



**Australian Government**

**Department of Education, Science and Training**

# **Higher Education Provider Guidelines**

**as amended**

made under section 238-10 of the

*Higher Education Support Act 2003*

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Prepared by the Legislation Section, Legal Branch, Department of Education, Science and Training.

# COMMONWEALTH OF AUSTRALIA

## *Higher Education Support Act 2003*

### HIGHER EDUCATION PROVIDER GUIDELINES

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## **CHAPTER 1 INTRODUCTION**

### **1.1 PURPOSE**

- 1.1.1 These Guidelines set out the *tuition assurance requirements* which a body corporate must fulfil to be approved by the Minister as a higher education provider under the *Act* and with which higher education providers other than Table A providers must comply in order to maintain their approval as higher education providers under the *Act*.
- 1.1.5 These Guidelines set out the grievance procedures which a body corporate must be willing and able to meet in order to be approved as a higher education provider under the *Act* and with which higher education providers other than Table A providers must comply in order to maintain their approval as higher education providers under the *Act*.
- 1.1.10 These Guidelines set out procedures to be followed by review officers reviewing reviewable decisions under Chapter 3 of the *Act*.
- 1.1.15 These Guidelines name the quality auditing body which will audit higher education providers.
- 1.1.19 These Guidelines specify periods under subsections 19-87(1) and 19-95(1) of the *Act*.
- 1.1.20 These Guidelines specify the date by which a higher education provider must publish the schedule of the student contribution amounts for places and tuition fees for a particular period under paragraph 19-95(2)(b) of the *Act*.
- 1.1.21 These Guidelines specify the date before which a variation to a:
- student contribution amount must be made under subparagraph 19-87(3)(a)(i) of the *Act*; and
  - fee must be made under subparagraph 19-90(4)(a)(i) of the *Act*.
- 1.1.22 These Guidelines specify the circumstances in which a:
- student contribution may be varied under subparagraph 19-87(3)(a)(ii) of the *Act*; and
  - fee may be varied under subparagraph 19-90(4)(a)(ii) of the *Act*.
- 1.1.23 These Guidelines specify the date by which information on student contribution amounts for places in units, or tuition fees, to apply to students in student cohorts must be published and made publicly available under subsection 19-97(2) of the *Act*.
- 1.1.24 These Guidelines specify the kind of conditions that a higher education provider may determine for a student cohort that are to apply in relation to the:
- student contribution amount for a place in the unit under subsection 19-88(5) of the *Act*; and
  - fee for the unit under subsection 19-91(5) of the *Act*.
- 1.1.25 These Guidelines specify in relation to the re-crediting of a person's Student Learning Entitlement (also referred to as SLE) in circumstances where subsections 36-20(2) and 36-20(3) of the *Act* apply:
- (a) the amount (if any) that is to be paid to the person; and
  - (b) the amount (if any) that is to be paid to the Commonwealth; and
  - (c) the person (if any) who is to pay the amounts.
- 1.1.30 These Guidelines specify in relation to the repayment of amounts where subsections 36-22(2A) and 36-22(2B) of the *Act* apply:
- (a) the amount (if any) that is to be paid to the person; and
  - (b) the amount (if any) that is to be paid to the Commonwealth; and
  - (c) the person (if any) who is to pay the amounts.

- 1.1.35 These Guidelines specify in relation to the re-crediting of a person's FEE-HELP balance in circumstances where subsections 110-5(1A) and 110-5(1B) of the *Act* apply:
- (a) the amount (if any) that is to be paid to the Commonwealth; and
  - (b) the person (if any) who is to pay the amounts.
- 1.1.40 These Guidelines specify the obligations on higher education providers in their capacity as providers of course assurance to other higher education providers.
- 1.1.45 These Guidelines specify the kind of conditions that a higher education provider may determine for a student cohort that are to apply in relation to the:
- (a) student contribution amount for a place in the unit under subsection 19-88(5) of the *Act*; and
  - (b) fees for the unit under subsection 19-91(5) of the *Act*.
- 1.1.50 These Guidelines detail the requirements for fees in respect of overseas students which are the fees referred to in paragraph 19-102(3)(d) of the *Act*.

## 1.5 INTERPRETATION

- 1.5.1 Unless the contrary intention appears, the terms within these Guidelines have the same meaning as in the *Higher Education Support Act 2003*.
- 1.5.2 Terms in these Guidelines that are in *italics* have the meanings given in paragraph 1.5.5 of these Guidelines.
- 1.5.5 In these Guidelines, unless the contrary intention appears:

**academic matters** includes those matters which relate to student progress, assessment, curriculum and awards in a course of study.

**Act** means the *Higher Education Support Act 2003*.

**Business Day** means, in relation to the doing of an action in a place, any day other than a Saturday, Sunday or public holiday in that place.

**course assurance option** means the tuition assurance option referred to in subparagraph 2.5.1.15c)i) and more fully described in section 2.3.

**Course Assurance TAS Operator** has the meaning given in subparagraph 2.3.1a)i).

**Exempt Provider** means a higher education provider that is exempted by the Minister under subsections 19-40(2) and 19-40(3) of the *Act* from complying with the *tuition assurance requirements*.

**First Provider** has the meaning given in paragraph 2.1.10.

**Group Manager** means the person from time to time holding the position of *Group Manager* of the Department's Higher Education Group.

**Guidelines** means these Higher Education Provider Guidelines.

**non-academic matters** includes those matters which do not relate to student progress, assessment, curriculum and awards in a course of study and includes complaints in relation to personal information that the provider holds in relation to the student, and about the administration of the Commonwealth Learning Scholarships Programme.

**Repayment Guarantor** has the meaning given in subparagraph 2.4.1c).

**Repayment TAS Operator** has the meaning given in subparagraph 2.4.1a)(i).

**replaced unit** means a unit of study in which the student was enrolled with a *First Provider* that is replaced by a *replacement unit*.

