



Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2021

I, Cindy Cummins, Acting TPS Director, make the following instrument.

Dated 23 December 2021

Cindy Cummins
Acting TPS Director

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Part 1—Introduction

1 Name

This instrument is the *Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2021*.

2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. Parts 1 to 3	31 December 2021	31 December 2021
2. Schedule 1	1 January 2022.	1 January 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

This instrument is made under sections 9 and 10 of the *Education Services for Overseas Students (TPS Levies) Act 2012*.

4 Definitions

Note: The expressions **risk rated premium component** and **special tuition protection component** are used in this instrument and are defined in the *Education Services for Overseas Students (TPS Levies) Act 2012*.

In this instrument:

annual registration charge means an annual registration charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997* as in force for a year referred to in subsection 11(4).

CRICOS means the Commonwealth Register of Institutions and Courses for Overseas Students.

entry to market charge means an entry to market charge imposed by the *Education Services for Overseas Students (Registration Charges) Act 1997* as in force for a year referred to in subsection 11(4).

ESOS Act means the *Education Services for Overseas Students Act 2000*.

ESOS (TPS Levies) Act means the *Education Services for Overseas Students (TPS Levies) Act 2012*.

length of operation, for a provider, means the number of years that the provider has been registered on CRICOS as a registered provider:

- (a) beginning at the time the provider was registered, or last registered, as a registered provider; and
- (b) ending on 31 December 2021.

non-exempt provider means a registered provider that the Minister has not exempted under subsection 12(b) of the Act from the requirement to pay the risk rated premium component.

overseas student enrolments means the total enrolments of overseas students for a registered provider worked out in accordance with section 4A of the ESOS (TPS Levies) Act.

provider has the same meaning as in the ESOS Act.

Registered provider has the same meaning as in the ESOS Act.

risk management means the ESOS agency for a provider uses a risk management approach under subsection 10E(2) of the ESOS Act, and as a result, decides to renew the provider's registration for a period less than the maximum period allowed.

Note: An ESOS agency for a provider may decide to renew a provider's registration for a period less than the maximum period allowed for reasons that are not due to risk management. For example, a shorter registration renewal may be appropriate for administrative reasons, such as aligning or staggering a registered provider's CRICOS period of registration with the provider's domestic period of registration.

TPS levy has the same meaning as in the ESOS Act.

tuition fees has the same meaning as in the ESOS Act.

5 Schedules

Each instrument that is specified in Schedule 1 to this instrument is repealed as set out in the applicable items in that Schedule.

Part 2—Risk factors for risk rated premium component

6 Risk rated premium component

- (1) For the purposes of paragraph 9(3)(a) of the ESOS (TPS Levies) Act, the percentage for 2022 is 0.00%.
- (2) For the purposes of paragraph 9(3)(b) of the ESOS (TPS Levies) Act, the following risk factors are specified:
 - (a) base risk factor;
 - (b) length of operation;
 - (c) volatility in overseas student enrolments;
 - (d) maximum overseas source country concentration;
 - (e) non-compliance and registration renewal.

7 Risk factor—base risk factor

- (1) The risk factor, base risk factor, applies to all non-exempt providers.
- (2) For the purposes of paragraph 9(3)(c) of the ESOS (TPS Levies) Act, the increase factor is 1.0.

8 Risk factor—length of operation

Application

- (1) The risk factor, length of operation, applies to all non-exempt providers.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the ESOS (TPS Levies) Act, the increase factor is that set out in the following table:

Registered provider's length of operation		
Column 1	Column 2	Column 3
Item	If a registered provider's length of operation is ...	then the factor is ...
1	less than 1 year	1.0
2	1 year or more but less than 2 years	0.5
3	2 years or more	0.0

9 Risk factor—volatility in overseas student enrolments

Application

- (1) The risk factor, volatility in overseas student enrolments, applies to a non-exempt provider that:
- (a) has a length of operation of 2 years or more; and
 - (b) had either or both of the following in 2021:
 - (i) at least 20 overseas student enrolments;
 - (ii) \$400,000 or more in tuition fee income.

Factor by which specified percentage is increased

- (2) For the purposes of paragraph 9(3)(c) of the ESOS (TPS Levies) Act, if the provider is an expanding provider (as determined under subsection (3)) the increase factor is that set out in the following table:

Registered provider's volatility in overseas student enrolments					
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	If a registered provider's volatility in overseas student enrolments is ...	and the provider's length of operation is 2 years or more but less than 3 years, then the factor is ...	and the provider's length of operation is 3 years or more but less than 4 years, then the factor is ...	and the provider's length of operation is 4 years or more but less than 5 years, then the factor is ...	and the provider's length of operation is 5 years or more, then the factor is ...
1	120% or more	0.9	1.8	2.6	3.5
2	105% or more but less than 120%	0.8	1.5	2.3	3.0
3	90% or more but less than 105%	0.6	1.3	1.9	2.5
4	75% or more but less than 90%	0.5	0.9	1.4	1.8
5	60% or more but less than 75%	0.3	0.6	0.9	1.2
6	45% or more but less than 60%	0.2	0.3	0.5	0.6
7	30% or more but less than 45%	0.1	0.2	0.3	0.4
8	less than 30%	0.0	0.0	0.0	0.0

Determining whether a registered provider is an expanding provider

- (3) A registered provider is an **expanding provider** if the provider had overseas student enrolments in 2020 and the number of overseas student enrolments in 2021 was greater than the number of enrolments in 2020.

