

## **EXPLANATORY STATEMENT**

Issued by the authority of the HELP Tuition Protection Director

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

### ***Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020***

#### **PURPOSE AND OPERATION**

The purpose of the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020* (the Instrument) is to determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the HELP Tuition Protection Levy (the Levy) for the 2020 calendar year.

The Levy is imposed under section 6 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the Act) on all leviable providers (as defined in section 5 of the Act), and provides an industry contribution towards the costs of tuition protection for students accessing HECS-HELP or FEE-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 Director is accountable for the appropriate and sustainable management of the Fund. This Instrument assists the Director in exercising his or her functions under the HESA by maintaining a high level of student protection and ensuring sufficient funds are held in the Fund to place students or re-credit their HELP balance in the event of provider closures.

#### **AUTHORITY**

This Instrument is made by the Director under section 13 of the Act.

Subsection 13(1) of the Act provides that, before 1 August 2020 and each later year, the Director must, by legislative instrument, determine the matters set out in section 13 of the Act for the purposes of sections 11 and 12 of the Act. Such matters relate to the calculation of the risk rated premium component and special tuition protection component of the Levy for the year.

In making an instrument under section 13, the Director must have regard to any advice of the HELP Tuition Protection Fund Advisory Board (the Advisory Board) and the sustainability of the Fund (subsection 13(4) of the Act). The Director may also have regard to any other matter that the Director considers appropriate (subsection 13(5) of the Act).

The Treasurer must approve the instrument in writing before it is made by the Director (subsection 13(6) of the Act).

#### **BACKGROUND**

The Act commenced on 1 January 2020 and imposes the Levy on leviable providers (as defined in section 5 of the Act). The Act is part of a package of legislation to implement a new tuition protection model for students participating in the VET Student Loans program and for higher

education students accessing HECS-HELP or FEE-HELP assistance at private higher education providers.

The Levy comprises three components:

- the administrative fee component;
- the risk rated premium component; and
- the special tuition protection component.

The Act specifies the amounts, or methods for calculating the amounts, for each component of the Levy. It also specifies the manner in which, and by whom, various matters relevant to each component of the Levy must be determined each year.

The Director is responsible for determining, through a legislative instrument each year, various matters relevant to the calculation of the risk rated premium component and special tuition protection component.

The Minister is responsible for determining, also through a legislative instrument, amounts relevant to the calculation of the administrative fee component.

If a leviable provider is a new provider for a year, the new provider only pays part of the administrative fee component in their first year (noting the amount of both the new provider’s risk rated premium component and special tuition protection component is zero – subsections 11(1) and 12(1) of the Act).

The risk rated premium component is intended to cover the risk of each provider defaulting (including where the provider fails to start to provide, or ceases to provide, a unit of study for a student). It is calculated according to a detailed methodology provided for in subsection 11(2) of the Act and as represented by the formula below.

***Risk rated premium component***

$$= \left\{ \left( \begin{array}{c} \text{total HELP students} \\ \text{for the year} \\ \times \\ \text{amount determined} \\ \text{by the Director} \end{array} \right) + \left( \begin{array}{c} \text{HECS-HELP \& FEE-HELP} \\ \text{loan amounts paid for} \\ \text{previous year} \\ \times \\ \text{percentage determined} \\ \text{by the Director} \end{array} \right) \right\} \times \{(risk\ factor\ values) + 1\}$$

‘Total HELP students’ means the total number of students who were enrolled during the previous year (i.e. 2019) in a 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 special tuition protection component of the Levy is intended to enable the Fund to grow and to ensure against future systemic shocks. Subsection 12(2) of the Act sets out how the special tuition protection component is to be calculated, as represented by the formula below.

