



Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2019

I, Vipin Mahajan, TPS Director, make the following instrument under sections 9 and 10 of the *Education Services for Overseas Students (TPS Levies) Act 2012*.

Dated 17 December 2019

Vipin Mahajan
TPS Director

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Part 1—Introduction

1 Name

This is the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Parts 1 to 3	31 December 2019	31 December 2019
2. Schedule 1	1 January 2020	1 January 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under sections 9 and 10 of the *Education Services for Overseas Students (TPS Levies) Act 2012*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: The expression, *risk rated premium component*, is used in this instrument and is defined in the *Education Services for Overseas Students (TPS Levies) Act 2012*.

In this instrument:

annual registration charge or *ARC* has the same meaning as in the *Education Services for Overseas Students Act 2000*.

ARC: see *annual registration charge*.

CRICOS means the Commonwealth Register of Institutions and Courses for Overseas Students.

enrolments means the total enrolments for a registered provider worked out in accordance with section 5 of the *Education Services for Overseas Students (Registration Charges) Act 1997*.

entry to market charge or **ETMC** has the same meaning as in the *Education Services for Overseas Students Act 2000*.

ESOS Act means the *Education Services for Overseas Students Act 2000*

ESOS (TPS Levies) Act means the *Education Services for Overseas Students (TPS Levies) Act 2012*.

ETMC: see **entry to market charge**.

length of operation, for a provider, means the number of years that the provider has been registered on CRICOS as a CRICOS provider:

- (a) beginning at the time the provider was registered, or last registered, as a CRICOS provider; and
- (b) ending on 31 December 2019.

national registration process, for a provider, means the process of amalgamating 2 or more of the provider's registrations on CRICOS into a single registration.

Note: For the process to request amalgamation, see item 96 of Schedule 2 to the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012*.

non-exempt provider means a registered provider that is not exempt from the requirement to pay the risk rated premium component, as provided for by section 5 of the *Education Services for Overseas Students (TPS Levies) (Levy exemptions) Determination 2012 (No. 1)*.

Note: The registered providers listed in that Determination as being exempt from the risk rated premium component were, in 2017, Table A providers under the *Higher Education Support Act 2003*, Government schools and State or Territory VET institutions.

provider has the same meaning as in the *Education Services for Overseas Students Act 2000*.

registered course means a course of education or training registered on CRICOS.

TPSL: see **TPS levy**.

TPS levy or **TPSL** has the same meaning as in the *Education Services for Overseas Students Act 2000*.

tuition fees has the same meaning as in the *Education Services for Overseas Students Act 2000*.

Part 2—Risk factors for risk rated premium component

6 Risk rated premium component

- (1) For the purposes of paragraph 9(3)(a) of the *ESOS (TPS Levies) Act*, the percentage for 2020 is 0.07%.
- (2) For the purposes of paragraph 9(3)(b) of the *ESOS (TPS Levies) Act*, the following risk factors are specified:
 - (a) base risk factor;
 - (b) length of operation;
 - (c) volatility in overseas student enrolments;
 - (d) maximum overseas source country concentration;
 - (e) non-compliance history.

7 Risk factor—base risk factor

- (1) The risk factor, base risk factor, applies to all non-exempt providers.
- (2) For the purposes of paragraph 9(3)(c) of the *ESOS (TPS Levies) Act*, the increase factor is 1.0.

8 Risk factor—length of operation

Application

- (1) The risk factor, length of operation, applies to a non-exempt provider.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the *ESOS (TPS Levies) Act*, the increase factor is that set out in the following table:

Registered provider's length of operation		
Column 1	Column 2	Column 3
Item	If a registered provider's length of operation is ...	then, the factor is ...
1	less than 1 year	1.0
2	1 year or more but less than 2 years	0.5
3	2 years or more	0.0

9 Risk factor—volatility in overseas student enrolments*Application*

- (1) The risk factor, volatility in overseas student enrolments, applies to a non-exempt provider that:

