



# **Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019**

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I, Dan Tehan, Minister for Education, make the following guidelines.

Dated            18 December 2019

Dan Tehan  
Minister for Education

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## 1 Name

This instrument is the *Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything else in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1, other than item 4	The day after this instrument is registered.	
3. Schedule 1, item 4	Immediately after the commencement of Part 1 of Schedule 1 to the <i>Higher Education Support Amendment (Cost Recovery) Act 2019</i> .	1 January 2020
4. Schedule 2, other than section 2.10 of item 3	1 January 2020	1 January 2020
5. Schedule 2, section 2.10 of item 3	Immediately after the commencement of the <i>Higher Education Support (HELP Tuition Protection Levy) Act 2020</i> .	

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to instrument has effect according to its terms.

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## Schedule 1—Provider integrity and application fee

### *Higher Education Provider Guidelines 2012*

#### 1 After paragraph 1.1.1(a)

Insert:

- ; (aa) set out the application fee for a body corporate’s application to be approved as a higher education provider;

#### 1A After paragraph 1.1.1(n)

Insert:

- ; (o) specify certain matters in relation to the quality and accountability requirements and other administrative requirements that apply to higher education providers approved under section 16-25 of the Act (see Chapter 8);
- (p) specify matters to be taken into account in determining whether students undertaking units of study provided by higher education providers approved under section 16-25 of the Act are genuine students (see Chapter 9).

#### 2 Section 1.5.5

Omit “paragraph 1.5.5”, substitute “paragraph 1.5.10”.

#### 3 Section 1.5.10

Insert:

**accounting standards** has the same meaning as in the *Corporations Act 2001*.

#### 4 Chapter 3

Repeal the Chapter, substitute:

### **CHAPTER 3 HIGHER EDUCATION PROVIDER APPLICATION FEE**

#### 3.1 Purpose

- 3.1.1 The purpose of this chapter is to set out the application fee for a body corporate’s application to be approved as a higher education provider.

#### 3.2 Higher education provider application fee

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

Year	Fee
2020	\$12,818
2021	\$13,010
2022	\$13,231

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Year	Fee
2023	\$13,456
2024	\$13,698

## 5 At the end of the instrument

Insert:

### **CHAPTER 8 QUALITY, ACCOUNTABILITY AND OTHER ADMINISTRATIVE REQUIREMENTS IN RELATION TO CERTAIN HIGHER EDUCATION PROVIDERS**

#### 8.1 Purpose

- 8.1.1 The purpose of this chapter is to set out additional quality, accountability and other administrative requirements that apply to higher education providers approved under section 16-25 of the *Act*.

#### 8.2 Financial statements

- 8.2.1 This section is made for the purposes of paragraph 19-10(2)(ab) of the *Act*.
- 8.2.5 If the higher education provider had total revenue of \$10 million or more for the previous annual financial reporting period, the financial statement for the annual financial reporting period must:
- (a) be a general purpose financial statement that complies with the applicable *accounting standards*; and
  - (b) be prepared by a qualified accountant in accordance with the applicable *accounting standards*; and
  - (c) include a declaration by the qualified accountant that the provider has, as at the date of the declaration, complied with all statutory obligations relating to the payment of:
    - (i) Commonwealth, State and Territory taxes; and
    - (ii) the superannuation guarantee charge in relation to employees of the provider.
- 8.2.10 If the higher education provider had total revenue of less than \$10 million for the previous annual financial reporting period, the financial statement for the annual financial reporting period must be a special purpose financial statement that complies with the following *accounting standards*:
- (a) AASB 101, Presentation of Financial Statements;
  - (b) AASB 107, Statement of Cash Flows;
  - (c) AASB 108, Accounting Policies, Changes in Accounting Estimates and Errors;
  - (d) AASB 1048, Interpretation of Standards;
  - (e) AASB 1054, Australian Additional Disclosures.
- 8.2.15 If the higher education provider is part of a consolidated entity, the financial statement for the annual financial reporting period must be accompanied by:

- (a) a copy of the most recent consolidated financial statements for the entity prepared in accordance with applicable *accounting standards*; and
- (b) such additional information related to the consolidated entity as is determined, in writing, by the Minister.

