

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) Instrument 2024

AUTHORITY

Paragraph 54B(f) of the *Education Services for Overseas Students Act 2000* (ESOS Act) provides that a function of the Tuition Protection Service Director (TPS Director) is to make a legislative instrument each year for the purposes of subsections 9(3) and 10(2) of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

Subsection 9(3) of the Act requires the TPS Director, before the beginning of each year, to make a legislative instrument specifying certain matters in relation to the risk rated premium component of the Tuition Protection Service (TPS) levy. Subsection 10(2) of the Act requires the TPS Director, before the beginning of each year, to make a legislative instrument specifying a percentage for that year for the special tuition protection component of the TPS levy.

Subsection 11(1) of the Act requires the matters in subsections 9(3) and 10(2) to be included in the same legislative instrument.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that, 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) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2023* (the Former Instrument) at Schedule 1 to the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2024* (the Instrument) is made in reliance on this power.

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 overseas students make in an Australian education, and to protect and enhance Australia's reputation as a destination of choice for overseas 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 administrative fee and base fee components are determined in a legislative instrument made by the Minister and are not dealt with in the Instrument.

The purpose of the Instrument is to specify a method for working out the amount payable by all non-exempt CRICOS registered providers for the risk rated premium and special tuition protection components of the TPS levy. A non-exempt provider is any CRICOS registered provider that is not exempted by the Minister under paragraph 12(b) of the Act from paying the risk rated premium component of the TPS levy.

The Instrument specifies that the provider risk factors for the risk rated premium component include a base risk factor, length of operation, volatility in overseas student enrolments, maximum overseas source country concentration and non-compliance and registration renewal.

The TPS Director has maintained the risk rated premium component in line with the settings of the 2024 TPS levy. However, the TPS Director has ceased the temporary COVID-19 setting that waived increase factors for positive volatility (growth) in overseas student enrolments. The volatility in overseas student enrolments risk factor and the maximum overseas source country concentration risk factor will continue to be waived where overseas student enrolments are less than 20% of a provider's total student enrolments. This will continue to benefit providers with a relatively small number of overseas students, better reflecting the lower associated risk profile. The TPS Director has kept the special tuition protection component at 0% as the Overseas Students Tuition Fund (the Fund) sits within the revised target range of \$40 to \$60 million.

With the international education sector potentially facing changes in 2025 due to the proposed National Planning Level (NPL) for new overseas student commencements (NOSC), along with recent identification of integrity issues in the sector, calls on the Fund may revert to medium-term levels. Acknowledging the risk and following advice from the Australian Government Actuary (AGA) and the TPS Advisory Board (the Board), the TPS Director has maintained the specified percentage for the risk rated premium component of 0.05%.

The Explanatory Memorandum to the Act explains that the purpose of the special tuition protection component is to build additional insurance in the Fund. The Fund is currently within its revised target range and therefore the TPS Director considers it is not necessary to impose a value for the special tuition protection component.

Subsection 11(4) of the Act provides that, before the TPS Director makes a legislative instrument setting the risk rated premium and special tuition protection components for the TPS levy, the Treasurer must approve the legislative instrument in writing. The Treasurer approved the Instrument on 16 December.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) provided a carve-out in relation to the “Annual legislative instrument to specify the risk rated premium and special tuition protection components of the Tuition Protection Service (TPS) levy - *Education Services for Overseas Students (TPS Levies – Risk Rated Premium and Special Tuition Protection Components) Instrument*” in 2019 (OIA23- 06231). The reason listed for this carve out is “minor or machinery: this is an annual process and the changes are administrative in nature.” This carve-out is listed in the current Guidance Note, issued in March 2024.

FINANCIAL IMPACT

The Instrument will result in a projected revenue of approximately \$2.7 million from the risk rated premium component of the TPS levy.

Given the funds are credited to a special account, and are derived from industry contribution, the funds cannot be directed toward any other program or portfolio as the funds can only be appropriated for the purpose of the special account.

In determining the matters relevant to the calculation of the risk rated premium component and special tuition protection component of the TPS levy, the TPS Director considered not only the sustainability of the Fund, but also the impact of current economic conditions and policies on businesses and education in Australia.

COMMENCEMENT

The Instrument commences on 31 December 2024 and repeals the Former Instrument on 1 January 2025.