- (a) has a length of operation of 2 years or more; and
 (b) had at least 20 enrolments, or \$400,000 or more in tuition fee income, in 2019.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the *ESOS (TPS Levies) Act*, where the provider is an expanding provider, as determined under subsection (4) of this instrument, the increase factor is that set out in the following table:

Registered provider's volatility in overseas student enrolments		
Column 1	Column 2	Column 3
Item	If a registered provider's volatility in overseas student enrolments is ...	then, the factor is ...
1	120% or more	3.5
2	105% or more but less than 120%	3.0
3	90% or more but less than 105%	2.5
4	75% or more but less than 90%	1.8
5	60% or more but less than 75%	1.2
6	45% or more but less than 60%	0.6
7	30% or more but less than 45%	0.4
8	less than 30%	0.0

- (3) For the purposes of paragraph 9(3)(c) of the *ESOS (TPS Levies) Act*, where the provider is not an expanding provider, as determined under subsection (4) of this instrument, the increase factor is that set out in the following table:

Registered provider's volatility in overseas student enrolments		
Column 1	Column 2	Column 3
Item	If a registered provider's volatility in overseas student enrolments is ...	then, the factor is ...
1	60% or more	1.5
2	45% or more but less than 60%	1.2
3	30% or more but less than 45%	1.0
4	15% or more but less than 30%	0.6
5	less than 15%	0.0

Determining whether a registered provider is an expanding provider

- (4) A registered provider is an expanding provider if one of the following two conditions is met:
- the registered provider had overseas enrolments in 2017 and the number of overseas enrolments in 2019 was greater than the number of overseas enrolments in 2017; or
 - the registered provider did not have overseas enrolments in 2017, but did have overseas enrolments in 2018 and the number of overseas enrolments in 2019 was greater than the number of overseas enrolments in 2018

*Working out the percentage of a registered provider's volatility in overseas student enrolments*Volatility in student enrolments

- (5) If a registered provider did not have overseas student enrolments in 2017 and 2018 the registered provider's growth in overseas student enrolments is zero.²
- (6) If a registered provider meets the condition set out in paragraph (4)(a) of this section, the percentage of a registered provider's volatility in overseas student enrolments is worked out using the formula:

$$\left[\frac{\text{Number of overseas student enrolments in 2019}}{\text{Number of overseas student enrolments in 2017}} - 1 \right] \times 100\%$$

- (7) If a registered provider meets the condition set out in paragraph (4)(b) of this section, the percentage of a registered provider's volatility in overseas student enrolments is worked out using the formula:

$$\left[\left\{ \frac{\text{Number of overseas student enrolments in 2019}}{\text{Number of overseas student enrolments in 2018}} \right\}^2 - 1 \right] \times 100\%$$

- (8) If a registered provider is not an expanding provider as determined under subsection (4) and had overseas student enrolments in 2017, the percentage of a registered provider's volatility in overseas student enrolments is worked out using the formula:

$$\left[1 - \frac{\text{Number of overseas student enrolments in 2019}}{\text{Number of overseas student enrolments in 2017}} \right] \times 100\%$$

- (9) If a registered provider is not an expanding provider as determined under subsection (4) and did not have overseas student enrolments in 2017, but had overseas student enrolments in 2018, the percentage of a registered provider's volatility in overseas student enrolments is worked out using the formula:

$$\left[1 - \left\{ \frac{\text{Number of overseas student enrolments in 2019}}{\text{Number of overseas student enrolments in 2018}} \right\}^2 \right] \times 100\%$$

10 Risk factor—maximum overseas source country concentration*Application*

- (1) The risk factor, maximum overseas source country concentration, applies to a non-exempt provider that had at least 20 enrolments, or \$400,000 or more in tuition fee income, in 2019.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the *ESOS (TPS Levies) Act*, the increase factor is that set out in the following table:

Registered provider's maximum overseas source country concentration		
Column 1	Column 2	Column 3
Item	If a registered provider's maximum overseas source country concentration is ...	then, the factor is ...
1	80% or more	3.1
2	50% or more but less than 80%	0.7
3	25% or more but less than 50%	0.3
4	less than 25%	0.0

Working out the maximum overseas source country concentration percentage

- (3) A registered provider's maximum overseas source country concentration is worked out using the formula:

$$\left[\frac{\text{Largest number of overseas student enrolments for a country}}{\text{Total number of overseas student enrolments}} \right] \times 100\%$$

where:

largest number of overseas student enrolments for a country means, of the number of enrolments with the registered provider for each overseas source country in 2019, the largest number of enrolments for any of those overseas source countries in 2019.

total number of overseas student enrolments means the total number of overseas student enrolments with the registered provider in 2019.

