



# **Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020**

---

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

Dated 16 December 2020

Dan Tehan  
Minister for Education

---



---

# Contents

1 Name.....	1
2 Commencement .....	1
3 Authority.....	1
4 Schedules .....	1
5 Application of amendments .....	1
<b>Schedule 1 – Amendments</b>	<b>2</b>
<i>Higher Education Provider Guidelines 2012</i> .....	2



---

## 1 Name

This instrument is the *Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2020*.

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. <i>The whole of this instrument</i>	1 January 2021	1 January 2021

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 5 Application of amendments

The amendments in items 3 and 4 of the Schedule to this instrument apply in relation to provider defaults that occur on or after the commencement of this instrument.

---

## Schedule 1 – Amendments

### *Higher Education Provider Guidelines 2012*

#### 1 Item (ii) (Authority)

Omit “for the purposes of Part 2-1 of the Act”.

#### 2 Section 1.1 (Purpose)

Repeal the section.

#### 3 Paragraph 1.5.10

Repeal the definition of “*Affected Student*”.

#### 4 Chapter 2

Repeal Chapter 2, substitute:

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

#### 2.1 Purpose and application

2.1.1 The purpose of this chapter is to set out the tuition protection requirements 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 *Act* and these *Guidelines*.

Note: The Minister must be satisfied that a body will meet the tuition protection requirements (if applicable) in order to be approved as a higher education provider under paragraph 16-25(1)(c) of the *Act*.

2.1.5 For the purposes of paragraph 166-5(1)(b) of the *Act*, Part 5-1A of the *Act* 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).

#### 2.5 HELP tuition protection levy

2.5.1 This section is made for the purposes of subsection 19-66A(3) of the *Act* in relation to the collection or recovery of the HELP tuition protection levy.

---

*Notice of amount of HELP tuition protection levy*

- 2.5.5 For the purposes of paragraphs 19-66A(3)(a) and (b) of the *Act*, the Higher Education Tuition Protection Director must give a written notice to each higher education provider who is liable to pay the HELP tuition protection levy, which specifies:
- (a) the year to which the levy relates;
  - (b) the amount of each component of the provider's levy;
  - (c) the total amount of the provider's levy;
  - (d) an explanation of how each component of the provider's levy was calculated;
  - (e) the day by which the levy is due and payable by the provider, which must be at least 30 days after the day the notice is given; and
  - (f) the method or methods by which the provider must pay the levy.
- 2.5.10 A failure to give a higher education provider the notice under paragraph 2.5.5 does not affect the liability of the provider to pay the HELP tuition protection levy.
- Note 1: HELP tuition protection levy is imposed, for a year, on a higher education provider to whom Part 5-1A of the *Act* applies but does not include a provider covered by subsection 5(1A) of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*.
- Note 2: Paragraph 19-66A(2)(a) of the *Act* requires a higher education provider to pay the HELP tuition protection levy when it is due and payable.
- 2.5.15 A notice under paragraph 2.5.5 does not need to be given if the liability to pay the HELP tuition protection levy is waived under paragraph 2.5.30 or paragraph 2.5.35.

*Overdue notice*

- 2.5.20 For the purposes of paragraph 19-66A(3)(a) of the *Act*, the Higher Education Tuition Protection Director may give a written overdue notice to the higher education provider to comply with a notice issued under paragraph 2.5.5 after the date the HELP tuition protection levy is due and payable.
- 2.5.25 The overdue notice must specify:
- (a) the amount that is still owing;
  - (b) information about consequences of the late payment; and
  - (c) the day the amount must be paid by the higher education provider.

*Waiver*

- 2.5.30 For the purposes of paragraph 19-66A(3)(f) of the *Act*, liability to pay the HELP tuition protection levy is waived for all higher education providers for the calendar year 2020.
- 2.5.35 Liability to pay the HELP tuition protection levy is waived if:
- (a) the provider's approval is revoked under the *Act*;
  - (b) the provider's registration is cancelled under the *TEQSA Act*; or

- 
- (c) the provider is no longer in operation  
prior to the time the Higher Education Tuition Protection Director issues a notice under paragraph 2.5.5.

