EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

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

**AUTHORITY**

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*.

**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:

- Harvest West Bible College Inc
- Adelaide Central School of Art Incorporated
- The Cairnmillar Institute School of Counselling and Psychotherapy Pty Ltd
- William Angliss Institute of TAFE
- Holmes Commercial Colleges (Melbourne) Ltd
- Melbourne Institute of Technology Pty Ltd
- Think: Colleges Pty Ltd

This would mean that these institutions are ‘higher education institutions’ within the meaning of the Act, thus meeting the requirements of the ITAA.

**CONSULTATION**

Consultation was not undertaken and was not considered necessary in this case because the instrument confers a benefit on the named institutions and they are the only bodies affected by the instrument. This instrument will not have a direct or substantial indirect effect on business, nor will it restrict competition.

**COMMENCEMENT**

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