8.2.20 In this section:

**consolidated entity** has the same meaning as in the *Corporations Act 2001*.

**general purpose financial statement** has the meaning given by the *accounting standards*.

**qualified accountant** has the same meaning as in the *Corporations Act 2001*.

**special purpose financial statement** means a financial statement that is not a general purpose financial statement.

### 8.3 Financial viability

8.3.1 For the purposes of paragraph 19-12(b) of the *Act*, the Minister must have regard to the following matters when determining whether a higher education provider is financially viable, and likely to remain so:

- (a) the provider generates sufficient income to meet operating payments, debt commitments and, where applicable, to allow growth while delivering quality higher education;
- (b) the provider's total assets exceed the provider's total liabilities (the provider has a positive equity position), and there is no evidence to suggest that this might change;
- (c) if the provider is not a charitable or not-for-profit organisation registered with the Australian Charities and Not-for-profits Commission, and has been operating for 3 years or more—the provider has operated at a profit for at least 2 of the 3 most recent financial years for the provider;
- (d) if the provider has at least 100 enrolments in courses of study that lead to higher education awards—at least 20% of the provider's revenue for the previous financial year came from sources other than payments that gave rise to FEE-HELP debts;
- (e) the provider has a net positive cash position from operating activities (determined in accordance with the *accounting standards*);
- (f) the provider is not providing guarantees or loans that could have a material effect on the provider's finances;
- (g) the provider is not providing its assets as security other than under a commercial loan arrangement with an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*).

### 8.4 Offering certain inducements

8.4.1 The following benefits are specified for the purposes of subsection 19-36A(2) of the *Act*:

- (a) the content and quality of the unit of study;



- (b) the amount of the tuition fees for the unit of study;
- (c) the availability of FEE-HELP assistance for the unit of study;
- (d) marketing merchandise up to the total value of \$30 per person;
- (e) the offering of money in the form of scholarships or bursaries.

## **8.5 Use of third party contact lists**

8.5.1 This section is made for the purposes of subsection 19-36C(3) of the *Act*.

8.5.5 Subsection 19-36C(2) of the *Act* does not apply if the student has given express consent to being contacted by the higher education provider.

8.5.10 However, subject to section 8.5.15, a student cannot be taken to have provided express consent unless:

- (a) information in the request for consent was presented clearly, and set out the specific purpose for which the student's personal information would be used if consent were given; and
- (b) the request was prominent; and
- (c) the student was able to give consent in a separate optional tick box from other consents; and
- (d) the request was not a required field to be answered in order for a person to submit other information; and
- (e) the request did not include a default tick for consent; and
- (f) the request named the provider; and
- (g) the request detailed any referral fee or other fee that would be paid to the person who made the request and any other benefit that would be provided to the person who made the request.

8.5.15 The student is taken to have provided express consent if the student initiates contact with a third party for the purpose of:

- (a) giving information relating to education and training to the provider; or
- (b) obtaining information relating to higher education from the provider.

## **8.6 Keeping records**

8.6.1 This section is made for the purposes of section 19-72 of the *Act*.

8.6.5 A higher education provider must keep records relating to:

- (a) how the provider assessed a student as academically suited to undertake a unit of study before enrolling the student in the unit of study being undertaken as part of a course of study; and
- (b) if the provider is satisfied that special circumstances apply to a student for the purposes of section 104-1A of the *Act*—the grounds on which the provider is so satisfied.

Note 1: The requirement to undertake the assessment mentioned in paragraph (a) is imposed under section 19-42 of the *Act*.

Note 2: For when special circumstances apply to a person, see section 104-30 of the *Act*.

- 8.6.10 The records must be kept in a manner so that they can be readily provided upon request to the student concerned, the Minister or the Secretary.
- 8.6.15 A record required to be kept by a provider under this section must be kept by the provider for the period of 7 years, starting from when the record was made by the provider.