**replacement unit** means a unit of study that a *student* undertakes with a *Second Provider* to replace a unit in which the student was enrolled with a *First Provider* where, whilst the student was enrolled, the *First Provider* ceased to provide the unit and the course of study of which the unit formed part.

**Second Provider** has the meaning given in subparagraph 2.3.5a).

**student contribution / tuition fee repayment option** means the tuition assurance option referred to in subparagraph 2.5.1.15c)ii), and more fully described in section 2.4 (and is the option referred to by this name in paragraphs 36-22A(1)(f), 79-20(d) and 104-42(1)(d) of the Act).

**tuition assurance administrator** means any *Course Assurance TAS Operator*, *Second Provider* referred to in paragraph 2.3.1b), *Course Assurance Guarantor* (as defined in subparagraph 2.3.1c)), *Repayment TAS Operator* or *Repayment Guarantor*.

**tuition assurance scheme** means a scheme that complies with the requirements of paragraph 2.3.1a) and the main object of which is to provide tuition assurance to meet the *tuition assurance requirements* as set out in these Guidelines for the benefit of students of the scheme members.

**victimise** means to act or omit to act towards a person in a way which is intended to cause disadvantage to that person because they have made a complaint, or may make a complaint, or may be or are the subject of a complaint.

## **CHAPTER 2 THE TUITION ASSURANCE REQUIREMENTS**

### **2.1 INTRODUCTION**

2.1.1 This Chapter 2 of the Guidelines sets out the requirements for tuition assurance for the purposes of section 16-30 of the *Act* (the "**tuition assurance requirements**").

2.1.5 The *tuition assurance requirements* have four parts:

- Part 1: General Requirements
- Part 2: Course Assurance Requirements;
- Part 3: Student Contribution or Tuition Fee Repayment Requirements (which is the *student contribution / tuition fee repayment option* referred to in paragraphs 36-22A(1)(f), 79-20(d) and 104-42(1)(d) of the *Act*); and
- Part 4: Administrative and Other Requirements.

2.1.10 A higher education provider, other than a Table A provider or an *Exempt Provider*, (the "**First Provider**") must satisfy the Minister that it complies with all four parts of the *tuition assurance requirements*.

2.1.15 A *First Provider* that is a registered provider is not required to comply with the *tuition assurance requirements* in respect of overseas students enrolled in a course with the *First Provider*, where, for the purposes of this paragraph 2.1.15, the terms:

- course;
- overseas student; and
- registered provider;

have the meanings given to them in the *Education Services for Overseas Student Act 2000*.

2.1.20 If a *First Provider* ceases to provide a course of study, a person who is currently enrolled in that course of study may choose to access either the arrangements described in Part 2 (Course Assurance) or those described in Part 3 (Student Contribution or Tuition Fee Repayments). If a person chooses to access Part 2 (Course Assurance), the person may access Part 3 (Student Contribution or Tuition Fee Repayments) in respect of *replaced units*, but only under the circumstances described in section 2.4, Part 3.2, below.

*Meaning of "ceases to provide a course of study"*

2.1.25 For the purposes of this Chapter 2 of the Guidelines, a *First Provider* "**ceases to provide a course of study**" if:

- a) the course does not start on:
  - (i) the date the course was scheduled to start; or
  - (ii) a later date that has been agreed between the *First Provider* and the person enrolled in the course; or
- b) the *First Provider* commences providing the course to a person and then, before the person has completed the course, ceases to provide that course (for any reason); or
- c) the Minister has suspended or revoked approval of the *First Provider* as a higher education provider under the *Act* and has not made a determination pursuant to paragraph 22-25(1)(b) of the *Act* in respect of that course; or

- d) notice is served on the *First Provider* or proceedings are taken to cancel the *First Provider's* incorporation or registration or to dissolve the *First Provider* as a legal entity; or
- e) the *First Provider* comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in other legislation, or an order has been made to place the *First Provider* under external administration; or
- f) in the case of a non self-accrediting institution, the *First Provider* ceases to have its name included, or to own or control a business name that is included, in the list of non self-accrediting higher education institutions contained in the Australian Qualifications Framework Register, as the name of an institution approved by an authorised accreditation authority to issue one or more higher education awards; or
- g) in the case of a self-accrediting institution, the *First Provider* ceases to have its name included, or to own or control a business name that is included, in the list of self-accrediting higher education institutions contained in the Australian Qualifications Framework Register, as the name of an institution empowered to issue its own qualifications; or
- h) the Secretary makes a declaration under paragraph 2.1.31b) that the *First Provider* has ceased to provide the course.

*Other circumstances that may amount to ceasing to provide a course of study*

2.1.30 If:

- a) a *First Provider* fails to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or
- b) a *First Provider* is unable to pay all of its debts when they become due; or
- c) proceedings are initiated to obtain an order for a *First Provider's* winding up or any shareholder, member or director convenes a meeting to consider a resolution for the winding up of the *First Provider*

then the *First Provider* must immediately notify the *First Provider's tuition assurance administrators* and the *Group Manager* to that effect.

2.1.31 If the *Group Manager* becomes aware (whether by notice under paragraph 2.1.30 or otherwise) that any of the events described in paragraphs 2.1.30a), 2.1.30b) or 2.1.30c) apply, or may apply, to a *First Provider*, then:

- a) the *First Provider* must, within a period specified by the *Group Manager*, provide the Secretary with such information that the *Group Manager* may reasonably request in relation to that event;
- b) the Secretary may, after considering any information provided by the *First Provider* under paragraph 2.1.31a), declare in writing that, for the purposes of this Chapter 2 of the Guidelines, the *First Provider* has ceased to provide one or more courses of study specified in the declaration; and
- c) the Secretary must give a copy of the declaration to the *First Provider* and the *First Provider's tuition assurance administrators*.

