

EXPLANATORY STATEMENT

Education Services for Overseas Students **(Notifying provider default – requirements of a notice)** **Determination 2012 (No. 1)**

Summary

The *Education Services for Overseas Students (Notifying provider default – requirements of a notice) Determination 2012 (No. 1)* is made by the Minister for Tertiary Education, Skills, Science and Research, pursuant to subsection 46B(6) of the *Education Services for Overseas Students Act 2000* (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 the determination is to specify requirements for a notice a provider must give if a provider defaults.

Authority

Subsection 6 of section 46B of the Act permits the Minister, by legislative instrument, to specify requirements for a notice given under this section.

Purpose and operation

This determination specifies additional information that a provider must give when notifying the Secretary and the TPS Director that they are unable to deliver a course as agreed with a student.

The notification which is to be made in the Provider Registration and International Student Management System (PRISMS) includes the default date, the reason for the default (e.g. insufficient enrolments) and contact details in case follow up action is required by the TPS Director or the Immigration Secretary.

Timely information about provider defaults forms part of an effective tuition protection service, helping to facilitate prompt and effective responses by providers and if necessary by the Tuition Protection Service in placing students in an alternative course or providing a refund.

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*.

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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 subsection (6) of section 46B of the *Education Services for Overseas Students Act 2000* (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.