

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education, Science and Training

Declaration under subsection 4(2) of the *Higher Education Funding Act 1988*

LEGISLATIVE BASIS FOR THE DECLARATION

Under subsection 4(2) of the *Higher Education Funding Act 1988* (the Act), the Minister may declare that a Table in subsection 4(1) is amended in the manner specified in the declaration and, where such a declaration is made, the declaration has effect accordingly.

Section 110 of the Act provides that a declaration made by the Minister under subsection 4(2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Minister has not delegated her powers under subsection 4(2) of the Act.

BACKGROUND

Higher Education Institutions which are established in Australia may apply to the Australian Taxation Office for deductible gift recipient (DGR) endorsement.

It is a requirement of the *Income Tax Assessment Act 1997* (ITAA) that in order to be eligible for DGR endorsement, a higher education institution must be either a public university or a 'higher education institution within the meaning of the *Higher Education Funding Act 1988*'. The Act remains current for this purpose as the ITAA makes no reference to the subsequent enabling legislation, the *Higher Education Support Act 2003* (HESA). As a consequence, in order for a higher education institution (that is not a public university) to gain DGR endorsement, it must be added to a table in subsection 4(1) of the Act by means of a ministerial declaration under subsection 4(2) of the Act.

PURPOSE/ EFFECT OF DECLARATION

The effect of this declaration is to add the following institutions to Table B in subsection 4(1) of the Act:

- Australian College of Applied Psychology Pty Ltd
- Australian Guild of Music Education Incorporated
- Australian Institute of Public Safety Pty Ltd
- Blue Mountains International Hotel Management School Pty Ltd
- Box Hill Institute of Technical and Further Education
- East Coast Gestalt Training Incorporated
- Institute of Counselling Incorporated
- International College of Management Sydney Pty Ltd
- JMC Pty Ltd
- North Melbourne Institute of TAFE

This would mean that these institutions are 'higher education institutions' under the Act, thus meeting the requirements of the ITAA.

CONSULTATION

The Department of Education, Science and Training (DEST) has consulted with the Council of Private Higher Education (COPHE) and the Australian Council for Private Education and Training, the peak bodies which between them represent all of the private higher education institutions listed in the Declaration, about this arrangement for allowing private higher education institutions access to DGR endorsement. There was full agreement with this measure.

DEST has also consulted with the ATO about this declaration and there was full agreement.

COMMENCEMENT

The instrument commences the day after it is registered on the Federal Register of Legislative Instruments in accordance with the *Legislative Instruments Act 2003*.