## **2.2 PART 1: GENERAL REQUIREMENTS**

*Corporate separation*

2.2.1 Subject to paragraph 2.2.2, the relationship between a *First Provider* and each of its *tuition assurance administrators* must be such that at all times:

- a) they are legally separate entities;

- b) they are not related to each other within the meaning of section 50 of the *Corporations Act 2001*;
- c) they are not associated entities within the meaning of section 50AAA of the *Corporations Act 2001*;
- d) they are not in a position where one is able to control the other within the meaning of section 50AA of the *Corporations Act 2001*; and
- e) they do not have in common one half or more of the persons who are directors or officers of either entity, where the terms “**director**” and “**officer**” have the meanings given to them in section 9 of the *Corporations Act 2001*.

2.2.2 If at any time the relationship between a *First Provider* and any of its *tuition assurance administrators* ceases to meet the requirements of paragraph 2.2.1, then the *First Provider* must immediately notify the *Group Manager* to that effect in writing, and include with that notification an alternative proposal for the Minister’s approval (which may be subject to such conditions as the Minister, in his or her sole discretion, may impose) that includes:

- a) detailed reasons for the non-compliance with paragraph 2.2.1;
- b) detailed reasons explaining why the *First Provider* and the *tuition assurance administrator* are prevented from changing the relationship between them so as to comply with paragraph 2.2.1; and
- c) details of any alternative arrangements proposed to apply as between the *First Provider* and the *tuition assurance administrator* which, while they will not result in a relationship that meets the requirements of paragraph 2.2.1, the *First Provider* reasonably believes meet the remainder of the *tuition assurance requirements*.

By way of example only, and without prejudice to the Department’s and the Minister’s consideration of the proposal, the alternative arrangements may include any one or more of the following:

- (i) a separate unconditional financial guarantee from a third person (who may be a natural person or a body corporate);
- (ii) a trust arrangement with an independent, third party trustee;
- (iii) a specifically established trust account with a bank or other financial institution.

## 2.3 PART 2: COURSE ASSURANCE REQUIREMENTS

2.3.1 The *First Provider* must demonstrate to the satisfaction of the Minister that it complies with the requirements in paragraph 2.3.5, by having in place, for each higher education course of study it provides, one or more of these arrangements:

- a) membership of a *tuition assurance scheme* that is:
  - (i) operated by a legal entity (“**Course Assurance TAS Operator**”); and
  - (ii) approved by the Minister for this purpose;
- b) a legally-binding agreement with one or more *Second Providers* (subject to paragraph 2.3.10);
- c) a legally-binding guarantee provided by a legal entity (“**Course Assurance Guarantor**”) that is a body corporate incorporated under or in accordance with a law of the Commonwealth or of any Australian State or Territory (not necessarily a higher education provider) and which has the necessary financial and administrative resources to fulfil such a guarantee, including resources that, should the *First Provider* cease to provide a course of study, will be available for use by the *Course Assurance Guarantor*, if requested by persons enrolled in that course of study, to make all the

arrangements necessary to ensure that those persons are enrolled in a similar course of study with another higher education provider.

- 2.3.5 If the *First Provider* ceases to provide a unit as a result of ceasing to provide the course of study of which the unit formed part, and if a student who is enrolled in the unit at that time chooses this *course assurance option* and not the *student contribution / tuition fee repayment option* in respect of the unit, that student:
- a) must be able to enrol in a similar course of study leading to the same or a comparable qualification with another higher education provider (the “**Second Provider**”);
  - b) must receive from the *Second Provider* for any successfully completed units of study undertaken as part of that course of study:
    - (i) full recognition (that is, full credit towards the same or a comparable qualification); or
    - (ii) if the Minister agrees that a course of study that the *First Provider* provides is of such a specialised nature, or contains components of such a specialised nature, that full credit transfer cannot be arranged - as much credit as possible towards a similar course of study;
  - c) must not be required to:
    - (i) pay the *Second Provider* a student contribution amount or tuition fee for any *replacement unit*; nor
    - (ii) give an appropriate officer of the *Second Provider* (or any other person) a request for Commonwealth assistance in relation to any *replacement unit*.
- 2.3.10 If a *Second Provider* is not approved as a higher education provider at the time of entering a legally-binding agreement referred to in paragraph 2.3.1(b), it must obtain approval as a higher education provider within six calendar months after the *First Provider* is approved as a higher education provider, or, where the *First Provider* is a listed provider, within six months after the date of the agreement.

## 2.4 PART 3: STUDENT CONTRIBUTION OR TUITION FEE REPAYMENT REQUIREMENTS

### ***Part 3.1: Students choosing student contribution / tuition fee repayment option for units that First Provider has ceased to provide***

- 2.4.1 The *First Provider* must demonstrate to the satisfaction of the Minister that it complies with the requirements in paragraphs 2.4.2 to 2.4.7, by having in place, for each higher education course of study it provides, one or more of these arrangements:
- a) membership of a *tuition assurance scheme* that is:
    - (i) operated by a legal entity (“**Repayment TAS Operator**”); and
    - (ii) approved by the Minister for this purpose;
  - b) a ‘tuition fees in arrears’ agreement is offered by the *First Provider* to students under which students enrol on the basis that student contributions or tuition fees for each unit of their course of study are paid in arrears;
  - c) a legally binding guarantee provided by a legal entity (“**Repayment Guarantor**”) that is a body corporate incorporated under or in accordance with a law of the Commonwealth or of any Australian State or Territory (not necessarily a higher education provider) which has the necessary financial and administrative resources to fulfil such a guarantee.

- 2.4.2 If a *First Provider* ceases to provide a unit as a result of ceasing to provide the course of study of which the unit formed part, and if a student who is enrolled in the unit at that time chooses this *student contribution / tuition fee repayment option* and not the *course assurance option* in respect of the unit, then, within one month (or longer period agreed in writing by the *Group Manager*) after receiving notification of that choice, the *First Provider* must:
- a) determine that section 36-22A of the *Act* applies to the student in respect of the unit (if the requirements of subsection 36-22A(1) of the *Act* are met); or
  - b) re-credit the student's SLE for the unit (if the requirements of subsection 79-20(1) of the *Act* are met); or
  - c) re-credit the student's FEE-HELP balance in respect of the unit (if the requirements of subsection 104-42(1) of the *Act* are met); and
  - d) immediately after making the determination or effecting the re-crediting under paragraph 2.4.2a), 2.4.2b) or 2.4.2c), as the case may be, notify its *Repayment TAS Operator* or *Repayment Guarantor* (whichever is applicable) to that effect.