11 Risk factor—non-compliance history*Application*

- (1) The risk factor, non-compliance history, applies to a non-exempt provider.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the Act, the increase factor is that set out in the following table:

Non-compliance history		
Column 1	Column 2	Column 3
Item	If a registered provider ...	then, the factor is ...
1	(a) has a weighted late payment measure of 30 days or more; or (b) has been sanctioned for non-compliance under section 83 of the <i>ESOS Act</i> in the last year	2.0
2	has a weighted late payment measure of 15 days or more but less than 30 days	0.9
3	has a weighted late payment measure of one day or more but less than 15 days	0.7
4	does not have a weighted late payment measure (payment on time)	0.0

Working out the weighted late payment measure

- (3) A registered provider's weighted late payment measure is worked out by adding the results of the calculations in paragraphs (a), (b) and (c):
- (a) for the 2019 year, work out $0.7 \times [\text{ARC} + \text{ETMC} + \text{TPSL}]$; and
 - (b) for the 2018 year, work out $0.2 \times [\text{ARC} + \text{ETMC} + \text{TPSL}]$; and
 - (c) for the 2017 year, work out $0.1 \times [\text{ARC} + \text{ETMC} + \text{TPSL}]$; and
- where:

ARC, for a year, means:

- (a) the number of days after the due date on which the annual registration charge for that year was received; or
- (b) if payment was received on or before the due date—zero.

ETMC, for a year, means:

- (a) the number of days after the due date on which the entry to market charge for that year was received; or
- (b) if the payment was received on or before the due date—zero.

TPSL, for a year, means:

- (a) the number of days after the due date on which the TPS levy payable for that year was received; or
- (b) if the TPS levy was received on or before the due date—zero.

12 Recalculation of risk factors when registrations amalgamated and national registration on CRICOS is finalised during 2019

- (1) This section applies if a provider amalgamates 2 or more registrations on CRICOS into a single registration through the national registration process.
- (2) The provider's risk factors in sections 7 to 11 are to be recalculated as follows:
 - (a) the risk factor length of operation is to be calculated in respect of the resultant merged entity (or registration) for the period:
 - (i) beginning at the start of the longest-running registration in the amalgamation; and
 - (ii) ending on 31 December 2019;
 - (b) the risk factor volatility in overseas student enrolments is to be calculated using subsections 9(5) to 9(9), but treating the number of overseas student enrolments for a year as the sum of student enrolments for all registrations in that year that were amalgamated into the single registration;
 - (c) the risk factor maximum overseas students source country concentration is to be calculated using subsection 10(3), as follows:
 - (i) the number of enrolments for each overseas source country is to be calculated as the sum of the enrolments for that overseas source country with each of the registrations that were amalgamated into the single registration;
 - (ii) the total number of enrolments is to be calculated as the sum of the total number of enrolments for all registrations that were amalgamated into the single registration;
 - (d) the risk factor non-compliance history is to be calculated for the resultant merged entity (or registration), including late payment measure and the sanctions for non-compliance under section 83 of the *ESOS Act*, in the 2019 year;
 - (e) the overseas students' tuition fee income for the 2019 year is to be calculated as the sum of the overseas students' tuition fee income for all registrations that were amalgamated into the single registration.

Part 3—Special tuition protection component

13 Special tuition protection component

For the purposes of subsection 10(2) of the *ESOS (TPS Levies) Act*, the specified percentage for 2020 is zero.

Schedule 1—Repeals

Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2018

1 The whole of the instrument

Repeal the instrument.