## 8.7 Publishing information

- 8.7.1 This section is made for the purposes of section 19-73 of the *Act*.
- 8.7.5 A higher education provider must publish the following information in relation to each unit of study offered by the provider:
- (a) the mode of delivery of the unit of study;
  - (b) whether the unit of study will be delivered by the provider or by a third party;
  - (c) whether FEE-HELP assistance is available for the unit of study;
  - (d) whether there are any limits or conditions on the FEE-HELP assistance available for the unit of study imposed on the provider's approval as a higher education provider.
- 8.7.10 The information must be published by the provider prominently on its website, and in a manner that is easily accessible without provision of login or contact information.
- 8.7.15 The information must:
- (a) be published before the earliest day for enrolment in the unit of study; and
  - (b) must remain published at least until the end of the period in which the unit can be undertaken.

## 8.8 Withdrawal from units of study

- 8.8.1 This section is made for the purposes of section 169-17 of the *Act*.
- 8.8.5 A higher education provider must have processes and procedures that include:
- (a) procedures for a student to withdraw from a unit of study or a course of study; and
  - (b) a procedure for a student to enrol in a unit of study that was part of a course of study with the provider in circumstances where the student had earlier withdrawn from a unit of study of that course undertaken with the provider.
- 8.8.10 The procedures for a student to withdraw from a unit of study or a course of study, before a census date for the unit or course, must not involve financial, administrative or other barriers to the withdrawal.
- 8.8.15 If a student withdraws from a unit of study or a course of study, the provider must not, after the withdrawal, enrol the student in a unit of study or course of study without the written permission of the student (which must be given after the withdrawal).

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## **CHAPTER 9 DETERMINING WHETHER STUDENTS ARE GENUINE STUDENTS**

### **9.1 Purpose**

9.1.1 The purpose of this chapter is to specify matters to be taken into account in determining whether students undertaking units of study provided by higher education providers approved under section 16-25 of the *Act* are genuine students.

### **9.2 Genuine student**

9.2.1 For the purposes of subsection 104-1(1A) of the *Act*, in determining whether a student is a genuine student in relation to a unit of study being undertaken as part of a course of study, regard may be had to the following matters:

- (a) whether the student is reasonably engaged in the course;
- (b) whether the student has been provided with information about the requirements for the course, and the cost and duration of the course;
- (c) whether the student has satisfied course requirements for the course or participated in assessment activities for the course;
- (d) if the course is an online course—the number of occasions on which the student has logged in to the course is not insignificant;
- (e) whether the student has provided up-to-date contact details that enable the *Department* to contact the student to verify the student's enrolment in the course;
- (f) if the student is enrolled in another course—the number of the enrolments and associated course loads would not make successful completion of a course by the student impossible or highly improbable.

## Schedule 2—Tuition protection

### *Higher Education Provider Guidelines 2012*

#### **1 Paragraph 1.1.1(a)**

Repeal the paragraph, substitute:

- (a) set out the tuition protection requirements which a body corporate must fulfil to be approved by the Minister as a higher education provider under sections 16-30, 19-66A, subsections 166-5(1), 166-10(3), 166-20(3), 166-15(5), 167-10(2), and paragraphs 166-25(2)(f) and (3)(g), 166-15(3)(b) of 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*;

#### **1A Paragraph 1.1.1(m)**

Repeal the paragraph, substitute:

- (m) specify the following tuition protection matters:
  - (i) matters relating to the collection of levies payable for tuition protection, including notices for payments, when payments become due and payable, extensions to the due date, penalties, refund of a levy or penalties, review of decisions for collection or recovery of a levy;
  - (ii) circumstances to which the HELP Tuition Protection Director may have regard to in the placement of an affected student;
  - (iii) information the HELP Tuition Protection Director may request from a provider in relation to students affected by the provider default;
  - (iv) requirements for a provider notice to affected students upon provider default;
  - (v) tuition protection payments from the HELP Tuition Protection Fund;
  - (vi) the classes of providers who are exempt from the requirement to pay one or more of the components of the tuition protection levies;

#### **2 Section 1.5.10, definitions of *course assurance option, Course Assurance TAS Operator, Exempt Provider, First Provider, Repayment Guarantor, Repayment TAS Operator, replaced unit, replacement unit, Second Provider, student contribution / tuition fee repayment option, tuition assurance administrator, tuition assurance scheme, transfer payment***

Repeal the definitions.

