

EXPLANATORY STATEMENT

Issued by the authority of the Higher Education 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 2023

AUTHORITY

Section 13 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the Act) provides that, before 1 August of each year, the Higher Education Tuition Protection Director (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 HELP tuition protection levy (the Levy) for the year.

In making an instrument under section 13, the Director must have regard to any advice of the Higher Education Tuition Protection Fund Advisory Board (the Board) and the sustainability of the Higher Education Tuition Protection Fund (the Fund). The Director may also have regard to any other matter that the Director considers appropriate. Subsection 13(6) of the Act also provides that the Treasurer must approve the instrument in writing before it is made by the Director.

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 repeal of the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020* and the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022* at Schedule 1 to the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2023* (the Instrument) is made in reliance on this power.

PURPOSE AND OPERATION

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 Levy for the 2023 calendar year.

The risk rated premium component ensures that a leviable provider's risk of default (meaning the risk of a provider failing to start to provide, or ceasing to provide, a unit of study for a student) 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.

The Levy is imposed under section 6 of 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 at private higher education providers. The Levy is payable into the Fund, which is established under section 167-2 of the *Higher Education Support Act 2003* (HESA) and managed by the Director.

The Director is accountable for the appropriate and sustainable management of the Fund. The Instrument assists the Director in exercising their functions under HESA by maintaining a high level of student protection and ensuring sufficient funds are held in the Fund to place students in a suitable replacement course or re-credit their HELP balance if a provider defaults.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has advised that an Impact Analysis is not required (OIA23-05107).

FINANCIAL IMPACT STATEMENT

This Instrument will result in projected revenue, from the risk-rated premium and special tuition protection components of the Levy only, of approximately \$2.5 million.

Given the Levy amounts are credited to the Fund, and are derived from industry contributions, the amount in the Fund cannot be directed toward any other program or portfolio, as it can only be appropriated for the purposes of the Fund.

In determining the matters relevant to the calculation of the risk rated premium component and special tuition protection components of the Levy, the Director has considered not only the sustainability of the Fund, but also the impact of current economic conditions on businesses and education in Australia. The Director's focus and intention in determining those matters was on supporting Australian businesses.

COMMENCEMENT

Parts 1 to 3 of the Instrument commence on 31 July 2023, and Schedule 1 of the Instrument which repeals the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020* and the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022*, commences on 1 August 2023.

CONSULTATION

Advice from the Board

Under subsection 13(4) of the Act, in making an instrument, the Director must have regard to any advice of the Board in relation to the instrument, and the sustainability of the Fund. In making the Instrument, the Director has accepted the Board's advice. The Board's final advice was published on the TPS website (<https://tps.gov.au>) on 20 June 2023.

Consultation with providers and peak bodies

From late April to early June 2023, the Director engaged with domestic education and training providers, policy agencies and peak bodies around Australia through online and in-person consultation sessions on the 2023 domestic levy settings. The majority were general information sessions and opportunities to hear feedback from the sector on the draft settings for the domestic levies as proposed by the Board. The Director also ran two smaller group sessions online for targeted providers in relation to the completion rate risk factor, due to feedback received during 2022 sector consultations. A final online session for the Director to give feedback to the sector on the consultation period was held on 5 June 2023.

The majority of education and training providers, and peak bodies, were generally satisfied with the proposed settings for the 2023 domestic levies.

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 2023

The *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2023* (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 2023 calendar year.

The risk rated premium component ensures that a leviable provider's risk of default (meaning the risk of a provider failing to start to provide, or ceasing to provide, a unit of study for a student) 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.

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 at private higher education providers. The Levy is payable into the Higher Education Tuition Protection Fund (the Fund), which is established under section 167-2 of the *Higher Education Support Act 2003* (HESA) and managed by the Higher Education Tuition Protection Director (the Director).

