

## EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

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

#### *Higher Education Support (HELP Tuition Protection Levy) (Administrative Fee) Determination 2020*

#### **Purpose and operation**

The purpose of the *Higher Education Support (HELP Tuition Protection Levy) (Administrative Fee) Determination 2020* (the **Instrument**) is to specify the amounts that enable the administrative fee component of the HELP tuition protection levy (**Levy**) to be calculated.

The Levy is imposed on all leviable providers under section 6 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the **Act**) and provides an industry contribution towards the costs of tuition protection for students accessing FEE-HELP or HECS-HELP assistance. The amount of the Levy for a year for a leviable provider is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component. The Levy is payable into the HELP Tuition Protection Fund (the **Fund**) which is established under section 167-1 of the *Higher Education Support Act 2003* (**HESA**) and managed by the HELP Tuition Protection Director (the **Director**).

The administrative fee component of the Levy is intended to cover the ongoing administration costs of the tuition protection arrangements, such as the remuneration of the Director and HELP Tuition Protection Fund Advisory Board (the **Advisory Board**) and any consultants engaged by the Director to assist and support the performance of his or her role and functions.

The administrative fee component is payable by all leviable providers (as defined in section 5 of the Act), but a new provider only pays part of the component in their first year.

The Instrument ensures sufficient funds are held to cover the ongoing administration costs of tuition protection for students accessing FEE-HELP or HECS-HELP assistance and therefore maintains a high level of student protection.

#### **Authority**

Subsection 9(1) of the Act provides that, before 1 August 2020, the Minister must determine by legislative instrument two separate amounts which are used to calculate the administrative fee component of the Levy for the 2020 calendar year.

Under subsection 9(2) of the Act, the Minister may choose to make a legislative instrument for the following calendar years (i.e. 2021 onwards).

If the Minister does not make a new instrument for the following calendar years, the amounts determined in this Instrument will continue to apply subject to indexation in accordance with

section 10 of the Act, until the Minister makes a new instrument under subsection 9(2) of the Act.

The Minister cannot exceed the ‘upper limits’ set out under subsection 9(3) of the Act in determining the amounts for the administrative fee component of the Levy. The Minister must also have regard to the sustainability of the Fund, and any other matter he or she considers appropriate, in determining such amounts.

## **Overview**

Section 5 of the Instrument specifies the amounts relevant to the calculation of the administrative fee component of the Levy for the 2020 calendar year.

Under section 8 of the Act, a leviable provider’s administrative fee component for a calendar year is the sum of:

- the amount determined for the purposes of paragraph 8(2)(a) of the Act;
- the amount determined for the purposes of paragraph 8(2)(b) of the Act, multiplied by the total HELP students for the provider for the year.

‘Total HELP students’ means the total number of students who 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 were entitled to HECS- HELP assistance or FEE- HELP assistance for that unit.

The administrative fee component is payable by all leviable providers. If a leviable provider is a new provider for a year, the amount of the provider’s administrative fee component is the amount determined for the purposes of paragraph 8(2)(a) only.

Public universities (Table A providers listed under section 16-15 of HESA), TAFEs and other government funded entities are exempt from payment of any part of the levy (see the definition of leviable provider in subsection 5(1) of the Act), so the entire levy collection will be from private higher education providers.

The Minister has considered two major factors in setting the administrative fee component of the Levy. Firstly, the target funds, as advised by the Australian Government Actuary, of between \$12,500,000 and \$15,000,000 is required for the long-term sustainability of the Fund. Secondly, broad supportive feedback received from the higher education sector who were consulted on the levy setting in the context of the COVID-19 pandemic, which has created a period of uncertainty and unprecedented circumstances.

In 2020, the administrative fee component is the sum of:

- (a) \$107; and
- (b) \$9 multiplied by the total number of students who were enrolled during the previous year (i.e. 2019) in at least one unit of study that forms part of a course of study that has its census date in 2019 and were entitled to HECS-HELP or FEE-HELP assistance for that unit.

## **Consultation**

The Department of Education, Skills and Employment has consulted the Department of the Prime Minister and Cabinet, the Australian Government Actuary, and the Director prior to the setting of the administrative fee component through this Instrument.

Consultation with the higher education sector was also undertaken in respect to the levy setting in the context of the COVID-19 pandemic.

More broadly, the Director and the Advisory Board undertook extensive consultation with HELP providers and their representatives on the levy framework and the components of the Levy. The Advisory Board released its draft advice in relation to the proposed settings for the risk rated premium and special tuition protection components of the Levy in May 2020. A copy of the draft advice is available on the Australian Government Tuition Protection Service website: <https://tps.gov.au>. Providers and industry peak bodies were invited to provide feedback during this public consultation, with feedback considered by the Director and the Advisory Board.

## **Regulatory Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that a regulatory impact statement is not required for this Instrument (OBPR reference 23228).

## **Financial Impact Statement**

This Instrument will result in a projected revenue of approximately \$0.5 million in 2020.

Given the funds are credited to a special account, and are derived from industry contributions, the funds cannot be redirected toward any other program or portfolio, as the funds can only be appropriated for the purposes of the special account.

