

EXPLANATORY STATEMENT

Issued by the authority of the Acting Higher Education Tuition Protection Director

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

Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2024

AUTHORITY

Section 13 of the *Higher Education (Up-front Payments 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 up-front payments 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 (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2023* (the Former Instrument) at Schedule 1 to the *Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2024* (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 2024 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 domestic up-front fee paying students 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 refund amounts of tuition fees paid up-front by students if a provider defaults.

Adjustments to the Calculation of the Levy

The Instrument is largely consistent with the Former Instrument, such that the calculation of the risk rated premium component of the Levy for the 2024 calendar year largely reflects the calculation of the Levy for the 2023 calendar year. There is no change to the calculation of the special tuition protection component.

The Instrument makes one adjustment to the way the risk rated premium component of the Levy will be calculated for the 2024 calendar year compared to how that component was calculated in accordance with the Former Instrument. This adjustment was approved by the Director having regard to advice from the Board and the Australian Government Actuary (AGA). Relative to the Former Instrument, the Instrument removes the net profit ratio score from the calculation for determining the financial strength score of a leviable provider. This adjustment reflects the results of a review undertaken by the AGA after the use of 'net profit' in the calculation was queried by some not-for-profit leviable providers. Specifically, this adjustment reflects the recommendation of the AGA and the Board to simplify the calculation and put less weight on 'profit' when measuring the financial strength risk factor. In the Instrument, financial strength will be measured by the two remaining scores, namely return on assets and debt to equity.

IMPACT ANALYSIS

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

FINANCIAL IMPACT STATEMENT

The Instrument will result in projected revenue, from the risk-rated premium and special tuition protection components of the Levy only, of approximately \$340,000.

Given the Levy funds are credited to the Fund, and are derived from industry contributions, the amounts 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 2024, and Schedule 1 of the Instrument which repeals the Former Instrument, commences on 1 August 2024.

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://www.education.gov.au/tps/resources/final-board-advice-2024-front-payments-tuition-protection-levy-settings>) on 14 June 2024.

Consultation with providers and peak bodies

From mid-March to mid-May 2024, the Director engaged with leviable education and training providers, policy agencies and peak bodies around Australia through online and in-person consultation sessions on the 2024 Levy settings. The purpose of the consultation sessions was to share general information about the Levy and present the 2024 draft Levy settings as proposed by the Board, and collect feedback from the sector on the draft Levy settings. A final online session for the Director to give feedback to the sector on the consultation period was held on 29 May 2024.

The majority of leviable education and training providers, and peak bodies, were satisfied with the proposed settings for the 2024 Levy.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2024

The *Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2024* (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 Levy for the 2024 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 domestic up-front fee paying students 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 refund amounts of tuition fees paid up-front by students if a provider defaults.

Adjustments to the Calculation of the Levy

The Instrument is largely consistent with the Former Instrument, such that the calculation of the risk rated premium component of the Levy for the 2024 calendar year largely reflects the calculation of the Levy for the 2023 calendar year. There is no change to the calculation of the special tuition protection component.

The Instrument makes one adjustment to the way the risk rated premium component of the Levy will be calculated for the 2024 calendar year compared to how that component was calculated in accordance with the *Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2023*

(the Former Instrument). This adjustment was approved by the Director having regard to advice from the Board and the Australian Government Actuary (AGA). Relative to the Former Instrument, the Instrument removes the net profit ratio score from the calculation for determining the financial strength score of a leviable provider. This adjustment reflects the results of a review undertaken by the AGA after the use of 'net profit' in the calculation was queried by some not-for-profit leviable providers. Specifically, this adjustment reflects the recommendation of the AGA and the Board to simplify the calculation and put less weight on 'profit' when measuring the financial strength risk factor. In the Instrument, financial strength will be measured by the two remaining scores, namely return on assets and debt to equity.

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 up-front payments tuition protection framework set out in HESA. The purpose of tuition protection is to ensure domestic up-front fee paying students are supported in the event that their approved course provider defaults by either providing a suitable replacement course or refunding amounts of tuition fees paid up-front by students.

The Instrument will ensure that sufficient funds are held in the Fund to cover the ongoing costs of providing tuition protection to domestic up-front fee paying students, 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 domestic up-front fee paying students.

Conclusion

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

Acting Higher Education Tuition Protection Director, Monica Sapra

HIGHER EDUCATION (UP-FRONT PAYMENTS TUITION PROTECTION LEVY) (RISK RATED PREMIUM AND SPECIAL TUITION PROTECTION COMPONENTS) DETERMINATION 2024

EXPLANATION OF PROVISIONS

PART 1 – INTRODUCTION

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2024* (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 2024 and Schedule 1 of the Instrument, which repeals the *Higher Education (Up-front Payments Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2023* (the Former Instrument), commences on 1 August 2024.

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 (Up-front Payments Tuition Protection Levy) Act 2020* (the Act).
4. In accordance with subsection 13(6) of the Act, the Treasurer has approved the Instrument.

Section 4: Definitions

5. 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

6. This section clarifies that Schedule 1 is effective on its terms to repeal the Former Instrument.

PART 2 – RISK RATED PREMIUM COMPONENT

Section 6: Risk rated premium component

7. 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.
8. 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 \$2.00.
9. 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 0.04 per cent.
10. 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.
11. 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

12. 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.
13. 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.
14. 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.
15. 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 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.
16. Where a provider scores a total value of 7.5 as their financial strength score, the integer value of 7 will be used to extrapolate the risk factor value.

Section 8: Risk factor – completion rate

17. 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.
18. Subsection 8(1) provides that the risk factor value for the completion rate risk factor for a liable provider is zero if the provider did not report any units of study for the calendar year beginning on 1 January 2023 (previous calendar year) in its PIR information (as defined in section 4 of the Instrument) – for example, because the provider did not deliver any units of study in 2023 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)).
19. The table in subsection 8(1) provides that the risk factor value for a liable 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 liable providers with a completion rate between 0% and 60% have remained the same from 2023 which reflects the advice of the Australian Government Actuary.
20. Subsection 8(2) provides a formula for calculating a liable provider's completion rate percentage, which is relevant for determining the completion rate risk factor for a liable provider. The liable provider's completion rate percentage will be calculated by reference to data reported by the provider in its PIR information.

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

21. 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).
22. Subsection 9(1) provides that the risk factor value for the non-compliance and registration renewal risk factor for a liable 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 or the leviable provider has a weighted late payment measure of less than 1 day.
23. 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.
24. 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

25. 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 sum of each up-front payment received, directly or indirectly, by the provider for a domestic student for a unit of study during the previous year, multiplied by the percentage determined in the Instrument for the purposes of paragraph 12(b) of the Act.
26. Section 10 specifies that the percentage for the purposes of paragraph 12(b) of the Act is 0.10%.

SCHEDULE 1 – REPEALS

Item 1

27. Item 1 repeals the Former Instrument from 1 August 2024.