

EXPLANATORY STATEMENT

Guidelines issued under section 238-10 of the Higher Education Support Act 2003

Higher Education Provider Amendment (Levy Waiver) Guidelines 2021

Authority

Section 238-10 of the *Higher Education Support Act 2003* (the Act) provides that the Minister may make guidelines providing for matters required or permitted by the Act. In particular, item 6 of the table in subsection 238-10(1) specifies the Minister may make Higher Education Provider Guidelines.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendments to the *Higher Education Provider Guidelines 2012* (the Principal Instrument) made by this instrument rely on this provision.

Legislative background

Part 5-1A of the Act establishes tuition protection for students at higher education providers which aims to ensure students are protected and supported in the event of a provider default – that is, where the student has not withdrawn from a unit of study and either the provider fails to start to provide a unit of study to the student on the day on which the unit was scheduled to start, or the provider ceases to provide a unit of study to the student on a day after the unit starts but before it is completed.

Part 5-1A of the Act applies to higher education providers other than Table A providers (i.e. public universities) and higher education providers that are government owned, or established under specified legislation.

Tuition protection is administered by the Higher Education Tuition Protection Director (the Director), who is supported by the Higher Education Tuition Protection Fund Advisory Board (the Board). The Director is responsible for managing the Higher Education Tuition Protection Fund (the Fund). The *Higher Education Support (HELP Tuition Protection Levy) Act 2020* requires leviable providers to contribute to the HELP tuition protection levy (the Levy) an amount commensurate with their size and risk. This amount is credited to the Fund and used to make payments in relation to the arrangements to support affected HELP students, and for the remuneration and allowances of the Director and the Board.

Purpose and operation

The purpose of the *Higher Education Provider Amendment (Levy Waiver) Guidelines 2021* (the Amendment Instrument) is to amend the Principal Instrument to provide for a waiver of the payment of the Levy for all higher education providers for the 2021 calendar year.

Paragraph 19-66A(3)(f) of the Act allows for the Principal Instrument to make provision for the refund, remission or waiver of the Levy or penalties for late payment. The Amendment

Instrument inserts new paragraph 2.5.31 into the Principal Instrument to waive the payment of the Levy for all higher education providers for the 2021 calendar year. The waiver of the Levy for 2021 will support providers at a time when they are dealing with the financial impact of the COVID-19 pandemic.

Commencement

The Amendment Instrument commences on the day after the Amendment Instrument is registered on the Federal Register of Legislation.

Regulatory Impact Statement

The Office of Best Practice regulation has been consulted and advised that a Regulatory Impact Statement is not required for the Amendment Instrument due to the minor regulatory impact of the proposed changes (OBPR ID: 23328).

Financial Impact Statement

The Amendment Instrument will result in reduced taxation revenue for the Fund of approximately \$2.8 million in 2021-22, due to the non-collection of the Levy for 2021.

Impact on underlying cash (\$ millions)					
	2021-22	2022-23	2023-24	2024-25	Total
HELP Tuition Protection Levy Waiver	-2.8	0.0	0.0	0.0	-2.8

Consultation

No public consultation was undertaken in relation to the Amendment Instrument. Higher education providers are aware of the proposed Levy settings and expected collection, due to the consultation undertaken by the Director earlier in 2021. While no adverse responses were received on the 2021 Levy collection during this consultation, the higher education sector has noted the financial challenges it has experienced as a result of the ongoing COVID-19 pandemic. In response, the amendments are a temporary measure for the sector, that are part of the Australian Government’s economic response to the COVID-19 pandemic and provide a benefit to higher education providers at a time of economic uncertainty. It is on this basis and having regard to the beneficial nature of these measures, that no public consultation was undertaken.

Detailed explanation of the *Higher Education Provider Amendment (Levy Waiver) Guidelines 2021*

Section 1 – Name

This section provides that the title of the Amendment Instrument is the *Higher Education Provider Amendment (Levy Waiver) Guidelines 2021* (the Amendment Instrument).

Section 2 – Commencement

This section provides that the Amendment Instrument will commence the day after the Amendment Instrument has been registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amendment Instrument is made under section 238-10 of the *Higher Education Support Act 2003*.

Section 4 – Schedule

This section provides that the *Higher Education Provider Guidelines 2012* are amended according to the terms set out in the Schedule.

Schedule 1—Amendments

Item 1 – Subsection 2.5

This item inserts new paragraph 2.5.31 which provides that payment of the HELP tuition protection levy is waived for all higher education providers for the 2021 calendar year.

Statement of Compatibility with Human Rights

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

Higher Education Provider Amendment (Levy Waiver) Guidelines 2021

The *Higher Education Provider Amendment (Levy Waiver) Guidelines 2021* (the Amendment 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 Amendment Instrument amends the *Higher Education Provider Guidelines 2012* (the Principal Instrument) to provide for a waiver of the payment of the Levy for all higher education providers for the 2021 calendar year.

Human rights implications

The Amendment Instrument engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right to work contained in Article 6 of the ICESCR.

Right to education

The Amendment Instrument supports the right to education, under Article 13 of ICESCR. Article 13(2)(c) of the ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

The Amendment Instrument supports the right to education as the amendment assists higher education providers at a time of economic uncertainty. The amendment will give providers financial relief during difficult economic circumstances so that they will be able to continue operating and delivering quality education courses to students now and in the future.

The Amendment Instrument supports the right to education.

Right to work

The Amendment Instrument supports the right to work, under Article 6 of ICESCR. Article 6(1) of the ICESCR provides that State Parties to the ICESCR are required to recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 6(2) of the ICESCR provides that the steps to be taken by a State Party to achieve the full realisation of this right include providing technical and vocational guidance and training programs.

The Amendment Instrument supports the right to work as the Amendment Instrument gives higher education providers financial relief during difficult economic circumstances caused by the COVID-19 pandemic, which will assist providers in continuing to deliver courses to students

now and in the future. In turn, this measure will support providers to maintain their workforce and support students to undertake study that will best prepare them to enter the workforce.

The Amendment Instrument supports the right to work.

Conclusion

This Amendment Instrument is compatible with human rights because it promotes the right to education and the right to work.

**Minister for Employment, Workforce, Skills, Small and Family Business
The Hon Stuart Robert MP**