

EXPLANATORY STATEMENT

Education Services for Overseas Students (TPS Levies) (Levy Exemptions) Determination 2012 (No. 1)

Summary

The *Education Services for Overseas Students (TPS Levies) (Levy Exemptions) Determination 2012 (No. 1)* is made by the Minister for Tertiary Education, Skills, Science and Research, pursuant to section 12 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act).

The tuition protection amendments to the ESOS legislative framework, which commence at the same time as item 2 of the table under subsection 2(1) of the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012*, are 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. This determination is one of a number the Minister may make to specify in greater detail some of the Act's requirements.

The purpose of this determination is to prescribe one or more classes of registered providers to be exempt from the requirement to pay certain components of the TPS (Tuition Protection Service) Levy.

Authority

Section 12 of the Act permits the Minister, by legislative instrument, to exempt one or more classes of registered providers from paying certain components of the TPS Levy.

Purpose and operation

Base fee component - exemption

The determination exempts registered schools that have no international students, from paying the base fee component of the TPS Levy. This recognises that many registered schools only maintain their CRICOS registration in order to be ready to enrol small numbers of international students from time to time as part of cultural enrichment and related programs.

Risk rated premium component - exemption

The determination also exempts public institutions from the requirement to pay the risk rated premium component of the TPS Levy because they are effectively underwritten by government and present a negligible risk to the TPS. These include the following classes of provider:

- Table 'A' providers (prescribed higher education providers);
- government schools; and
- TAFEs.

Consultation

The Department of Industry, Innovation, Science, Research and Tertiary Education has consulted with the TPS Implementation Consultative Committee (representatives from Universities Australia, the Australian Council for Private Education and Training, the Council of Private Higher Education, the Independent Schools Council of Australia, TAFE Directors Australia, English Australia and the Council of International Students Australia).

Regulation Impact Statement

The regulatory impact of the introduction of the TPS, to which this determination relates, was considered in the ESOS (Tuition Protection Service and other related measures) Regulatory Impact Statement assessed as adequate by the OBPR on 2 February 2012.

A post-implementation review of this and other measures related to the TPS is required to be undertaken within one to two years of implementation.

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) (Levy Exemptions)** **Determination 2012 (No. 1)**

This determination 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 Determination

The determination is made under section 12 of the *Education Services for Overseas Students (TPS Levies) Act 2012* (the Act) by the Minister for Tertiary Education, Skills, Science and Research.

The tuition protection amendments to the ESOS legislative framework, which commence at the same time as item 2 of the table under subsection 2(1) of the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012*, are 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. This determination is one of a number the Minister may make to specify in greater detail some of the Act's requirements.

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Human rights implications

Right to education

This determination engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this determination has an effect on the provision of education services to international students by bodies corporate registered on the CRICOS.

To the extent that the right to education is engaged, this right is promoted by the determination.

Conclusion

This determination is compatible with human rights because it advances the protection of human rights.