***Special tuition protection component***

$$= \left( \begin{array}{c} \text{HECS-HELP \& FEE-HELP} \\ \text{loan amounts} \\ \text{paid for previous year} \end{array} \right) \times \left( \begin{array}{c} \text{percentage determined} \\ \text{by the Director} \end{array} \right)$$

## **CONSULTATION**

The Director has consulted and considered the Advisory Board's advice in making this Instrument. Members of the Advisory Board are members of the TPS Advisory Board (section 167-30 of HESA), who are appointed by the Minister under section 55D of the *Education Services for Overseas Students Act 2000* (taking into account the membership specifications set out in section 55C of that Act). The Advisory Board currently comprises four non-government sector representatives, selected on the basis of their qualifications and experience in the sector, and five government representatives.

The Director has also worked extensively with the Australian Government Actuary (AGA) in determining the risk factors and methods for working out the risk factor values.

The Director and the Advisory Board have also undertaken extensive consultation with higher education providers and their representatives on the levy framework and the risk rated premium and special tuition protection 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 and the Director and the Advisory Board took this feedback into consideration.

The Director also consulted the Department of Education, Skills and Employment regarding the Advisory Board's draft advice.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation (OBPR) has advised a regulatory impact statement is not required for this Instrument (OBPR ID 23325).

## **FINANCIAL IMPACT STATEMENT**

This Instrument will result in a projected revenue of approximately \$2.6 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 determining the matters relevant to the calculation of the risk rated premium component and special tuition protection component of the Levy, the Director 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 Director's focus and intention in determining those matters was on supporting Australian businesses 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) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020*

The *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) 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 determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the HELP Tuition Protection Levy (the Levy) for the 2020 calendar year.

The Levy is imposed under section 6 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the Act) on all leviable providers (as defined in section 5 of the Act), and provides an industry contribution towards the costs of tuition protection for students accessing HECS-HELP and FEE-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 Director is accountable for the appropriate and sustainable management of the Fund. This Instrument assists the Director in exercising his or her functions under the HESA by maintaining a high level of student protection and ensuring sufficient funds are held in the Fund to place students or re-credit their HELP loan balance in the event of provider closures.

#### **Human rights implications**

##### Right to education

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, it provides that '[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...?'

The Instrument is part of the broader HELP tuition protection scheme (the Scheme) set out in the HESA. The Scheme's aim is to ensure students accessing HECS-HELP and FEE-HELP assistance are protected and supported in the event that their approved course provider defaults (meaning the provider fails to start to provide, or ceases to provide, a unit of study for a student) by either providing a suitable replacement course or re-credit to their HELP balance.

Through the Instrument, the Director determines various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the Levy for the 2020 calendar year.

The risk rated premium component ensures that a leviable provider's risk of default is reflected in the amount of Levy payable by that provider and ensures providers are financially incentivised to reduce their risk of defaulting.

The special tuition protection component of the Levy ensures that the Fund builds to a sufficient balance.

Therefore, this Instrument will ensure that sufficient funds are held in the Fund to cover the ongoing administration costs of tuition protection for students accessing HECS-HELP and FEE-HELP assistance, thereby maintaining a high level of student protection in the event a course provider is no longer able to deliver a unit of study. The Instrument is compatible with and will enhance the right to education by ensuring that there are appropriately funded tuition protection arrangements in place for higher education students.

The Instrument is compatible with the right to education.

### **Conclusion**

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

## **HELP Tuition Protection Director**

# HIGHER EDUCATION SUPPORT (HELP TUITION PROTECTION LEVY) (RISK RATED PREMIUM AND SPECIAL TUITION PROTECTION COMPONENTS) DETERMINATION 2020

## EXPLANATION OF PROVISIONS

### **Part 1 – Introduction**

#### **Section 1: Name and Section 2: Commencement**

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

#### **Section 3: Authority**

Section 3 sets out the HELP Tuition Protection Director's (the Director) authority to make the Instrument.

The Instrument is made under section 13 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the Act), for the purposes of sections 11 and 12 of the Act, which relate to the calculation of the risk rated premium component and special tuition protection component of the HELP tuition protection levy (the Levy) for the year.

