



# **Higher Education Support (HELP Tuition Protection Levy) Act 2020**

**No. 4, 2020**

**An Act to impose HELP tuition protection levy, and  
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Contents

<b>Part 1—Preliminary</b>	2
1 Short title.....	2
2 Commencement.....	2
3 Crown to be bound .....	2
4 Act does not impose tax on property of a State .....	2
5 Definitions.....	3
<b>Part 2—HELP tuition protection levy</b>	5
6 Imposition of HELP tuition protection levy .....	5
7 Amount of HELP tuition protection levy.....	5
8 Administrative fee component.....	5
9 Legislative instrument for purposes of section 8 .....	6
10 Indexation of administrative fee components etc.....	6
11 Risk rated premium component.....	8
12 Special tuition protection component .....	9
13 Legislative instrument for purposes of section 11 or 12 .....	9
<b>Part 3—Other matters</b>	11
14 Exemptions.....	11
15 Regulations.....	11





# Higher Education Support (HELP Tuition Protection Levy) Act 2020

No. 4, 2020

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**An Act to impose HELP tuition protection levy, and  
for related purposes**

*[Assented to 17 February 2020]*

The Parliament of Australia enacts:

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## Part 1—Preliminary

### 1 Short title

This Act is the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*.

### 2 Commencement

- (1) Each provision of this Act 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.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	At the same time as Part 1 of Schedule 2 to the <i>Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019</i> commences.	1 January 2020

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

### 3 Crown to be bound

This Act binds the Crown in each of its capacities.

### 4 Act does not impose tax on property of a State

- (1) This Act does not impose a tax on property of any kind belonging to a State.

- (2) ***Property of any kind belonging to a State*** has the same meaning as in section 114 of the Constitution.

## 5 Definitions

- (1) In this Act:

***administrative fee component***, for a leviable provider for a year, has the meaning given by section 8.

***HELP tuition protection levy*** means levy imposed by section 6.

***leviable provider*** means a higher education provider to whom Part 5-1A of the *Higher Education Support Act 2003* applies but does not include a provider covered by subsection (1A).

***new provider***, for a year, means a leviable provider that was not a higher education provider at any time during the previous year.

***property of any kind belonging to a State***: see subsection 4(2).

***risk rated premium component***, for a leviable provider for a year, has the meaning given by section 11.

***special tuition protection component***, for a leviable provider for a year, has the meaning given by section 12.

***total HELP students***, for a leviable provider for a year, means the total number of students who:

- (a) were enrolled during the previous year in at least one unit of study that forms part of a course of study and that has its census date in the previous year; and
- (b) were entitled to HECS-HELP assistance or FEE-HELP assistance for that unit.

***year*** means calendar year.

- (1A) A higher education provider is covered by this subsection if the provider is:
- (a) owned by the Commonwealth, a State or a Territory; or
  - (b) established under one of the following:

Section 5

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- (i) the *Technical and Further Education Commission Act 1990* (NSW);
  - (ii) the *Education and Training Reform Act 2006* (Vic.);
  - (iii) the *TAFE Queensland Act 2013* (Qld);
  - (iv) the *Vocational Education and Training Act 1996* (WA);
  - (v) the *TAFE SA Act 2012* (SA);
  - (vi) the *Training and Workforce Development Act 2013* (Tas.);
  - (vii) the *Canberra Institute of Technology Act 1987* (ACT).
- (2) An expression used in this Act that is also used in the *Higher Education Support Act 2003* has the same meaning as in that Act.



## **Part 2—HELP tuition protection levy**

### **6 Imposition of HELP tuition protection levy**

Levy is imposed by this section on a body, for a year starting on or after the commencement of this section, if the body is a leviable provider at any time during the year.

### **7 Amount of HELP tuition protection levy**

The amount of HELP tuition protection levy for a year for a leviable provider is the sum of the following components:

- (a) the provider's administrative fee component for the year (see section 8);
- (b) the provider's risk rated premium component for the year (see section 11);
- (c) the provider's special tuition protection component for the year (see section 12).

Note: Classes of providers may be exempt from the requirement to pay one or more components of HELP tuition protection levy: see section 14.

### **8 Administrative fee component**

- (1) If a leviable provider is a new provider for a year, the amount of the provider's **administrative fee component** for the year is the amount determined for the purposes of paragraph (2)(a) for the year.
- (2) Otherwise, a leviable provider's **administrative fee component** for a year is the sum of:
  - (a) the amount determined in an instrument under section 9 for the purposes of this paragraph for the year; and
  - (b) the amount determined in an instrument under section 9 for the purposes of this paragraph for the year, multiplied by the total HELP students for the provider for the year.

Section 9

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**9 Legislative instrument for purposes of section 8**

*2020*

- (1) Before 1 August 2020, the Minister must, by legislative instrument, determine each of the following for that year:
  - (a) an amount for the purposes of paragraph 8(2)(a);
  - (b) an amount for the purposes of paragraph 8(2)(b).

*Later years*

- (2) Before 1 August of the year 2021 or a later year, the Minister may, by legislative instrument, determine one or both of the following for the year:
  - (a) an amount for the purposes of paragraph 8(2)(a);
  - (b) an amount for the purposes of paragraph 8(2)(b).

Note: The amounts determined under this subsection may be indexed under section 10.

*Upper limit*

- (3) The Minister must not determine an amount for the purposes of paragraph 8(2)(a) or (b) for a year that exceeds the following:
  - (a) for paragraph 8(2)(a)—\$325;
  - (b) for paragraph 8(2)(b)—\$31.

