

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Education

Higher Education Support Act 2003

Higher Education Provider Amendment (Levy Waiver) Guidelines 2020

Purpose and authority

The purpose of the *Higher Education Provider Amendment (Levy Waiver) Guidelines 2020* (the **Amendment Instrument**) is to amend the *Higher Education Provider Guidelines 2012* (the **Guidelines**) to provide for a waiver of the payment of the HELP tuition protection levy (**Levy**) for all higher education providers for the 2020 calendar year.

The Minister for Education makes this instrument under section 238-10 of the *Higher Education Support Act 2003* (the **Act**). The Amendment Instrument amends the Guidelines for the purposes of Part 2-1 of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**) provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument. Subsection 33(3) of the AIA is relied on to amend various provisions in the Guidelines.

Background

The Australian Government is committed to supporting education providers as they deal with the financial consequences of the global outbreak of COVID-19. This support includes waiving the collection of the Levy for 2020.

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to ensure students are protected and supported in the event of a provider default – that is, where the student has not withdrawn from a unit of study and either: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 HELP Tuition Protection Director (the **Director**) who is supported by the HELP Tuition Protection Fund Advisory Board (the **Board**). The Director is responsible for managing the HELP Tuition Protection Fund (the **Fund**). The *Higher Education Support (HELP Tuition Protection Levy) Act 2020*

requires leviable providers to contribute the annual Levy, commensurate with their size and risk which 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 Board.

Section 2.10 of the Guidelines sets out the requirements for the determination and collection of the Levy for the purposes of section 19-66A of the Act.

Paragraph 19-66A(3)(f) of the Act allows for the Guidelines to make provision for the refund, remission or waiver of the Levy or penalties for late payment. The Amendment Instrument inserts new paragraph 2.10.45A in the Guidelines to waive the payment of the Levy for all higher education providers for the calendar year 2020. The Amendment Instrument also inserts new paragraphs 2.10.5A and 2.10.15A in the Guidelines to ensure that the Director is not required to issue Levy notices for 2020. The waiver of the Levy for 2020 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.

Regulatory Impact Statement

The Office of Best Practice Regulation (**OBPR**) assessed that a Regulation Impact Statement was not required for the Amendment Instrument due to the minor regulatory impact of the proposed changes (OBPR reference 23328).

Financial Impact Statement

The Amendment Instrument will result in reduced taxation revenue for the Fund of approximately \$3.6 million in 2020-21, due to the non-collection of the Levy for 2020.

Impact on underlying cash (\$ millions)					
	2020-21	2021-22	2022-23	2023-24	Total
HELP Tuition Protection Levy Waiver	-3.6	0.0	0.0	0.0	-3.6

Consultation

No consultation was undertaken in relation to the Amendment Instrument. The amendments are a further relief measure for the higher education sector as part of the Government's economic response to COVID-19 challenges, 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 stakeholder consultation was not undertaken.

EXPLANATION OF PROVISIONS

Sections 1, 2 and 3 of the Amendment Instrument are technical provisions that set out the name, commencement, and authority for the Instrument.

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

The Amendment Instrument is made by the Minister for Education under section 238-10 of the Act. The Amendment Instrument amends the Guidelines for the purposes of Part 2-1 of the Act.

Section 4 of the Amendment Instrument provides that the Guidelines are amended as set out in the Schedule to the Amendment Instrument.

Schedule 1 – Amendments

Higher Education Provider Guidelines 2012

Schedule 1 amends the Guidelines.

Item 1 inserts new paragraph 2.10.5A to provide that paragraph 2.10.5 (notice of the levy) does not apply if the liability to pay the Levy is waived under new paragraph 2.10.45A. This amendment is consequential to the amendment in item 4 of the Amendment Instrument and avoids the Director having to issue a Levy notice when it is not required for 2020.

Item 2 inserts new paragraph 2.10.15A to provide that paragraph 2.10.10 does not apply if the liability to pay the Levy is waived under new paragraph 2.10.45A. This amendment is consequential to the amendment in item 4 of the Amendment Instrument and avoids the Director having to issue a Levy notice under paragraph 2.10.10 when it is not required for 2020.

Item 3 makes a technical amendment to rectify an incorrect reference in paragraph 2.10.40.

Item 4 inserts new paragraph 2.10.45A which provides that payment of the HELP tuition protection levy is waived for all higher education providers for the calendar year 2020.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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Human rights implications

The Amendment Instrument engages the following human rights:

- 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 engages the right to education as set out in Article 13 of the ICESCR, which recognises the right of everyone to education, is directed towards the full development of the human personality and the sense of its dignity, and to enable all persons to participate effectively in society.

The Amendment Instrument is compatible with and promotes the right to education as the amendments assist higher education providers at a time of economic uncertainty. These amendments will give providers financial relief during difficult economic circumstances so that they will be available to continue operating and delivering quality education courses to students now and in the future.

The Amendment Instrument promotes the right to education.

Right to work

Article 6(1) of the ICESCR provides that States 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.

By giving higher education providers financial relief during difficult economic circumstances caused by the COVID-19 pandemic, the Amendment Instrument will assist providers to continue delivering 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. Now more than ever, it is essential that people are qualified and skilled to take up employment opportunities to support Australia's COVID-19 economic recovery.

The Amendment Instrument promotes the right to work.

Conclusion

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

Dan Tehan
Minister for Education