In accordance with subsection 13(4) of the Act, in making this Instrument, the Director had regard to the advice of the HELP Tuition Protection Fund Advisory Board (the Advisory Board) and the sustainability of the HELP Tuition Protection Fund (the Fund). The Director also had regard to other matters that the Director considers appropriate (subsection 13(5) of the Act).

In accordance with subsection 13(6) of the Act, the Treasurer approved the Instrument.

#### **Section 4: Definitions**

Section 4 includes definitions for the purposes of the Instrument.

In particular, 'financial statement' means the statements given by a leviable provider to the Minister for the purposes of section 19-10 of the *Higher Education Support Act 2003* (HESA) for the annual financial report ending in 2019. This term is used in section 6 and is relevant to the determination of the risk factor value for the financial strength risk factor for a leviable provider.

'Statement of general information' means the information provided by a leviable provider to the Minister in accordance with a notice under section 19-70 of HESA. This term is used in section 7 and is relevant to the determination of the risk factor value for the completion rate risk factor for a leviable provider.

### **Part 2 – Risk rated premium component**

Section 11 of the Act deals with the risk rated premium component of the Levy:

- subsection 11(1) of the Act provides that 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;
- subsection 11(2) of the Act sets out a six-step method statement for calculating a leviable provider's risk rated premium component. The Director is responsible for determining various matters for the purposes of different steps in the method statement in subsection 11(2).

Sections 5 to 8 of the Instrument set out the matters determined by the Director for the purposes of subsection 11(2) of the Act, allowing the risk rated premium component of the Levy for the 2020 calendar to be calculated.

### **Section 5: Risk rated premium component**

Subsection 5(1) provides that the amount for the purposes of step 1 of the method statement in subsection 11(2) of the Act is \$6.00.

Subsection 5(2) provides that the percentage for the purposes of step 2 of the method statement in subsection 11(2) of the Act is 0.06%.

For the purposes of step 4 of the method statement in subsection 11(2) of the Act, subsection 5(3) of the Instrument specifies three risk factors that reflect the risk of payments being made out of the Fund in respect of leviable providers with those factors. They are:

- (a) the financial strength risk factor;
- (b) the completion rate risk factor;
- (c) the non-compliance history risk factor.

### **Section 6: Risk factor – financial strength**

Subsection 6(1) of the Instrument specifies the risk factor value for the financial strength risk factor for a leviable provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.

The risk factor value is:

- (a) 2.50, if the provider did not submit financial statements;
- (b) as set out in the table in paragraph 6(1)(b), if the provider submitted financial statements. Under the table, the risk factor value will depend on the financial strength score of the provider.

Subsections 6(2) and (3) explain how a provider's financial strength score is to be determined. A provider's financial strength score is the sum of the scores for the net profit ratio, the return on assets and the debt to equity. The table in subsections 6(3) sets out formulas for calculating the score for each ratio, with the relevant information for those formula being taken or derived from the provider's financial statements.

In order to work out the score for the 'Net profit ratio':

Based on the leviable provider's financial statement, the provider's 'net profit before tax' (NPBT) is divided by the provider's 'total revenue'. If the result is less than or equal to zero, then the provider's score is one. If the result is greater than zero but less than or equal to 0.7, then the provider's score is two. If the result is greater than 0.7, then the provider's score is three.

In order to work out the score for the ‘return on assets’ ratio:

Based on the leviable provider’s financial statement, the provider’s NPBT is divided by the provider’s ‘total assets’. If the result is less than or equal to zero, then the provider’s score is one. If the result is greater than zero but less than or equal to 0.1, then the provider’s score is two. If the result is greater than 0.1, then the provider’s score is three.