The Director is accountable for the appropriate and sustainable management of the Fund. The Instrument assists the Director in exercising their functions under HESA by maintaining a high level of student protection and ensuring sufficient funds are held in the Fund to place students in a suitable replacement course or re-credit their HELP balance if a provider defaults.

Human rights implications

Right to education

The Instrument engages Article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which 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 Instrument is part of the broader HELP tuition protection framework set out in HESA. The purpose of tuition protection is to ensure students accessing HECS-HELP and FEE-HELP assistance are supported in the event that their approved course provider defaults by either providing a suitable replacement course or re-credit of their HELP balance.

The Instrument will ensure that sufficient funds are held in the Fund to cover the ongoing costs of providing tuition protection to 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.

Conclusion

The Instrument is compatible with human rights because it supports the right to education.

Higher Education Tuition Protection Director, Melinda Hatton

HIGHER EDUCATION SUPPORT (HELP TUITION PROTECTION LEVY) (RISK RATED PREMIUM AND SPECIAL TUITION PROTECTION COMPONENTS) DETERMINATION 2023

EXPLANATION OF PROVISIONS

PART 1 – INTRODUCTION

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2023* (the Instrument).

Section 2: Commencement

2. This section sets out the commencement dates of the Instrument. Parts 1 to 3 of the Instrument commence on 31 July 2023 and Schedule 1 of the Instrument, which repeals the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020* and the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022*, commences on 1 August 2023.

Section 3: Authority

3. This section provides that the Instrument is made by the Higher Education Tuition Protection Director (the Director) under section 13 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020* (the Act).

Section 4: Definitions

4. This section defines a range of terms that are used in the Instrument and notes that some terms used in the Instrument are defined in section 5 of the Act (and have the same meaning as in the Act).

Section 5: Schedules

5. This section clarifies that Schedule 1 is effective on its terms to repeal the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020* and the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022*.

PART 2 – RISK RATED PREMIUM COMPONENT

Section 6: Risk rated premium component

6. Section 6 provides amounts, percentages and risk factors relevant for determining a leviable provider's risk rated premium component under subsection 11(2) of the Act.
7. Subsection 6(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.
8. Subsection 6(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 per cent.
9. Subsection 6(3) provides that the three risk factors that are specified for the purposes of step 4 of the method statement in subsection 11(2) are the financial strength risk factor, the completion rate risk factor and the non-compliance history and registration renewal risk factor.
10. Subsection 13(3) of the Act provides that a risk factor value for a risk factor must be a number between zero and 10 (inclusive). As set out below, the possible risk factor values for all the specified risk factors fall within this range.

Section 7: Risk factor – financial strength

11. Section 7 of the Instrument provides the method of calculating the financial strength risk factor value for the provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.
12. Subsection 7(1) provides that the risk factor value for the financial strength risk factor for a leviable provider is 2.5 if the provider did not submit its financial statement (unless the provider was not required to submit a financial statement); 0.0 if the provider was not required to submit a financial statement; and as set out in the table in subsection 7(1) if the provider submitted its financial statement.
13. The table in subsection 7(1) provides that the risk factor value for a leviable provider that submitted a financial statement is 0.0 if the financial strength score of the provider (as determined under subsections 7(2) and (3)) is 8 or 9; 1.0 if the financial strength score of the provider is 6 or 7; and 2.0 if the financial strength score of the provider is 1 to 5.
14. Subsections 7(2) and 7(3) provide the method for determining a leviable provider's financial strength score, which is relevant for determining the financial strength risk factor value for a leviable provider. Subsection (2) provides that a leviable provider's financial strength score is the sum of the net profit ratio score, return on assets score and debt to equity score. The table in subsection (3) sets out the formulas for calculating each score, with the relevant information for those formulas being taken or derived from the provider's financial statements.

