

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment, Workforce, Skills, Small and Family
Business

Education Services for Overseas Students (TPS Levies) Act 2012

Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021

AUTHORITY

Section 7A of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act) allows the Minister to determine the administrative and base fee components of the Tuition Protection Service (TPS) levy by legislative instrument.

The Minister may, by legislative instrument before 1 January 2022, determine amounts for the purposes of paragraphs 6(a), 6(b), 7(a) and (7(b) of the Act for the administrative and base fee components of the 2022 TPS levy (subsection 7A(2) of the Act). Under subsection 7A(2) of the Act, the Minister may choose to make a new legislative instrument for following calendar years (i.e. for 2023 onwards).

However, if the Minister does not make a new instrument for the following calendar years, this Instrument will continue to apply but with annual indexation in accordance with section 8 of the Act, until the Minister makes a new instrument.

The Minister cannot exceed the 'upper limits' set out under subsection 7A(3) of the Act in determining the amounts for the administrative and base fee components of the TPS levy. The Minister must also have regard to the sustainability of the Overseas Student Tuition Fund (the Fund), and any other matter the Minister considers appropriate, in determining such amounts.

Section 12 of the Act permits the Minister, by legislative instrument, to exempt one or more classes of registered providers from paying the base fee component (or paragraph 7(a) of the base fee component) and risk rated premium component of the TPS Levy.

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 *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2020* (F2020L01638) (the former instrument) and the *Education Services for Overseas Students (TPS Levies) Act 2012 (Levy exemptions) Determination 2012 (No. 1)* (F2012L01382) (the exemption instrument) in Schedule 1 to this instrument relies on this provision.

PURPOSE AND OPERATION

The TPS arrangements, including the TPS levy, commenced on 1 July 2012 and are designed to establish a universal tuition protection framework in respect of overseas students. This framework benefits overseas students affected by a provider default, by providing students with 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.

Under Part 2 of the Act, all providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) on 1 January of a year are liable to pay a TPS levy for the year. The amount of the TPS levy payable is the sum of a provider's:

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

The purpose of the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021* (the Instrument) is to specify the dollar amounts payable by all non-exempt CRICOS registered providers for the purpose of working out the administrative and base fee components of the TPS levy under sections 6 and 7 of the Act.

In 2020, the Minister made the former instrument under subsection 7A(1) of the Act which determined the amounts for the administrative and base fee components of the TPS levy for the calendar year beginning on 1 January 2021. The former instrument reduced the fixed fee and per enrolment components of the administrative and base fee components by 20 per cent (compared to the fees collected in 2020).

In recognition of the significant ongoing impact of the COVID-19 pandemic on the sector, the Minister has agreed that the administrative and base fee components be further reduced to effectively waive the collection amount for the 2022 TPS levy. The Australian Government Actuary (AGA) has advised the balance of the Fund is likely to remain within the Fund target range of \$35 million to \$60 million. This recommendation has been endorsed by the TPS Advisory Board.

The Minister is making a determination to set the fixed fee and per enrolment components of the administrative and base fee components to zero. It is anticipated that this reduction will be a one-off reduction to the Fund and the Minister will reconsider the fee settings for the 2023 TPS levy collection next year.

The risk rated premium and special tuition protection components of the TPS levy are determined in a legislative instrument made by the TPS Director and are not dealt with in this Instrument.

The Overseas Student Tuition Fund

The TPS levy is payable into the Fund, which is established under section 52A of the *Education Services for Overseas Students Act 2000*. The Fund is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has assessed the reduction of the TPS levy as having a minor regulatory impact (OBPR ID: 43871). The Regulatory Impact Statement is at Attachment A.

FINANCIAL IMPACT STATEMENT

This Instrument will not result in any revenue in 2022 for the administrative and base fee components of the TPS levy.

In determining the matters relevant to the calculation of the administrative and base fee components of the TPS levy, the Minister considered not only the sustainability of the Fund, but also the reality of the economy-wide ramifications and impact of the COVID-19 pandemic on businesses and education in Australia. The Minister's focus and intention in determining those matters was on supporting Australian businesses.

COMMENCEMENT

Sections 1 to 7 of the Instrument commence on 31 December 2021 and Schedule 1 to the Instrument, which repeals the former instrument and the exemption instrument, commences on 1 January 2022.

CONSULTATION

The department has consulted the TPS Director prior to the reduction of the administrative and base fee components of the TPS levy through this 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) (Administrative and Base Fees) Determination 2021

The *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021* (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 Tuition Protection Service (TPS) arrangements, including the TPS levy, commenced on 1 July 2012 and are designed to establish a universal tuition protection framework in respect of overseas students. This framework benefits overseas students affected by a provider default, by providing students with 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.

Under Part 2 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act), all providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) on 1 January of a year are liable to pay a TPS levy for the year. The amount of the TPS levy payable is the sum of a provider's:

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

The purpose of the Instrument is to specify the dollar amounts payable by all non-exempt CRICOS registered providers for the purpose of working out the administrative and base fee components of the TPS levy under sections 6 and 7 of the Act.

In 2020, the Minister made the former instrument under subsection 7A(1) of the Act which determined the amounts for the administrative and base fee components of the TPS levy for the calendar year beginning on 1 January 2021. The former instrument reduced the fixed fee and per enrolment components of the administrative and base fee components by 20 per cent (compared to the fees collected in 2020).

In recognition of the significant ongoing impact of the COVID-19 pandemic on the sector, the Minister has agreed that the administrative and base fee components be further reduced to effectively waive the collection amount for the 2022 TPS levy. The Australian Government Actuary (AGA) has advised the balance of the Fund is likely to remain within

the Fund target range of \$35 million to \$60 million. This recommendation has been endorsed by the TPS Advisory Board.