(Under subsections 36-22A(3), 79-20(2) and 104-42(2) of the *Act*, the Secretary may make the determination or effect the re-crediting if the *First Provider* is unable to do so, in which case the Secretary may give the notice referred to in paragraph 2.4.2d).)

- 2.4.3 Within ten *Business Days* after receiving notification from the *First Provider* or the Secretary under paragraph 2.4.2, the *Repayment TAS Operator* or *Repayment Guarantor* (whichever is applicable) must:
- a) pay the student the total of any up-front payments paid for that unit of study to the *First Provider* by the student (or on behalf of the student by any party other than the Commonwealth); and
  - b) pay the Commonwealth any amounts paid for that unit of study by the Commonwealth to the *First Provider* in discharge of the student's liability to pay his or her student contribution amount or tuition fee for the unit.

**Part 3.2: Students withdrawing from replacement units under special circumstances**

- 2.4.4 If the *Second Provider* receives an application from any person under paragraph 36-22(1)(e), 79-1(1)(d) or 104-25(1)(d) of the *Act* in relation to a *replacement unit* in which the person is enrolled with a *Second Provider*, the *Second Provider* must:
- a) immediately notify the *First Provider* and the *Group Manager* of the application;
  - b) ensure that the up-to-date information kept by it under paragraph 2.5.2.1 can be accessed by the Commonwealth and, in order to effectively meet their obligations under the arrangements, the *First Provider's tuition assurance administrators*;
  - c) deal with the application in accordance with subsection 36-22(7) or section 79-15 or subsection 104-40(1) of the *Act* (as the case may be); and
  - d) immediately after having dealt with the application, notify the persons referred to in subparagraph 2.4.4a) as to whether, in respect of the *replacement unit*:
    - (i) it has determined that section 36-22 of the *Act* applies to the student; or
    - (ii) it is satisfied that the requirements of subsection 79-1(1) of the *Act* are met; or
    - (iii) it is satisfied that the requirements of subsection 104-25(1) of the *Act* are met.

(Under subsections 36-22(9), 79-1(2) and 104-25(3) of the *Act*, the Secretary may act for certain purposes where the relevant provider is unable to do so, in which case the Secretary may give the notice referred to in this subparagraph 2.4.4d).)

- 2.4.5 If the notice under subparagraph 2.4.4d)(i) states that the *Second Provider* has determined that section 36-22 of the *Act* applies to the student, the *First Provider* must immediately notify its *Repayment TAS Operator* or *Repayment Guarantor* (whichever is applicable) to that effect.

(The Secretary may give this notice if the *First Provider* is unable to do so.)

- 2.4.6 If a notice under subparagraph 2.4.4d)(ii) or 2.4.4d)(iii), states that the *Second Provider* is satisfied that the requirements of subsection 79-1(1) or subsection 104-25(1) of the *Act*, respectively, are met:

- a) the *Second Provider* and the persons referred to in sub-paragraph 2.4.4a) will liaise and do all things reasonably necessary to effect re-crediting of the student's SLE or FEE-HELP balance in relation to the *replaced unit* within one month after the *First Provider* receives the notice; and
- b) the *First Provider* must immediately after the re-crediting has been effected, notify its *Repayment TAS Operator* or *Repayment Guarantor* (whichever is applicable) to that effect.

(Under subsections 79-1(2) and 104-25(3), the Secretary may effect the re-crediting or if the relevant provider is unable to do so, in which case the Secretary may give the notice referred to in subparagraph 2.4.6b).)

- 2.4.7 Within five *Business Days* after receiving notification from the *First Provider* or the Secretary under paragraph 2.4.5, the *Repayment TAS Operator* or *Repayment Guarantor* (whichever is applicable) must, for the purposes of subsections 36-20(3), 36-22(2B) and 110-5(1B) of the *Act*, and in consequence of the remission of any HECS-HELP debt or FEE-HELP debt under subsections 137-5(4), 137-5(5) or 137-10(4) of the *Act*:

- a) pay the student the total amount of any up-front-payments paid for the *replaced unit* to the *First Provider* by the student (or on behalf of the student by any party other than the Commonwealth); and
- b) pay the Commonwealth any amounts paid for the *replaced unit* by the Commonwealth to the *First Provider* in discharge of the student's liability to pay his or her student contribution amount or tuition fee for the *replaced unit*.

## 2.5 PART 4: ADMINISTRATIVE AND OTHER REQUIREMENTS

### 2.5.1 Statement of Tuition Assurance

- 2.5.1.1 A *First Provider* must publish to all enrolling students a complete and unambiguous "**Statement of Tuition Assurance**" explaining the *tuition assurance requirements* and the *tuition assurance scheme* that is in place to meet the *tuition assurance requirements* for each of its higher education courses of study.

- 2.5.1.5 Exempt providers must publish to all enrolling students a "**Statement of Tuition Assurance Exemption**" explaining the exemption/s they have been granted from complying with the *tuition assurance requirements* and what this means in the event the *Exempt Provider* ceases to provide the course(s) concerned.

2.5.1.10 The method of publication to be used for both the *Statement of Tuition Assurance* and the *Statement of Tuition Assurance Exemption* is to be determined by the *First Provider* and may include printed handbooks, publication on the *First Provider's* web site, or any other method determined by the *First Provider* which would bring the information to the attention of students and prospective students. The *First Provider* must also ensure that at enrolment each enrolling student is provided with clear information about where either the *Statement of Tuition Assurance* or the *Statement of Tuition Assurance Exemption* (whichever is applicable) may be obtained.

