



Tuition Protection (Up-front Payments Guidelines) 2020

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

Dated 16 December 2020

Dan Tehan
Minister for Education

Contents

Part 1 – Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
Part 2 - Tuition Protection.....	3
Division 1 – Tuition fees.....	3
Division 2 – Up-front payments tuition protection levy	4
Division 3 – Information and documents related to tuition protection.....	6
Division 4 – When a provider defaults in relation to a student	9
Division 5 – Notifying the Higher Education Tuition Protection Director of the details of a default	10
Division 6 – Requirements of notice to student	11
Division 7 – Providers to notify of outcome of discharge of obligations.....	12
Division 8 – Other tuition protection requirements.....	13

Part 1 – Preliminary

1 Name

This instrument is the *Tuition Protection (Up-front Payments 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
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Note: This table relates only to the provisions of this instrument as originally made.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 26B of the *Tertiary Education Quality and Standards Agency Act 2011*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) domestic student;
- (b) tuition fees;
- (c) unit of study;
- (d) up-front payment.

In this instrument:

Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

enabling course means a course of instruction provided to a domestic student for the purpose of enabling the student to undertake a course leading to an Australian higher education award but does not include a course leading to an Australian higher education award.

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

Levy Act means the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*.

personal information has the same meaning as in the *Privacy Act 1988*.

up-front payments tuition protection levy means levy imposed by the Levy Act.

Part 2 - Tuition Protection

Division 1 – Tuition fees

5 Meaning of tuition fees

- (1) This section prescribes other amounts for the purposes of paragraph (c) of the definition of *tuition fees* in section 5 of the Act.
- (2) Any fee payable for the following matters by a domestic student enrolled with, or applying for enrolment with, the registered higher education provider in a unit of study, are prescribed amounts:
 - (a) tuition;
 - (b) examination or other type of mandatory assessment;
 - (c) an enabling course; and
 - (d) granting an Australian higher education award for completion of the course.
- (3) The amount of tuition fees does not include a fee that is:
 - (a) payable in respect of an organisation of students, or of students and other persons;
 - (b) payable in respect of the provision to students of amenities or services that are not of an academic nature;
 - (c) payable in respect of books or equipment;
 - (d) payable in respect of residential accommodation;
 - (e) payable in respect of studies (other than in respect of an enabling course) that are not required to be undertaken for the purpose of obtaining an Australian higher education award; or
 - (f) of a kind that is incidental to studies that may be undertaken with a registered higher education provider if any of the following apply:
 - (i) it is a charge for a good or service that is not essential to the Australian course of study;
 - (ii) it is a charge for an alternative form, or alternative forms, of access to a good or service that is an essential component of the course but is otherwise made readily available at no additional fee by the provider;
 - (iii) it is a charge for an essential good or service that the student has the choice of acquiring from a supplier other than the provider and is for equipment or items which become the physical property of the student and are not consumed during the course or food, transport and accommodation costs associated with the provision of field trips that form part of the course; or
 - (iv) it is a fine or a penalty, provided it is imposed by the provider principally as a disincentive and not in order to raise revenue or cover administrative costs.

Division 2 – Up-front payments tuition protection levy

6 Notice of amount of up-front payments tuition protection levy

- (1) For the purposes of paragraphs 26A(5)(a) and (b) of the Act, the Higher Education Tuition Protection Director must issue a written notice to each registered higher education provider who is liable to pay the up-front payments 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) A failure to give a registered higher education provider the notice under subsection (1) does not affect the liability of the provider to pay the up-front payments tuition protection levy.

Note 1: Up-front payments tuition protection levy is imposed, for a year, on a registered higher education provider to whom Part 5A of the Act applies under the Levy Act.

Note 2: Subsection 26A(4) of the Act requires a registered higher education provider to pay the up-front payments tuition protection levy when it is due and payable. This is a condition of registration for the purposes of section 24 and section 26A of the Act.

- (3) A notice under subsection (1) does not need to be given if the liability to pay the up-front payments tuition protection levy is waived under section 8.

7 Overdue notice

- (1) For the purposes of paragraph 26A(5)(a) of the Act, the Higher Education Tuition Protection Director may give a written overdue notice to the registered higher education provider to comply with a notice issued under section 6 after the date the up-front payments tuition protection levy is due and payable.
- (2) 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 registered higher education provider.

