

EXPLANATORY STATEMENT

Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2020

Purpose and operation

The purpose of the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2020* (the **Instrument**) is to specify the dollar amounts payable by all non-exempt Commonwealth Register of Institutions and Courses for Overseas Students (**CRICOS**) registered providers for the purpose of working out the administrative and base fee components of the Tuition Protection Service (**TPS**) levy under sections 6 and 7 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the **Act**).

A provider who is registered on 1 January of a year is liable to pay a TPS levy for the year unless an exemption applies. The amount of the TPS levy for a registered provider for a year is the sum of the provider's administrative fee component, base fee component, risk rated premium component and special tuition protection component for the year. The TPS levy is credited to the Overseas Students Tuition Protection Fund (the **Fund**) which is established under section 52A of the *Education Services for Overseas Students Act 2000*.

The TPS arrangements commenced on 1 July 2012 and are designed to establish a universal tuition protection framework. 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 international students make in an Australian education, and to protect and enhance Australia's reputation as a destination of choice for international students.

Sections 1 to 7 of the Instrument commence on 31 December 2020 and Schedule 1 to the Instrument which repeals the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2017* (**2017 Determination**) (F2017L01358) commences on 1 January 2021.

This Instrument maintains a high level of student protection and ensures that sufficient funds are held to refund or place students in the event of provider closures, while also updating administrative arrangements for the ongoing effective operation of the TPS.

Authority

Section 7A of the Act allows the Minister for Education to determine the administrative and base fee components of the TPS levy by legislative instrument.

The Minister may, by legislative instrument before 1 January 2021, determine amounts for the purposes of paragraphs 6(a), 6(b), 7(a) and (7(b) of the Act for the administrative and base fee components of the 2021 TPS levy (subsection 7A(2) of the Act). Under subsection 7A(2) of the Act, the Minister may choose to make a legislative instrument for the following calendar years (i.e. for 2022 onwards).

However, if the Minister does not make a new instrument for the following calendar years, this Instrument will continue to apply but with annual indexation in accordance with section 8 of the Act, until the Minister makes a new instrument.

The Minister cannot exceed the ‘upper limits’ set out under subsection 7A(3) of the Act in determining the amounts for the administrative and base fee components of the TPS levy. The Minister must also have regard to the sustainability of the Fund, and any other matter the Minister considers appropriate, in determining such amounts.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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. This Instrument repeals the 2017 Determination.

Overview

Under the Act, the Minister is able to make an instrument to set the administrative and base fee components of the TPS levy, to proactively manage the balance of the Fund.

In 2017, the Minister made the 2017 Determination under subsection 7A(1) of the Act which determined the amounts for the administrative and base fee components of the TPS levy for the calendar year beginning on 1 January 2018. The Minister has not made a new instrument under section 7A since the 2017 Determination, therefore indexation under section 8 of the Act has applied to the TPS levy payable by providers for the calendar years beginning on 1 January 2019 and 1 January 2020.

In recognition of the significant impact of the COVID-19 pandemic on the sector, the Minister has agreed that the administrative and base fee components be temporarily changed to lower the collection amount for the 2021 TPS levy. The Australian Government Actuary (AGA) has advised the balance of the Fund is likely to remain within the Fund target range of \$35 million to \$60 million. This recommendation has been endorsed by the TPS Advisory Board.

The Minister is making a determination to reduce the fixed fee and per enrolment components of the administrative and base fee components by 20 per cent (compared to the fees collected in 2020). It is anticipated that this reduction will be a one-off reduction to the Fund and the Minister will reconsider the fee settings for the 2022 TPS levy collection next year.

In 2021, the administrative fee component is the sum of:

- a) \$89.60; and
- b) \$0.46 multiplied by the total enrolments for the provider for the previous year (2020).

In 2021, the base fee component is the sum of:

- c) \$180; and
- d) \$1.14 multiplied by the total enrolments for the provider for the previous year (2020).

Consultation

The department has consulted the TPS Director, the TPS Advisory Board and AGA prior to the reduction of the administrative and base fee components of the TPS levy through this Instrument.

Regulatory Impact Statement

The Office of Best Practice Regulation (**OBPR**) confirms that a regulation impact statement is not required (OBPR 43357).

Financial Impact Statement

This Instrument will result in a projected revenue of approximately \$3.1 million in 2021 for the administrative and base fee components of the TPS levy.

