

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Employment, Workforce, Skills, Small and Family  
Business

### ***Higher Education Support Act 2003***

### ***Higher Education Provider Amendment (Higher Education Provider Charge and Application Fee) Guidelines 2022***

#### **AUTHORITY**

The *Higher Education Provider Amendment (Higher Education Provider Charge and Application Fee) Guidelines 2022* ('Amendment Guidelines') are made under section 238-10 of the *Higher Education Support Act 2003* ('HESA'), specifically item 6 of the table which specifies that the Minister may make Higher Education Provider Guidelines to give effect to matters under various provisions in HESA.

Under subsection 19-66(2) of HESA, the Higher Education Provider Guidelines may provide for:

- (a) the issue of notices setting out the amount of the charge payable by a provider;
- (b) when the charge is due and payable;
- (c) the issue of notices extending the time for payment of the charge;
- (d) penalties for late payment of the charge;
- (e) to whom the charge and any penalties for late payment are payable;
- (f) the refund, remission or waiver of the charge or penalties for late payment;
- (g) the review of decisions made under the Higher Education Provider Guidelines in relation to the collection or recovery of the charge;
- (h) any other matters relating to the collection or recovery of the charge.

Under paragraph 16-40(2)(c), the Higher Education Provider Guidelines may prescribe a fee, or a method for working out a fee, that must accompany an application for approval as a higher education provider under section 16-40 of HESA.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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 Provider Guidelines 2012* ('the Principal Guidelines') contained in the Schedule to the Amendment Guidelines rely on that provision.

#### **BACKGROUND, PURPOSE AND OPERATION**

The higher education provider charge ('the charge') is imposed by section 6 of the *Higher Education Support (Charges) Act 2019* ('HESA Charges Act'). Section 7 of the HESA Charges

Act provides that the amount of the charge for a year for a higher education provider is the amount (including a nil amount): (a) prescribed by the regulations for that year, or (b) worked out for that year in accordance with a method prescribed by the regulations.

The charge is imposed on all higher education providers whose students are entitled to HECS-HELP assistance or FEE-HELP assistance under HESA. The purpose of the charge is to partially recover the costs incurred by the Commonwealth in administering the Higher Education Loans Program ('HELP'), including data collection and analysis as well as compliance activities.

Under subsection 19-66(1) of HESA, a higher education provider must pay the charge and any penalty for late payment of the charge. The purpose of the Amendment Guidelines is to amend the Principal Guidelines to provide for various matters in accordance with subsection 19-66(2) of HESA, as set out above.

Section 16-40 of HESA provides that a body corporate that is a registered higher education provider may apply, in writing, to the Minister for approval as a higher education provider under HESA. It also sets out the requirements for such an application. The Amendment Guidelines amend paragraph 3.2.1 of the Principal Guidelines to reduce the amount of the application fee for 2022, 2023 and 2024.

#### **REGULATORY IMPACT**

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OPBR Reference OBPR21-01250).

#### **COMMENCEMENT**

The Amendment Guidelines commence the day after they are registered on the Federal Register of Legislation.

#### **CONSULTATION**

As the Amendment Guidelines provide for matters relating to the charge imposed by the HESA Charges Act, and do not introduce new policy, consultation was not required for the Amendment Guidelines. The department has not undertaken any consultation on the changes relating to the application fee as they represent a variation downwards consistent with a change in the Consumer Price Index.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### Higher Education Provider Amendment (Higher Education Provider Charge and Application Fee) Guidelines 2022

The *Higher Education Provider Amendment (Higher Education Provider Charge and Application Fee) Guidelines 2022* ('the Amendment Guidelines') are 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 higher education provider charge ('the charge') is imposed by section 6 of the *Higher Education Support (Charges) Act 2019* ('HESA Charges Act'). Section 7 of the HESA Charges Act provides that the amount of the charge for a year for a higher education provider is the amount (including a nil amount): (a) prescribed by the regulations for that year, or (b) worked out for that year in accordance with a method prescribed by the regulations.

The charge is imposed on all higher education providers whose students are entitled to HECS-HELP assistance or FEE-HELP assistance under the *Higher Education Support Act 2003* ('HESA'). The purpose of the charge is to partially recover the costs incurred by the Commonwealth in administering the Higher Education Loans Program ('HELP'), including data collection and analysis as well as compliance activities.

