

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Education**

***Education Services for Overseas Students Act 2000***

***Education Services for Overseas Students (Calls on the OSTF – requirements for payments)  
Instrument 2022***

### **AUTHORITY**

Subsection 50B(5) of the *Education Services for Overseas Students Act 2000* (the Act) provides that the Minister may, by legislative instrument, specify requirements for payments made by the Tuition Protection Service (TPS) Director under section 50B of the Act.

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. The repeal of the *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Determination 2012 (No. 1)* (the Former Instrument) by the Schedule to this instrument relies on that provision.

### **PURPOSE AND OPERATION**

The purpose of the *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Instrument 2022* (the Instrument) is to repeal and replace the Former Instrument, which was due to sunset (or automatically repeal) on 1 October 2022 in accordance with the *Legislation Act 2003*. The Instrument will specify how payments under section 50B of the Act must be made. For example, payments to a student under paragraph 50B(3)(c) must be made electronically, and in Australian dollars, to a transaction account nominated by, and in the name of, the student.

The Overseas Student Tuition Fund (OSTF) is part of the TPS framework and exists to strengthen tuition protection to ensure overseas students, and intending overseas students, receive the tuition they have paid for or, as a last resort, a refund. A payment from the OSTF under section 50B of the Act is made to a student, a person other than the student (for example, a person who is authorised to act on behalf of a student who is under 18) or a provider, for the purpose of funding the placement and refund activity of the TPS framework.

Specifying requirements for how payments are made helps safeguard the interests of payment recipients and acts as a control on the management of the OSTF.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation has advised that no RIS is required as the Instrument is unlikely to have a more than minor regulatory impact (OBPR ID: 44167).

## **COMMENCEMENT**

This instrument commences on the day after it is registered on the Federal Register of Legislation.

## **CONSULTATION**

The TPS Director is a Commonwealth statutory officer established by the Act, and has functions that include overseeing the operation of student placements, making payments to providers for accepting students affected by a provider default, overseeing refunds to students, managing the operation of the OSTF and determining the amount of the annual TPS levy. The TPS Operations Team is located within the Department of Education and supports the TPS Director. The TPS Director and the TPS Operations Team were consulted in the preparation of this Instrument and are supportive of this Instrument.

As prescribed in legislation (section 176A of the Act, section 113A of the *Vet Student Loans Act 2016* (VSL Act), section 238-7 of the *Higher Education Support Act 2003* (HESA) and section 203A of the *Tertiary Education Quality and Standards Agency 2011* (TEQSA Act)), it is a requirement that the responsible Minister commence a review of the tuition protection arrangements. The Review must consider the operation of tuition protection arrangements and each Tuition Protection Fund and related matters. The Terms of Reference for the Review were issued on 14 September 2021. The Review was conducted by an independent consultant whose analysis was informed by comprehensive consultations with key stakeholders across the International Education, Higher Education and VET sectors. The relevant terms of reference were to assess the effectiveness and efficiency of the current legislative, operational, administrative and governance arrangements of the TPS, including:

- whether the current delivery arrangements best meet the tuition protection policy objectives as set out in the Act, VSL Act, HESA and the TEQSA Act, and
- the framework of the current legislative structure of the TPS as set out in the Act, VSL Act, HESA, the TEQSA Act, and multiple subordinate legislative instruments.

The Reviewer consulted 38 tuition providers and was concluded in February 2022.

The review found that out of 115 students surveyed 74% were either satisfied or very satisfied with the TPS overall and 65% were satisfied or very satisfied with the time it took for the TPS to refund or place them at another institution.

Those surveyed did not provide feedback on the mechanics of the payment, however, the review found that TPS's performance is resilient to high volumes of activity, indicating that current operational models scale well to increased volumes.

The Review did not make any recommendations regarding changing the content of this Instrument.

