

## EXPLANATORY STATEMENT

### **Education Services for Overseas Students (TPS Levies – Risk Rated Premium and Special Tuition Protection Components)** **Instrument 2015**

#### Summary

*The Education Services for Overseas Students (TPS Levies) – Risk Rated Premium and Special Tuition Protection Components, Instrument 2015* is made by the Tuition Protection Service (TPS) Director, pursuant to subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

The TPS arrangements commenced on 1 July 2012, and are designed to establish a universal tuition protection framework which will benefit overseas students affected by a default by providing placement options or refunds where placement is not available. The arrangements are also designed to protect the considerable investment international students make in an Australian education and to protect and enhance Australia's reputation as a destination of choice for international students.

This instrument commences on 31 December 2015, and is one of a number the Minister may make to specify in greater detail some of the Act's requirements.

#### Authority

Subsection 54B of Part A, Division 3 of the *Education Services for Overseas Students Act 2000* (the ESOS Act) permits the TPS Director, by legislative instrument, to specify a method for working out the risk rated premium component of the TPS Levy for a year for the purposes of the subsection 9(2) of the Act, and a special tuition protection component of the TPS Levy for a year for the purposes of subsection 10(2) of the Act.

#### Purpose and operation

The purpose of this instrument is to specify a method for working out the amount payable by all *non-exempt* Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered providers for the risk rated premium and special tuition protection component of the TPS Levy.

A *non-exempt provider* is any CRICOS registered provider other than a provider falling into one of the classes identified in Section 5, Part 2 of the Act, that is, Table A providers under *the Higher Education Support Act 2003*, Government schools and State or Territory VET institutions.

The TPS Levy is payable into the Overseas Student Tuition Fund (OSTF), a special account under the *Public Governance, Performance and Accountability Act 2013*. The TPS Director is accountable for the management of the OSTF and is obligated under the ESOS Act with ensuring the sustainability of the OSTF.

Under Part 2, section 5 of the Act, all CRICOS registered providers are liable to pay a TPS Levy for the year. The amount of the TPS levy payable is a sum of:

- the provider’s administrative fee component (section 6 of the Act);
- the provider’s base fee component (section 7 of the Act);
- the provider’s risk rated premium component (section 9 of the Act); and
- the provider’s special tuition protection component (section 10 of the Act).

*Risk rated premium component of the TPS Levy*

Under section 9 (3) of the Act, before the beginning of each calendar year, the TPS Director must, by legislative instrument, specify the following components of the risk rated premium component of the TPS Levy:

- a) percentage for that year;
- b) sum of one or more risk factors that reflect the risk of calls being made on the OSTF in respect of registered providers with that factor or those factors; and
- c) for each risk factor, the factor by which the specified percentage for that year is multiplied.

The risk factors determined by the TPS Director are designed to reflect the risk of default and therefore the risk of a call each provider represents on the TPS framework. A registered provider’s risk component for a risk factor for a year is worked out in accordance with the formula in section 9(2) of the Act, as below.

$$\left( \begin{array}{l} \text{Specified} \\ \text{percentage} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{Increase factor} \\ \text{for the risk factor} \\ \text{for the year} \end{array} \right) \times \begin{array}{l} \text{Provider's overseas student} \\ \text{tuition fees} \\ \text{for the previous year} \end{array}$$

If more than one increase factor for the risk factor exists for a year, to which subsection 9(2) of the Act relates, the matching factors in the last column of the table (set out in the legislative instrument) will be added together. The specified percentage will then be multiplied by the sum of the factors. The specified percentage for 2016 is 0.1%.

For example, if a provider X has two risk factors which apply to them and the sum of the increase factors for the risk factors is 3, and the provider’s overseas students’ tuition fee income is \$250,000 for 2015, the calculation for the risk rated premium for provider X would be

$$(0.1/100 \times 3) \times \$250,000 = \$750.$$

*Special tuition protection component of the TPS Levy*

Under section 10 (2) of the Act, before the beginning of each year, the TPS Director must, by legislative instrument, specify a percentage for a specified tuition component of the TSP Levy for that year. As in section 10 (3) of the Act, the percentage specified can be zero.

A registered provider’s special tuition protection component for a year is worked out in accordance with the formula in section 10 (1) in the Act, as below.

$$\begin{array}{l} \text{Specified percentage} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{Provider's overseas student} \\ \text{tuition fees} \\ \text{for the previous year} \end{array}$$

*The Explanatory Memorandum, Education Services for Overseas Students (TPS Levies) Bill 2011*, Clause 10, Subclause (2); placed before Australian Parliament states that the special tuition protection component is designed to build additional insurance in the OSTF. This component is expressed as a percentage of overseas student tuition fee income, as determined by the TPS Director following advice of the TPS Advisory Board. The specified percentage rate for the special tuition protection component for 2016 is zero.

#### *Supplementary process requirements*

In order to work out the amount of TPS Levy, registered providers will be required under subsection 26(3) of the *Education Services for Overseas Students Act 2000 (ESOS Act)* to enter the total of their overseas student tuition fees for the previous calendar year into the specified field in PRISMS. Overseas tuition fee income is defined at section 7 of the ESOS Act as fees that are directly related to the course. If a registered provider does not provide its overseas student tuition fees for the previous year by the due date the Minister may take action under Division 1 of Part 6 of the *Education Services for Overseas Students Act 2000* against the registered provider.

