



# **Education Services for Overseas Students (TPS Levies) Act 2012**

**No. 11, 2012**

## **Compilation No. 1**

**Compilation date:** 10 December 2015

**Includes amendments up to:** Act No. 145, 2015

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Education Services for Overseas Students (TPS Levies) Act 2012* that shows the text of the law as amended and in force on 10 December 2015 (the *compilation date*).

This compilation was prepared on 5 January 2016.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to impose the requirement to pay TPS levies, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Education Services for Overseas Students (TPS Levies) Act 2012*.

### 2 Commencement

- (1) Each provision of this Act 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
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	20 March 2012
2. Sections 3 to 16	At the same time as Part 1 of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012</i> commences.	1 July 2012
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

## Section 3

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

### 3 Crown to be bound

This Act binds the Crown in each of its capacities.

### 4 Interpretation

#### *Definitions*

- (1) In this Act:

***administrative fee component*** for a registered provider for a year has the meaning given by section 6.

***base fee component*** for a registered provider for a year has the meaning given by section 7.

***overseas student tuition fees*** for a registered provider for a year is the amount of tuition fees received by the provider during the year in respect of an overseas student or intending overseas student.

***risk rated premium component*** for a registered provider for a year has the meaning given by section 9.

***special tuition protection component*** for a registered provider for a year has the meaning given by section 10.

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

#### *Expressions used in the Education Services for Overseas Students Act 2000*

- (2) An expression used in this Act that is also used in the *Education Services for Overseas Students Act 2000* has the same meaning as in that Act.

## Part 2—The amount of the TPS levy

### 5 TPS levy

#### *Registered providers*

- (1) A provider who is registered on 1 January of a year is liable to pay a TPS levy for the year.

Note: This section extends to a registered provider whose registration has been suspended.

- (2) The amount of the TPS levy for a registered provider for a year is the sum of the following components:
- (a) the provider's administrative fee component for the year (see section 6);
  - (b) the provider's base fee component for the year (see section 7);
  - (c) the provider's risk rated premium component for the year (see section 9);
  - (d) the provider's special tuition protection component for the year (see section 10).

Note: Classes of providers may be exempt from the requirement to pay either or both the base fee component or the risk rated premium component: see section 12.

#### *Unregistered providers*

- (3) A provider who is not yet registered, but who is seeking to be registered under section 9AB of the *Education Services for Overseas Students Act 2000* in a year, is liable to pay a TPS levy for the year.
- (4) The amount of the TPS levy for such an unregistered provider for that year is the sum of the following components:
- (a) the amount specified in paragraph 6(a) for the year;
  - (b) the amount specified in paragraph 7(a) for the year.

## Section 6

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Note 1: Those amounts are indexed under section 8.

Note 2: Classes of providers may be exempt from the requirement to pay the amount in paragraph 7(a): see section 12.

### 6 Administrative fee component

A registered provider's *administrative fee component* for a year is the sum of the following components:

- (a) \$100;
- (b) \$2 multiplied by the total enrolments for the provider for the previous year.

Note 1: For *total enrolments*, see section 4.

Note 2: The dollar amounts are indexed under section 8.

### 7 Base fee component

A registered provider's *base fee component* for a year is the sum of the following components:

- (a) \$200;
- (b) \$5 multiplied by the total enrolments for the provider for the previous year.

Note 1: For *total enrolments*, see section 4.

Note 2: The dollar amounts are indexed under section 8.

### 8 Indexation of administrative and base fee components

- (1) This section applies for the purpose of working out a dollar amount specified in paragraph 6(a) or (b) or 7(a) or (b) for any year (the *current year*) after the initial year.

Note: The TPS Director must make the indexed dollar amounts publicly available: see section 13.

