

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Education Services for Overseas Students (TPS Levies) Act 2012

Education Services for Overseas Students (TPS Levies—Exemptions) Instrument 2022

AUTHORITY

Section 12 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act) provides that the Minister may, by legislative instrument, prescribe one or more classes of registered providers who are exempt from the requirement to pay one or both of the base fee component and the risk rated premium component of the tuition protection service (TPS) levy.

PURPOSE AND OPERATION

Subsection 5(1) of the Act provides that a provider registered with an Education Services for Overseas Students (ESOS) agency on 1 January of a year is liable to pay the TPS levy for that calendar year. The TPS levy is an annual levy made up of four components: the administrative fee component (see section 6 of the Act); the base fee component (see section 7 of the Act); the risk rated premium component (see section 9 of the Act); and the special tuition protection component (see section 10 of the Act).

TPS levy payments are held in the Overseas Student Tuition Fund (OSTF). The purpose of the OSTF is to fund the activities, remuneration and allowances of the TPS Director. The TPS Director is a Commonwealth statutory officer established by the Act, and has functions that include overseeing the operation of overseas student placements, making payments to providers for accepting overseas students affected by a provider default, overseeing refunds to overseas students, managing the operation of the OSTF, and determining the amount of the risk rated premium component and the special tuition protection component of the annual TPS levy.

The purpose of the *Education Services for Overseas Students (TPS Levies—Exemptions) Instrument 2022* (the Instrument) is to prescribe the classes of providers that are exempt from paying one or both of the base fee component and the risk rated premium component of the TPS levy, consistent with section 12 of the Act. The purpose of the Instrument is to specify providers that, for equity reasons, or because the providers are low risk, should be exempt from paying the base fee component or risk rated component of the TPS levy. Until 1 January 2022, when the previous exemptions instrument was repealed, the providers listed in the Instrument were exempt from the requirement to pay the relevant components on the TPS levy. The previous exemptions instrument was repealed ahead of that instrument sunsetting and ceasing to have effect, and was not remade immediately

because, at the time, the relevant components of the TPS levy had been set at zero so no provider was liable to pay the base fee or risk rated premium components of the TPS levy.

REGULATORY IMPACT

The Office of Best Practice regulation has been consulted and advised that a Regulatory Impact Statement is not required for the Instrument due to the minor regulatory impact of the proposed changes (OBPR ID: 03462).

COMMENCEMENT

The Instrument takes effect from the day after the Instrument is registered on the Federal Register of Legislation.

CONSULTATION

The TPS Operations Team is located within the Department of Education (department) and supports the TPS Director. The TPS Director and the TPS Operations Team were consulted in the preparation of this Instrument and are supportive of this Instrument.

The department consulted peak education bodies (including Group of 8, Universities Australia, Australian Government Schools International (AGSI) and TAFE Directors Australia (TDA)) about exemptions from the requirement to pay the base fee or risk rated premium component of the international TPS levy. TDA provided feedback and requested that the 22 TAFEs continue to be exempt from the risk rated premium component of the TPS levy in recognition of the low-risk posed by state and territory owned vocational education and training (VET) institutions. This feedback was taken into consideration when making the Instrument.

As prescribed in legislation (section 113A of the *VET Student Loans Act 2016* (VSL Act), section 176A of the *Education Services for Overseas Students Act 2000* (ESOS Act), section 238-7 of the *Higher Education Support Act 2003* (HESA) and section 203A of the *Tertiary Education Quality and Standards Agency 2011* (TEQSA Act)), the department, on behalf of the responsible Minister, arranged for a review of the tuition protection arrangements to be conducted in late 2021 and early 2022 (the Review). The Review considered the operation of tuition protection arrangements and each Tuition Protection Fund and related matters. The Review was conducted by an independent consultant whose analysis was informed by comprehensive consultations with key stakeholders across the International Education, Higher Education and VET sectors. The Terms of Reference for the Review required the consultant to assess the effectiveness and efficiency of the current legislative, operational, administrative and governance arrangements of the TPS, including:

- whether the current delivery arrangements best meet the tuition protection policy objectives as set out in the ESOS Act, VSL Act, HESA and the TEQSA Act;

- the framework of the current legislative structure of the TPS as set out in the ESOS Act, VSL Act, HESA, the TEQSA Act, and multiple subordinate legislative instruments, and
- levy mechanisms.

