

EXPLANATORY STATEMENT

Education Services for Overseas Students **(Calls on the OSTF – requirements for payments)** **Determination 2012 (No. 1)**

Summary

The *Education Services for Overseas Students (Calls on the OSTF – requirements for payments) Determination 2012 (No. 1)* is made by the Minister for Tertiary Education, Skills, Science and Research, pursuant to subsection 50B(5) 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 requirements for payments that are made by the TPS Director under section 50B of the Act.

Authority

Subsection 5 of section 50B of the Act permits the Minister, by legislative instrument, to specify requirements for payments made under this section.

Purpose and operation

As a measure to help safeguard the interests of payment recipients and as a control on the management of OSTF funds, the following requirements are placed on the TPS Director when making a payment to a student, a person other than the student (for example, a person who is authorised to act on behalf of a student who is under 18) or a provider. The payment must be made electronically; must be in Australian dollars to a transaction account nominated by and in the name of the specified recipient; and, in the case of a payment to a provider, the account into which the funds are paid must be held with an Australian Authorised Deposit-taking Institution (ADI) as listed on the Australian Prudential Regulation Authority (APRA) website.

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 (5) of section 50B 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.