Under subsection 19-66(1) of HESA, a higher education provider must pay the charge and any penalty for late payment of the charge. Under subsection 19-66(2) of HESA, the Higher Education Provider Guidelines may provide for:

- (a) the issue of notices setting out the amount of the charge payable by a provider;
- (b) when the charge is due and payable;
- (c) the issue of notices extending the time for payment of the charge;
- (d) penalties for late payment of the charge;
- (e) to whom the charge and any penalties for late payment are payable;
- (f) the refund, remission or waiver of the charge or penalties for late payment;
- (g) the review of decisions made under the Higher Education Provider Guidelines in relation to the collection or recovery of the charge;
- (h) any other matters relating to the collection or recovery of the charge.

The purpose of the Amendment Guidelines is to amend the *Higher Education Provider Guidelines 2012* ('the Principal Guidelines') to provide for various matters in accordance with subsection 19-66(2) of HESA, as set out above.

Section 16-40 of HESA provides that a body corporate that is a registered higher education provider may apply, in writing, to the Minister for approval as a higher education provider under HESA. It also sets out the requirements for such an application. The Amendment

Guidelines amend paragraph 3.2.1 of the Principal Guidelines to reduce the amount of the application fee for 2022, 2023 and 2024.

### **Human rights implications**

The Amendment Guidelines do not engage any of the applicable rights or freedoms. They provide various administrative matters in relation to the collection and recovery of an annual charge imposed on higher education providers by the HESA Charges Act, and prescribe a fee that must accompany an application for approval as a higher education provider under HESA.

### **Conclusion**

The Amendment Guidelines are compatible with human rights because they do not raise any human rights issues.

**Minister for Employment, Workforce, Skills, Small and Family Business**

**The Hon Stuart Robert MP**

# HIGHER EDUCATION PROVIDER AMENDMENT (HIGHER EDUCATION PROVIDER CHARGE AND APPLICATION FEE) GUIDELINES 2022

## EXPLANATION OF PROVISIONS

### **Section 1: Name**

1. This section specifies the name of the instrument as the *Higher Education Provider Amendment (Higher Education Provider Charge and Application Fee) Guidelines 2022* ('the Amendment Guidelines').

### **Section 2: Commencement**

2. This section specifies that the Amendment Guidelines commence on the day after registration on the Federal Register of Legislation.

### **Section 3: Authority**

3. The Amendment Guidelines are made by the Minister under section 238-10 of the *Higher Education Support Act 2003* ('HESA').

### **Section 4: Schedules**

4. This section provides that the instrument that is specified in the Schedule (the *Higher Education Provider Guidelines 2012* ('the Principal Guidelines')) is amended as set out in the applicable items in the Schedule.

## SCHEDULE—AMENDMENTS

### *Higher Education Provider Guidelines 2012*

#### **Item 1: Paragraph 3.2.1**

5. This item repeals and replaces paragraph 3.2.1, which prescribes the fee that must accompany an application to the Minister under section 16-40 of HESA for approval as a higher education provider under HESA.
6. The table set out in new paragraph 3.2.1 prescribes the amount of the application fee for applications made in 2020 to 2024. As a result of this amendment, the amount of the application fee for 2022, 2023 and 2024 will reduce slightly. The amount of the application fee for 2020 and 2021 are redundant but are retained for completeness.

#### **Item 2: After Chapter 9**

7. This item inserts a new Chapter 10 into the Principal Guidelines.

#### **10.1 Purpose**

8. Paragraph 10.1.1 provides that the purpose of Chapter 10 is to provide for various matters in relation to the collection and recovery of higher education provider charge ('the charge') for the purposes of subsection 19-66(2) of HESA.
9. The note to paragraph 10.1.1 explains that the charge is imposed by the *Higher Education Support (Charges) Act 2019*.

#### **10.5 Higher education provider charge**

10. Paragraph 10.5.1 requires the Secretary to issue a notice to each higher education provider who is liable to pay the charge. The notice is to specify the following:
  - (a) the year to which the charge relates;
  - (b) the total amount of the provider's charge;
  - (c) an explanation of how the charge was calculated;
  - (d) the day by which the charge is due and payable, which must be at least 30 days after the day the notice is given;
  - (e) the method or methods by which the provider must pay the charge; and
  - (f) information about the consequences of a late payment.