2.5.1.15 The *Statement of Tuition Assurance* must explain to students, that if the *First Provider* ceases to provide the course of study in which they are enrolled:

- a) the *First Provider* must meet the *tuition assurance requirements*;
- b) the *First Provider* has a *tuition assurance scheme* in place to meet the *tuition assurance requirements* and the nature of that *tuition assurance scheme*;
- c) students will have the choice of:
  - i) an offer of a place in a similar course of study with a *Second Provider* without any requirement to pay the *Second Provider* any student contribution or tuition fee for any *replacement units* (the “**course assurance option**”); or
  - ii) a refund of their up-front payments for any unit of study that the student commences but does not complete because the *First Provider* ceases to provide the course of study of which the unit forms part (an “**Affected Unit**”) (and, if the student chooses this option, a corresponding re-crediting of any SLE or FEE-HELP balance relating to that unit) (the “**student contribution / tuition fee repayment option**”); and
- d) if students choose the *course assurance option*:
  - i) the nature of the similar course of study that would be offered to students;
  - ii) the name of the *Second Provider* that would be providing this similar course of study;
  - iii) the qualification to which this similar course of study would lead; how much credit a student would receive for the units of study they have completed with the *First Provider* towards the similar course of study [Note: This will be full credit unless otherwise approved by the Minister under subparagraph 2.3.5b)(ii)];
  - iv) that the *Second Provider* might have different student contribution amounts or tuition fees for units of study in the remainder of the similar course of study, to the amounts or fees students would have paid for units of study which were part of the course of study the *First Provider* ceased to provide; and
  - v) that students are not obliged to enrol in the course offered with the *Second Provider* under the course assurance option, but that if they enrol with any other provider there is no obligation on that provider to offer full credit transfer for the units of study completed with the *First Provider* or to offer a replacement unit free of charge.

## 2.5.2 Information for *tuition assurance administrators* and the Commonwealth

2.5.2.1 The *First Provider* must keep up-to-date enrolment information on the persons enrolled with the *First Provider*, and the *Second Provider* must keep up-to-date enrolment information on the persons enrolled in *replacement units* with the *Second Provider*. This information must include:

- a) each person's name and contact details;

- b) the name of the course and the unit(s) the person is currently enrolled in;
- c) the amount paid for each unit that the person is currently enrolled in and the nature of that payment (ie student contribution or tuition fee, amounts paid up-front versus through a HELP loan);
- d) details of the units successfully completed with provider to date; and
- e) for *Second Providers*, details of credits granted under paragraph 2.3.5b).

2.5.2.5 The *First Provider* must ensure that, if its *tuition assurance scheme* is activated, the information described in paragraph 2.5.2.1 can be accessed by the Commonwealth and, in order to effectively meet their obligations under those arrangements, the *First Provider's tuition assurance administrators*.

2.5.2.10 The *tuition assurance scheme* must provide that, if it is activated, each *tuition assurance administrator* must:

- a) immediately seek to obtain the information described in paragraph 2.5.2.1 from the *First Provider*, and
- b) if such information is not readily available, make all reasonable efforts to fulfil the obligations it has assumed under the *tuition assurance scheme*.

### 2.5.3 Written Tuition Assurance Offer to Students

2.5.3.1 The *tuition assurance scheme* must provide that:

- a) if the *First Provider* ceases to provide a course of study, the *tuition assurance administrator(s)* for that course of study must provide a person enrolled in that course with written advice (the "**Written Tuition Assurance Offer**"), that he/she may choose either the *course assurance option* or the *student contribution / tuition fee repayment option*;
- b) where the *tuition assurance administrator* is a *Second Provider* referred to in paragraph 2.3.1b), the *Written Tuition Assurance Offer* must make a direct offer of enrolment as specified in subparagraph 2.5.1.15d);
- c) where the *tuition assurance administrator* is a *Course Assurance TAS Operator* or a *Course Assurance Guarantor*, the *Written Tuition Assurance Offer* must name the course(s) and *Second Provider(s)* that the student may choose for the purposes of enrolling as specified in subparagraph 2.5.1.15d);
- d) where the *tuition assurance administrator* is a *Repayment TAS Operator* or *Repayment Guarantor*, the *Written Tuition Assurance Offer* must make a direct offer of repayment as specified in subparagraph 2.5.1.15c)ii);
- e) the *Written Tuition Assurance Offer* must refer to and enclose a copy of the *First Provider's Statement of Tuition Assurance* referred to in paragraph 2.5.1.1, and, in relation to the Guidelines:
  - i) refer to [www.comlaw.gov.au](http://www.comlaw.gov.au), from which an electronic copy of the Guidelines can be obtained; and
  - ii) include contact details of the *First Provider's* personnel from whom a copy of the Guidelines can be obtained;
- f) the *Written Tuition Assurance Offer* must include directions that the student must follow in order to notify the *First Provider*, the *First Provider's tuition assurance administrator(s)* and the *Group Manager* of the choice that the student has made under paragraph 2.5.3.1a) for each *Affected Unit* (as defined in paragraph 2.5.1.15c)ii));

- g) the Written Tuition Assurance Offer must completely and unambiguously comply with all of the requirements specified in this section 2.5.3;
- h) the *tuition assurance administrator* responsible for providing any Written Tuition Assurance Offer must do so within twenty *Business Days* after it knows, or should know by reasonable enquiries (including enquiries of the *First Provider* and of the Department) that the *First Provider* has ceased to provide the course of study.

## **2.6 EXEMPTION**

- 2.6.1 Any body corporate seeking to be approved by the Minister as a higher education provider or any higher education provider other than a Table A provider which considers that adequate grounds exist for it to be exempted from complying with the *tuition assurance requirements* under section 19-40 of the *Act*, should apply to the Minister in writing setting out those grounds.

## **CHAPTER 3 PARTICULAR OBLIGATIONS ON CERTAIN PROVIDERS**

3.1 The purpose of this chapter is to specify:

- a) obligations on higher education providers in their capacity as *Second Providers*; and
- b) a condition which applies to *Exempt Providers*, concerning information about persons enrolled with them.

