2016–2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EDUCATION SERVICES FOR OVERSEAS STUDENTS
(TPS LEVIES) AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education and Training,
Senator the Honourable Simon Birmingham)
EDUCATION SERVICES FOR OVERSEAS STUDENTS (TPS LEVIES) AMENDMENT BILL 2017

OUTLINE

The Education Services for Overseas Students (TPS Levies) Amendment Bill 2017 (the Bill) amends the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act) to enable the Minister for Education and Training to act flexibly and quickly in response to market conditions and major shocks in the international education sector, and proactively manage the balance of the Overseas Students Tuition Fund (the Fund).

The Tuition Protection Service (TPS) is an initiative of the Australian Government to assist international students whose education providers are unable to fully deliver their course of study. The TPS ensures that international students are able to complete their studies in another course or with another education provider, or receive a refund of their unspent tuition fees.

The TPS is funded by an annual levy on all international education providers. The levy comprises administrative fee and base fee components which are based on a provider’s enrolment numbers, a risk rated premium and a special tuition protection component. Amounts collected are credited into the Fund, which is a Special Account under the *Public Governance, Performance and Accountability Act 2013*. The Fund is established under section 52A of the *Education Services for Overseas Students Act 2000*.

Recent growth in student enrolments has resulted in an increased collection of the administrative and base fee components of the TPS levy. Since this growth has not been offset by a similar proportion of claims on the Fund, reserves have increased sharply.

The balance in the Fund is forecast to exceed the upper target recommended by the Australian Government Actuary and the TPS Advisory Board. This has the potential to undermine industry commitment to the TPS, and does not appropriately recognise education providers that are managing risk effectively.

The TPS Director has already reduced the risk rated premium in order to slow the growth of the Fund. Further reductions to the risk rated premium would result in the loss of an effective price signal to higher risk providers. An appropriate reduction to the current administrative and base fees is needed to ensure the Fund remains within the target range of $30 million to $50 million recommended by the Australian Government Actuary and endorsed by the TPS Advisory Board. It is anticipated that this will be a one-off reduction to the Fund and the fee settings may not be updated every year.

Giving the Minister authority to proactively manage the Fund will maintain sufficient reserves to meet claims each year, commensurate with an increase in student enrolments. It also allows the Fund to remain viable in case any unforeseen events or major provider closures occur.
FINANCIAL IMPACT STATEMENT

The Bill will not have any direct financial impacts for the Commonwealth. The legislative instrument that is created under the amended Act may result in revenue gains or losses in future years depending on the amounts for the administrative and base fee components of the levy set by the Minister. In setting these fees the Minister must have regard to the sustainability of the Fund.

The scale of any revenue increase or loss resulting from these components will be limited by the ceiling amount on the administrative and base fees, which is consistent with the current indexed amounts. The current indexed amounts are as follows:

**Administrative Fee Component** of:
(a) $107; and
(b) $2.15 multiplied by the total enrolments for the provider for the previous year (2016).

A registered provider's **Base Fee Component** for a year is the sum of:
(a) $215; and
(b) $5.38 multiplied by the total enrolments for the provider for the previous year (2016).

Any future revenue increases or losses may be affected by the TPS Director’s current ability to set the risk rated premium and special tuition protection components each year.
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) AMENDMENT BILL 2017

The Education Services for Overseas Students (TPS Levies) Amendment Bill 2017 (the Bill) 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 Bill

The Bill amends the Education Services for Overseas Students (TPS Levies) Act 2012 (the Act) to enable the Minister for Education and Training to act flexibly and quickly in response to market conditions and major shocks in the international education sector, and proactively manage the balance of the Overseas Students Tuition Fund (the Fund).

The Tuition Protection Service (TPS) is an initiative of the Australian Government to assist international students whose education providers are unable to fully deliver their course of study. The TPS ensures that international students are able to complete their studies in another course or with another education provider, or receive a refund of their unspent tuition fees.

The TPS is funded by an annual levy on all international education providers. The levy comprises administrative fee and base fee components which are based on a provider’s enrolment numbers, a risk rated premium and a special tuition protection component. Amounts collected are credited into the Fund, which is a Special Account under the Public Governance, Performance and Accountability Act 2013. The Fund is established under section 52A of the Education Services for Overseas Students Act 2000 (ESOS Act).

Recent growth in student enrolments has resulted in an increased collection of the administrative and base fee components of the TPS levy. Since this growth has not been offset by a similar proportion of claims on the Fund, reserves have increased sharply.

The balance in the Fund is forecast to exceed the upper target recommended by the Australian Government Actuary and the TPS Advisory Board. This has the potential to undermine industry commitment to the TPS, and does not appropriately recognise education providers that are managing risk effectively.