In order to work out the score for the ‘debt to equity’ ratio:

Based on the leviable provider’s financial statement, the provider’s ‘total liabilities’ is divided by the provider’s ‘total equity’. If the result is greater than or equal to 2.5, then the provider’s score is one. Alternatively, if the provider’s total equity is less than or equal to zero (i.e. the provider has a negative value of equity or zero equity), then the provider’s score is also one. If the result is less than 2.5 but greater than or equal to 1.5, then the provider’s score is two. If the result is less than 1.5 but greater than or equal to zero, then the provider’s score is three.

### **Section 7: Risk factor – completion rate**

Subsection 7(1) of the Instrument specifies the risk factor value for the completion rate risk factor for a leviable provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.

The risk factor value is determined by reference to information reported by leviable providers in their statements of general information and is:

- (a) zero, if the provider did not report any units of study for the calendar year beginning on 1 January 2019 (previous calendar year) in its statements of general information. For example, the provider did not deliver any units in 2019 and therefore there were no units to report;
- (b) as set out in the table in paragraph 7(1)(b), otherwise. Under the table, the risk factor value will depend on the provider’s completion rate percentage.

Subsection 7(2) sets out the formula for determining a provider’s completion rate percentage, with the relevant information for that formula also being taken from the provider’s statements of general information. This includes:

- the total EFTSL value for units with a census day in the previous calendar year for which no unit of study completion status has been reported (Data missing EFTL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of ‘failed’ (Failed EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of ‘unit of study to be commenced later in the year or still in process of completing or completion status not yet determined’ (Ongoing EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar year reported by the provider as having a unit of study completion status of ‘successfully completed all the requirements’ (Passed EFTSL);
- the total EFTSL value for units of study with a census day in the previous calendar



year reported by the provider as having a unit of study completion status of ‘withdrew without penalty’ (Withdrawn EFTSL).

‘EFTSL’ and ‘EFTSL value’ has the same meaning as in HESA.

**Section 8: Risk factor – non-compliance history**

Section 8 of the Instrument specifies the risk factor value of zero for the non-compliance history risk factor for a leviable provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act. The purpose of the non-compliance history risk factor is to assess the risk of a provider based on their history of non-compliance related to the late payment of other charges and payments. However, given leviable providers were not liable to pay any relevant charges in 2019, the risk factor value for all leviable providers for 2020 is zero for this risk factor.

If late payment measures had been available, it was intended that the non-compliance history risk factor would have been based on the following:

<b>Non-compliance history</b>		
<b>Item</b>	<b>If a leviable provider ...</b>	<b>then, the risk factor value is ...</b>
1	has a weighted late payment measure of 30 days or more	2.00
2	has a weighted late payment measure of 15 days or more but less than 30 days	0.90
3	has a weighted late payment measure of 1 day or more but less than 15 days	0.70
4	does not have a weighted late payment measure (payment on time)	0.00

The ‘weighted late payment measure’ is worked out using the formula:

$$0.7 \times [HEPC + HTPL]$$

‘HEPC’, for a year, means:

- (a) the number of days after the due date on which the higher education provider charge (imposed under the *Higher Education Support (Charges) Act 2019*) for that year was received; or
- (b) if payment was received on or before the due date—zero.

‘HTPL’, for a year, means:

- (a) the number of days after the due date on which the HELP tuition protection levy payable for that year was received; or
- (b) if the HELP tuition protection levy was received on or before the due date—zero.

### **Part 3 – Special tuition protection component**

#### **Section 9: Special tuition protection component**

Section 12 of the Act deals with the special tuition protection component of the Levy:

- subsection 12(1) provides that 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;
- otherwise, a leviable provider's special tuition protection component for a year is the amount equal to the total amount of assistance paid to the provider under sections 96-1 and 110-1 of HESA in the previous year, multiplied by the percentage determined in an instrument made under section 13 for the purposes of subsection 12(2) for a year.

Section 9 of the Instrument provides that the percentage for the purposes of subsection 12(2) of the Act is 0.15%.