



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

**No. 11, 2012**

## **Compilation No. 5**

<b>Compilation date:</b>	1 January 2022
<b>Includes amendments up to:</b>	Act No. 85, 2021
<b>Registered:</b>	5 January 2022

Prepared by the Office of Parliamentary Counsel, Canberra

---

## 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 1 January 2022 (the *compilation date*).

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 the Legislation Register ([www.legislation.gov.au](http://www.legislation.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 the Legislation Register 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.

### Editorial changes

For more information about any editorial changes made in this compilation, see 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 the Legislation Register 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

---

# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	1
3 Crown to be bound .....	2
4 Interpretation .....	2
4A Total enrolments .....	3
<b>Part 2—The amount of the TPS levy</b>	4
5 TPS levy .....	4
6 Administrative fee component .....	5
7 Base fee component .....	5
7A Legislative instrument for purposes of section 6 or 7 .....	5
8 Indexation of administrative and base fee components .....	7
9 Risk rated premium component .....	8
10 Special tuition protection component .....	9
11 Rules for making legislative instrument under section 9 or 10 .....	9
<b>Part 3—Other matters</b>	11
12 Exemptions .....	11
14 Imposition of requirement to pay the TPS levy .....	11
15 Section 114 of the Constitution .....	11
16 Regulations .....	11
<b>Endnotes</b>	12
<b>Endnote 1—About the endnotes</b>	12
<b>Endnote 2—Abbreviation key</b>	14
<b>Endnote 3—Legislation history</b>	15
<b>Endnote 4—Amendment history</b>	16



# 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

---

- (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.

***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 in relation to that quarter.

***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.

***September quarter*** means a period of 3 months starting on 1 July.

***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 has the meaning given by section 4A.

*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.

#### **4A Total enrolments**

- (1) For the purposes of this Act, the **total enrolments** for a registered provider for a year are worked out by adding together the number of enrolments of overseas students for each course for which the provider is registered in the year.
- (2) When working out the enrolments for a course for a year:
- (a) for a course of at least 26 weeks duration—each student who is enrolled in, and is undertaking, the course at any time during the year counts as one enrolment; and
  - (b) for a course of 13 or more weeks, but less than 26 weeks, duration—each student who is enrolled in, and is undertaking, the course at any time during the year counts as 0.5 of an enrolment; and
  - (c) for a course of less than 13 weeks duration—each student who is enrolled in, and is undertaking, the course at any time during the year counts as 0.25 of an enrolment.

*Working out what constitutes a course*

- (3) For the purposes of this section, a course that spans 2 or more years is taken to be a separate course in each of those years.
- (4) For the purposes of this section, a course is taken to be a separate course at each location at which the provider is registered to provide the course.

## 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 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 under paragraph 6(a) for the year;
  - (b) the amount under paragraph 7(a) for the year.

Note: Those amounts are indexed under section 8.



## 6 Administrative fee component

Subject to section 8, a registered provider's **administrative fee component** for a year is the sum of:

- (a) the amount (a **dollar amount**) determined in an instrument under section 7A for the purposes of this paragraph for that year; and
- (b) the amount (a **dollar amount**) determined in an instrument under section 7A for the purposes of this paragraph for that year, multiplied by the total enrolments for the provider for the previous year.

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

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

## 7 Base fee component

Subject to section 8, a registered provider's **base fee component** for a year is the sum of:

- (a) the amount (a **dollar amount**) determined in an instrument under section 7A for the purposes of this paragraph for that year; and
- (b) the amount (a **dollar amount**) determined in an instrument under section 7A for the purposes of this paragraph for that year, multiplied by the total enrolments for the provider for the previous year.

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

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

## 7A Legislative instrument for purposes of section 6 or 7

*Calendar year beginning on 1 January 2018*

- (1) Before the calendar year beginning on 1 January 2018, the Minister must, by legislative instrument, do all of the following:
  - (a) determine an amount for the purposes of paragraph 6(a) for that year;

Section 7A

---

- (b) determine an amount for the purposes of paragraph 6(b) for that year;
- (c) determine an amount for the purposes of paragraph 7(a) for that year;
- (d) determine an amount for the purposes of paragraph 7(b) for that year.

