

EXPLANATORY STATEMENT

Issued by the authority of the Tuition Protection Service Director

Education Services for Overseas Students (TPS Levies) Act 2012

Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Amendment Instrument 2021

Summary

The *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Amendment Instrument 2021* (Amendment Instrument) amends the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2020* (Principal Instrument) to correct a minor technical error in the Principal Instrument in order to give effect to the intention of the Principal Instrument.

Commencement

The Amendment Instrument commences on the day after the instrument is registered.

Authority

The Principal Instrument was made by the Tuition Protection Service (TPS) Director under sections 9 and 10 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (TPS Levies Act). The Amendment Instrument amends the Principal Instrument under section 9 of the TPS Levies Act. Subsection 33(3) of the *Acts Interpretation Act 1901* provides 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.

Purpose and operation

The Principal Instrument specifies a method for working out the amount payable by all *non-exempt* providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) with respect to the risk rated premium and special tuition protection components of the TPS levy.

The Amendment Instrument corrects a clerical mistake which resulted in a technical error in a formula under subsection 10(3) of the Principal Instrument. Subsection 10(3) sets out the method for calculating the risk factor for maximum overseas source country concentration. The amendment to the formula ensures that the application and operation of section 10 of the Principal Instrument gives effect to the purpose and intention of the Principal Instrument as outlined in section 10 and in the explanatory statement of the Principal Instrument.

Consultation

The TPS Director consulted extensively before making the Principal Instrument as explained in the explanatory statement of that instrument. The technical error in the formula is not consistent

with the intent of the Principal Instrument or the industry consultation. The minor technical amendment made through this Amendment Instrument is consistent with and gives effect to the recommendations of the TPS Advisory Board, advice of the Australian Government Actuary, views of the regulators (the Australian Skills Quality Authority and Tertiary Education Quality and Standards Agency) and industry peak bodies and the Treasurer's approval in respect to the Principal Instrument.

Impact of the incorrect formula

The incorrect formula applied from commencement of the Principal Instrument on 1 January 2021 until commencement of this Amendment Instrument on 2 February 2021. Within this period, no TPS levies were calculated or collected by the TPS Director in line with the incorrect formula. In particular, the TPS Director did not issue any invoices or give notice to any providers between 1 January 2021 and 2 February 2021. Consequently, the error in the Principal Instrument had no practical effect or impact on providers.

Financial Impact Statement

The Amendment Instrument does not change the financial impact outlined in the Principal Instrument.

Regulatory Impact Statement

A regulatory impact statement is not required due to the technical nature of this Amendment Instrument consistent with previous advice from the Office of Best Practice Regulation (OBPR) in relation to the Principal Instrument (OBPR ID 25749).

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Explanation of Provisions

Section 1: Name

1. Section 1 provides the name of the instrument, the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Amendment Instrument 2021* (Amendment Instrument).

Section 2: Commencement

2. Section 2 provides that the Amendment Instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3: Authority

3. Section 3 sets out the TPS Director's legal authority to make the Amendment Instrument under section 9 of the *Education Services for Overseas Students (TPS Levies) Act 2012*.

Section 4: Schedules

4. Section 4 provides that Schedule 1 to the Amendment Instrument amends the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2020* (Principal Instrument).

Schedule 1 – Amendments

Item 1: Subsection 10(3)

5. Item 1 amends the formula in subsection 10(3) of the Principal Instrument to make an editorial correction to remove the '-1' part of the formula.
6. Without this amendment, the intended operation of the table under subsection 10(2) could not apply as intended given the result of the formula under subsection 10(3) would give rise to a negative percentage. This does not reflect the original intention of section 10 as explained in the explanatory statement for the Principal Instrument and as recommended by the TPS Advisory Board and approved by the Treasurer.
7. Therefore, this amendment merely corrects an obvious error in the formula under subsection 10(3) of the Principal Instrument.

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) Amendment Instrument 2021

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 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) Amendment Instrument 2021* (Amendment Instrument) amends the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2020* (Principal Instrument) to correct a minor technical error in the Principal Instrument in order to give effect to the original intention of the Principal Instrument.

Human rights implications

The Amendment Instrument makes a technical amendment to the Principal Instrument and therefore does not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Instrument is compatible with human rights as it does not raise any human rights issues.

TPS Director