#### **2A Section 1.5.10**

Add:

***Affected Student*** means a student who is enrolled with a higher education provider to whom Part 5-1A of the *Act* applies, and is unable to complete a

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course as described at subsection 166-10 of the *Act*, because a higher education provider *defaults*.

### 3 Chapter 2

Repeal the chapter, substitute:

## **CHAPTER 2 THE TUITION PROTECTION REQUIREMENTS**

### 2.1 Introduction

2.1.1 This chapter of the Guidelines sets out the requirements for tuition protection for the purposes of section 16-30 of the *Act*. The *tuition protection requirements* are the requirements set out in Part 5-1A of the *Higher Education Support Act 2003*, including these Guidelines.

2.1.5 The *tuition protection requirements* have five parts:

- Part 1: Providers of a kind
- Part 2: Requirements for the determination and collection of levies
- Part 3: Notices of provider default
- Part 4: Other student placement service requirements; and
- Part 5: Payments to a provider of replacement course.

2.1.10 A higher education provider, other than a Table A provider or provider at Part 1 of these Guidelines, must satisfy the Secretary that it complies with Part 2, Part 3 and Part 5 of the *tuition protection requirements*.

### 2.5 Part 1: Providers of a kind

2.5.1 This Part prescribes providers of a kind to whom Part 5-1A of the *Act* does not apply, for the purposes of paragraph 166-5(1)(b) of the *Act*. Part 5-1A does not apply to a provider if the provider is:

- (a) owned by the Commonwealth, a State or a Territory; or
- (b) established under one of the following:
  - (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).

### 2.10 Part 2: Requirements for the determination and collection of levies

2.10.1 This Part sets out the requirements for the purposes of section 19-66A of the *Act* for the determination and collection of levy amounts.

Note: Notices for the collection and recovery of a levy to a leviable provider are given in writing and are emailed to the primary contact listed in the HELP IT System (HITS).

*Notice of the levy*

- 2.10.5 The HELP Tuition Protection Director must give a written notice to each higher education provider liable to pay a HELP tuition protection levy that sets out for the provider:
- (a) the amount of the levy; and
  - (b) the calculation for each levy component that applies to the higher education provider; and
  - (c) the day by which the higher education provider must pay the levy, which must be at least 30 days after the written notice is given to the provider.

*Notice of the levy for a higher education provider that is a leviable provider after 30 June in a calendar year*

- 2.10.10 Where a higher education provider becomes a leviable provider after 30 June in a calendar year, and continues to be a leviable provider in the following calendar year, the HELP Tuition Protection Director must give the higher education provider a written notice of the levy for the first year in the next calendar year (**levy notice**).

- 2.10.15 The levy notice must set out the amounts for the *administrative fee component* of the HELP tuition protection levy imposed under subsection 8(1) of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* for:

- (a) the first year the higher education provider became a leviable provider; and
- (b) the year in which the notice is issued.

Note: This means there will be two *administrative fee components* set out in the levy notice, and payable, so that the higher education provider is compliant with the requirements under part 5-1A of the *Act*.

*Overdue notice*

- 2.10.20 The HELP Tuition Protection Director may give a written overdue notice to comply with a levy notice by the end or within 7 days of the due day. The overdue notice must specify:
- (a) the amount that is still owing; and
  - (b) state the day the amount must be paid by the higher education provider.

*Review of levy determination or collection*

- 2.10.25 A leviable provider may make a request for review in writing to the HELP Tuition Protection Director within 7 days of a levy notice in relation to a determination of a levy component or components.
- 2.10.30 If a request for review is made by a leviable provider the HELP Tuition Protection Director must review the decision and may:

- (a) affirm, vary or set aside the levy determined in the levy notice; and
- (b) if the decision is set aside – make such other decision as is appropriate.