In setting the amounts for the administrative fee component of the Levy the Minister considered not only the sustainability of the Fund, but also the reality of the economy-wide ramifications and impact of the COVID-19 pandemic on businesses and education in Australia. The Minister's focus and intention in setting those amounts was on supporting Australia's higher education providers and student welfare.

## **Statement of Compatibility with Human Rights**

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

### **Higher Education Support (HELP Tuition Protection Levy) (Administrative Fee) Determination 2020**

The *Higher Education Support (HELP Tuition Protection Levy) (Administrative Fee) Determination 2020* (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the Instrument is to specify the amounts that enable the administrative fee component of the HELP tuition protection levy (**Levy**) to be calculated.

The Levy is imposed on all leviable providers under section 6 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the **Act**) and provides an industry contribution towards the costs of tuition protection for students accessing FEE-HELP or HECS-HELP assistance. The amount of the Levy for a year for a leviable provider is the sum of the provider's administrative fee component, risk rated premium component and special tuition protection component. The Levy is payable into the HELP Tuition Protection Fund (the **Fund**) which is established under section 167-1 of the *Higher Education Support Act 2003* (**HESA**) and managed by the HELP Tuition Protection Director (the **Director**).

The administrative fee component of the Levy is intended to cover the ongoing administration costs of the tuition protection arrangements, such as the remuneration of the Director, members of the HELP Tuition Protection Fund Advisory Board and any consultants engaged by the Director to assist and support the performance of his or her role and functions. The administrative fee component is payable by all leviable providers, but a new provider only pays part of the component in their first year.

The Instrument ensures sufficient funds are held to cover the ongoing administration costs of tuition protection for students accessing FEE-HELP or HECS-HELP assistance and therefore maintains a high level of student protection.

#### **Human rights implications**

##### **Right to education**

This Instrument engages the right to education, contained in Article 13 of the *International Covenant on Economic, Social, and Cultural Rights*, insofar as it relates to the provision of high quality education services to higher education students accessing FEE-HELP or HECS-HELP assistance at approved higher education providers under HESA.

The Instrument specifies the amounts that enable the administrative fee component of the Levy to be calculated for the 2020 calendar year.

The purpose of the administrative fee component is to cover the ongoing administration costs of tuition protection arrangements under HESA. The Australian Government administers the

provision of FEE-HELP and HECS-HELP assistance to higher education students, which are income contingent loans under HESA. When an approved higher education provider defaults in relation to a student, for example, by ceasing to provide a course to a student after it starts, but before it is completed, the Director manages the provision of tuition protection. This includes deciding whether a suitable replacement course is available for a student and assisting in the placement of that student or providing a re-credit of FEE-HELP or HECS-HELP assistance to that student. Liable providers pay the Levy as calculated in accordance with the Act to enable the provision of tuition protection to students.

The Instrument will ensure that sufficient funds are held in the Fund to cover the ongoing administration costs of tuition protection for students accessing FEE-HELP and HECS-HELP assistance, thereby maintaining a high level of student protection in the event a HELP provider is no longer able to deliver a course. The Instrument will promote the right to education by ensuring that there are appropriately funded tuition protection arrangements in place for affected higher education students to be assisted to continue their studies.

The Instrument is compatible with the right to education.

### **Conclusion**

This Instrument is compatible with human rights because it advances the promotion of human rights.

**Minister for Education**  
**The Hon Dan Tehan MP**

***Higher Education Support (HELP Tuition Protection Levy) (Administrative Fee)  
Determination 2020***

**Explanation of Provisions**

Sections 1: Name and 2: Commencement

Sections 1 and 2 of the *Higher Education Support (HELP Tuition Protection Levy) (Administrative Fee) Determination 2020* (the **Instrument**) are formal provisions setting out the name and date of commencement of the Instrument.

Section 3: Authority

Section 3 of the Instrument sets out the Minister's legal authority to make the Instrument.

Section 4: Definitions

Section 4 defines terms used in the Instrument.

Section 5: Determination of administrative fee component

Section 5 of the Instrument specifies two amounts for the purposes of section 8 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the **Act**), relevant to the calculation of the administrative fee component of the HELP tuition protection levy (the **Levy**) for the calendar year beginning on 1 January 2020.

The amount of \$107 is specified for the purposes of paragraph 8(2)(a) of the Act, while the amount of \$9 is specified for the purposes of paragraph 8(2)(a) the Act.

Therefore, in 2020, the administrative fee component of the Levy is the sum of:

- a) \$107; and
- b) \$9, multiplied by the total number of students who were enrolled during the previous year (i.e. 2019) in at least one unit of study that forms part of a course of study that has its census date in 2019 and were entitled to HECS-HELP or FEE-HELP assistance for that unit (see definition of 'total HELP students' under section 5 of the Act).

The Minister retains the ability to increase these amounts, up to the upper limits set out in subsection 9(3) of the Act, to ensure adequate tuition protection for students should a spate of large provider closures occur (which would affect the ongoing administration costs of the tuition protection arrangements).

The Minister has considered the sustainability of the HELP Tuition Protection Fund in setting these amounts and also had regard to other matters the Minister considers appropriate.

The note clarifies that these amounts are subject to indexation in accordance with subsection 10(1) of the Act, unless an instrument is made under subsection 9(2) of the Act for a subsequent year.