Before the TPS Director makes a legislative instrument under subsections 9(3) and 10(2) of the Act, the Treasurer must approve the legislative instrument in writing, under sub section 11(4) of the Act. The Treasurer approved the instrument on 17 December 2015.

#### *Provider National Registration Process – national registration finalised in the period from 1 January to 31 December 2015*

The Provider National Registration process provides an option for providers to request an amalgamation of all of the provider's registrations into a single, master CRICOS registration. This process allows seamless re-alignment of registered courses under a single master registration, with access still available for all users and contacts. The excess course registrations will ultimately be cancelled as part of the consolidation.

The following approach, ensuring no disadvantage to providers, is utilised for the calculation of the risk rated premium component of the 2016 TPS Levy, in the context of Provider National Registration process and in accordance with the legislative instrument:

1. *Payment in arrears* – no change is expected as universally all of the registrants accept payment in advance;
2. *Length of operation* – will be calculated for the resultant merged entity (or registration) as operating for the same period as the oldest registration which has been amalgamated, commencing from the oldest registration and ending on 31 December 2014.
3. *Growth in overseas student enrolments* - will be calculated for the resultant merged entity (or registration) as the sum of student enrolments for all registrations that were amalgamated into the single registration;
4. *Maximum overseas students source country concentration* – will be calculated for the resultant merged entity (or registration) as the sum of all nationalities for all registrations that were amalgamated into the single registration;

5. *Non-compliance history* – will be calculated for the resultant merged entity (or registration), including late payment measure and the sanctions for non-compliance under Division 1 of Subdivision A of section 83 of the Education Services for Overseas Students Act 2000, in the year 2015.

Overseas students' tuition fee income for the 2015 calendar year will be calculated as the sum of all amalgamated registrations.

### Consultation

Under section 11(2) of the Act, in making a legislative instrument, the TPS Director must have regard to any advice of the TPS Advisory Board in relation to the legislative instrument, and the sustainability of the Overseas Students Tuition Fund (OSTF).

The TPS Advisory Board was appointed by the Minister (Part 5A, Division 4 of the ESOS Act), and comprises eight government and non-government sector representatives, selected on the basis of their qualifications and experience in the sector.

In addition to considering any advice of the TPS Advisory Board, in determining the risk rated premium and special tuition protection components of the TPS Levy, under sub section 11(3) of the Act, the TPS Director may have regard to any other matters he or she considers appropriate.

The TPS Director has worked extensively with the Australian Government Actuary in determining the risk factors and increase factors of the risk rated premium component of the TPS Levy.

In finalising its advice and recommendations, the TPS Advisory Board has consulted with international education stakeholders and representatives of the two national regulatory bodies Australian Skills Quality Authority and Tertiary Education Quality Standards Agency. On 7 August 2015 the TPS Advisory Board provided draft recommendations for the 2016 TPS Levy settings which were posted on the TPS website on 26 August 2015, inviting feedback from all CRICOS providers on the proposed setting of the levy.

The TPS Director also consulted extensively on the Board's draft recommendations before their finalisation. On 25 August 2015 the TPS Director wrote to peak stakeholders inviting feedback and comments regarding the recommended settings for the 2016 TPS Levy. During September 2015 the TPS Director also undertook focused consultations with key stakeholders. The feedback was taken into consideration in finalising the settings for the 2016 TPS Levy.

### Regulatory Impact Statement

The regulatory impact of the introduction of the TPS Levy and its four components, to which this instrument relates, was considered in the ESOS (Tuition Protection Service and other related measures) Regulatory Impact Statement assessed as adequate by the Office of Best Practice Regulation on 2 February 2012.

A post-implementation review of this and other measures related to the Tuition Protection Service has been completed and the recommendations are under consideration by the Minister.

## **Statement of Compatibility with Human Rights**

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

### **Education Services for Overseas Students (TPS Levies -- Risk Rated Premium and Special Tuition Protection Components)** **Instrument 2015**

This 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 Instrument**

*The Education Services for Overseas Students (TPS Levies -- Risk Rated Premium and Special Tuition Protection Components) Instrument 2015* is made by the Tuition Protection Service (TPS) Director, pursuant to subsection 5 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act), and specify the components for the purposes of subsections 9(3) and 10(2) of the Act.

The TPS protection arrangements commenced on 1 July 2012, and are designed to establish a universal tuition protection framework which will benefit overseas students affected by a provider closure by providing placement options or refunds where placement is not available. The arrangements are also designed to protect the considerable investment international students make in an Australian education and to protect and enhance Australia's reputation as a destination of choice for international students.

The purpose of this instrument is to specify a method for working out the amount payable by all *non-exempt* Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered providers for the risk rated premium and special tuition protection component of the TPS Levy.

#### **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, this instrument has an effect on the provision of education services to international students by bodies corporate registered on the CRICOS.

To the extent that the right to education is engaged, this right is promoted by the instrument.

##### *Conclusion*

This instrument is compatible with human rights because it advances the protection of human rights.