Note: The amounts in this subsection are indexed under section 10.

*Having regard to matters*

- (4) In making a legislative instrument under this section, the Minister must have regard to the sustainability of the HELP Tuition Protection Fund.
- (5) The Minister may also have regard to any other matter the Minister considers appropriate.

**10 Indexation of administrative fee components etc.**

- (1) On 1 August of the year 2021 (the *current year*) and each later year (the *current year*) an amount mentioned in paragraph 8(2)(a)
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or (b) or 9(3)(a) or (b) is replaced by the amount worked out using the formula:

$$\text{Amount under that paragraph for the previous year} \times \text{Indexation factor for that 1 August}$$

- (2) Subsection (1) does not apply to an amount mentioned in paragraph 8(2)(a) or (b) if the Minister has determined an amount for the purposes of that paragraph for the current year.

*Indexation factor*

- (3) The ***indexation factor*** for a 1 August is the number worked out using the formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

where:

***base quarter*** means the last September quarter before the reference quarter.

***index number***, for a quarter, means the All Groups Consumer Price Index number from the original series (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

***reference quarter*** means the September quarter in the year before the current year.

*Rounding factors and amounts etc.*

- (4) The indexation factor worked out under subsection (3) must be rounded up or down to 3 places (rounding up in the case of exactly halfway between).
- (5) An amount worked out under subsection (1) for the purposes of paragraph 8(2)(a) or 9(3)(a) or (b) must be rounded to the nearest whole dollar (rounding up in the case of 50 cents).

## Section 11

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- (6) An amount worked out under subsection (1) for the purposes of paragraph 8(2)(b) must be rounded to the nearest whole cent (rounding up in the case of 0.5 cents).
- (7) An indexation factor that is less than 1 is to be increased to 1.
- (8) If at any time (whether before or after the commencement of this section) the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change, only index numbers published in terms of the new index reference period are to be used.

### *Publication*

- (9) The Minister must cause each amount worked out under subsection (1) to be made publicly available in any manner the Minister considers appropriate.

## 11 Risk rated premium component

- (1) If a leviable provider is a new provider for a year, the amount of the provider's **risk rated premium component** for the year is zero.
- (2) Otherwise, a leviable provider's **risk rated premium component** for a year is worked out using the following method statement.

### *Method statement*

Step 1: Multiply the total HELP students for the provider for the year by the amount determined in an instrument under section 13 for the purposes of this step for the year.

Step 2: Multiply the amount equal to the total amount of assistance paid to the provider under sections 96-1 and 110-1 of the *Higher Education Support Act 2003* in the previous year by the percentage determined in an instrument under section 13 for the purposes of this step for the year.

Step 3: Add up the results of steps 1 and 2.

- Step 4: For each risk factor determined in an instrument under section 13 for the purposes of this step for the year, work out the risk factor value for the provider for the year in accordance with the instrument.
- Step 5: Add up the results of step 4 and add 1.
- Step 6: Multiply the results of step 3 by the results of step 5. The result is the provider's risk rated premium component for the year.

## 12 Special tuition protection component

- (1) If a leviable provider is a new provider for a year, the amount of the provider's *special tuition protection component* for the year is zero.
- (2) Otherwise, a leviable provider's *special tuition protection component* for a year is an amount equal to the total amount of assistance paid to the provider under sections 96-1 and 110-1 of the *Higher Education Support Act 2003* in the previous year, multiplied by the percentage determined in an instrument under section 13 for the purposes of this subsection for the year.

## 13 Legislative instrument for purposes of section 11 or 12

- (1) Before 1 August 2020 and each later year, the HELP Tuition Protection Director must, by legislative instrument, determine each of the following for the year:
  - (a) an amount for the purposes of step 1 of the method statement in subsection 11(2);
  - (b) a percentage for the purposes of step 2 of the method statement in subsection 11(2);
  - (c) for the purposes of step 4 of the method statement in subsection 11(2):
    - (i) one or more risk factors that reflect the risk of payments being made out of the HELP Tuition Protection Fund in respect of leviable providers with that factor or those factors; and

Section 13

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- (ii) for each risk factor—the risk factor value, or a method for working out the risk factor value, for leviable providers, or a class of leviable providers;
  - (d) a percentage for the purposes of subsection 12(2).
- (2) The percentage determined in an instrument for the purposes of paragraph (1)(b) or (d) may be zero.
- (3) A risk factor value for a risk factor determined for the purposes of subparagraph (1)(c)(ii) must be a number between zero and 10 (inclusive).
- (4) In making a legislative instrument under subsection (1), the HELP Tuition Protection Director must have regard to:
  - (a) any advice of the HELP Tuition Protection Fund Advisory Board in relation to the matters referred to in that subsection; and
  - (b) the sustainability of the HELP Tuition Protection Fund.
- (5) The HELP Tuition Protection Director may have regard to any other matter that the Director considers appropriate.
- (6) Before the HELP Tuition Protection Director makes a legislative instrument under subsection (1), the Treasurer must approve the legislative instrument in writing.

## **Part 3—Other matters**

### **14 Exemptions**

The Higher Education Provider Guidelines may prescribe one or more classes of liable providers who are exempt from the requirement to pay one or more of the following:

- (a) the administrative fee component;
- (b) the risk rated premium component;
- (c) the special tuition protection component.

### **15 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 18 September 2019  
Senate on 11 November 2019]*

(184/19)

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