

## EXPLANATORY STATEMENT

### **Education Services for Overseas Students** **(Calculation of unspent pre-paid fees – provider default)** **Determination 2012 (No. 1)**

#### Summary

The *Education Services for Overseas Students (Calculation of unspent pre-paid fees – provider default) Determination 2012 (No. 1)* is made by the Minister for Tertiary Education, Skills, Science and Research, pursuant to subsection 46D(7) 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 a method for working out the amount of 'unspent pre-paid fees' for the purposes of calculating refunds in cases where a provider has defaulted.

#### Authority

Subsection 7 of section 46D of the Act permits the Minister, by legislative instrument, to specify a method for working out the amount of unspent pre-paid tuition fees for the purposes of subsection (6).

#### Purpose and operation

Under subsection 46D(6) of the Act, as amended, students will be eligible for a refund of the unused portion of pre-paid tuition fees (i.e. tuition for which the student has paid but which has not yet been delivered by the provider) rather than a full refund that they were entitled to prior to this amendment. The amended approach recognises costs incurred by a provider to deliver tuition until the date of a default. By limiting refund amounts to unspent pre-paid tuition, providers will be better placed to meet their obligations and thereby avoid recourse by students to the Tuition Protection Service (TPS).

The calculation method specified will be used for the following purposes:

- For subsection (6) of section 46D of the Act, calculating a refund to be paid to a student by a provider in order for the defaulting provider to meet its obligations, where the student has not accepted a place in an alternative course; or
- For subsection (1) of section 50B of the Act, when calculating the amount the TPS Director will pay out of the OSTF to an alternative provider or to a student.

Consequential changes are also being made to the ESOS Regulations to require certain classes of provider to provide information into the Provider Registration and International Student Management System (PRISMS) to facilitate the accurate calculation of refunds.

### 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 partial refunds, 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 Tuition Protection Service is also required 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*.

### ***The Education Services for Overseas Students (Calculation of unspent pre-paid fees – provider default) 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 (7) of section 46D of the *Education Services for Overseas Students Act 2000* (the ESOS 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 the Determination is to specify a method for working out the amount of 'unspent pre-paid fees' for the purposes of calculating refunds in cases where a provider has defaulted.

#### **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.