Note: The HELP Tuition Protection Director may give notice of a change to a due date for payment of a levy where a review decision is likely to occur on or after the due date specified in the levy notice.

#### *Review decision*

2.10.35 The HELP Tuition Protection Director must give notice of the review decision to the higher education provider within 7 days of the decision. The notice of the review decision must:

- (a) set out the reasons for the decision; and
- (b) where the review decision causes the calculation, total amount or due date of the levy to be varied or set aside, issue a new levy notice with a due date at least 30 days after the date the provider is notified of the review decision.

#### *Refund*

2.10.40 If an amount paid by a leviable provider exceeds the amount determined in the levy notice, or the HELP Tuition Director otherwise determines that a refund is payable, the HELP Tuition Protection Director must pay the refund from the HELP Tuition Protection Fund.

### **2.15 Part 3: Notices of provider default**

2.15.1 This Part sets out the requirements under sections 166-10 and 166-15 of the *Act* where the higher education provider must give the information specified to the HELP Tuition Protection Director and to an *affected student* within the specified timeframes.

#### *Notice to the HELP Tuition Protection Director*

2.15.5 A notice given under subsection 166-15(2) of the *Act* must be given in writing and include the following information:

- (a) the circumstances of the default;
- (b) the number of students in relation to whom the higher education provider has defaulted;
- (c) advice about:
  - (i) whether the higher education provider intends to teach units of study so that students are able to complete the units, or provide a refund to those students; and
  - (ii) if so, how the higher education provider intends to teach the units and/or refund students.

Note: This information is in addition to that required under subsection 166-15(2) of the *Act*.

2.15.10 A notice given under subsection 166-15(3) of the *Act* must also include the following information in a form requested by the Director:

- (a) student contact hours;
- (b) mode of study and location of study, where the unit(s) of study are delivered face-to-face, for each unit of study affected by the default;
- (c) unit hours;
- (d) work integrated learning and internship requirements for each course of study affected by the default.

Note: This information is in addition to that required under subsection 166-15(3) of the *Act*.

#### *Notice to an affected student*

2.15.15 A written notice given under subsection 166-20(2) of the *Act* must include:

- (a) the name of the course of study affected by the default; and
- (b) the day the course of study ceased to be provided; and
- (c) a copy of the affected student's transcript for units of study already completed; and
- (d) details of where to get information from the Australian Government Department of Education about tuition protection.

### **2.20 Part 4: Other student placement service requirements**

#### *Placement service for an affected student who had deferred their study at the time of higher education provider default*

- 2.20.1 Where an *affected student* had deferred their study at the time a higher education provider defaults and the student did not receive tuition protection assistance at that time, the HELP Tuition Protection Director must assist the student if the student later seeks tuition protection assistance.
- 2.20.5 In providing tuition protection assistance to an affected student who deferred their study, the HELP Tuition Protection Director must have regard to whether a replacement course determined to be a suitable replacement course under section 166-25 of the *Act* immediately following the higher education provider default, continues to be a suitable replacement course.
- 2.20.10 In providing student placement services to an affected student who had deferred their study, the HELP Tuition Protection Director must comply with all of the requirements under section 166-25 of the *Act*.

### **2.25 Part 5: Payment to a provider of a replacement course**

- 2.25.1 This Part provides for payments in connection with tuition protection under paragraph 167-10(1)(a) of the *Act*.
- 2.25.5 The HELP Tuition Protection Director may make a payment from the HELP Tuition Protection Fund to the higher education provider of a replacement course where the HELP Tuition Protection Director is satisfied that the provider has met its obligations to the student under section 166-30 of the *Act*, and one of the following requirements is met:
- (a) the student is enrolled and the course census date has passed; or



- (b) the student is enrolled and 6 weeks has passed since the student commenced the course.

*Who can receive a payment*

- 2.25.10 An amount paid under this Part must be paid by the HELP Tuition Protection Director to the higher education provider of the replacement course.

*Maximum amount of a payment*

- 2.25.15 The HELP Tuition Protection Director may make a payment up to a maximum amount of \$2000 for each *affected student*.