EXPLANATORY STATEMENT

**Education Services for Overseas Students**
(Suitable Alternative Courses)
**Determination 2012 (No. 1)**

**Summary**

The Education Services for Overseas Students (Suitable Alternative Courses) Determination 2012 (No. 1) is made by the Minister for Tertiary Education, Skills, Science and Research, pursuant to subsection 49(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 this determination is to specify criteria to be applied in considering whether a particular course is a ‘suitable alternative course’.

**Authority**

Subsection 6 of section 49 of the Act permits the Minister, by legislative instrument, to specify criteria to be applied in considering whether a particular course is a suitable alternative course for the purposes of the Act.

**Purpose and operation**

If a defaulting provider is not able or likely to meet its obligations to a student under section 46D of the Act (by arranging for a place in an alternative course to be offered to a student or by paying a refund to the student), the TPS Director must first (before offering a refund), if there are suitable alternative courses available, provide the student with one or more options for such alternative courses.

The criteria to be applied by the TPS Director when considering whether a particular course is a suitable alternative course reflect the policy objective of assisting students to continue their education in Australia, broadly consistent with their original intentions in terms of field of study and geographic location. Ultimately, the student does not have to accept an offer and after 30 days may apply for a refund. However, the TPS Director will begin the process by providing options through the online placement service, where they are available, consistent with this determination.

**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).

Explanatory Statement to F2012L01381
Regulation Impact Statement

The regulatory impacts of the introduction of the TPS, to which this determination relates, were 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


Education Services for Overseas Students
(Suitable Alternative Courses)
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 subsection (6) of section 49 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.

The purpose of this determination is to specify criteria to be applied in considering whether a particular course is a ‘suitable alternative course’.

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.