Section 8: Risk factor – completion rate

15. Section 8 of the Instrument provides the method of calculating the completion rate risk factor value for the provider, for the purposes of step 4 of the method statement in subsection 11(2) of the Act.
16. Subsection 8(1) provides that the risk factor value for the completion rate risk factor for a leviable provider is zero if the provider did not report any units of study for the calendar year beginning on 1 January 2022 (previous calendar year) in its statement of general information – for example, because the provider did not deliver any units of study in 2022 and therefore, there were no units to report. If the provider did report units of study for the previous calendar year, the risk factor value will depend on the provider’s completion rate percentage (as set out in the table in subsection 8(1)).
17. The table in subsection 8(1) provides that the risk factor value for a leviable provider is 0.0 if its completion rate percentage (as determined under subsection 8(2)) is 85% or more; 1.0 if its completion rate percentage is 60% or more but less than 85%; 2.5 if its completion rate percentage is 35% or more but less than 60%; and 3.5 if its completion rate percentage is 0% or more but less than 35%. The risk factor values for leviable providers with a completion rate between 0% and 60% have been increased for 2023. This adjustment reflects the advice of the Australian Government Actuary. The completion rate risk values were previously reduced as part of COVID-19 support measures by the Government. In 2020 and 2021, while the domestic levies were determined, they were not ultimately levied on providers. The risk values have now increased slightly from 2022, but are not as high as their pre-COVID settings. This provides a continued concession to the sector, albeit not as generous as the 2022 settings.
18. Subsection 8(2) provides a formula for calculating a leviable provider’s completion rate percentage, which is relevant for determining the completion rate risk factor for a leviable provider. The leviable provider’s completion rate percentage will be calculated by reference to data reported by the provider in its statement of general information (as defined in section 4 of the Instrument).

Section 9: Risk factor – non-compliance history and registration renewal

19. Section 9 of the Instrument provides the method of calculating the non-compliance history and registration renewal risk factor value for the 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 and registration renewal 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; and the renewal of their registration as a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act).

20. Subsection 9(1) provides that the risk factor value for the non-compliance and registration renewal risk factor for a leviable provider is as set out in the table in subsection 9(1). The table provides that the risk factor value for the non-compliance and registration renewal risk factor for a leviable provider is:
- 2.0 if the leviable provider has a weighted late payment measure of 30 days or more (as worked out under subsection 9(3));
 - 0.9 if the leviable provider has a weighted late payment measure of 15 days or more but less than 30 days;
 - 0.7 if the leviable provider has a weighted late payment measure of 1 day or more but less than 15 days;
 - 1.0 if the leviable provider applied under section 35 of the TEQSA Act to renew the provider's registration and, due to risk management reasons, the period for which the registration was renewed is less than the maximum period specified in subsection 36(4) of the TEQSA Act; or
 - 0.0 if the leviable provider applied under section 35 of the TEQSA Act to renew the provider's registration and was renewed for the maximum period specified in subsection 36(4) of the TEQSA Act.
21. Subsection 9(2) provides that, where more than one item in the table in subsection (1) applies, the risk factor value for the non-compliance history and registration renewal risk factor is the sum of the applicable risk factor values.
22. Subsection 9(3) provides the method for determining a leviable provider's weighted late payment measure, which is relevant for determining the non-compliance and registration renewal risk factor for a leviable provider.

PART 3 – SPECIAL TUITION PROTECTION COMPONENT

Section 10: Special tuition protection component

23. Section 12 of the Act deals with the special tuition protection component of the levy, and provides that a leviable provider's (other than leviable providers that are new providers for the year) special tuition protection component is the amount equal to the total amount of assistance paid to the provider under sections 96-1 and 110-1 of the *Higher Education Support Act 2003* in the previous year, multiplied by the percentage determined in the Instrument for the purposes of subsection 12(2) of the Act.
24. Section 10 specifies that the percentage for the purposes of subsection 12(2) of the Act is 0.10%.

SCHEDULE 1 – REPEALS

Items 1 and 2

25. Items 1 and 2 repeal the *Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination*

2020 and the Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2022, from 1 August 2023.