The TPS Director has already reduced the risk rated premium in order to slow the growth of the Fund. Further reductions to the risk rated premium would result in the loss of an effective price signal to higher risk providers. An appropriate reduction to the current administrative and base fees is needed to ensure the Fund remains within the target range of $30 million to $50 million recommended by the Australian Government Actuary and endorsed by the TPS Advisory Board. It is anticipated that
this will be a one-off reduction to the Fund and the fee settings may not be updated every year.

Giving the Minister authority to proactively manage the Fund will maintain sufficient reserves to meet claims each year, commensurate with an increase in student enrolments. It also allows the Fund to remain viable in case any unforeseen events or major provider closures occur.

**Analysis of human rights implication**

The Bill engages the following human rights:

*Right to education*

This Bill 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 education services to international students by education service providers registered under the ESOS Act.

The Australian Government has the overarching responsibility for protecting the reputation of Australia’s education and training industry, supporting the capacity of the international education industry to provide quality education and training services, and maintaining the integrity of the student visa program.

The TPS delivers assistance to students by placing students in an alternative course of study or refunds them where there is no suitable alternative course.

The measures contained in the Bill enhance the right to education by ensuring that the Minister for Education and Training is able to act flexibly and quickly in response to market conditions and major shocks in the sector to proactively manage the balance in the Fund. This ensures that the fees that providers are paying in relation to the TPS levy remain within the new target range of $30 million to $50 million recommended by the Australian Government Actuary and endorsed by the TPS Advisory Board.

This ensures that providers are able to utilise remaining funds for alternative purposes to enhance the quality of the services that they provide to overseas students. It also ensures the Government is only charging providers fees required to meet the safe reserve in the Fund recommended by the Australian Government Actuary.

The Bill is compatible with the right to education.

**Conclusion**

The Bill is compatible with human rights because it advances human rights.
NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be the *Education Services for Overseas Students (TPS Levies) Amendment Act 2017.*

Clause 2 - Commencement

The table in subclause 2(1) sets out when the Act’s provisions will commence. The table provides that the whole of the Act will commence the day after the Act receives the Royal Assent.

Subclause 2(2) provides that information in column 3 of the table at subclause 2(1) is not part of the Act and information may be inserted into column 3 or information in it may be edited in any published version of the Act.

Clause 3 - Schedules

This clause provides that any legislation that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule and that any other item in a schedule has effect according to its terms.

LIST OF ABBREVIATIONS

<table>
<thead>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>Act</td>
<td><em>Education Services for Overseas Students (TPS Levies) Act 2012</em></td>
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<td>Bill</td>
<td><em>Education Services for Overseas Students (TPS Levies) Amendment Bill 2017</em></td>
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<td>Fund</td>
<td>Overseas Students Tuition Fund</td>
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<td>TPS</td>
<td>Tuition Protection Service</td>
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Schedule 1 Amendments

Summary

This Schedule amends the Act to enable the Minister to act flexibly and quickly in response to market conditions and major shocks in the international education sector, and proactively manage the balance in the Fund. The TPS levy is collected from all registered providers on an annual basis.

Administrative and Base Fee Components

This measure will enable the Minister to set the administrative and base fee components of the TPS levy through a legislative instrument. The Minister must make a legislative instrument by 31 December 2017 to set the administrative and base fee components of the TPS levy to apply for 2018.

Following this, the Minister may choose to make a new legislative instrument annually to set the administrative and base fees for the following calendar year. It is not anticipated the fee settings will be updated every year. If the Minister does not make a new legislative instrument, the existing instrument will continue to apply.

The Minister must have regard to the sustainability of the Fund or any other matter he or she considers appropriate in setting the administrative and base fee components through a legislative instrument.

This measure will reduce the risk of accumulating excessive reserves in the Fund, ensure industry commitment to the TPS, appropriately recognise international education providers that are managing risk effectively, and contribute to the stable growth of the international education sector.

Indexation

This measure allows an annual indexed amount to be applied to the dollar amounts for the administrative and base fee components as worked out by the Minister, until he or she makes a new instrument. However, if the Minister makes a legislative instrument setting out the administrative and base fee components by 31 December to apply to the following calendar year, indexation will not apply to that calendar year.

Imposing an ‘upper limit’

This measure will set an ‘upper limit’ which the Minister cannot exceed in determining the administrative and base fee components through a legislative instrument. This limit is consistent with the indexed amounts for the administrative and base fee components in 2017 as set out in sections 6 and 7 of the Act.