The Minister is making a determination to set the fixed fee and per enrolment components of the administrative and base fee components to zero. It is anticipated that this reduction will be a one-off reduction to the Fund and the Minister will reconsider the fee settings for the 2023 TPS levy collection next year.

The risk rated premium and special tuition protection components of the TPS levy are determined in a legislative instrument made by the TPS Director and are not dealt with in this Instrument.

Human rights implications

The Instrument engages the right to education.

Right to education

The Instrument engages the right to education, contained in Article 13 of *the International Covenant on Economic, Social, and Cultural Rights*, insofar as it relates to the provision of high-quality education services to international students by education service providers registered under the *Education Services for Overseas Students Act 2000*.

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

The Australian Government has overarching responsibility for protecting the reputation of Australia's education and training industry and supports the capacity of the international education industry to provide high quality education and training services. The TPS delivers assistance to international students by placing students in an alternative course of study or refunds them where there is no suitable alternative course.

The Instrument will remove the tuition protection levies payable by international education providers to help them manage the financial impacts of the COVID-19 pandemic and international border closures. This will enable providers to continue operating to provide education to overseas students.

The Instrument is compatible with the right to education.

Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights.

Minister for Employment, Workforce, Skills, Small and Family Business

EDUCATION SERVICES FOR OVERSEAS STUDENTS (TPS LEVIES) (ADMINISTRATIVE AND BASE FEES) DETERMINATION 2021

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021* (the Instrument).

Section 2: Commencement

2. This section sets out the commencement dates of the Instrument.
3. Sections 1 to 7 of the Instrument commence on 31 December 2021 and Schedule 1 to the Instrument, which repeals the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2020* (F2020L01638) (the former instrument) and the *Education Services for Overseas Students (TPS Levies) Act 2012 (Levy exemptions) Determination 2012 (No. 1)* (F2012L01382) (the exemption instrument), commences on 1 January 2022.

Section 3: Authority

4. The Instrument is made by the Minister under section 7A of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

Section 4: Schedules

5. This section clarifies that Schedule 1 is effective on its terms. That is, to repeal the former instrument and the exemption instrument.

Section 5: Definitions

6. This section provides definitions for terms used in the Instrument.
7. In section 4 of the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004*, ‘government school’ in relation to a State, means a school in the State that is conducted by or on behalf of the Government of the State.
8. In section 4 of the *Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004*, ‘non-government school’ means a school in a State that is not conducted by or on behalf of the Government of a State, but does not include a school conducted for profit.

9. In section 5 of the *Education Services for Overseas Students Act 2000*, ‘registered provider’ for a course for a location means a provider that is registered to provide the course at the location.
10. Section 16-15 of the *Higher Education Support Act 2003* lists providers which are Table A providers.

Section 6: Determination of administrative fee component

11. Section 6 sets the dollar amount at zero for the administrative fee component of the TPS levy for the calendar year beginning on 1 January 2022. Section 6 determines the amounts for the purposes of paragraphs 6(a) and (b) of the Act.
12. The Minister retains the ability to increase these amounts (for future years), up to the upper limits set out in subsection 7A(3) of the Act, to ensure adequate tuition protection for students should a spate of large provider closures occur (which would affect the ongoing administration costs of the tuition protection arrangements).
13. The Minister has considered the sustainability of the Overseas Students Tuition Protection Fund in setting these amounts and had regard to other matters, such as the impact of the COVID-19 pandemic on the sector.

Section 7: Determination of base fee component

14. Section 7 sets the dollar amount at zero for the base fee component for the calendar year beginning on 1 January 2022. Section 7 determines the amounts for the purposes of paragraphs 7(a) and (b) of the Act.
15. The Minister retains the ability to increase these amounts (for future years), up to the upper limits set out in subsection 7A(3) of the Act, to ensure adequate tuition protection for students should a spate of large provider closures occur (which would affect the ongoing administration costs of the tuition protection arrangements).
16. The Minister has considered the sustainability of the Overseas Students Tuition Protection Fund in setting these amounts and had regard to other matters, such as the impact of the COVID-19 pandemic on the sector.

SCHEDULE 1—REPEALS

Item 1: The whole of the instrument

17. This item repeals the former instrument from 1 January 2022.

Item 2: The whole of the instrument

18. This item repeals the exemption instrument from 1 January 2022, ahead of it sunsetting on 1 April 2022.
19. Given the components of the TPS levy have been set at zero, there is no need to remake the exemption instrument to exempt certain providers from the requirement to pay the TPS levy in 2022.

Minor Regulation Impact Statement

Regulatory charges relief for Australia's international education sector

Department of Education Skills and Employment

OBPR Reference number: 43871

Summary of the proposed policy and any options considered:

The proposal targets education providers facing continued COVID-19 related revenue loss from the downturn in student numbers.

The measures seek to:

- provide broad based support for a short period, supporting retention of staff by providers
- reduce costs associated with staying in business and free up provider resources to grow online and offshore enrolments and expand domestic operations; and
- preserve future choice and diversity within the sector to position Australia to compete against key overseas competitors, and ensure the sector is well-placed to recommence when borders open.

Waiving or substantially reducing the 2022 Tuition Protection Service (TPS) international levy aims to provide financial relief to international education providers.

What are the regulatory impacts associated with this proposal? Explain.

There will be a regulatory saving for businesses as they will not be required to pay the annual TPS levy in 2022.

What are the regulatory costs/savings associated with this proposal? Explain and quantify. Have offsets been identified for increases in regulatory costs? If not, why?

As there are no regulatory costs associated with the TPS levy waiver, no offsets need to be identified. The TPS levy waiver will cost the Government and save providers an estimated \$3.5 million in 2021-22.

Regulatory burden estimate (RBE) table

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	\$0	\$0	\$0