*Internal review of notice issued under paragraph 2.5.5*

- 2.5.40 For the purposes of paragraph 19-66A(3)(g) of the *Act*, a higher education provider may request the Higher Education Tuition Protection Director to reconsider a notice issued under paragraph 2.5.5 in relation to the determination of any components of the HELP tuition protection levy (**decision**).
- 2.5.45 The higher education provider's request must be in writing and given to the Higher Education Tuition Protection Director within 14 days after the day on which the provider received the notice.
- 2.5.50 After receiving the request, the Higher Education Tuition Protection Director must reconsider the decision and:
- (a) confirm the decision;
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- 2.5.55 The Higher Education Tuition Protection Director must give the higher education provider written notice of the Director's decision (**internal review decision**) under paragraph 2.5.50.
- 2.5.60 The notice under paragraph 2.5.55:
- (a) must be given within 7 days after the internal review decision is made;
  - (b) must contain a statement of the reasons for the internal review decision; and
  - (c) if subparagraph 2.5.50(b) or (c) applies, include a new notice under paragraph 2.5.5 with a due date at least 30 days after the date the provider is notified of the internal review decision.

*Administrative Appeals Tribunal review*

- 2.5.65 For the purposes of paragraph 19-66A(3)(g) of the *Act*, an application may be made to the Administrative Appeals Tribunal for the review of a decision that has been confirmed, varied or set aside under paragraph 2.5.50.



---

## **2.10 When a higher education provider defaults in relation to a student**

- 2.10.1 For the purposes of subsection 166-10(3) of the *Act*, a higher education provider defaults in relation to a student if the following circumstances apply in relation to the provider and the student:
- (a) the student is enrolled in a course of study with that provider and is not enrolled in any units of study within that course; and
  - (b) the provider fails to commence the course on the day the course was scheduled to start or ceases to provide the course on a day after the course starts but before it is completed.

## **2.15 Notifying the Higher Education Tuition Protection Director of the details of the default**

### *Additional details of default*

- 2.15.1 For the purposes of paragraph 166-15(3)(b) of the *Act*, the written notice given to the Higher Education Tuition Protection Director under subsection 166-15(3) of the *Act* must specify for each student in relation to each unit of study and course of study that the student was enrolled in at the time of the default:
- (a) the student's residential address, phone number and email address;
  - (b) whether the student was studying part-time or full-time;
  - (c) the mode of delivery of each unit or course and if the student did not study online, the location (campus, suburb and postcode) where each unit or course was primarily delivered;
  - (d) unit and course description outlines, including outlines for completed units;
  - (e) whether the student has withdrawn from the course and the date of withdrawal;
  - (f) whether the student has deferred from any units or the course, the date of the deferral and the date the student is expected to re-commence study;
  - (g) the unit of study status and unit completion date for each unit, including whether the status is withdrawn, ongoing, passed or failed;
  - (h) any work integrated learning and internship requirements for each unit;
  - (i) information about any scholarship arrangements or any payment arrangements made for the student by a third party for the student's tuition fees; and
  - (j) the total of other fees that are not tuition fees paid for the student for the unit or course received by the provider.

---

*Requirements of notice*

- 2.15.5 For the purposes of subsection 166-15(5) of the *Act*, the notice given to the Higher Education Tuition Protection Director under subsection 166-15(2) of the *Act* must include information about the number of students in relation to whom the higher education provider has defaulted.
- 2.15.10 The information required under subsection 166-15(3) of the *Act* must be given to the Higher Education Tuition Protection Director in a manner and form approved by the Director.

**2.20 Requirements of notice to student**

- 2.20.1 For the purposes of subsection 166-20(3) of the *Act*, the higher education provider must specify in its written notice of default to students in relation to whom it has defaulted:
- (a) the name of the course of study and units of study that the student was enrolled in at the time of the default;
  - (b) the date of the default;
  - (c) a copy of the student's transcript for units already completed;
  - (d) evidence of any amounts of up-front payments received; and
  - (e) details of where to get information from the responsible Australian Government Department about tuition protection.
- 2.20.5 The higher education provider must send the notice in one of the following ways:
- (a) to the student's personal email address as advised by the student;
  - (b) to the student's postal address as advised by the student; or
  - (c) to the student by another method agreed to by the student.