The Review, tabled in Parliament on 7 April 2022, made several recommendations regarding the levy components enshrined in the primary legislation (for example, making funding arrangements clearer and simpler, simplifying levy calculations, improving the transparency of assessing risk rates, considering whether to remove the base fee component, as well as moving to full industry funding and therefore the equity of distinguishing between private and public providers). Overall, the Review made no express recommendations that affect the content of 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—Exemptions) Instrument 2022*

The *Education Services for Overseas Students (TPS Levies—Exemptions) Instrument 2022* (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

Subsection 5(1) of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act) provides that a provider registered with an ESOS agency on 1 January of a year is liable to pay a tuition protection service (TPS) levy for that calendar year. The TPS levy is an annual levy made up of four components: the administrative fee component (see section 6 of the Act); the base fee component (see section 7 of the Act); the risk rated premium component (see section 9 of the Act); and the special tuition protection component (see section 10 of the Act).

TPS levy payments are held in the Overseas Student Tuition Fund (OSTF). The purpose of the OSTF is to fund the activities, remuneration and allowances of the TPS Director. The TPS Director is a Commonwealth statutory officer established by the Act, and has functions that include overseeing the operation of overseas student placements, making payments to providers for accepting overseas students affected by a provider default, overseeing refunds to overseas students, managing the operation of the OSTF, and determining the amount of the risk-rated premium component and the special tuition protection component of the annual TPS levy.

Section 12 of the Act provides that the Minister may, by legislative instrument, prescribe one or more classes of registered providers that are exempt from the requirement to pay one or both of the base fee component and the risk rated premium component of the TPS levy.

The purpose of the Instrument is to prescribe the classes of providers that are exempt from paying one or both of the base fee component and the risk rated premium component of the levy, consistent with section 12 of the Act. The purpose of the Instrument is to specify providers that, for equity reasons, or because the providers are low-risk, should be exempt from paying the base fee component or risk rated component of the TPS levy. Until 1 January 2022, when the previous exemptions instrument was repealed, the providers listed in the Instrument were exempt from the requirement to pay the relevant components

on the TPS levy. The previous exemptions instrument was repealed ahead of that instrument sunseting and ceasing to have effect, and was not remade immediately because, at the time, the relevant components of the TPS levy had been set at zero so no provider was liable to pay the base fee or risk rated premium components of the TPS levy.

Human rights implications

Right to education

The Instrument engages the right to education, under Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Paragraph 13(2)(c) of the ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

The Instrument prescribes classes of registered providers that are exempt from the requirement to pay one or both of the base fee component and the risk rated premium component of the TPS levy. The TPS levy assists with supporting the functions of the TPS, in particular, by funding the activities, remuneration and allowances of the TPS Director. Therefore, any exemptions from the requirement to pay components of the TPS levy limit the right to education, as such exemptions limit the amount of funds available to support the functions of the TPS. However, that limitation is reasonable and proportionate because:

- for the base fee component exemption: many registered schools only maintain their Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registration to be ready to enrol small numbers of international students from time to time as part of cultural enrichment and related programs. The exemption recognises that these schools did not receive any additional revenue from international student enrolments in the calendar year immediately prior to the year for which the levy was imposed.
- for the risk rated premium component exemption: Table A providers, government schools and State or Territory VET institutions, as public institutions, are at low risk of defaulting on obligations to students as they are effectively underwritten by government.

Conclusion

The Instrument is compatible with human rights because, while it limits the right to education, that limitation is reasonable and proportionate.

The Hon Jason Clare MP, Minister for Education

EDUCATION SERVICES FOR OVERSEAS STUDENTS (TPS LEVIES – EXEMPTIONS) INSTRUMENT 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the title of the Instrument is the *Education Services for Overseas Students (TPS Levies—Exemptions) Instrument 2022* (the Instrument).

Section 2: Commencement

2. This section provides that the Instrument will commence the day after the Instrument is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Instrument is made under section 12 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

Section 4: Definitions

4. This section provides definitions for certain expressions used in the Instrument, and notes that a number of expressions used in the Instrument are already defined in the Act.

Section 5: Base fee component – exemption

5. This section provides that registered schools that had no overseas student enrolments in the calendar year immediately prior to the year for which the levy is imposed (the relevant year) are exempt from the requirement to pay the base fee component of the TPS levy. These registered schools did not receive any additional revenue from overseas student enrolments in the relevant year. Noting this, as an equity measure, the government has agreed to provide some relief to these providers by giving this exemption. This exemption also recognises that many registered schools only enrol small numbers of overseas students from time to time as part of cultural enrichment and related programs.

Section 6: Risk rated premium component – exemption

6. This section provides that Table A providers, government schools and State or Territory VET institutions are exempt from the requirement to pay the risk rated premium component of the TPS levy. This exemption recognises that these public institutions are at low risk of defaulting on obligations to students as they are effectively underwritten by government and, as such, present a negligible risk to the TPS.