Working out the percentage of a registered provider's volatility in overseas student enrolments

- (4) If a registered provider did not have overseas student enrolments in 2020, or the provider is not an expanding provider, the registered provider's volatility in overseas student enrolments is 0%.
- (5) If a registered provider is an expanding provider under subsection (3), the percentage of a registered provider's volatility in overseas student enrolments is worked out using the formula:

$$\left[\frac{\text{Number of overseas student enrolments in 2021}}{\text{Number of overseas student enrolments in 2020}} - 1 \right] \times 100\%$$

10 Risk factor—maximum overseas source country concentration

Application

- (1) The risk factor, maximum overseas source country concentration, applies to a non-exempt provider that had either or both of the following in 2021:
- (a) at least 20 overseas student enrolments;
 - (b) \$400,000 or more in tuition fee income.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the ESOS (TPS Levies) Act, the increase factor is that set out in the following table:

Registered provider's maximum overseas source country concentration		
Column 1	Column 2	Column 3
Item	If a registered provider's maximum overseas source country concentration is ...	then the factor is ...
1	80% or more	3.1
2	50% or more but less than 80%	0.7
3	25% or more but less than 50%	0.3
4	less than 25%	0.0

Working out the maximum overseas source country concentration percentage

- (3) A registered provider's maximum overseas source country concentration is worked out using the formula:

$$\left[\frac{\text{Largest number of overseas student enrolments for a country}}{\text{Total number of overseas student enrolments}} \right] \times 100\%$$

where:

largest number of overseas student enrolments for a country means, of the number of overseas student enrolments with the registered provider for each overseas source country in 2021, the largest number of enrolments for any of those overseas source countries in 2021.

total number of overseas student enrolments means the total number of overseas student enrolments with the registered provider in 2021.

11 Risk factor—non-compliance and registration renewal

Application

- (1) The risk factor, non-compliance and registration renewal, applies to all non-exempt providers.

Factor by which specified percentage is multiplied

- (2) For the purposes of paragraph 9(3)(c) of the ESOS (TPS Levies) Act, the increase factor is that set out in the following table subject to subsection (3):

Registered provider's non-compliance and registration renewal		
Column 1	Column 2	Column 3
Item	If a registered provider ...	then the factor is ...
1	has a weighted late payment measure of 30 days or more	2.0
2	has a weighted late payment measure of 15 days or more but less than 30 days	0.9
3	has a weighted late payment measure of 1 day or more but less than 15 days	0.7
4	does not have a weighted late payment measure (payment on time)	0.0
5	had action mentioned in section 83 of the ESOS Act taken against it in 2021	1.0
6	applied under section 10D of the ESOS Act to renew the provider's registration and, due to risk management, the period of registration set out in the notice given in 2021 under section 10G of that Act is less than the maximum period allowed	1.0

- (3) Where more than one item in the table at subsection (2) applies, the increase factor is the sum of the factors in column 3.

Working out the weighted late payment measure

- (4) A registered provider's weighted late payment measure is worked out by adding the results of the calculations in the following paragraphs:

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- (a) for 2021, work out $0.7 \times [\text{ARC} + \text{EMC} + \text{TPSL}]$;
 - (b) for 2020, work out $0.2 \times [\text{ARC} + \text{EMC} + \text{TPSL}]$;
 - (c) for 2019, work out $0.1 \times [\text{ARC} + \text{EMC} + \text{TPSL}]$;

where:

ARC, for a year, means:

- (a) the number of days after the due date on which the annual registration charge for that year was received; or
- (b) if payment was received on or before the due date—zero.

EMC, for a year, means:

- (a) the number of days after the due date on which the entry to market charge for that year was received; or
- (b) if the payment was received on or before the due date—zero.

TPSL, for a year, means:

- (a) the number of days after the due date on which the TPS levy payable for that year was received; or
- (b) if the TPS levy was received on or before the due date—zero.

12 Recalculation of risk factors when registrations amalgamated and national registration on CRICOS is finalised during 2021

- (1) This section applies if a provider amalgamates 2 or more registrations on CRICOS into a single registration through the national registration process in 2020.

Note: For the process to request amalgamation, see item 96 of Schedule 2 to the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012*.

- (2) If this section applies to a provider, the provider's risk factors in sections 7 to 11 are to be recalculated as applicable:
 - (a) the risk factor length of operation is to be calculated in respect of the resultant amalgamated registration for the period:
 - (i) beginning at the start of the longest-running registration in the amalgamation; and
 - (ii) ending on 31 December 2021;
 - (b) the risk factor volatility in overseas student enrolments is to be calculated using subsections 9(4) to 9(5), but treating the number of overseas student enrolments for a year as the sum of student enrolments for all registrations in that year that were amalgamated into the single registration;
 - (c) the risk factor maximum overseas students source country concentration is to be calculated using subsection 10(3), as follows:
 - (i) the number of enrolments for each overseas source country is to be calculated as the sum of the enrolments for that overseas source country with each of the registrations that were amalgamated into the single registration;

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- (ii) the total number of enrolments is to be calculated as the sum of the total number of enrolments for all registrations that were amalgamated into the single registration;
 - (d) the risk factor non-compliance and registration renewal is to be calculated for the resultant amalgamated registration in respect to the weighted late payment measure and actions under section 83 of the ESOS Act for the provider, in the 2021 year;
 - (e) the overseas students' tuition fee income for 2021 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

13 Special tuition protection component

For the purposes of subsection 10(2) of the ESOS (TPS Levies) Act, the specified percentage for 2021 is 0.

Schedule 1—Repeals

Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2020

1 The whole of the instrument

Repeal the instrument