**2.25 Providers to notify of outcome of discharge of obligations**

- 2.25.1 For the purposes of subsection 166-26A(3) of the *Act*, the higher education provider must include in its written notice to the Higher Education Tuition Protection Director:
- (a) if the provider arranged a replacement unit or replacement course —evidence of the arrangement between the student and replacement provider, including any payment arrangements relating to tuition fees.

---

## **2.30 Payments in connection with tuition protection**

- 2.30.1 For the purposes of paragraph 167-10(1)(a) of the *Act*, if a student accepts an offer of a replacement unit or replacement course, the Higher Education Tuition Protection Director may make payment of such amounts that the Director considers appropriate to:
- (a) the replacement provider; or
  - (b) another person in order to facilitate a student's placement in a replacement unit or replacement course.
- 2.30.5 In deciding whether to make a payment, and the amount of such a payment, the Higher Education Tuition Protection Director:
- (a) must have regard to the sustainability of the Higher Education Tuition Protection Fund; and
  - (b) may have regard to any other matters the Director considers relevant.

## **2.40 Other tuition protection requirements – special circumstances**

### *HECS-HELP assistance*

- 2.40.1 For the purposes of subsection 36-20(4) of the *Act*, if the higher education provider determines that section 36-20 of the *Act* applies to a person and the person enrolled in the unit as a replacement unit, the defaulting provider must:
- (a) pay the person an amount equal to the payment, or the sum of the payments, that the person made in relation to their student contribution amount for the affected unit; and
  - (b) pay to the Commonwealth an amount equal to any HECS-HELP assistance to which the person was entitled to for the affected unit.
- 2.40.5 If the defaulting provider is unable to act for the purposes of subparagraph 2.40.1(a), the Higher Education Tuition Protection Director must pay the person an amount equal to the payment, or the sum of the payments, that the person made in relation to their student contribution amount for the affected unit.
- 2.40.10 If paragraph 2.40.5 applies, the defaulting provider must pay the Commonwealth for the purposes of the Higher Education Tuition Protection Fund an amount equal to the amount that the Higher Education Tuition Protection Director paid in relation to the person under paragraph 2.40.5.

---

*FEE-HELP assistance*

2.40.15 For the purposes of subsection 110-5(1B) of the *Act*, if the circumstances at subsection 110-5(1A) of the *Act* apply, then the defaulting provider must pay to the Commonwealth an amount equal to any FEE-HELP assistance to which the person was entitled to for the affected unit which the replacement unit replaces.

2.40.20 For the purposes of section 2.40, **defaulting provider** means a higher education provider which defaulted in relation to the person and the affected unit which the replacement unit replaces.

## **5 Chapter 8 (heading)**

Repeal the heading, substitute:

### **CHAPTER 8 QUALITY, ACCOUNTABILITY AND OTHER ADMINISTRATIVE REQUIREMENTS**

#### **6 Paragraph 8.1.1**

Omit “approved under section 16-25 of the *Act*”.

#### **7 Paragraph 8.2.1**

After “the *Act*”, insert “and only applies to higher education providers approved under section 16-25 of the *Act*”.

#### **8 Paragraph 8.3.1**

After “higher education provider”, insert “approved under section 16-25 of the *Act*”.

#### **9 Subparagraph 8.4.1(c)**

After “FEE-HELP assistance”, insert “and HECS-HELP assistance”.

#### **10 After subparagraph 8.6.5(b)**

Insert:

and (c) if the provider determines that undertaking a unit will not impose an unreasonable study load on a person for the purposes of subsections 36-12(2) and 104-1AA(2)—the grounds on which the provider made such a determination.

#### **11 Subparagraph 8.7.5(c)**

Repeal the subparagraph, substitute:

(c) whether FEE-HELP assistance or HECS-HELP assistance is available for the unit of study and whether a person can be a Commonwealth supported student in relation to the unit of study;

---

**12 Subparagraph 8.7.5(d)**

After “FEE-HELP assistance”, insert “or HECS-HELP assistance”.

**13 Paragraph 9.1.1**

Omit “approved under section 16-25 of the *Act*”.

**14 Paragraph 9.2.1**

Omit “subsection 104-1(1A)”, substitute “subsections 36-5(6) and 104-1(1AB)”.