CONSULTATION

Consultation with the TPS Advisory Board

Under subsection 11(2) of the Act, in making an instrument, the TPS Director must have regard to any advice of the Board in relation to the Instrument, and the sustainability of the Fund.

The Board is appointed by the Minister under section 55D of the ESOS Act (in line with the membership requirements set out in section 55C of that Act). The Board currently comprise three non-government sector representatives, selected based on their qualifications and experience in the sector, and six government representatives.

The Board has a role in providing advice to the TPS Director on the setting of the risk rated premium and special tuition protection components of the TPS levy. The AGA prepares an in-depth report for the Board modelling revenue and sector impact based on the draft settings and using industry data supplied by the Department of Education and the Department of Employment and Workplace Relations as an evidence base for decision making. In its advice to the TPS Director dated 21 October 2024 on the recommended settings for the risk rated premium and special tuition protection components of the TPS levy, the Board noted it had considered a number of issues including the strategic risk environment, the advice of the AGA, the views of the regulators (the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality and Standards Agency (TEQSA)) and industry peak bodies, and the quantum of funds required for the long-term sustainability of the Fund.

The AGA has recommended that the temporary COVID-19 setting that waived increase factors for positive volatility in overseas student enrolments should cease and increase factors for positive volatility be reinstated. This follows from the 2024 International TPS levy report, where the AGA noted that, as borders re-opened in 2022, it is expected that the increase factors for positive volatility be reinstated in 2025. The research undertaken by the AGA suggests that the positive volatility increase factors applied prior to the pandemic are suitable levels to be reinstated.

The Board supported the AGA's recommendation to reinstate the positive volatility increase factors to pre-pandemic levels.

In recognition that the sector is expecting to face further policy developments in international education in 2025, the Board also supported the AGA's recommendation not to change the 2025 levy settings in relation to the risk rated premium component and the special tuition protection component.

Consultation with regulators and peak bodies

In finalising its advice and recommendations, and consistent with its previous practice, the Board and TPS Director consulted with international education stakeholders and representatives of the two national regulatory bodies: ASQA and TEQSA.

On 7 August 2024, the Board provided draft recommendations to the TPS Director for the 2025 International TPS levy. The Board's draft advice was published on the TPS website on 14 August 2024, inviting feedback from all CRICOS-registered providers on the proposed settings of the levy.

From mid-August to early October 2024, leviable international education providers were consulted on the draft settings of the 2025 International TPS levy. A national webinar and nine in-person consultation sessions were held around Australia to present the draft levy settings to education providers, and to invite any comments and questions on the draft levy settings.

The TPS Director met with the following peak body representatives during the consultation period:

- English Australia
- International Education Association of Australia
- Universities Australia
- Independent Schools Australia
- Independent Tertiary Education Council Australia
- Independent Higher Education Australia

The TPS Director also met with the following Study Australia representatives during the consultation period:

- Study Adelaide
- Study Melbourne
- Study Perth
- Study NSW

Overall, those consulted were supportive of the draft International TPS levy settings. Consulted education providers acknowledged that the settings were 'modest' and appreciated that the 2025 settings were maintained at 2024 levels.

No adjustments to the Board's draft advice were deemed necessary as a result of these significant consultations.

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 2024

The *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2024* (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 overseas students make in an Australian education, and to protect and enhance Australia's reputation as a destination of choice for overseas 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 administrative fee and base fee components are determined in a legislative instrument made by the Minister and are not dealt with in the Instrument.

The purpose of the Instrument is to specify a method for working out the amount payable by all non-exempt CRICOS registered providers for the risk rated premium and special tuition protection components of the TPS levy. A non-exempt provider is any CRICOS registered provider that is not exempted by the Minister under paragraph 12(b) of the Act from paying the risk rated premium component of the TPS levy.

The Instrument specifies that the provider risk factors for the risk rated premium component include a base risk factor, length of operation, volatility in overseas student enrolments, maximum overseas source country concentration and non-compliance and registration renewal.