This measure will ensure the balance in the Fund is sustainable, while giving providers some certainty around the maximum possible amounts for the administrative and base fees.
Publishing the administrative and base fee components

This measure requires the Minister to cause the amount of the indexed administrative and base fees components to be published in any manner he or she considers appropriate. The Minister is considered to have met the publication requirement so long as the amounts are published, for example by the TPS Director or anyone else.

This measure will ensure that the administrative and base fee amounts for each year are publicly available to providers to assist in planning their finances.

Detailed explanation

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

**Item 1 – Subsection 4(1)**

This item adds two new definitions to subsection 4(1) of the Act for ‘index number’ and ‘September quarter’.

**Item 2 – Paragraphs 5(4)(a) and (b)**

Currently the amount of the TPS levy for an unregistered provider under section 5 of the Act is the sum of the amounts specified in paragraphs 6(a) and 7(a) of the Act for the year. This item substitutes the term ‘specified in’ to ‘under’ in paragraphs 5(4)(a) and (b) of the Act. This reflects the changes to sections 6 and 7 made through this Bill which will no longer specify amounts but rather refer to the Minister’s power to determine the amounts in a legislative instrument. This item ensures that the amounts for unregistered providers will remain consistent with amounts determined for registered providers.

**Items 3 and 4 – Subsection 5(4)**

Item 3 substitutes the reference to ‘Note 1’ with ‘Note’. This is because Note 2 is repealed by item 4. There will be a single note under subsection 5(4) that explains that the amounts for working out the TPS levy for unregistered providers will continue to be indexed under section 8.

Item 4 repeals Note 2 at subsection 5(4) which provides “classes of providers may be exempt from the requirement to pay the amount in paragraph 7(a): see section 12”. The exemption under section 12 only relates to registered providers and is not relevant to the payment of the TPS levy by unregistered providers. Therefore Note 2 is not required under subsection 5(4).

**Item 5 – Sections 6 and 7**

Item 5 repeals sections 6 and 7 and substitutes new sections 6, 7 and 7A.

The amount of the TPS levy for a registered provider for a year is the sum of the following components (see subsection 5(2)):
the provider’s administrative fee component for the year;
the provider’s base fee component for the year;
the provider’s risk rated premium component for the year; and
the provider’s special tuition protection component for the year.

Section 6 Administrative fee component

New section 6 sets out the method for determining the administrative fee component of the TPS levy for a year. Subject to the indexation provisions under section 8, a registered provider’s administrative fee component for a year is the sum of the following components:

- the dollar amount determined in a legislative instrument made by the Minister under new section 7A for the purposes of paragraph 6(a) for that year; and
- the dollar amount determined in a legislative instrument under new section 7A for the purposes of paragraph 6(b) for that year multiplied by the total enrolments for the provider for the previous year.

Note 1 provides that ‘total enrolments’ is defined under section 4 of the Act. Note 2 clarifies that the dollar amounts are indexed under section 8.

Section 7 Base fee component

New section 7 sets out the method for determining the base fee component of the TPS levy for a year. Subject to the indexation provisions under section 8, a registered provider’s base fee component for a year is the sum of the following components:

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

Note 1 provides that ‘total enrolments’ is defined under section 4 of the Act. Note 2 clarifies that the dollar amounts are indexed under section 8.

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

Calendar year beginning on 1 January 2018

New subsection 7A(1) sets out what the Minister has to do for the calendar year beginning on 1 January 2018. Before 1 January 2018, the Minister must make a legislative instrument(s) which:

- determines an amount for the purposes of paragraph 6(a) for 2018;
- determines an amount for the purposes of paragraph 6(b) for 2018;
- determines an amount for the purposes of paragraph 7(a) for 2018;
- determines an amount for the purposes of paragraph 7(b) for 2018.
This means that on or before 31 December 2017, the Minister must make a legislative instrument which determines the dollar amounts for the administrative fee component (for paragraphs 6(a) and (b)) and base fee component (for paragraphs 7(a) and (b)) as part of the TPS levy to be paid by registered providers for 2018.

Additionally, the amounts determined by the Minister through this legislative instrument for paragraphs 6(a) and 7(a) also apply to the determination of the TPS levy for unregistered providers under subsection 5(4) of the Act for the year beginning on 1 January 2018.

Later calendar years

It is not anticipated the administrative and base fee component will be updated every year. However, before the calendar year beginning on 1 January 2019 or a later calendar year, the Minister may choose to do one or more of the following through a legislative instrument:

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

The Minister has discretion to make a legislative instrument setting out the administrative and base fee components of the TPS levy to apply from 2019. The Minister is only required through the Bill to make a legislative instrument for the calendar year beginning 1 January 2018.