### **3.5 REQUIREMENT FOR *SECOND PROVIDERS* UNDER LEGALLY BINDING COURSE ASSURANCE AGREEMENTS**

3.5.1 A *Second Provider* must meet its obligations under the legally binding agreement referred to in paragraph 2.3.1b) of these Guidelines and the requirements placed on a *Second Provider* under Chapter 2 of these Guidelines.

### **3.10 CONDITION OF EXEMPTION FROM COMPLYING WITH THE *TUITION ASSURANCE REQUIREMENTS***

3.10.1 Without limiting the conditions that may apply to an *Exempt Provider* or an exemption from complying with the *tuition assurance requirements* under subsection 19-40(2) of the *Act*, an *exempt provider* must keep up-to-date enrolment information on the persons enrolled with the *Exempt Provider* as though it were a *First Provider*, as specified in paragraph 2.5.2.1 of these Guidelines.

## **CHAPTER 4 GRIEVANCE AND REVIEW PROCEDURES**

4.1 The purpose of this chapter is:

- a) to ensure that all higher education providers other than those listed on Table A of the *Act* have a grievance procedure in place to ensure effective and fair handling of complaints about both *academic* and *non-academic matters*. (See paragraphs 19-45(1)(a) and (b) and subsection 19-45(2) of the *Act*.); and
- b) to set out procedures that review officers must follow when reviewing reviewable decisions of higher education providers under Chapter 3 of the *Act*. (See subsection 19-45(4) of the *Act*.)

### **4.5 REQUIREMENTS FOR GRIEVANCE PROCEDURES**

4.5.1 A higher education provider other than a Table A provider must have a grievance procedure to deal with complaints:

- a) from the provider's students, and from persons seeking to enrol in courses of study with the provider, relating to *non-academic matters*; and
- b) from the provider's students, relating to *academic matters*.

4.5.2 These grievance procedures must contain the following elements:

- a) an arrangement for handling complaints which is easily accessible to students; is without charge, or at reasonable cost to students; and encourages timely resolution; and
- b) an arrangement for the internal investigation of complaints which remain unresolved by the process outlined at a) by an independent and impartial senior officer of the provider nominated by the provider, or dedicated complaints committee or unit established by the provider; and
- c) a provision for external review of decisions made under paragraph b) by an independent person or body established or nominated by the higher education provider.

4.5.5 The higher education provider must:

- a) have a mechanism in place to implement the grievance procedures, including implementation of recommendations arising from any external review under paragraph 4.5.2c);
- b) ensure that the grievance procedures are complete, unambiguous and agreed to and ratified by the provider's governing body;
- c) not *victimise* or discriminate against any complainant or respondent;
- d) make details of the grievance procedures publicly available;
- e) communicate the grievance procedures in writing to its staff and train its staff in their application;
- f) specify reasonable timelines for responses to each stage of the process;
- g) allow the complainant and/or respondent to be accompanied and assisted by a third party if desired;

- h) give reasons and full explanation in writing for decisions and actions taken as part of the procedures, if requested by the complainant and/or respondent;
- i) keep appropriate records of all grievances for at least five years, and allow parties to the complaint appropriate access to these records;
- j) ensure that such records are treated as confidential.

4.5.10 Students or persons seeking to enrol in course of study with a provider are entitled to access the grievance procedures as set out by that provider, regardless of the location of the campus at which the grievance has arisen, the student's place of residence or the mode in which they study.

4.5.15 The procedures set out in this document do not replace or modify procedures or any other responsibilities which may arise under other higher education provider policies or under statute or any other law.

#### **4.10 REQUIREMENTS FOR REVIEWING DECISIONS OF A HIGHER EDUCATION PROVIDER IN RELATION TO ASSISTANCE UNDER CHAPTER 3 OF THE ACT**

4.10.1 In reviewing *reviewable decisions* made under Chapter 3 of the *Act*, providers must comply with the requirements of this section 4.10 of these Guidelines and of Division 209 of the *Act*.

4.10.5 The higher education provider must acknowledge receipt of an application for review of a reviewable decision in writing and inform the applicant that, if the reviewer has not advised the applicant of a decision within 45 days of receiving the application for review, the reviewer is taken to have confirmed the original decision.

4.10.10 The reviewer of a reviewable decision must inform applicants of their right to apply to the Administrative Appeals Tribunal for a review of the reviewable decision that has been confirmed, varied or set aside under section 209-5 or 209-10 of the *Act*, and provide the contact details of the closest Administrative Appeals Registry and the approximate costs of lodging an appeal with the Administrative Appeals Tribunal.

## **CHAPTER 5 QUALITY AUDITING BODY**

- 5.1 The purpose of this chapter is to name the body which will undertake quality audits of:
- a) a Table A provider (see section 19-27 of the *Act*); and
  - b) a higher education provider other than a Table A provider (see section 19-25 of the *Act*.)
- 5.5 The quality auditing body is the Australian Universities Quality Agency.

## **CHAPTER 6 PUBLICATION REQUIREMENTS FOR STUDENT CONTRIBUTION AMOUNTS AND TUITION FEES**

### **6.1 PURPOSE**

6.1.1 The purpose of this chapter is to specify the:

- a) periods under subsections 19-87(1) and 19-95(1) of the *Act*;
- b) date by which a higher education provider must publish the schedule of student contribution amounts for places and tuition fees for a particular period under paragraph 19-95(2)(b) of the *Act*;
- c) date before which a variation to a:
  - i) student contribution amount must be made under subparagraph 19-87(3)(a)(i) of the *Act*, and
  - ii) fee must be made under subparagraph 19-90(4)(a)(i) of the *Act*;
- d) circumstances in which a:
  - iii) student contribution may be varied under subparagraph 19-87(3)(a)(ii) of the *Act*, and
  - iv) fee may be varied under subparagraph 19-90(4)(a)(ii) of the *Act*; and
- e) date by which information on student contribution amounts for places in units, or tuition fees, to apply to students in student cohorts must be published and made publicly available under subsection 19-97(2) of the *Act*.

