

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Support Amendment (Startup Year) Guidelines 2023

AUTHORITY

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make Administration Guidelines and Higher Education Provider Guidelines to, amongst other things, provide for matters necessary or convenient to be provided in order to carry out, or give effect to, certain provisions in the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 Support (Administration) Guidelines 2022* and the *Higher Education Provider Guidelines 2023* (together, the 'Principal Instruments') made by the *Higher Education Support Amendment (Startup Year) Guidelines 2023* (the Amendment Instrument) rely on this provision.

PURPOSE AND OPERATION

The *Education Legislation Amendment (Startup Year and Other Measures) Act 2023* amended the Act to create a new form of Higher Education Loan Program (HELP) assistance, STARTUP-HELP, for students undertaking accelerator program courses at approved higher education providers. The Amendment Instrument amends the Principal Instruments to make changes to prescribe requirements for higher education providers in relation to the delivery of accelerator program courses and the provision of STARTUP-HELP assistance.

The Amendment Instrument amends the *Higher Education Support (Administration) Guidelines 2022* (Administration Guidelines) to specify requirements in relation to the administration of accelerator program courses and the provision of STARTUP-HELP assistance. This includes prescribing requirements for higher education providers in relation to the provision of certain information to students in accelerator program courses in a Commonwealth Assistance Notice, requirements in relation to the publication of information in relation to census dates and Equivalent Full Time Student Load (EFTSL) values for accelerator program courses, and in relation to determining the EFTSL value for an accelerator program course.

The Amendment Instrument also amends the *Higher Education Provider Guidelines 2023* (HEP Guidelines) to prescribe updated requirements for higher education providers in relation to accelerator program courses and STARTUP-HELP assistance. This includes

updating the relevant sections in the HEP Guidelines which prescribe requirements in relation to a provider's grievance procedures, the period in which the higher education provider proposes to provide units of study or accelerator program courses, the publication of certain information by higher education providers, the offering of inducements by higher education providers and withdrawal from units of study or accelerator program courses.

IMPACT ANALYSIS

The Office of Impact Analysis has advised that an Impact Analysis is not required for the Amendment Instrument as it is unlikely to have a more than minor impact (OIA23-06065).

COMMENCEMENT

The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The Department of Education undertook a targeted consultation process from late October to early November 2023 on the drafting of the Amendment Instrument with key stakeholders from the Startup Year Working Group representing universities and higher education peak bodies. Stakeholders were asked about options for the proposed calculation method to determine the EFTSL value of an accelerator program course, as well as the Amendment Instrument more broadly. Feedback from this consultation process informed the drafting of the requirement in relation to the determination of the EFTSL value for an accelerator program course, and stakeholders did not otherwise raise any issues or concerns about the Amendment Instrument.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support Amendment (Startup Year) Guidelines 2023

The *Higher Education Support Amendment (Startup Year) Guidelines 2023* (the Amendment 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 *Education Legislation Amendment (Startup Year and Other Measures) Act 2023* amended the *Higher Education Support Act 2003* (the Act) to create a new form of Higher Education Loan Program (HELP) assistance, STARTUP-HELP, for students undertaking accelerator program courses at approved higher education providers. The Amendment Instrument amends the *Higher Education Support (Administration) Guidelines 2022* and the *Higher Education Provider Guidelines 2023* (together, the 'Principal Instruments') to make changes to prescribe requirements for higher education providers in relation to the delivery of accelerator program courses and the provision of STARTUP-HELP assistance.

The Amendment Instrument amends the *Higher Education Support (Administration) Guidelines 2022* (Administration Guidelines) to specify requirements in relation to the administration of accelerator program courses and the provision of STARTUP-HELP assistance. This includes prescribing requirements for higher education providers in relation to the provision of certain information to students in accelerator program courses in a Commonwealth Assistance Notice, requirements in relation to the publication of information in relation to census dates and Equivalent Full Time Student Load (EFTSL) values for accelerator program courses, and in relation to determining the EFTSL value for an accelerator program course.

The Amendment Instrument also amends the *Higher Education Provider Guidelines 2023* (HEP Guidelines) to prescribe updated requirements for higher education providers in relation to accelerator program courses and STARTUP-HELP assistance. This includes updating the relevant sections in the HEP Guidelines which prescribe requirements in relation to a provider's grievance procedures, the period in which the higher education provider proposes to provide units of study or accelerator program courses, the publication of certain information by higher education providers, the offering of inducements by higher education providers and withdrawal from units of study or accelerator program courses.

Human rights implications

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

Right to education

Article 13(2)(c) of the ICESCR provides that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education’.