The TPS Director has maintained the risk rated premium component in line with the settings of the 2024 TPS levy. However, the TPS Director has ceased the temporary COVID-19 setting

that waived increase factors for positive volatility (growth) in overseas student enrolments. The volatility in overseas student enrolments risk factor and the maximum overseas source country concentration risk factor will continue to be waived where overseas student enrolments are less than 20% of a provider's total student enrolments. This will continue to benefit providers with a relatively small number of overseas students, better reflecting the lower associated risk profile. The TPS Director has kept the special tuition protection component at 0% as the Overseas Students Tuition Fund (the Fund) sits within the revised target range of \$40 to \$60 million.

With the international education sector potentially facing changes in 2025 due to the proposed National Planning Level (NPL) for new overseas student commencements (NOSC), along with recent identification of integrity issues in the sector, calls on the Fund may revert to medium-term levels. Acknowledging the risk and following advice from the Australian Government Actuary (AGA) and the TPS Advisory Board (the Board), the TPS Director has maintained the specified percentage for the risk rated premium component of 0.05%.

The Explanatory Memorandum to the Act explains that the purpose of the special tuition protection component is to build additional insurance in the Fund. The Fund is currently within its revised target range and therefore the TPS Director considers it is not necessary to impose a value for the special tuition protection component.

Subsection 11(4) of the Act provides that, before the TPS Director makes a legislative instrument setting the risk rated premium and special tuition protection components for the TPS levy, the Treasurer must approve the legislative instrument in writing. The Treasurer approved the Instrument on 16 December 2024.

Human rights implications

Right to education

The Instrument promotes 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 overseas students by education service providers registered under the *Education Services for Overseas Students Act 2000*.

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 Instrument assists the TPS Director to manage the Fund and ensure that sufficient funds are credited to the Fund. The Fund supports the TPS framework, which assists overseas students by placing them in alternative courses of study or providing refunds in the event of a provider default (that is, the provider is unable to continue to provide the course to the student). The management of the balance of the Fund will ensure that the Fund remains

within the revised target range of \$40 million to \$60 million as recommended by the AGA and endorsed by the Board.

Conclusion

The Instrument is compatible with human rights because it promotes the right to education.

Melinda Hatton, TPS Director

EDUCATION SERVICES FOR OVERSEAS STUDENTS (TPS LEVIES) (RISK RATED PREMIUM AND SPECIAL TUITION PROTECTION COMPONENTS) INSTRUMENT 2024

EXPLANATION OF PROVISIONS

PART 1—INTRODUCTION

Section 1: Name

1. This is a formal provision specifying that the name of the instrument is the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2024* (the Instrument).

Section 2: Commencement

2. This section sets out the commencement dates of the Instrument. Parts 1 to 3 of the Instrument commence on 31 December 2024 and Schedule 1 of the Instrument, which repeals the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2023* (the Former Instrument) commences on 1 January 2025.

Section 3: Authority

3. The Instrument is made by the TPS Director under sections 9 and 10 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

Section 4: Definitions

4. This section provides definitions for terms used in the Instrument. The note in that section provides that the terms 'risk rated premium component' and 'special tuition protection component' are defined in the definitions section of the Act.

Section 5: Schedules

5. This section clarifies that Schedule 1 is effective on its terms to repeal the Former Instrument.

PART 2—RISK FACTORS FOR RISK RATED PREMIUM COMPONENT

Section 6: Risk rated premium component

6. This section sets out the risk rated premium component of the TPS levy.
7. Subsection 6(1) provides that 0.05% is the percentage for 2025 for the purposes of paragraph 9(3)(a) of the Act.
8. Subsection 6(2) sets out the risk factors specified for the purposes of paragraph 9(3)(b) of the Act. The five risk factors to be applied in 2025 remain the same from 2024 and are as follows: base risk factor; length of operation; volatility in overseas student enrolments; maximum overseas source country concentration; and non-compliance and registration renewal.
9. The risk rated premium component of a provider's levy is worked out for each risk factor in accordance with the formula set out in subsection 9(2) of the Act, which is reproduced below.

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

10. Each of the risk factors specified at subsection 6(2) are given a numerical value in sections 7 to 11 of the Instrument to provide the relevant increase factors used in the overall calculation of the risk rated premium component of the TPS levy.
11. In accordance with subsection 9(1) of the Act, if more than one risk factor is applicable for a provider for a year (as set out in subsections 7(1), 8(1), 9(1)-(2), 10(1)-(2) and 11(1) of the Instrument), the provider's risk components for the relevant factors will be added together to calculate the risk rated premium component of the TPS levy.