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

In determining the matters relevant to the calculation of the administrative and base fee components of the TPS levy, the Minister considered not only the sustainability of the Fund, but also the reality of the economy-wide ramifications and impact of the COVID-19 pandemic on businesses and education in Australia. The Minister's focus and intention in determining those matters was on supporting Australian businesses.

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Determination 2020***

Explanation of Provisions

Section 1: Name

Section 1 of the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2020* (the **Instrument**) is a formal provision setting out the name of the Instrument.

Section 2: Commencement

Section 2 provides that sections 1 to 7 of the Instrument commence on 31 December 2020 and Schedule 1 commences on 1 January 2021 (which repeals the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2017*).

Section 3: Authority

Section 3 of the Instrument sets out the Minister's legal authority to make the Instrument under section 7A of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the **Act**).

Section 4: Definitions

Section 4 defines terms used in the Instrument.

Section 5: Schedules

Section 5 provides that the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fee) Determination 2017* is repealed by Schedule 1 to the Instrument.

Section 6: Determination of administrative fee component

Section 6 sets the dollar amounts for the administrative fee component of the TPS levy for the calendar year beginning on 1 January 2021. Section 6 determines the amounts for the purposes of paragraphs 6(a) and (b) of the Act.

The Minister retains the ability to increase these amounts (for future years), up to the upper limits set out in subsection 7A(3) of the Act, to ensure adequate tuition protection for students should a spate of large provider closures occur (which would affect the ongoing administration costs of the tuition protection arrangements).

The Minister has considered the sustainability of the Overseas Students Tuition Protection Fund in setting these amounts and had regard to other matters such as the impact of the COVID-19 pandemic on the sector.

The note clarifies that these amounts are subject to indexation in accordance with section 8 of the Act, unless an instrument is made under section 7A of the Act for a later calendar year.

Section 7: Determination of base fee component

Section 7 sets the dollar amounts for the base fee component for the calendar year beginning on 1 January 2021. Section 7 determines the amounts for the purposes of paragraphs 7(a) and (b) of the Act.

The Minister retains the ability to increase these amounts (for future years), up to the upper limits set out in subsection 7A(3) of the Act, to ensure adequate tuition protection for students should a spate of large provider closures occur (which would affect the ongoing administration costs of the tuition protection arrangements).

The Minister has considered the sustainability of the Overseas Students Tuition Protection Fund in setting these amounts and had regard to other matters such as the impact of the COVID-19 pandemic on the sector.

The note clarifies that these amounts are subject to indexation in accordance with section 8 of the Act, unless an instrument is made under section 7A of the Act for a later calendar year.

Schedule 1 – Repeals

Schedule 1 repeals the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fee) Determination 2017* (F2017L01358).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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The Legislative 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

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Under the Act, the Minister is able to make an instrument to set the administrative and base fee components of the TPS levy, to proactively manage the balance of the Overseas Students Tuition Protection Fund (the **Fund**).

In 2017, the Minister made the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2017* (**2017 Determination**) under subsection 7A(1) of the Act which determined the amounts for the administrative and base fee components of the TPS levy for the calendar year beginning on 1 January 2018. The Minister has not made a new instrument under section 7A since the 2017 Determination, therefore indexation under section 8 of the Act has applied to the TPS levy payable by providers for the calendar years beginning on 1 January 2019 and 1 January 2020.

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The Minister is making a determination to reduce the fixed fee and per enrolment components of the administrative and base fee components by 20 per cent (compared to the fees collected in 2020). It is anticipated that this reduction will be a one-off reduction to the Fund and the Minister will reconsider the fee settings for the 2022 TPS levy collection next year.

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Human rights implications

Right to education

This Instrument 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 high quality education services to international students by registered providers under the *Education Services for Overseas Students Act 2000*.

To the extent that the right to education is engaged, this right is promoted by the Instrument.

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 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 Instrument will enhance the right to education by ensuring that the Minister for Education is proactively managing the balance in the Fund. This will ensure that the Fund remains within the current target range of \$35 million to \$60 million recommended by the AGA and endorsed by the TPS Advisory Board. Registered providers will only be charged the amount of levy required to maintain the safe reserve in the Fund as determined by the Minister and TPS Director based on recommendations from the AGA.

The Instrument is compatible with the right to education.

Conclusion

This Instrument is compatible with human rights because it advances the promotion of human rights.

Minister for Education
The Hon Dan Tehan MP