The Amendment Instrument provides for new requirements that must be met by higher education providers in relation to the provision of STARTUP-HELP assistance to students. These requirements support the right to education as they require higher education providers to provide students with information which affects their enrolment in their accelerator program course, such as information relating to the census dates and the EFTSL value of their accelerator program course. The requirements also provide certain protections for students, by requiring that higher education providers provide information about grievance procedures to students and ensuring that information about accelerator program courses offered by a higher education provider is made publicly available, so that students can make an informed choice about undertaking an accelerator program course.

Conclusion

The Amendment Instrument is compatible with human rights because it supports the right to education.

Minister for Education, The Hon Jason Clare MP

HIGHER EDUCATION SUPPORT AMENDMENT (STARTUP YEAR) GUIDELINES 2023

EXPLANATION OF PROVISIONS

Part 1 – Introduction

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support Amendment (Startup Year) Guidelines 2023* (the Amendment Instrument).

Section 2: Commencement

2. This section provides that the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Amendment Instrument is made under section 238-10 of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments to the *Higher Education Support (Administration) Guidelines 2022*

Higher Education Support (Administration) Guidelines 2022

Items 1 to 3: Sections 12 to 14

5. Sections 12 to 14 of the *Higher Education Support (Administration) Guidelines 2022* (Administration Guidelines) specify the circumstances that are beyond a person's control, circumstances that did not make their full impact until on or after the census date, and circumstances that make it impracticable for the person to complete the requirements for the purposes of subsections 36-13(3) and 36-21(1) of the Act.
6. The notes in those sections provide that the circumstances specified in those sections also apply for the purposes of subsections 97-30(2) and 104-30(2) of the Act. Those subsections are relevant to the determination of whether a person's HELP balance should be re-credited in relation to HECS-HELP and FEE-HELP assistance the person received where special circumstances apply to the person.
7. Items 1 to 3 amend the notes in sections 12 to 14 to reflect that circumstances specified in sections 12 to 14 also apply for the purposes of subsection 128E-5(2). Subsection 128E-5(2) is relevant to the determination of whether a person's STARTUP-HELP assistance should be reversed because special circumstances apply to the person.

Item 4: Section 16

8. Item 4 repeals and replaces section 16 of the Administration Guidelines.
9. Old section 16 provides that for the purposes of subsection 169-5(1) of the Act, a higher education provider must give a Commonwealth Assistance Notice to any person who meets the requirements set out in subsection 169-5(1) of the Act. Subsection 169-5(1) of the Act requires that a higher education provider must give notices required by the Administration Guidelines to a person who is enrolled in a unit of study and who is seeking Commonwealth assistance or is a Commonwealth supported student for the unit.
10. New section 16 is largely the same as the previous section 16, except it provides that a higher education provider must also give a Commonwealth Assistance Notice to any person who meets the requirements set out in subsection 169-5(1A) of the Act. Subsection 169-5(1A) of the Act requires that a higher education provider must give notices required by the Administration Guidelines to a person who is enrolled in an accelerator program course and who is seeking Commonwealth assistance for the accelerator program course or for a student services and amenities fee imposed on the person.

Item 5: After subsection 17(6)

11. Section 17 of the Administration Guidelines sets out the information that a Commonwealth Assistance Notice must contain.
12. Item 5 inserts a new subsection 17(6A) that sets out what information must be included in a Commonwealth Assistance Notice where a higher education provider has selected a person to receive STARTUP-HELP assistance.

Item 6: After subsection 18(3)

13. Section 18 of the Administration Guidelines provides for the requirements for the period within which a notice described in section 169-5 of the Act must be given.
14. Item 6 inserts new subsection 18(4), which provides that, for the purposes of subsection 169-5(3) of the Act, a notice that contains information in respect of STARTUP-HELP assistance must be given within 28 days of the earliest census date indicated in the notice.

Item 7: Part 6

15. Item 7 repeals and replaces Part 6 in the Administration Guidelines.
16. Part 6 specifies the publication requirements for census dates and EFTSL values.
17. The requirements in Part 6 which relate to units of study are unchanged, and Part 6 has been amended to include the new requirements in relation to the publication requirements for census dates and EFTSL values for accelerator program courses.
18. The new requirements in relation to the publication requirements for census dates and EFTSL values for accelerator program courses are largely similar to the existing publication requirements for census dates and EFTSL values for units of study.
19. However, new subsection 22(2) prescribes a new publication requirement in relation to accelerator program courses, and requires that providers publishing EFTSL values for accelerator program course must also publish information on how the provider determined the EFTSL value for that accelerator program course under new section 28A.

