

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Education Services for Overseas Students (TPS Levies) Act 2012

Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2022

AUTHORITY

Section 7A of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act) allows the Minister to determine the administrative and base fee components of the Tuition Protection Service (TPS) levy by legislative instrument.

Under subsection 7A(2) of the Act, the Minister may, before 1 January 2023, 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 2023 TPS levy. The Minister may choose to make a new legislative instrument for following calendar years (i.e. for 2024 onwards).

However, if the Minister does not make a new instrument for the following calendar years, the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2022* (the 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 Overseas Students Tuition Fund (OSTF), and any other matter the Minister considers appropriate, in determining amounts for the purposes of paragraphs 6(a), 6(b), 7(a) and (7(b) 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 (TPS Levies) (Administrative and Base Fees) Determination 2021* (the Former Instrument) in Schedule 1 to the Instrument relies on this provision.

PURPOSE AND OPERATION

The TPS arrangements, including the TPS levy, commenced on 1 July 2012 and are designed to establish a universal tuition protection framework in respect of overseas students. 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.

Under Part 2 of the Act, all providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) on 1 January of a year are liable to pay a TPS levy for the year. The amount of the TPS levy payable is the sum of a provider's:

- administrative fee component (section 6 of the Act);
- base fee component (section 7 of the Act);
- risk rated premium component (section 9 of the Act); and
- special tuition protection component (section 10 of the Act).

The purpose of the Instrument is to specify the dollar amounts payable by all non-exempt CRICOS registered providers for the purpose of working out the administrative and base fee components of the TPS levy under sections 6 and 7 of the Act.

In 2021, the Minister made the Former Instrument under subsection 7A(2) 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 2022. The Former Instrument set the fixed fee and per enrolment components of the administrative and base fee components to zero in recognition of the significant impact of the COVID-19 pandemic on the sector. This was anticipated to be a temporary relief measure.

To ensure the ongoing sustainability of the OSTF, the Minister has agreed that the administrative and base fee components are not to be set at zero for 2023. However, to reduce the impact of the administrative and base fee components of the levies, the Minister has set these components at 2021 levels plus the consumer price index (CPI) across two years. These settings provide the sector with a modest reduction compared to the amounts determined for the administrative and base fee components in 2020 (pre-COVID-19).

These settings will ensure the OSTF remains within the target range of \$35 million to \$60 million as recommended by the Australian Government Actuary (AGA) and endorsed by the TPS Advisory Board.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has been consulted and advised that a regulatory impact statement is not required as the changes are minor or machinery in nature (OBPR reference: OBPR22-03444).

FINANCIAL IMPACT

The Instrument will result in an estimated levy collection of approximately \$1.5 million in 2023 for the administrative and base fee components of the TPS levy. This estimate is based on projected student numbers for 2023.

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 OSTF, but also the reality of the ongoing economy-wide ramifications and impact of the COVID-19 pandemic on businesses and education in Australia.

COMMENCEMENT

Sections 1 to 7 of the Instrument commence on 31 December 2022 and Schedule 1 to the Instrument, which repeals the Former Instrument, commences on 1 January 2023.

CONSULTATION

The Department of Education engaged the AGA to provide advice about the administrative and base fee component amounts and the impact of these settings on the OSTF. The AGA's advice is reflected in the provisions of the Instrument.

The Department of Education consulted the TPS Director about the Instrument and no concerns were raised.

The Department of Education consulted peak education bodies (including Group of 8, Universities Australia and TAFE Directors Australia) about the potential re-instatement of the administrative fee and base fee components of the international TPS levy in 2023. Feedback received indicated broad support for the recommencement of regulatory charging in 2023.

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) (Administrative and Base Fees) Determination 2022

The *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 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 Tuition Protection Service (TPS) arrangements, including the TPS levy, commenced on 1 July 2012 and are designed to establish a universal tuition protection framework in respect of overseas students. 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.