### **6.5 PERIODS**

6.5.1 For the purposes of subsections 19-87(1) and 19-95(1) of the *Act*:

- a) the first period of a year commences on the 1st of January and ends on the 30th of June of that year.
- b) the second period of a year commences on the 1st of July and ends on the 31st of December of that year.

6.5.5 The periods specified in paragraph 6.5.1 of these guidelines are relevant only for the purposes of subsections 19-87(1) and 19-95(1) of the *Act* and paragraph 6.10.1 of these guidelines.

### **6.10 DATE BY WHICH A HIGHER EDUCATION PROVIDER MUST PUBLISH THE SCHEDULE OF STUDENT CONTRIBUTION AMOUNTS FOR PLACES AND TUITION FEES FOR A PARTICULAR PERIOD**

6.10.1 A higher education provider must publish a schedule of student contribution amounts for places and tuition fees by:

- a) the 1st of April of a year for units of study with a census date in the second period of the same year; and
- b) the 1st of October of a year for units of study with a census date in the first period of the subsequent year.

### **6.15 DATE BEFORE WHICH A VARIATION TO A STUDENT CONTRIBUTION AMOUNT OR FEE MUST BE MADE**

6.15.1 If the circumstances covered in section 6.20 of these guidelines prevail, a higher education provider may vary a student contribution amount or fee for a unit of study up to two months before the earlier of:

- a) the date of commencement of the unit of study; and
- b) the last date that a student can enrol in the unit of study without incurring a late enrolment fee.

## **6.20 CIRCUMSTANCES IN WHICH A STUDENT CONTRIBUTION AMOUNT OR FEE MAY BE VARIED**

6.20.1 A higher education provider may only vary a student contribution amount or fee if:

- a) the reason for the change was unforeseen at the time the student contribution amount or fee was determined; and
- b) the reason for the change was beyond the higher education provider's control; and
- c) the higher education provider has advised the Department of Education, Science and Training, in writing, of its intention to vary, and its reasons for varying, the student contribution amount or fee.

6.20.5 For circumstances to be considered unforeseen under paragraph 6.20.1a) of these guidelines, the circumstances must be unusual, uncommon or abnormal.

6.20.10 For the circumstances to be considered beyond a higher education provider's control under paragraph 6.20.1b) of these guidelines, the circumstances must be such that a reasonable person would consider the circumstances to not be due to the higher education provider's action or inaction, either direct or indirect.

## **6.25 DATE BY WHICH STUDENT COHORT INFORMATION MUST BE PUBLISHED**

6.25.1 Sufficient information to enable a person in a student cohort to work out his or her student contribution amount and tuition fee for each unit of study that the provider provides or is to provide as part of the cohort's course of study, and any conditions that are to apply in relation to the amount or fee for each unit of study for each cohort, must be published and made publicly available by 1 October in the year preceding the year in which the student cohort commences its course of study.

## **CHAPTER 7 CONDITIONS FOR A STUDENT COHORT**

### **7.1 PURPOSE**

7.1.1 The purpose of this chapter is to specify the kind of conditions that a higher education provider may determine for a student cohort that are to apply in relation to the:

- a) student contribution amount for a place in the unit under subsection 19-88(5) of the *Act*; and
- b) fee for the unit under subsection 19-91(5) of the *Act*.

### **7.5 THE KIND OF CONDITIONS THAT MAY BE DETERMINED**

7.5.1 A higher education provider may only determine a condition that specifies the period of time that students in a student cohort are subject to the:

- a) student contribution amount for a place in a unit of study determined under 19-88(2) of the *Act*; and
- b) fee for a unit of study determined under 19-91(2) of the *Act*.

## **CHAPTER 8 FEES IN RESPECT OF OVERSEAS STUDENTS**

### **8.1 PURPOSE**

- 8.1.1 The purpose of this chapter is to detail the requirements for fees in respect of overseas students which are the fees referred to in paragraph 19-102(3)(d) of the *Act*.

### **8.5 REQUIREMENTS**

- 8.5.1 Subject to paragraph 8.10 of these guidelines when determining the fee for an overseas student, a higher education provider must meet the following requirements in respect of all overseas students other than those students excluded under paragraph 8.10.1:
- (a) a higher education provider must charge as a minimum, a fee sufficient to recover the full cost of providing a course to an overseas student. Without limiting the meaning of full cost, it includes:
    - (i) full operating costs, including equipment costs. Account should be taken not only of directly associated staff costs, but also all overheads (including but not limited to, utilities, rent and marketing costs) and common services costs (including but not limited to, libraries and the provision of services required under the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* and the *Education Services for Overseas Students Act 2000*); and
    - (ii) full capital costs. For fee calculation purposes, the current average cost per place of providing capital facilities for the course in question should be determined by the higher education provider. A capital component of the fee will not need to be taken into account where the necessary capital facilities are provided by a third party.
  - (b) The fee must be no less than those shown for the relevant category of courses in the schedule of minimum indicative course fees, which forms part of these guidelines, except where:
    - (i) a course is provided wholly off-shore and students will not at any stage enter Australia for study; or
    - (ii) approval has been given by the Department of Education, Science and Training to charge less than the minimum indicative fee for a course.
  - (c) Where the requirements of subparagraph 8.5.1(b)(i) or subparagraph 8.5(b)(ii) are satisfied in relation to a course no minimum indicative fee will apply. However the higher education provider must be able to demonstrate that the fee proposed will recover at least the full cost of providing the course in accordance with paragraph 8.5.1(a).
  - (d) For the purposes of paragraph 8.5.1(b), the minimum indicative course fee for the relevant category of course is:
    - (i) where, in accordance with subparagraph 8.5.1(a)(ii), the capital component of the fee is not taken into account because the necessary capital facilities are provided by a third party, the amount in the column headed *Total without capital component*; or
    - (ii) in all other circumstances, the amount in the column headed *Total with capital component*.