Item 8: After Part 7

20. Item 8 inserts a new Part 7A in the Administration Guidelines, which specifies the requirement for higher education providers when those providers are determining the EFTSL value of an accelerator program course.

21. New section 28A requires that higher education providers determining the EFTSL value of an accelerator program course must determine the EFTSL value by reference to the amount of time taken to complete the accelerator program course on a full-time basis.

Schedule 2 – Amendments to the *Higher Education Provider Guidelines 2023*

Higher Education Provider Guidelines 2023

Item 1: Section 20

1. Item 1 repeals and replaces section 20 of the *Higher Education Provider Guidelines 2023* (HEP Guidelines).
2. Section 20 specifies additional requirements on non-Table A higher education providers in relation to their grievance procedures.
3. New section 20 is largely unchanged from old section 20. The changes to section 20 simply extend the requirements in old section 20 that relate to courses of study to accelerator program courses.

Item 2: Section 22

4. Item 2 repeals and replaces section 22 of the HEP Guidelines.
5. Previous section 22 set out the requirements for the period in which a higher education provides or proposes to provide a unit of study.
6. New section 22 extends the requirements that were previously specified for units of study to accelerator program courses.

Item 3: Section 23

7. Item 3 repeals and replaces section 23 of the HEP Guidelines.
8. Previous section 23 set out requirements for the date by which, and manner by which, a higher education must publish the schedules of student contribution amounts for places and tuition fees for a particular period for a unit of study.
9. New section 23 continues to set out the date by which, and manner by which a higher education provider must publish the schedules of student contribution amounts for places and tuition fees for a particular period for a unit of study, and also sets out the dates by which, and manner by which the higher education provider must publish schedules of accelerator program course fees for an accelerator program course.

Item 4: Section 34

10. Item 4 repeals and replaces section 34 of the HEP Guidelines.
11. Subsections 19-36A(1) and (2) of the Act provide that a higher education provider must not offer or provide a benefit, or cause a benefit to be offered or provided if

the benefit would be reasonably likely to induce a person to make a request for Commonwealth assistance in relation to enrolling in a unit of study with the provider, unless the benefit is specified in the HEP Guidelines.

12. Old section 34 specified benefits that the requirement in subsection 19-36A(1) did not apply to.
13. Subsections 19-36A(3) and (4) of the Act provide that a higher education provider must not offer or provide a benefit, or cause a benefit to be offered or provided if the benefit would be reasonably likely to induce a person to make a request for Commonwealth assistance in relation to enrolling in an accelerator program course with the provider, unless the benefit is specified in the HEP Guidelines.
14. New section 34 specifies benefits that the requirement in subsections 19-36A(1) and (3) do not apply to. The benefits listed in new section 34 are largely the same as those listed in old section 34, but new section 34 includes a new benefit in relation to accelerator program courses. The new benefit is the offering of money in the form of investments into the student's startup business.

Item 5: Section 37

15. Item 5 repeals and replaces section 37 of the HEP Guidelines.
16. Old section 37 set out the requirements on higher education providers to publish certain information in relation to units of study offered by the provider, and imposed requirements on how and when that information must be published.
17. New section 37 amends old section 37 to also include requirements on higher education providers to publish certain information in relation to accelerator program courses, and include requirements on how and when that accelerator program course information must be published.

Item 6: Section 38

18. Item 6 repeals and replaces section 38 of the HEP Guidelines.
19. Old section 38 set out the requirements on higher education providers to have processes and procedures for a student's withdrawal from a unit of study or course of study.
20. New section 38 extends the requirements in old section 38 to also apply to a student's withdrawal from an accelerator program course.

Item 7: Section 39

21. Item 7 repeals and replaces section 39 of the HEP Guidelines.

22. Subsections 36-5(6), 104-1(1AB) and 128B-10(2) of the Act provide that, in determining whether a person is a genuine student for the purposes of the Act, the Secretary must have regard to the matters specified in the HEP Guidelines.
23. Old section 39 only provided for the matters that the Secretary must have regard to for the purposes of subsection 36-5(6) and 104-1(1AB) (which relate to the Secretary determining whether a person is a genuine student in relation to a unit of study, for the purposes of determining whether the student is a Commonwealth supported student or entitled to FEE-HELP assistance).
24. New section 39 sets out the matters that the Secretary must have regard to for the purposes of subsection 36-5(6), 104-1(1AB) and 128B-10(2) of the Act. Subsection 128B-10(2) of the Act relates to the Secretary determining whether a person is a genuine student in relation to an accelerator program course for the purposes of determining whether the student is entitled to STARTUP-HELP assistance.
25. New section 39 is largely unchanged from old section 39, and simply makes minor amendments to extend the listed matters in old section 39 to accelerator program courses.