Under Part 2 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act), all providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) on 1 January of a year are liable to pay a TPS levy for the year. The amount of the TPS levy payable is the sum of a provider's:

- administrative fee component (section 6 of the Act);
- base fee component (section 7 of the Act);
- risk rated premium component (section 9 of the Act); and
- special tuition protection component (section 10 of the Act).

The purpose of the Instrument is to specify the dollar amounts payable by all non-exempt CRICOS registered providers for the purpose of working out the administrative and base fee components of the TPS levy under sections 6 and 7 of the Act.

In 2021, the Minister made the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021* (the Former Instrument) under subsection 7A(2) 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 2022. The Former Instrument set the fixed fee and per enrolment components of the administrative and base fee components to zero in recognition of the significant impact of the COVID-19 pandemic on the sector.

To ensure the ongoing sustainability of the Overseas Student Tuition Fund (OSTF), the Minister has agreed that the administrative and base fee components are not to be set at

zero for 2023. However, to reduce the impact of the administrative and base fee components of the levies, the Minister will reduce the administrative and base fee components by 20 per cent (compared to the amount determined for the administrative and base fee components of the TPS levy in 2021).

These settings will ensure the OSTF remains within the target range of \$35 million to \$60 million as recommended by the Australian Government Actuary (AGA) and endorsed by the TPS Advisory Board.

Human rights implications

The Instrument engages the right to education.

Right to education

The 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 education service providers registered 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 international students by placing students in an alternative course of study or refunding 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 OSTF. The OSTF supports the TPS framework, which supports and provides assistance to international students by placing international students in alternative courses of study or providing refunds. The management of the balance in the OSTF will ensure that the OSTF remains within the current target range of \$35 million to \$60 million as 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 OSTF as determined by the Minister and TPS Director based on recommendations from the TPS Advisory Board and the AGA.

The Instrument is compatible with the right to education.

Conclusion

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

The Hon Jason Clare MP, Minister for Education

EDUCATION SERVICES FOR OVERSEAS STUDENTS (TPS LEVIES) (ADMINISTRATIVE AND BASE FEES) DETERMINATION 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2022* (the Instrument).

Section 2: Commencement

2. This section sets out the commencement dates of the Instrument.
3. Sections 1 to 7 of the Instrument commence on 31 December 2022 and Schedule 1 to the Instrument, which repeals the *Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021* (the Former Instrument) commences on 1 January 2023.

Section 3: Authority

4. The Instrument is made by the Minister under section 7A of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

Section 4: Schedules

5. This section clarifies that Schedule 1 is effective on its terms to repeal the Former Instrument.

Section 5: Definitions

6. This section provides that 'Act' in the Instrument means the *Education Services for Overseas Students (TPS Levies) Act 2012* and notes that some terms used in the Instrument (such as 'administrative fee component' and 'base fee component') are defined in the Act.

Section 6: Determination of administrative fee component

7. Section 6 sets the dollar amounts for the administrative fee component of the TPS levy for the calendar year beginning on 1 January 2023 by determining the amounts for the purposes of paragraphs 6(a) and (b) of the Act.
8. Section 6 thus provides that the amount for the purposes of paragraph 6(a) of the Act is \$79.20 and the amount for the purposes of paragraph 6(b) of the Act is \$0.41.

9. 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).
10. The Minister has considered the sustainability of the Overseas Students Tuition Fund (the OSTF) in setting these amounts and had regard to other matters, such as the impact of the COVID-19 pandemic on the sector.
11. 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

12. Section 7 sets the dollar amount for the base fee component for the calendar year beginning on 1 January 2023 by determining the amounts for the purposes of paragraphs 7(a) and (b) of the Act.
13. Section 7 thus provides that the amount for the purposes of paragraph 7(a) of the Act is \$159.20 and the amount for the purposes of paragraph 7(b) of the Act is \$1.01.
14. 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).
15. The Minister has considered the sustainability of the OSTF in setting these amounts and had regard to other matters, such as the impact of the COVID-19 pandemic on the sector.
16. 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

Education Services for Overseas Students (TPS Levies) (Administrative and Base Fees) Determination 2021

Item 1: The whole of the instrument

17. This item repeals the Former Instrument from 1 January 2023.