For example, on or before 31 December 2018, the Minister may make a legislative instrument to determine the amounts for the administrative fee and base fee component of the TPS levy for the calendar year beginning on 1 January 2019. However, if the Minister chooses not to make a legislative instrument on or before 31 December 2018, then the legislative instrument made by the Minister in 2017 will continue to apply in 2019 but will be indexed in accordance with section 8 of the Act.

Upper limit

New subsection 7A(3) prescribes that the Minister cannot determine an amount in a legislative instrument under section 7A for the purposes of paragraph 6(a) or (b) or 7(a) or (b) for a year that exceeds the following:

- for paragraph 6(a) - $107;
- for paragraph 6(b) - $2.15;
- for paragraph 7(a) - $215;
- for paragraph 7(b) - $5.38.

The above dollar amounts reflect the current indexed amounts for the administrative and base fees components set out in the Act.

This means that the Minister cannot determine any amounts for the administrative or base fee component which exceeds the above amounts. Effectively, this item
provides an ‘upper limit’ or ‘cap’ on the dollar amounts the Minister may determine through a legislative instrument.

This amendment provides transparency and assurance to the sector by limiting the Minister’s power to determine dollar amounts for the administrative and base fee components of the TPS levy through a legislative instrument.

In addition, instruments made by the Minister under the new section 7A are subject to parliamentary scrutiny (disallowance) processes. This ensures parliamentary oversight of the Minister’s determination of the administrative and base fee components of the TPS levy.

The note in subsection 7A(3) clarifies that while an upper limit applies to the Minister’s determination making power through the legislative instrument, indexation under section 8 may in the future exceed the upper limits for the administrative and base fee components.

Having regard to matters

New subsection 7A(4) provides that the Minister must have regard to the sustainability of the Fund in making a legislative instrument under new section 7A. Also, the Minister may have regard to any other matter he or she considers appropriate.

**Item 6 – Subsections 8(1) and (2)**

Item 6 repeals the existing subsections 8(1) and (2) and provides for new subsections (1), (2) and (2A). Section 8 provides for the indexation of the administrative and base fee components of the TPS levy.

New subsection 8(1) provides that section 8 applies for the purposes of working out a dollar amount under paragraphs 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.

This provision clarifies that where the Minister does not make a legislative instrument for a particular year, then indexation will apply to the administrative and base fee components for that year.

For example, if the Minister does not make a legislative instrument on or before 31 December 2018 to determine the administrative and base fee components for the calendar year beginning on 1 January 2019, then the amounts determined in the legislative instrument made by the Minister for the calendar year beginning on 1 January 2018 will continue to apply for 2019, but with indexation applied to those amounts.

The method for working out indexation is provided for under new subsections 8(2) and (2A).
Item 7 – Subsection 8(3)

Item 7 makes a consequential amendment to subsection 8(3) as a result of item 6.

Item 8 – At the end of section 8

Item 8 adds a new subsection 8(7) which provides that the Minister must cause each amount worked out under subsection 8(2) to be made publicly available in any manner he or she considers appropriate. For example, the Minister may require that the TPS Director publish the indexed amounts on a particular website.

Item 9 – Part 3 (heading)

Item 9 repeals the heading ‘Part 3 – Miscellaneous’.

Item 10 – Section 11 (heading)

Item 10 repeals the heading at section 11 and substitutes the heading for ‘Rules for making legislative instrument under section 9 or 10’.

This clarifies that the rules at section 11 only apply to the legislative instruments made by the TPS Director under section 9 or 10, and not to the legislative instrument(s) made by the Minister under section 6 or 7.

Item 11 – Before section 12

Item 11 inserts a new heading ‘Part 3 – Other matters’.

Item 12 – Section 13

Item 12 repeals section 13 which deals with the publication of administrative and base fee components. The publication of those amounts is now dealt with under new subsection 8(7) (see item 8).

Item 13 – Application and saving provisions

Item 13 sets out the application and saving provisions for the Bill.

Subitem 13(1) clarifies that the amendments made by Schedule 1 to the Bill apply in relation to working out the amount of TPS levy under subsections 5(2) or (4) of the Act for the calendar year beginning on 1 January 2018 and each later calendar year. Therefore, the amendments made by this Bill do not apply to the calculation of the TPS levy for registered and unregistered providers who are required to pay the TPS levy for 2017.

Subitem 13(2) provides that the amendments made by Schedule 1 to the Bill do not affect the continuity of any instrument in force under section 12 of the Act immediately before the commencement of this item. Section 12 allows the Minister, by legislative instrument, to prescribe one or more classes of registered providers who are exempt from the requirement to pay either or both of the base fee component or risk rated premium component. This item will commence the day after the Bill (once enacted) receives the Royal Assent.