## 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 (Calls on the OSTF – requirements for payments) Instrument 2022

The *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Instrument 2022* (the 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**

The purpose of the Instrument is to repeal and replace the *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Determination 2012 (No. 1)*. The Instrument will specify how payments under section 50B of the Act must be made. For example, payments to a student under paragraph 50B(3)(c) must be made electronically, and in Australian dollars, to a transaction account nominated by, and in the name of, the student.

The Overseas Student Tuition Fund (OSTF) is part of the Tuition Protection Service (TPS) framework and exists to strengthen tuition protection to ensure overseas students, and intending overseas students, receive the tuition they have paid for or, as a last resort, a refund. A payment from the OSTF under section 50B is made to a student, a person other than the student (for example, a person who is authorised to act on behalf of a student who is under 18) or a provider, for the purpose of funding the placement and refund activity of the TPS framework.

#### **Human rights implications**

The Instrument engages the right to education.

##### Right to education

The Instrument promotes the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Article 13(2)(c) of the ICESCR provides that ‘higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.’

Section 6 of the Instrument specifies requirements for how payments from the OSTF must be made to payment recipients under section 50B of the Act. In particular, all payments must be made electronically, and in Australian dollars, to a transaction account nominated by, and in the name of, the provider, individual or student. For payments to a registered provider, the payment must also be paid into an account held with an authorised deposit-taking institution.

Through the OSTF, providers are supported to continue providing education to impacted students, and, where no equivalent course is available or a student does not elect to undertake a replacement course, a refund can be provided to the impacted individual.

The requirements on payments imposed by section 6 of the Instrument ensure that reasonable steps are taken to confirm payments are made to the correct recipient and that the use of OSTF funds is traceable. By promoting the sustainability of the OSTF through secure and proper management, the broader goals of the right to education are supported by removing an impediment to continuing accessibility through the provision of an equivalent program or reimbursement.

Therefore, the Instrument promotes the right to education by protecting students, those who pay fees on behalf of students, and providers.

### **Conclusion**

The Instrument is compatible with human rights because it promotes the right to education.

**The Hon Jason Clare MP, Minister for Education**

**EDUCATION SERVICES FOR OVERSEAS STUDENTS  
(CALLS ON THE OSTF – REQUIREMENTS FOR PAYMENTS) INSTRUMENT 2022**

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. This section specifies the name of the instrument as the *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Instrument 2022* (the Instrument).

**Section 2: Commencement**

2. This section specifies that the Instrument commences on the day after its registration on the Federal Register of Legislation.

**Section 3: Authority**

3. The Instrument is made by the Minister under subsection 50B(5) of the *Education Services for Overseas Students Act 2000* (the Act).

**Section 4: Definitions**

4. Section 4 provides definitions for certain expressions used in the Instrument, and notes that a number of expressions used in the Instrument are already defined in section 5 of the Act.
5. This section defines the terms ‘Act’ and ‘authorised deposit-taking institution’ for the purposes of the Instrument.
6. ‘Act’ refers to the *Education Services for Overseas Students Act 2000*.
7. ‘Authorised deposit-taking institution’ (ADI) has the same meaning as in the *Banking Act 1959*, which defines an ADI as a body corporate in relation to which an authority under subsection 9(3) of the *Banking Act 1959* is in force.

**Section 5: Schedules**

8. This section clarifies that Schedule 1 is effective on its terms (that is, to repeal the *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Determination 2012 (No. 1)* (the Former Instrument)).

## **Section 6: Requirements for payment**

9. This section specifies additional requirements for payments that are made by the TPS Director under section 50B of the Act.
10. Subsection (1) provides that payments made to a registered provider:
  - a. must be made electronically;
  - b. must be in Australian dollars and paid into a transaction account nominated by, and in the name of, the provider; and
  - c. must be paid into an account held with an ADI.
11. Subsections (2) and (3) provide that payments to individuals, whether students or other persons, must be made electronically in Australian dollars and paid into a transaction account nominated by, and in the name of, the person or student.

## **SCHEDULE 1—REPEALS**

### **Item 1: The whole of the instrument**

12. This item repeals the Former Instrument.