EXPLANATORY STATEMENT

Issued by the authority of the Minister for Education

Subject: - Schools Assistance Act 2008
          Determination of Eligible New Arrivals

Authority

The Schools Assistance Act 2008 (the Act) provides, among other things, for the Commonwealth to give financial assistance to States for non-government schools in order to assist with the provision of intensive English tuition for newly arrived primary and secondary school students whose language backgrounds are other than English.

Section 92(3) of the Act provides that the Minister may determine criteria for being a person newly arrived in Australia for the purposes of paragraph (b) of the definition of ‘eligible new arrival’ under subsection 92(1) of the Act.

Purpose and operation

This instrument determines the definition of an ‘eligible new arrival’ for the purposes of receiving financial assistance under the Act.

Background

Support for a particular group of newly arrived students who require English tuition is provided through the Act. Financial assistance under the English as a Second Language – New Arrivals program must be provided to those who are newly arrived in Australia and require intensive English tuition. This is intended so that those in most need of assistance in order to get started in Australian education and society will receive specific targeted funding from the Australian Government.

The final criteria for funding require the visa subclass of a particular student to be eligible under a determination made under the Act. Non-government education authorities are provided with lists of eligible visa subclasses. Program funding allows the school to provide teaching support such as classroom aides, ESL trained teachers, or professional development for ESL support.

The Minister may make these determinations in order to expand visa eligibility for the program. If the Minister does not specify a particular visa, targeted assistance under this program would not be available for that student.

Explanation of Provisions

The Schedule attached to the Determination specifies each class of visa holder who satisfies the criteria for being a person newly arrived in Australia for the purposes of the definition of ‘eligible new arrival’.
Commencement

This determination is taken to have commenced on 1 January 2009. Retrospective commencement is required to ensure that, during the period prior to the making of this Determination, no person was disadvantaged as a result of the definition of “Eligible New Arrival” under paragraph 92(1)(b) of the Act not having been determined since the enactment of the Act.

The retrospective commencement of this Determination does not infringe subsection 12(2) of the Legislative Instruments Act 2003 because the matters determined are beneficial in nature and do not affect the rights of a person (other than the Commonwealth) as at the date of commencement so as to disadvantage any person. Nor does the retrospective commencement of this Determination impose any liabilities on any person (other than the Commonwealth) in respect of anything done or omitted to be done before the date of commencement.

Consultation

Consultations were not undertaken with stakeholders for this instrument as the determination confers a benefit to schools and students. The applicable visa information with respect to the Migration Act 1958 was provided by the Department of Immigration and Citizenship.