseas study is undertaken in Asia.
- 3.5 Specifies the countries considered to be in Asia, with reference to the Australian Bureau of Statistics' Standard Australian Classification of Countries.

Chapter 4 Administering OS-HELP

- 4.1 Outlines the purpose of the chapter which is to set out procedures that higher education providers must follow in administering OS-HELP.
- 4.5 Sets out the procedures higher education providers must follow in administering OS-HELP assistance. This involves providers: notifying students of the outcomes of applications for OS-HELP assistance, withdrawing offers where a student is no longer eligible for OS-HELP assistance and the loan has not been paid, and notifying the Department if it knows or suspects that a student who has been paid OS-HELP assistance has provided false or misleading information in their application for OS-HELP assistance. Also specifies in how many payments a provider must pay OS-HELP assistance to a student and when the payments must be made.

Consultation

The UA AsiaBound Working Group was consulted between 8 and 16 July 2013. The Working Group includes representatives from Universities Australia as well as The University of Adelaide, the Australian National University, Victoria University, La Trobe University, the University of Technology Sydney, The University of Melbourne, University of Western Sydney, RMIT University, Charles Sturt University, Griffith University and The University of Western Australia.

Commencement

This legislative instrument shall take effect on 1 January 2014.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This Legislative 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 OS-HELP Guidelines 2013 are made by the Minister under section 238-10 of the *Higher Education Support Act 2003* (the Act). OS-HELP is a loan program to assist eligible students to pay expenses associated with undertaking overseas study as part of their higher education. The OS-HELP Guidelines 2013 set out various requirements for the provision of loans to eligible students as OS-HELP assistance.

The OS-HELP Guidelines 2013 include changes to the OS-HELP scheme due to the passage of the *Higher Education Support Amendment (Asian Century) Act 2013*, which gives effect to measures announced as part of the Government's response to the Asian Century White paper. The amendments expand eligibility for OS-HELP assistance and provide additional incentives for university students to undertake part of their course of study in Asia from 1 January 2014 by:

- increasing the maximum loan amount for students undertaking overseas study in Asia to \$7,500 (\$1,250 more than for other destinations); and
- providing for a supplementary loan amount of up to \$1,000 for students undertaking intensive Asian language study in preparation for overseas study in Asia.

The OS-HELP Guidelines 2013:

- set out principles and procedures that higher education providers must follow when selecting students for receipt of OS-HELP assistance for overseas study and for receipt of a supplementary amount for Asian language study;
- specify how the number of students providers may select for OS-HELP assistance is determined, and the maximum number for all providers in a year;
- specify the countries that are to be considered in Asia for the purpose of determining whether a student may receive the maximum loan amount for overseas study in Asia and a supplementary amount for Asian language study; and
- set out the procedures that higher education providers must follow in administering OS-HELP assistance.

Human rights implication

Right to education

The Legislative Instrument engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (the Covenant).

To the extent that the right to education is engaged, it is promoted as the OS-HELP Guidelines 2013 will provide further incentive and opportunity for students to undertake part of their higher education overseas, particularly in Asia. The Guidelines also enhance Australian students' access to education by removing restrictions on the kinds of overseas study students may receive

OS-HELP assistance for and allowing for students to receive OS-HELP assistance for Asian language study taken in preparation for overseas study in Asia.

The number of OS-HELP loans that higher education providers may issue in a year and the maximum loan amount that students may receive are capped having regard to reasonable, proportionate and necessary constraints on public spending.

Article 15, which recognises the right of everyone to take part in cultural life, relates to the right to education under Article 13 of the Covenant, Article 15 provides that the right to participate in cultural life includes the benefits to be derived from encouragement and development of international contacts and co-operation in the cultural fields.

The Legislative Instrument broadly engages the right to education as it provides increased opportunity for university students to undertake part of their course of study overseas, thereby encouraging the development of greater international contact and cultural co-operation between Australia and the countries of Asia.

Conclusion

The Legislative Instrument is compatible with human rights as these amendments further advance the right to education, and any positive discrimination toward students undertaking overseas study in Asia is reasonable and objective.