



Higher Education (Up-front Payments Tuition Protection Levy) Act 2020

No. 102, 2020

**An Act to impose up-front payments 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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Higher Education (Up-front Payments Tuition Protection Levy) Act 2020

No. 102, 2020

**An Act to impose up-front payments tuition
protection levy, and for related purposes**

[Assented to 20 November 2020]

The Parliament of Australia enacts:

No. 102, 2020 Higher Education (Up-front Payments Tuition Protection Levy) Act 1
2020

Part 1—Preliminary

1 Short title

This Act is the *Higher Education (Up-front Payments 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	At the same time as the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i> commences.	1 January 2021

Note: This table relates only to the provisions of this Act as originally enacted.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

In this Act:

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

Australian course of study has the same meaning as in the *Tertiary Education Quality and Standards Agency Act 2011*.

domestic student has the same meaning as in the *Tertiary Education Quality and Standards Agency Act 2011*.

Higher Education Tuition Protection Director means the person referred to in section 167-15 of the *Higher Education Support Act 2003*.

Higher Education Tuition Protection Fund means the Fund established by section 167-1 of the *Higher Education Support Act 2003*.

Higher Education Tuition Protection Fund Advisory Board means the Board established by section 167-30 of the *Higher Education Support Act 2003*.

leviable provider means a registered higher education provider to whom Part 5A of the *Tertiary Education Quality and Standards Agency Act 2011* applies.

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

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

registered higher education provider has the same meaning as in the *Tertiary Education Quality and Standards Agency Act 2011*.

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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 up-front fee paying students, for a leviable provider for a year, means the total number of domestic students for which one or more up-front payments for one or more units of study was received, directly or indirectly, by the provider during the year.

unit of study:

- (a) in relation to an Australian course of study and a registered higher education provider that is also a higher education provider within the meaning of the *Higher Education Support Act 2003*—has the same meaning as in that Act; or
- (b) in relation to an Australian course of study and a registered higher education provider that is not of the kind mentioned in paragraph (a) means:
 - (i) a subject or unit (however described) that a person may undertake as part of the course; or
 - (ii) if the course is not comprised of subjects or units as referred to in subparagraph (i)—the course.

up-front payment has the same meaning as in the *Tertiary Education Quality and Standards Agency Act 2011*.

Up-front Payments Guidelines means guidelines made by the Minister under section 26B of the *Tertiary Education Quality and Standards Agency Act 2011*.

up-front payments tuition protection levy means levy imposed by section 6.

year means calendar year.

Part 2—Up-front payments tuition protection levy

6 Imposition of up-front payments 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 up-front payments tuition protection levy

The amount of up-front payments 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 up-front payments 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

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total up-front fee paying students for the provider for the previous year.

- (3) For the purposes of working out the total up-front fee paying students for a provider for the previous year in paragraph (2)(b), disregard a student if that student would also fall within the definition of **total HELP students** (within the meaning of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*) for that previous year.

9 Legislative instrument for purposes of section 8

2021

- (1) Before 1 August 2021, 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 2022 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 Higher Education 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 2022 (the *current year*) and each later year (the *current year*) an amount mentioned in paragraph 8(2)(a) 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.

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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 decimal 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).
- (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 liable 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 liable provider's **risk rated premium component** for a year (the **current year**) is worked out using the following method statement:

Method statement

- Step 1: Multiply the total up-front fee paying students (as reduced under subsection (3)) for the provider for the previous year by the amount determined in an instrument under section 13 for the purposes of this step for the current year.
- Step 2: Multiply the amount equal to the sum of each up-front payment received, directly or indirectly, by the provider for a domestic student for a unit of study during the previous year by the percentage determined in an instrument under section 13 for the purposes of this step for the current 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 current year, work out the risk factor value for the provider for the current 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 current year.

- (3) For the purposes of working out the total up-front fee paying students for a provider for the previous year in step 1 of the method statement in subsection (2), disregard a student if that student would also fall within the definition of **total HELP students** (within the meaning of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*) for that previous year.

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12 Special tuition protection component

A leviable provider's *special tuition protection component* for a year is:

- (a) if the leviable provider is a new provider for the year—zero; or
- (b) otherwise—an amount equal to the sum of each up-front payment received, directly or indirectly, by the provider for a domestic student for a unit of study during the previous year multiplied by the percentage determined in an instrument under section 13 for the purposes of this paragraph for the year.

13 Legislative instrument for purposes of section 11 or 12

- (1) Before 1 August 2021 and each later year, the Higher Education 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 Higher Education Tuition Protection Fund in respect of leviable providers with that factor or those factors; and
 - (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 paragraph 12(b).
- (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 Higher Education Tuition Protection Director must have regard to:
 - (a) any advice of the Higher Education Tuition Protection Fund Advisory Board in relation to the matters referred to in that subsection; and
 - (b) the sustainability of the Higher Education Tuition Protection Fund.
- (5) The Higher Education Tuition Protection Director may have regard to any other matter that the Director considers appropriate.
- (6) Before the Higher Education 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 Up-front Payments Guidelines may prescribe one or more classes of leviable 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.

*[Minister's second reading speech made in—
House of Representatives on 26 August 2020
Senate on 10 November 2020]*

(100/20)