*Later calendar years*

- (2) Before the calendar year beginning on 1 January 2019 or a later calendar year, the Minister may, by legislative instrument, do one or more of the following:
  - (a) determine an amount for the purposes of paragraph 6(a) for that year;
  - (b) determine an amount for the purposes of paragraph 6(b) for that year;
  - (c) determine an amount for the purposes of paragraph 7(a) for that year;
  - (d) determine an amount for the purposes of paragraph 7(b) for that year.

*Upper limit*

- (3) The Minister must not determine an amount in an instrument under this section for the purposes of paragraph 6(a) or (b) or 7(a) or (b) for a year that exceeds the following:
  - (a) for paragraph 6(a)—\$107;
  - (b) for paragraph 6(b)—\$2.15;
  - (c) for paragraph 7(a)—\$215;
  - (d) for paragraph 7(b)—\$5.38.

Note: Indexation under section 8 of the dollar amount under paragraph 6(a) or (b) or 7(a) or (b) may result in that amount exceeding the upper limit in this subsection that applies to the Minister's determination-making power.

*Having regard to matters*

- (4) In making a legislative instrument under this section, the Minister must have regard to the sustainability of the OSTF.
- (5) The Minister may also have regard to any other matter he or she considers appropriate.

**8 Indexation of administrative and base fee components**

- (1) This section applies for the purpose of working out a dollar amount under paragraph 6(a) or (b) or 7(a) or (b) for the calendar year (the **current year**) beginning on 1 January 2019 or a later calendar year (the **current year**) if in the previous year the Minister did not make an instrument under section 7A for the purposes of that paragraph for the current year.
- (2) The dollar amount under that paragraph is on 1 January of the current year replaced by the amount worked out using the formula:

$$\text{Dollar amount under that paragraph for the previous year} \times \text{Indexation factor for that 1 January}$$

*Indexation factor*

- (2A) The **indexation factor** for a 1 January is the number worked out using the formula:

$$\frac{\text{Index number for the reference September quarter}}{\text{Index number for the base September quarter}}$$

where:

**base September quarter** means the last September quarter before the reference September quarter.

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

## Section 9

---

### *Rounding factors and amounts etc.*

- (3) The indexation factor worked out under subsection (2A) 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.

### *Publication*

- (7) The Minister must cause each amount worked out under subsection (2) to be made publicly available in any manner he or she considers appropriate.

## 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:

$$\text{Specified percentage for the year} \times \frac{\text{Provider's overseas student tuition fees for the previous year}}{\text{tuition fees for the previous year}}$$

- (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.

## 11 Rules for making legislative instrument under section 9 or 10

- (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

Section 11

---

- (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 *Legislation 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.

## **Part 3—Other matters**

### **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.

### **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

---

## 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

### 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.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### 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



---

Endnote 1—About the endnotes

---

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

---

#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	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): 5 Mar 2016 (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)	—
Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015	171, 2015	11 Dec 2015	Sch 1 (item 283) and Sch 6 (items 2–6, 8–13): 1 July 2016 (s 2(1) items 2, 6, 8) Sch 6 (items 1, 7): 12 Dec 2015 (s 2(1) items 5, 7)	Sch 6
Education Services for Overseas Students (TPS Levies) Amendment Act 2017	98, 2017	14 Sept 2017	15 Sept 2017 (s 2(1) item 1)	Sch 1 (item 13)
Education Services for Overseas Students (TPS Levies) Amendment Act 2021	85, 2021	27 Aug 2021	1 Jan 2022 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

---

#### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 4 .....	am No 98, 2017; No 85, 2021
s 4A .....	ad No 85, 2021
<b>Part 2</b>	
s 5 .....	am No 171, 2015; No 98, 2017
s 6 .....	rs No 98, 2017
	am No 85, 2021
s 7 .....	rs No 98, 2017
	am No 85, 2021
s 7A .....	ad No 98, 2017
s 8 .....	am No 145, 2015; No 98, 2017
Part 3 heading .....	rep No 98, 2017
s 11 .....	am No 126, 2015; No 98, 2017
<b>Part 3</b>	
Part 3 heading .....	ad No 98, 2017
s 13 .....	rep No 98, 2017

---