Section 7: Risk factor – base risk factor

12. Section 7 sets out the base risk factor, which applies to all non-exempt providers (subsection 7(1)).
13. Subsection 7(2) specifies a numerical increase factor of 1.0 for the base risk factor for the purposes of paragraph 9(3)(c) of the Act.

Section 8: Risk factor – length of operation

14. Section 8 sets out the length of operation risk factor, which applies to all non-exempt providers (subsection 8(1)).

15. Subsection 8(2) provides the numerical increase factors set out in the table for different provider lengths of operation, for the purposes of paragraph 9(3)(c) of the Act.

Section 9: Risk factor – volatility in overseas student enrolments

16. Section 9 sets out the volatility in overseas student enrolments risk factor, which applies to non-exempt providers that meet the criteria specified in subsection 9(1).
17. Subsection 9(2) provides that the risk factor does not apply to non-exempt providers where the provider's proportion of overseas students is less than 20% of its total student population. The TPS Director considers that this risk factor should not apply where providers have a small percentage of overseas students proportionate to their overall student population.
18. Subsection 9(3) sets out in a table the increase factors that apply to a registered provider depending on the provider's volatility in overseas student enrolments . These values differ from 2023 as the TPS Director has ceased the temporary COVID-19 setting that waived increase factors for positive volatility (growth) in overseas student enrolments.
19. Subsection 9(4) provides for reductions in the increase factors listed in the table in subsection 9(3), where a registered provider has been operating for less than 5 years, with different reductions applying depending on the provider's length of operation.
20. Subsections 9(5) and 9(6) provide the method for working out a registered provider's volatility in overseas student enrolments. Subsection 9(5) provides that, if a registered provider did not have overseas enrolments in 2024, the registered provider's volatility in overseas student enrolments is 0%. Subsection 9(6) provides a formula to work out the percentage of a registered provider's volatility in overseas student enrolments. The resulting percentage is used to determine which numerical increase factor applies under subsection 9(3). The amended formula clarifies the intended operation of the calculation.
21. Examples of how the risk factor for volatility in overseas student enrolments is calculated for a registered provider are set out below.
 - A non-exempt registered provider, that has been in operation for 4 years, has more than 20 overseas student enrolments and \$600,000 in tuition fee income, whose proportion of overseas student enrolments is 20% or more of its total student population, had 40 overseas student enrolments in 2024 and 150 overseas student enrolments in 2023. The percentage of the registered provider's volatility in overseas student enrolments using the formula in

subsection 9(6) would be -73%. As the provider has been in operation for 4 years, its increase factor would be 2.6.

- A non-exempt registered provider, that has been in operation for 6 years, has more than 20 overseas student enrolments and \$760,000 in tuition fee income, whose proportion of overseas student enrolments is 20% or more of its total student population, had 300 overseas student enrolments in 2024 and 210 overseas student enrolments in 2023. The percentage of the registered provider's volatility in overseas student enrolments using the formula in subsection 9(6) would be 43%. As the provider has been in operation for 6 years, its increase factor would be 0.4.

Section 10: Risk factor – maximum overseas source country concentration

22. Section 10 sets out the maximum overseas source country concentration risk factor, which applies to non-exempt providers that fulfil the criteria specified in subsection 10(1).
23. Subsection 10(2) provides that the risk factor does not apply to non-exempt providers where the provider's proportion of overseas students is less than 20% of its total student population. The TPS Director considers that this risk should not apply where providers have a small percentage of overseas students proportionate to their overall student population.
24. Subsection 10(3) sets out in a table the increase factors that apply to a registered provider depending on the provider's maximum overseas source country concentration broken down as a percentage for the purposes of paragraph 9(3)(c) of the Act.
25. Subsection 10(4) provides the formula to work out the maximum overseas source country concentration percentage and defines the terms 'largest number of overseas student enrolments for a country' and 'total number of overseas student enrolments'.

