THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EDUCATION SERVICES FOR OVERSEAS STUDENTS 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
AMENDMENT BILL 2017

OUTLINE

The Education Services for Overseas Students Amendment Bill 2017 (the Bill) amends the Education Services for Overseas Students Act 2000 (ESOS Act) to make consequential and technical amendments to reflect the changes to the Education Services for Overseas Students (TPS Levies) Act 2012 made through the Education Services for Overseas Students (TPS Levies) Amendment Bill 2017.

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 Overseas Students Tuition Fund (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 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.
FINANCIAL IMPACT STATEMENT

Nil.
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 AMENDMENT BILL 2017

The Education Services for Overseas Students 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 Act 2000 (ESOS Act) to make consequential and technical amendments to reflect the changes to the Education Services for Overseas Students (TPS Levies) Act 2012 made through the Education Services for Overseas Students (TPS Levies) Amendment Bill 2017 (TPS Levies Bill).

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 Overseas Students Tuition Fund (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 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 implications**

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 TPS Levies Bill and consequential amendments in this 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 of 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.

The measures will allow providers 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 TPS Advisory Board and the TPS Director.

The Bill is compatible with the right to education.

**Conclusion**

The Bill is compatible with human rights because it advances human rights.
EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT BILL 2017

NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be the Education Services for Overseas Students 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 sections 1 to 3 and anything in this Act not elsewhere covered by this table will commence the day the Act receives the Royal Assent. Schedule 1 will commence at the same time as the Education Services for Overseas Students (TPS Levies) Amendment Act 2017 (TPS Levies Amendment Act) commences. However, Schedule 1 does not commence at all if the TPS Levies Amendment Act does not commence.

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>
<tr>
<th>Act</th>
<th>Education Services for Overseas Students (TPS Levies) Act 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill</td>
<td>Education Services for Overseas Students Amendment Bill 2017</td>
</tr>
<tr>
<td>ESOS Act</td>
<td>Education Services for Overseas Students Act 2000</td>
</tr>
<tr>
<td>TPS</td>
<td>Tuition Protection Service</td>
</tr>
<tr>
<td>TPS Levies Bill</td>
<td>Education Services for Overseas Students (TPS Levies) Amendment Bill 2017</td>
</tr>
</tbody>
</table>
Schedule 1  Amendments

Summary

This Schedule amends the ESOS Act. This Bill makes consequential and technical amendments to the ESOS Act to reflect the Minister's ability to set the administrative and base fee components of the TPS levy. It clarifies that the TPS Director must work out the amount of each provider’s TPS levy in accordance with the instruments made under the Act.

Detailed explanation

Education Services for Overseas Students Act 2000

Item 1 – Section 51

Item 1 clarifies that the TPS Director is responsible for working out the amount of the TPS levy each year as opposed to setting the amount of the TPS levy each year. This more accurately reflects the role of the TPS Director in working out the TPS levy to be paid by each registered provider in accordance with the Act.

The amendments made through the TPS Levies Bill allow the Minister to determine the administrative and base fee components of the TPS levy by legislative instrument. The TPS Director will continue to be responsible for determining the risk rated premium component and special tuition protection component of the TPS levy.

Item 2 – Section 53A (heading)

Item 2 repeals the heading and substitutes the heading with ‘TPS Director to work out the amount of TPS levies’. This more accurately reflects the role of the TPS Director in working out the TPS levy to be paid by each registered provider in accordance with the Act.

Item 3 – Subsection 53A(2)

Item 3 clarifies that the TPS Director must determine the TPS levy amount in accordance with the Act. This is a consequential amendment following the changes made through the TPS Levies Bill to the Act.

Item 4 – Application provision

Item 4 provides that the repeal and substitution of subsection 53A(2) of the ESOS Act made by Schedule 1 to this Bill applies in relation to the calendar year beginning on 1 January 2018 and each later calendar year.