#### *Indexation formula*

- (2) The dollar amounts specified are to be adjusted for the current year by multiplying the amounts that applied to the year before the current year by the indexation factor worked out using the formula:



$$\frac{\text{Index number for the recent September quarter}}{\text{Index number for the previous September quarter}}$$

where:

***index number***, for a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for that quarter.

***initial year*** means the first calendar year in relation to which the TPS levy is imposed under section 14.

***previous September quarter*** means the September quarter before the recent September quarter.

***recent September quarter*** means the September quarter in the year before the current year.

*Rounding factors and amounts etc.*

- (3) The indexation factor worked out under subsection (2) must be rounded up or down to 3 places (rounding up in the case of exactly halfway between).
- (4) Amounts worked out under subsection (2) for the purposes of paragraph 6(a) or 7(a) must be rounded to the nearest whole dollar (rounding up in the case of 50 cents).
- (5) Amounts worked out under subsection (2) for the purposes of paragraph 6(b) or 7(b) must be rounded to the nearest whole cent (rounding up in the case of 0.5 cent).
- (6) If at any time (whether before or after the commencement of this section) the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change, only index numbers published in terms of the new index reference period are to be used.

Section 9

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### 9 Risk rated premium component

- (1) A registered provider's *risk rated premium component* for a year is the sum of the provider's risk components for each risk factor for the year.
- (2) A registered provider's *risk component* for a risk factor for a year is worked out in accordance with the following formula:

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

- (3) Before the beginning of each year, the TPS Director must, by legislative instrument, specify the following for the purposes of subsection (2):
  - (a) a percentage for that year;
  - (b) one or more risk factors that reflect the risk of calls being made on the OSTF in respect of registered providers with that factor or those factors;
  - (c) for each risk factor, the factor by which the specified percentage for that year is multiplied.

Note: For rules relating to making the legislative instrument, see section 11.

### 10 Special tuition protection component

- (1) A registered provider's *special tuition protection component* for a year is worked out in accordance with the following formula:

$$\begin{array}{l} \text{Specified percentage} \\ \text{for the year} \end{array} \times \begin{array}{l} \text{Provider's overseas student} \\ \text{tuition fees} \\ \text{for the previous year} \end{array}$$

- (2) Before the beginning of each year, the TPS Director must, by legislative instrument, specify a percentage for that year for the purposes of subsection (1).

Note: For rules relating to making the legislative instrument, see section 11.

- (3) The percentage specified can be zero.

## **Part 3—Miscellaneous**

### **11 Rules relating to making a legislative instrument**

- (1) The matters referred to in subsections 9(3) and 10(2) must be included in the same legislative instrument.

*Having regard to matters*

- (2) In making a legislative instrument under those subsections, the TPS Director must have regard to:
  - (a) any advice of the Board in relation to the matters referred to in those subsections; and
  - (b) the sustainability of the OSTF.
- (3) The Director may have regard to any other matter he or she considers appropriate.

*Approval of the Treasurer*

- (4) Before the TPS Director makes (within the meaning of the *Legislative Instruments Act 2003*) a legislative instrument under subsections 9(3) and 10(2), the Treasurer must approve the legislative instrument in writing.
- (5) An approval given under subsection (4) is not a legislative instrument.

### **12 Exemptions**

The Minister may, by legislative instrument, prescribe one or more classes of registered providers who are exempt from the requirement to pay either or both of the following:

- (a) the base fee component (or paragraph 7(a) of the base fee component);
- (b) the risk rated premium component.

Section 13

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**13 Publication of administrative and base fee components**

The TPS Director must make the dollar amounts of the administrative fee component and the base fee component for a year publicly available, in any manner he or she considers appropriate.

**14 Imposition of requirement to pay the TPS levy**

The requirement to pay TPS levies under the *Education Services for Overseas Students Act 2000* is imposed by this section.

**15 Section 114 of the Constitution**

- (1) If, apart from this section, this Act would purport to operate in a way that would be invalid because of section 114 of the Constitution, this Act does not have that operation.
- (2) For the purposes of this section, assume that, in section 114 of the Constitution, State includes the Australian Capital Territory and the Northern Territory.

**16 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

A = Act	o = order(s)
ad = added or inserted	Ord = Ordinance
am = amended	orig = original
amdt = amendment	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous (prev...) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislative Instruments	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LI = Legislative Instrument	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Education Services for Overseas Students (TPS Levies) Act 2012	11, 2012	20 Mar 2012	s 3–16: 1 July 2012 (s 2(1) item 2) Remainder: 20 Mar 2012 (s 2(1) item 1)	
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 177): <u>awaiting commencement</u> (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 4 (item 10): 10 Dec 2015 (s 2(1) item 7)	—

## Endnotes

Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 2</b>	
s 8 .....	am No 145, 2015
<b>Part 3</b>	
s 11 .....	am No 126, 2015

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