Section 11: Risk factor – non-compliance and registration renewal

26. Section 11 sets out the non-compliance and registration renewal risk factor, which applies to all non-exempt providers (subsection 11(1)).
27. Subsection 11(2) sets out in a table the increase factors that apply for a registered provider's non-compliance and registration renewal risk factor for the purposes of paragraph 9(3)(c) of the Act. Risk management is defined in section 4 for the purposes of item 6 of the table in subsection 11(2). Item 6 provides that an increase factor applies to a provider where the provider applies for renewal of registration

- and, due to risk management, is renewed for a period less than the maximum period allowed. The maximum period allowed under the ESOS Act is seven years.
28. The definition of risk management ensures that providers who are renewed for a period less than the maximum period allowed are not penalised if the shorter renewal is for administrative purposes. Only providers who are renewed for a shorter period because the ESOS agency considers there are risks involved with a longer renewal period are subject to the increase factor of 1.0 at item 6 of subsection 11(2). This will only be attributed to providers who, due to their risk profile, are given shortened registration renewals.
29. The increase factors set out in the table under subsection 11(2) are subject to subsection 11(3). Subsection 11(3) provides that where more than one item in the table in subsection 11(2) applies, the increase factor that applies is the sum of the factors (i.e. more than one increase factor can apply to a registered provider).
30. The table in subsection 11(2) is intended to operate on the basis that only one of items 1-4 can apply (given that a provider can only have one late payment measure, depending on whether, and how late, it has paid its charges and levies in the past), but that items 5 and 6 could apply as well (depending on whether compliance action was taken against the provider under section 83 of the ESOS Act, or whether the provider was renewed for less than the maximum period due to risk management). This means that a provider may have an applicable factor in column 3 of the table in subsection 11(2) for one, two or three items (that is, one of items 1-4, and possibly also the factor that applies for items 5 and/or 6).
31. For example, if a registered provider has a weighted late payment measure of 30 days or more (item 1), had action mentioned in section 83 of the ESOS Act taken against it in 2023 (item 5) and also applied under section 10D of the ESOS Act to renew its registration and, for risk management reasons, the period of registration in the notice is less than the maximum period allowed (item 6), then the increase factor would be 4 (2.0 plus 1.0 plus 1.0).
32. Subsection 11(4) provides the formula to work out the weighted late payment measure (paragraphs (a) to (c)), and defines the terms 'CARC' and 'TPSL'.

Section 12: Recalculation of risk factors when registrations amalgamated and national registration on CRICOS is finalised during 2023

33. Section 12 sets out the recalculation of risk factors when a provider amalgamates 2 or more registrations on CRICOS into a single registration through the national registration process in 2024. If a provider has amalgamated registrations on CRICOS, its overseas student tuition fees should represent all fees the provider received

across all courses the provider delivers at all locations for its amalgamated registration.

34. Paragraph 12(2)(a) provides for the recalculation of the length of operation risk factor. The recalculated risk factor applies to the resultant amalgamated registration.
35. Paragraph 12(2)(b) provides for the recalculation of the volatility in overseas student enrolments risk factor, based on treating the number of overseas student enrolments for a year as the sum of all student enrolments for all registrations.
36. Paragraph 12(2)(c) provides for the recalculation of the maximum overseas source country concentration risk factor, specifying that the sum of enrolments for all registrations must be used for the number of enrolments for that overseas source country and for the total number of enrolments.
37. Paragraph 12(2)(d) provides for the recalculation of the non-compliance and registration renewal risk factor. The recalculated risk factor applies to the resultant amalgamated registration.
38. Paragraph 12(2)(e) provides that the overseas student's tuition fee income for the 2023 year is to be calculated as the sum of the overseas students' tuition fee income for the courses in relation to all registrations that were amalgamated into the single registration.

PART 3 – SPECIAL TUITION PROTECTION COMPONENT

Section 13: Special tuition protection component

39. Under subsection 10(2) of the Act, before the beginning of each year, the TPS Director must, by legislative instrument, specify a percentage for a special tuition protection component of the TPS levy for that year. Subsection 10(3) of the Act provides that the percentage specified can be zero.
40. Section 13 sets the specified percentage of the special tuition protection component for 2025 as zero for the purposes of subsection 10(2) of the Act.
41. The purpose of the special tuition protection component is to build additional insurance in the Overseas Tuition Protection Fund (the Fund). The Fund is currently within its target range and therefore the TPS Director considers it is not necessary to impose a value for the special tuition protection component of the levy.

SCHEDULE 1—REPEALS

Item 1: The whole of the instrument

42. Schedule 1 to the Instrument repeals the Former Instrument from 1 January 2025.