8 Waiver

For the purposes of paragraph 26A(5)(f) of the Act, liability to pay the up-front payments tuition protection levy for a year is waived if:

- (a) the provider's registration is cancelled under the Act; or
- (b) the provider is no longer in operation

prior to the time the Higher Education Tuition Protection Director issues a notice under section 6.

9 Internal review of notice issued under section 6

- (1) For the purposes of paragraph 26A(5)(g) of the Act, a registered higher education provider may request the Higher Education Tuition Protection Director to reconsider a notice issued under section 6 in relation to the determination of any components of the up-front payments tuition protection levy (*decision*).
- (2) The registered 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.
- (3) 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.
- (4) The Higher Education Tuition Protection Director must give the registered higher education provider written notice of the Director's decision (*internal review decision*) under subsection (3).
- (5) The notice under subsection (4):
 - (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 paragraph 9(3)(b) or (c) applies, include a new notice under section 6 with a due date at least 30 days after the date the provider is notified of the internal review decision.

10 Administrative Appeals Tribunal review

For the purposes of paragraph 26A(5)(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 section 9.

Division 3 – Information and documents related to tuition protection

11 Record Keeping

For the purposes of paragraph 26A(7)(a) of the Act, a registered higher education provider must keep records in relation to the following matters for each domestic student who is enrolled in a unit of study or Australian course of study with the provider or who has paid any up-front payments to the provider:

- (a) the student's name;
- (b) the student's residential address, phone number and email address;
- (c) the student's date of birth;
- (d) the student's identification code as issued by the provider;
- (e) the student's student identifier (within the meaning of the *Student Identifiers Act 2014*);
- (f) whether the student was studying part-time or full-time;
- (g) 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;
- (h) course information and student's progression in the course:
 - (i) course name and course code;
 - (ii) course description outline;
 - (iii) course commencement date;
 - (iv) course outcome and course outcome date;
 - (v) standard course duration; and
 - (vi) other relevant details related to the field of education;
- (i) unit information and student's progression in the unit:
 - (i) unit name and unit code;
 - (ii) unit description outlines, including outlines for completed units;
 - (iii) unit completion date;
 - (iv) record of results for completed units; and
 - (v) unit of study status for each unit, including whether the status is withdrawn, ongoing, passed or failed;
- (j) whether the student has withdrawn from the course and the date of withdrawal;
- (k) whether the student has deferred any units or the course, the date of the deferral and the date the student is expected to re-commence study;
- (l) any work integrated learning and internship requirements for each unit;
- (m) information about any scholarship arrangements or any payment arrangements made for the student by a third party for the student's tuition fees;
- (n) the total of tuition fees the student is liable to pay for the unit or course and method of payment;
- (o) the total of up-front payments paid for the student for a unit or course;
- (p) for each amount of up-front payment paid for the student:
 - (i) whether the amount was paid for the full course or unit;

-
- (ii) if the amount was paid for the full course – the duration of the course; and
 - (iii) if the amount was paid for a unit – the duration of the unit;
 - (q) any up-front payments for the student for the unit or course that:
 - (i) have become payable; and
 - (ii) have not been paid;
 - (r) the total of other fees that are not tuition fees paid for the student for the unit or course received by the provider.

12 Giving information and documents to the Secretary

For the purposes of paragraph 26A(7)(b) of the Act, a registered higher education provider must give the following information or documents to the Secretary about each domestic student enrolled in a unit of study or Australian course of study with the provider or who has paid any up-front payments to the provider:

- (a) the student's name;
- (b) the student's residential address, phone number and email address;
- (c) the student's date of birth;
- (d) the student's identification code as issued by the provider;
- (e) the student's student identifier (within the meaning of the *Student Identifiers Act 2014*);
- (f) whether the student was studying part-time or full-time;
- (g) 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;
- (h) course information and student's progression in the course:
 - (i) course name and course code;
 - (ii) course description outline;
 - (iii) course commencement date;
 - (iv) course outcome and course outcome date;
 - (v) standard course duration; and
 - (vi) other relevant details related to the field of education;
- (i) unit information and student's progression in the unit:
 - (i) unit name and unit code;
 - (ii) unit description outlines, including outlines for completed units;
 - (iii) unit completion date;
 - (iv) record of results for completed units; and
 - (v) unit of study status for each unit, including whether the status is withdrawn, ongoing, passed or failed;
- (j) whether the student has withdrawn from the course and the date of withdrawal;
- (k) whether the student has deferred any units or the course, the date of the deferral and the date the student is expected to re-commence study;
- (l) any work integrated learning and internship requirements for each unit;

