



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

I, Stuart Robert, Minister for Employment, Workforce, Skills, Small and Family Business, make the following legislative instrument.

Dated 17 March 2022

Stuart Robert
Minister for Employment, Workforce, Skills, Small and Family Business

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1 Name

This instrument is the *Higher Education Provider Amendment (Higher Education Provider Charge and Application Fee) Guidelines 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	On the day after this instrument is registered	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 238-10 of the *Higher Education Support Act 2003*.

4 Schedules

The instrument that is specified in the Schedule to this instrument is amended as set out in the applicable items in the Schedule.

Schedule—Amendments

Higher Education Provider Guidelines 2012

1 Paragraph 3.2.1

Repeal the paragraph, substitute:

- 3.2.1 For the purposes of paragraph 16-40(2)(c) of the Act, the fee is set out in the table below.

Year	Fee
2020	\$12,818
2021	\$13,010
2022	\$13,153
2023	\$13,364
2024	\$13,577

2 After Chapter 9

Insert:

CHAPTER 10 HIGHER EDUCATION PROVIDER CHARGE

10.1 Purpose

- 10.1.1 The purpose of this chapter is to provide various matters in relation to the collection and recovery of higher education provider charge for the purposes of subsection 19-66(2) of the Act.

Note 1: Higher education provider charge is imposed by the *Higher Education Support (Charges) Act 2019*. The charge is imposed on a body, for a year starting on or after 1 January 2020, if the body is a higher education provider (within the same meaning of the Act) at any time during that year.

10.5 Higher education provider charge

Notice of amount of higher education provider charge (for the purposes of paragraphs 19-66(2)(a), (b) and (h) of the Act)

- 10.5.1 The Secretary must give a written notice to each higher education provider who is liable to pay higher education provider charge, which specifies:
- (a) the year to which the charge relates;
 - (b) the total amount of the provider's charge;
 - (c) an explanation of how the provider's charge was calculated;
 - (d) the day by which the charge is due and payable by the provider, which must be at least 30 days after the day the notice is given;

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- (e) the method or methods by which the provider must pay the charge; and
 - (f) information about the consequences of a late payment.

Note 1: A failure to give a higher education provider the notice under paragraph 10.5.1 is not intended to affect the liability of the provider to pay higher education provider charge.

10.5.5 A notice under paragraph 10.5.1 does not need to be given if:

- (a) the liability to pay higher education provider charge is waived in accordance with paragraph 10.5.30; or
- (b) the amount of higher education charge for a higher education provider for the year is nil.

When higher education provider charge due for payment in the event of revocation of approval (for the purposes of paragraph 19-66(2)(b) of the Act)

10.5.10 If, before the end of the year to which higher education provider charge relates, a higher education provider's approval is revoked under Division 22 of Part 2-1 of the Act, the amount of higher education provider charge may be due and payable on a day that is after the date that the revocation takes effect and either before or after the end of the year.

Extension notice (for the purposes of paragraphs 19-66(2)(c) of the Act)

10.5.15 The Secretary may, at any time after giving a higher education provider a notice under paragraph 10.5.1, give the provider a written extension notice that specifies a day that is later than the day specified in paragraph 10.5.1 as the day on which higher education provider charge is due and payable. The extension notice has effect according to its terms.

Late payment penalty (for the purposes of paragraph 19-66(2)(d) of the Act)

10.5.20 If an amount of higher education provider charge payable by a higher education provider remains unpaid after the day on which it is due and payable, the provider is liable to pay a penalty worked out using the formula:

$$\frac{0.2 \times \text{unpaid amounts} \times \text{days overdue}}{365}$$

where:

unpaid amount is the amount of higher education provider charge that has not been paid.

days overdue is the number of days after the higher education provider charge is due and payable that elapse before the day on which the charge is paid.

10.5.25 To avoid doubt, a late payment penalty that a provider is liable to pay is due and payable immediately.

Waiver of higher education provider charge and late payment penalty (for the purposes of paragraph 19-66(2)(f) of the Act)

10.5.30 The Secretary may, on behalf of the Commonwealth, waive the payment of the whole or a part of an amount of higher education provider charge or late payment penalty (or both) that is payable by a higher education provider.

10.5.35 The Secretary may do so on his or her initiative or on written application by the relevant higher education provider.

Recovery of higher education provider charge and late payment penalty (for the purposes of paragraph 19-66(2)(f) and (h) of the Act)

10.5.40 The following amounts may be recovered by the Secretary, on behalf of the Commonwealth, from a higher education provider as debts due to the Commonwealth:

- (a) an amount of higher education provider charge that is due and payable by the provider;
- (b) a late payment penalty that is due and payable by the provider.

Refund of higher education provider charge and late payment penalty (for the purposes of paragraph 19-66(2)(f) of the Act)

10.5.45 The Secretary may, on behalf of the Commonwealth, refund the whole or a part of an amount of higher education provider charge or late payment penalty (or both) paid by a higher education provider if the Secretary is satisfied that special or unusual circumstances exist that cause the charge or late payment penalty to be unreasonable or inequitable.

10.5.50 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

Reviewable decisions (for the purposes of paragraph 19-66(2)(g) of the Act)

10.10.1 The following are **reviewable decisions** for the purposes of this chapter:

- (a) a decision to issue a notice under paragraph 10.5.1 in relation to the determination of higher education provider charge;
- (b) a decision not to waive the payment of the whole or a part of an amount of higher education provider 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 higher education provider charge or late payment penalty under paragraph 10.5.45 following an application by a higher education provider.

Internal review (for the purposes of paragraph 19-66(2)(g) of the Act)

10.10.5 A higher education provider may request the Secretary to reconsider a reviewable decision.

10.10.10 The higher education provider's request must be in writing and 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 issued under paragraph 10.5.1 or notice of the decision under paragraph 10.5.30 or 10.5.45.

10.10.15 After receiving the request, the Secretary must reconsider the reviewable decision and:

- (a) confirm the decision;
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

10.10.20 Without limiting the obligation that the Secretary has under section 27A of the *Administrative Appeals Tribunal Act 1975*, the Secretary must give a notice of the Secretary's decision (**internal review decision**) under paragraph 10.10.15.

10.10.25 The notice under paragraph 10.10.20:

- (a) must be given within 14 days after the internal review decision is made;
- (b) must contain a statement of the reasons for the internal review decision; and
- (c) if the internal review decision relates to a notice issued under paragraph 10.5.1 and subparagraphs 10.10.15(b) or (c) apply, include a new notice under paragraph 10.5.1 with a due date at least 30 days after the date the provider is notified of the internal review decision.

Administrative Appeals Tribunal review (for the purposes of paragraph 19-66(2)(g) of the Act)

10.10.30 An application may be made to the Administrative Appeals Tribunal for the review of a decision that has been confirmed, varied or set aside under paragraph 10.10.15.