

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education and Youth

Higher Education (Up-front Payments Tuition Protection Levy) Act 2020

Higher Education (Up-front Payments Tuition Protection Levy) (Administrative Fee Component) Determination 2021

PURPOSE AND OPERATION

The purpose of the *Higher Education (Up-front Payments Tuition Protection Levy) Administrative Fee Component) Determination 2021* (the Instrument) is to specify the amounts that enable the administrative fee component of the up-front payments tuition protection levy (the Levy) to be calculated for the 2021 calendar year.

The Levy is imposed under section 6 of the *Higher Education (Up-front Payments 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 domestic up-front fee paying students at private higher education providers. 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 Higher Education Tuition Protection Fund (the Fund) which is established under section 167-1 of the *Higher Education Support Act 2003* (HESA) and managed by the Higher Education 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 Higher Education Tuition Protection Fund Advisory Board (the Advisory Board) and any consultants engaged by the Director to assist and support the performance of their role and functions.

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

The Instrument ensures sufficient funds are held in the Fund to cover the ongoing administration costs of tuition protection for domestic up-front fee paying students at private higher education providers.

AUTHORITY

Subsection 9(1) of the Act provides that, before 1 August 2021, the Minister must determine, by legislative instrument, two separate amounts which are used to calculate the administrative fee component of the Levy for the 2021 calendar year.

Under subsection 9(2) of the Act, the Minister may choose to make a legislative instrument for the following calendar years (that is, 2022 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) (and indexed under section 10) 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 the Minister 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 2021 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 up-front fee paying students for the provider for the previous year.

For the purposes of working out the total up-front fee paying students for a provider for the previous year, students who would also fall within the definition of total HELP students (within the meaning of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*) are to be disregarded.

‘Total up-front fee paying students’, for a leviable provider for a year, means the total number of domestic students for which one or more up-front payments for one or more units of study was received, directly or indirectly, by the provider during the year (see section 5 of the Act).

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. This is because paragraph 8(2)(b) of the Act factors in the number of up-front payments a provider received in the previous year. A new provider will not have received any up-front payments from students in the previous year.

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 section 5 of the Act and section 62B of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act)), so the entire Levy collection will be from private higher education providers.

In setting the administrative fee component of the Levy, the Minister has considered the advice of the Australian Government Actuary (AGA). The AGA advised that target funds between \$21 million and \$25 million are required for the long-term sustainability of the Fund. The current balance of the fund is \$6.4 million.

In 2021, the administrative fee component is the sum of:

- (a) \$108; and
- (b) \$9.06 multiplied by the total number of domestic students for which one or more up-front payments for one or more units of study was received, directly or indirectly, by the provider during the previous year (that is, 2020) (disregarding any students who would also fall within the definition of total HELP students (within the meaning of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*).

CONSULTATION

The Department of Education, Skills and Employment has consulted with the Director, prior to the setting of the administrative fee component of the Levy through this Instrument. The Director was supportive of the proposed administrative fee component, as it is consistent with administrative fee component of the HELP tuition protection levy for 2021.

More broadly, the Director has consulted and accepted the Advisory Board's advice relating to the special tuition protection and risk rated premium components of the Levy. 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 up to seven 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 AGA in determining the risk factors for the risk rated component of the levy, and methods for working out the corresponding risk factor values.

The Director and the Advisory Board have also undertaken 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. This included the following industry peak bodies: Independent Higher Education Australia and the Independent Tertiary Education Council Australia. The Board's advice has taken the sector's feedback into consideration, recommending a lower per student charge and lower income percentage rate for the risk rated premium component than is proposed for the HELP tuition protection levy.

The Director also consulted the Department of Education, Skills and Employment. No concerns were raised.

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 42730).

FINANCIAL IMPACT STATEMENT

This Instrument will result in a projected revenue of approximately \$0.3 million in 2021. Given the funds are credited to a special account, and are derived from industry contributions, 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 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*

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The *Higher Education (Up-front Payments Tuition Protection Levy) (Administrative Fee Component) Determination 2021* (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 up-front payments tuition protection levy (the Levy) to be calculated for the 2021 calendar year.

The Levy is imposed under section 6 of the *Higher Education (Up-front Payments 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 domestic up-front fee paying students at private higher education providers. 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 Higher Education Tuition Protection Fund (the Fund) which is established under section 167-1 of the *Higher Education Support Act 2003* (HESA) and managed by the Higher Education 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 Higher Education Tuition Protection Fund Advisory Board and any consultants engaged by the Director to assist and support the performance of their role and functions. The administrative fee component is payable by all leviable providers, but a new provider is only required to pay part of the component in their first year.

The Instrument ensures sufficient funds are held in the Fund to cover the ongoing administration costs of tuition protection for domestic up-front fee paying students at private higher education providers.

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*. In particular, Article 13 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 tuition protection scheme (the Scheme) set out in the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) for domestic up-front fee paying students at private higher education providers. The Scheme's aim is to

ensure that such students are protected and supported in the event that their provider defaults (meaning the provider fails to start to provide, or ceases to provide, a unit of study for a student) by arranging a placement for the student in a suitable replacement unit or course, or a refund of the amount of tuition fees paid up-front by the student for the affected unit. Under the Scheme, the defaulting provider has initial responsibility for providing a remedy to its affected students. If the defaulting provider fails to discharge its obligations, the Director is required to assist in providing tuition protection to the affected students in order to enable them to continue their studies and obtain a qualification.

Leviable providers pay the Levy as calculated in accordance with the Act to enable the provision of tuition protection to students.

The Instrument specifies the amounts that enable the administrative fee component of the Levy to be calculated for the 2021 calendar year. The purpose of the administrative fee component is to cover the ongoing administration costs of tuition protection arrangements under the TEQSA Act.

Therefore, the Instrument will ensure that sufficient funds are held in the Fund to cover the ongoing administration costs of tuition protection for domestic up-front fee paying students at private higher education providers, thereby maintaining a high level of student protection in the event a 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 and Youth
The Hon Alan Tudge MP

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EXPLANATION OF PROVISIONS

Sections 1: Name

Section 1 of the *Higher Education (Up-front Payments Tuition Protection Levy) (Administrative Fee Component) Determination 2021* (the Instrument) is a formal provision setting out the name of the Instrument.

Section 2: Commencement

Section 2 is also a formal provision. It sets out the 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 (Up-front Payments Tuition Protection Levy) Act 2020* (the Act), relevant to the calculation of the administrative fee component of the up-front payments tuition protection levy (the Levy) for the calendar year beginning on 1 January 2021.

The amount of \$108 is specified for the purposes of paragraph 8(2)(a) of the Act, and the amount of \$9.06 is specified for the purposes of paragraph 8(2)(b) of the Act.

Therefore, in 2021, the administrative fee component of the Levy is the sum of:

- a) \$108; and
- b) \$9.06, multiplied by the total number of domestic students for which one or more up-front payments for one or more units of study was received, directly or indirectly, by the provider during the previous year (that is, 2020) (see definition of 'total up-front fee paying students' under section 5 of the Act). For the purposes of working out the total up-front fee paying students for a provider for the previous year, students who would also fall within the definition of total HELP students (within the meaning of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*) are to be disregarded.

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 Higher Education Tuition Protection Fund in setting these amounts and also had regard to other matters the Minister considers appropriate.

The note at the end of the section 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.