11. The note to paragraph 10.5.1 clarifies that a failure to give the notice to a higher education provider does not affect the liability of the provider to pay the charge.
12. Paragraph 10.5.5 provides that the Secretary does not need to give a notice if the liability to pay the charge is waived in accordance with paragraph 10.5.30 or if the amount of higher education charge for a higher education provider for the relevant year is nil.
13. Paragraph 10.5.10 provides that, where a provider's approval is revoked under Division 22 of Part 2-1 of HESA, the amount of the charge may be due and payable on a day after the date that revocation takes effect and either before or after the end of the year. This makes clear that the revocation of a provider's approval does not discharge a provider's liability to pay higher education provider charge for a year.
14. Paragraph 10.5.15 provides that the Secretary may issue an extension notice to a provider.
15. Paragraph 10.5.20 specifies the formula for calculating the penalty for late payment of the charge.
16. Paragraph 10.5.25 clarifies that a late payment penalty that a provider is liable to pay is due and payable immediately.
17. Paragraph 10.5.30 empowers the Secretary to waive, on behalf of the Commonwealth, the payment of the whole or a part of the charge or late payment penalty (or both). In accordance with paragraph 10.5.35, the Secretary may do so on his or her initiative or on written application by the relevant higher education provider.
18. Paragraph 10.5.40 provides that the charge and late payment penalty may be recovered by the Secretary, on behalf of the Commonwealth, from a higher education provider as debts due to the Commonwealth.
19. Paragraphs 10.5.45 and 10.5.50 provide for the partial or total refund of the charge or late payment penalty (or both) paid by a higher education provider. The Secretary may refund the whole or a part of the charge or late payment penalty (or both) if the Secretary is satisfied that special or unusual circumstances exist that cause the charge or late payment penalty to be unreasonable or inequitable. The Secretary may do so on his or her initiative or on written application by the relevant higher education provider.

#### 10.10 Review of decisions

20. Section 10.10 provides for internal and external review of decisions made under Chapter 10 in relation to the charge.
21. Paragraphs 10.10.5 to 10.10.25 set out the internal review process.
22. In accordance with paragraph 10.10.5, a higher education provider may request the Secretary to reconsider:
  - (a) a decision to issue a notice under paragraph 10.5.1 in relation to the determination of the charge;

- (b) a decision not to waive the payment of the whole or a part of an amount of the charge or late payment penalty under paragraph 10.5.30 following an application by a higher education provider;
  - (c) a decision not to refund the payment of the whole or a part of an amount of the charge or late payment penalty under paragraph 10.5.45 following an application by a higher education provider.
- 23. Each of these decisions is a 'reviewable decision' for the purposes of Chapter 10 (as set out in paragraph 10.10.1).
- 24. Paragraph 10.10.10 requires that a higher education provider's request for review be made in writing and be given to the Secretary within 14 days, or such longer period as the Secretary allows, after the day on which the provider received the notice under paragraph 10.5.1 or notice of the decision under paragraph 10.5.30 or 10.5.45.
- 25. Paragraph 10.10.15 provides that the Secretary must reconsider the decision and confirm, vary or set the decision aside and substitute a new decision.
- 26. Paragraph 10.10.20 requires the Secretary to give notice of his or her decision under paragraph 10.10.15 (the 'internal review decision'). This requirement is not intended to limit the obligation imposed on the Secretary under section 27A of the *Administrative Appeals Tribunal Act 1975*.
- 27. Paragraph 10.10.25 requires that the notice of the internal review decision: (a) be given within 14 days after the internal review decision is made; (b) contain a statement of reasons for the internal review decision; and (c) include a new notice under paragraph 10.5.1 where the Secretary varies or substitutes the original decision.
- 28. Paragraph 10.10.30 provides that a higher education provider may make an application to the Administrative Appeals Tribunal for the review of a decision that has been confirmed, varied or set aside under paragraph 10.10.15. This paragraph allows a provider to apply for external merits review of the Secretary's internal review decision.