-
- (m) information about any scholarship arrangements or any payment arrangements made for the student by a third party for the student's tuition fees;
 - (n) the total of tuition fees the student is liable to pay for the unit or course and method of payment;
 - (o) the total of up-front payments paid for the student for a unit or course;
 - (p) for each amount of up-front payment paid for the student:
 - (i) whether the amount was paid for the full course or unit;
 - (ii) if the amount was paid for the full course—the duration of the course; and
 - (iii) if the amount was paid for a unit—the duration of the unit;
 - (q) any up-front payments for the student for the unit or course that:
 - (i) have become payable; and
 - (ii) have not been paid;
 - (r) the total of other fees that are not tuition fees paid for the student for the unit or course received by the provider.

Division 4 – When a provider defaults in relation to a student

13 Other default circumstances

- (1) For the purposes of subsection 62C(3) of the Act, a registered higher education provider defaults in relation to a domestic student if the following circumstances apply in relation to the provider and the student:
 - (a) the student is enrolled in an Australian 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.

Division 5 – Notifying the Higher Education Tuition Protection Director of the details of a default

14 Additional details of default

For the purposes of paragraph 62D(3)(c) of the Act, the written notice given to the Higher Education Tuition Protection Director under subsection 62D(3) of the Act must specify for each domestic student in relation to each unit of study and the Australian 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 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.

15 Requirements of notice

- (1) For the purposes of subsection 62D(5) of the Act, the notice given to the Higher Education Tuition Protection Director under subsection 62D(2) must include information about the number of domestic students in relation to whom the registered higher education provider has defaulted.
- (2) The information required under subsection 62D(3) of the Act must be given to the Higher Education Tuition Protection Director in a manner and form approved by the Director.

Division 6 – Requirements of notice to student

16 Requirements of notice

- (1) For the purposes of subsection 62E(3) of the Act, the registered higher education provider must specify in its written notice of default to domestic students in relation to whom it has defaulted:
 - (a) the name of the Australian 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) The registered 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.

Division 7 – Providers to notify of outcome of discharge of obligations

17 Requirements of notice

For the purposes of subsection 62H(3) of the Act, the registered 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;
- (b) if the provider provided a refund to the domestic student under subsection 62F(8) of the Act — evidence of the refund to the student, including the date of the refund.

Division 8 – Other tuition protection requirements

18 Notification about the collection of personal information and tuition protection

- (1) For the purposes of paragraph 26A(3)(b) of the Act, the registered higher education provider must provide a domestic student at or before the time or, if that is not practicable, as soon as practicable after, a provider collects personal information about the student for the purposes of enrolment in an Australian course of study or unit of study:
 - (a) general information about the operation of tuition protection under Part 5A of the Act;
 - (b) notification of the collection of personal information for the purposes of tuition protection.
- (2) The notification of collection in paragraph 18(1)(b) must inform the student of the following matters:
 - (a) that the registered higher education provider must disclose certain personal information to the Secretary under the Act, including:
 - (i) the student's name, date of birth, contact details and identifiers;
 - (ii) the student's study arrangements and details including enrolments and course progress;
 - (iii) the student's payment arrangement, including tuition fees paid or payable, scholarships and payments by third parties;
 - (b) that the Secretary may disclose this personal information to the Higher Education Tuition Protection Director in the event of a likely default or default by the provider for the Director to perform functions and powers under the Act;
 - (c) that the Secretary and the Director may disclose some of this personal information to the Australian Government Actuary for the purposes of the up-front payments tuition protection levy payable under the Levy Act; and
 - (d) that further details about how the Secretary and the Director handle personal information is set out in their respective privacy policies.

Note: Registered higher education providers may have other privacy obligations under other laws, including the *Privacy Act 1988*.