## 8.10 CIRCUMSTANCES IN WHICH THE REQUIREMENTS FOR DETERMINING FEES FOR OVERSEAS STUDENTS MAY NOT APPLY

- 8.10.1 A higher education provider is not required to comply with the requirements of paragraph 8.5.1 when determining the fee for the following classes of overseas students:
- (a) overseas students undertaking study in Australia as part of a formal exchange programme; and
  - (b) overseas students undertaking study in Australia towards a research Masters degree or a research Doctoral degree who have been awarded a scholarship for that study on the basis of merit following a competitive application process.

8.10.5 For the purposes of paragraph 8.10.1(a), a formal exchange programme is a programme established under a formal agreement between an Australian higher education provider and an overseas higher education institution ["overseas institution"] that provides for:

- (a) students of the Australian higher education provider to undertake study at the overseas institution, where the study at the overseas institution contributes to the requirements of a course of study being undertaken by the students with the Australian higher education provider;
- (b) students of the overseas institution to undertake study at the Australian higher education provider, where the study at the Australian higher education provider contributes to the requirements of a course of study being undertaken by the students with the overseas institution;
- (c) the exchange of students between the Australian higher education provider and the overseas institution to be reciprocal over time;
- (d) all students of the Australian higher education provider undertaking study in accordance with paragraph 8.10.5(a) are charged student contribution amounts and tuition fees in accordance with HESA and are not charged fees at the overseas institution; and
- (e) all students of the overseas institution undertaking study in accordance with paragraph 8.10.5(b) are charged fees in accordance with the practices of that overseas institution and are not charged fees at the Australian higher education provider.

## 8.15 CALCULATION OF MINIMUM INDICATIVE COURSE FEES

8.15.1 The schedule of minimum indicative course fees for 2007 is as follows:

<b>COURSE CATEGORIES</b>	<b>Total without capital component</b>	<b>Total with capital component</b>

<b>ON CAMPUS</b>			
		<b>Fees weekly</b>	
<b>1.</b>	ELICOS	\$242	\$264
		<b>Fees per year (Equivalent Full-time)</b>	
<b>2.</b>	Law, Economics, Business, Humanities, Maths/Statistics, Social Science, Education, Computing, Architecture, Design, Nursing, Arts, Science (non-lab-based)	\$8,244	\$9,835
<b>3.</b>	Science (lab-based), Paramedical, Engineering, Pharmacy, Agriculture	\$12,447	\$14,707
<b>4.</b>	Medicine, Dentistry, Veterinary Science	\$17,211	\$20,257
<b>EXTERNAL</b>			
		<b>Fees weekly</b>	
<b>E1.</b>	ELICOS (fees/weekly)	\$242	\$264
		<b>Fees per year (Equivalent Full-time)</b>	
<b>E2.</b>	Law, Economics, Business, Humanities, Maths/Statistics, Social Science, Education, Computing, Architecture, Design, Nursing, Arts, Science (non-lab-based)	\$8,244	\$8,689
<b>E3.</b>	Science (lab-based), Paramedical, Engineering, Pharmacy, Agriculture	\$12,447	\$13,051

8.15.5 Amounts in paragraph 8.15.1 will be indexed each year after 2007 in accordance with the method of indexation set out in Division 198 of Part 5-6 of Chapter 5 of the *Act*.

## **CHAPTER 9 FEES FOR GOODS AND SERVICES INCIDENTAL TO STUDIES**

### **9.1 PURPOSE**

9.1.1 The purpose of this chapter is to specify the criteria for determining whether a fee is of a kind referred to in paragraph 19-102(3)(f) of the *Act*.

### **9.5 CRITERIA FOR DETERMINING WHETHER A FEE IS OF A KIND THAT IS INCIDENTAL TO STUDIES THAT MAY BE UNDERTAKEN WITH A HIGHER EDUCATION PROVIDER**

9.5.1 Provided that its payment is in accordance with the *Act*, a fee is of a kind that is incidental to studies that may be undertaken with a higher education provider if it falls into any one or more of the following categories:

- (a) It is a charge for a good or service that is not essential to the course of study.
- (b) It is a charge for an alternative form, or alternative forms, of access to a good or service that is an essential component of the course of study but is otherwise made readily available at no additional fee by the higher education provider.
- (c) It is a charge for an essential good or service that the student has the choice of acquiring from a supplier other than the higher education provider and is for:
  - (i) equipment or items which become the physical property of the student and are not consumed during the course of study; or
  - (ii) food, transport and accommodation costs associated with the provision of field trips that form part of the course of study.
- (d) It is a fine or a penalty provided it is imposed principally as a disincentive and not in order to raise revenue or cover administrative costs.

# Notes to the Higher Education Provider Guidelines

## Note 1

The Higher Education Provider Guidelines in force under section 238-10 of the *Higher Education Support Act 2003* as shown in this compilation is amended as indicated in the Tables below.

## Table of Instruments

<b>Title</b>	<b>Date of notification in Gazette or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
Higher Education Provider Guidelines	13 Sept 2005 (see F2005L02590)	13 Sept 2005	—
Amendment No. 1 to the Higher Education Provider Guidelines	17 Nov 2006 (see F2006L03704)	18 Nov 2006	—

# Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Higher Education Provider Guidelines</b>	
p 1.1.25	rs. F2006L03704
p 1.1.30	ad. F2006L03704
p 1.1.35	ad. F2006L03704
p 1.1.40	ad. F2006L03704
p 1.1.45	ad. F2006L03704
p 1.1.50	ad. F2006L03704
p 1.5.2	ad. F2006L03704
p 5.5.5	am. F2006L03704
Chapter 2	rs. F2006L03704
Chapter 3	ad. F2006L03704
Chapter 4	am. F2006L03704 (originally Chapter 3 F2005L02590)
p 4.5.1	rs. F2006L03704
p 4.5.2	ad. F2006L03704
p 4.5.5	am. F2006L03704
P 4.10.1	rs F2006L03704
P 4.10.5	rs F2006L03704
P 4.10.10	ad F2006L03704
Chapter 5	am. F2006L03704 (originally Chapter 4 F2005L02590)
Chapter 8	ad. F2006L03704
Chapter 9	ad. F2006L03704