

## EXPLANATORY STATEMENT

### *Schools Assistance Act 2008 – Determination of Classes of Persons Who Are Not Overseas Students 2013*

*Schools Assistance Act 2008*

#### Authority

The *Schools Assistance Act 2008* provides for Commonwealth financial assistance to non-government schools.

Section 173(1) of the Act provides that financial assistance is not to be provided to a State for overseas students.

Section 173(4) of the Act provides that the Minister may, by legislative instrument, determine that a person is not an *overseas student*.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Purpose and operation

The purpose of the *Determination of Classes of Persons Who Are Not Overseas Students 2013* (the Determination) is to make provision for the widening of the classification of persons who are not to be regarded as overseas students. This was deemed necessary due to the creation of new visa subclasses since 2009 by the Department of Immigration and Citizenship. Without amending the current Determination a student holding one of these new visas would by default be regarded as an overseas student and would not attract recurrent assistance funding.

The Determination revokes the *Determination of Classes of Persons Who Are Not Overseas Students 2008* and replaces it with an expanded list of visa subclasses of persons who are not overseas students by adding a number of new and updated visa subclasses.

Non-government schools will thereafter be able to include additional students in the School Census in order to attract recurrent assistance funding.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### Explanation of Provisions

The Schedule to the Determination outlines which persons or classes of persons are to be so determined.

## Commencement

The Determination commenced on 1 January 2013.

Note: this Determination affects which students can be counted by schools in the Census of Non-Government Schools that occurs in August 2013. However, the purpose of counting these students in the census is to determine the school's entitlement to funding for the 2013 Calendar Year. When a student is counted in the census in August, under the Act they are taken to have attended the school for the whole year, and the school is funded accordingly.

For this reason, the Determination needs to apply from the beginning of the year, to ensure that a student counted in the census can legitimately attract funding entitlement for the full calendar year. There will be no detrimental effect on the students concerned resulting from the retrospective effect of this Determination.

## Consultation

The Determination has the effect of increasing the availability of recurrent assistance funding payable under the Act. As the increase in the availability of funding has a beneficial effect on stakeholders, consultation was not undertaken as it was not deemed necessary.

## 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 legislative instrument 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 Legislative Instrument

The purpose of the *Determination of Classes of Persons Who Are Not Overseas Students 2013* (the Determination) is to make provision for the widening of the classification of persons who are not to be regarded as overseas students for the purposes of the *Schools Assistance Act 2008* (the Act). This will allow for more students at non-government schools to be eligible to receive recurrent assistance funding.

### Human Rights Implications

#### *The Right to Education*

The Determination engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights. In particular, the Determination will allow for the provision of additional recurrent assistance funding to non-government schools who enrol eligible visa holders. This will have the effect of increasing the funding provided by the Australian Government to improve educational outcomes for school students. Students who are eligible to receive recurrent assistance funding normally pay a lower school fee rate than non-eligible students who may have to pay a Cost Recovery Fee. The Determination will therefore improve the ability of students to access non-government schooling through reducing the amount of students who may otherwise pay a Cost Recovery Fee.

To the extent that the right to education is engaged, this right is promoted as the Determination will enable funding under the Act to be available for an increased number of students holding certain visas. It will also provide a wider range of choice to access non-government schooling through its effect of reducing school fees.

### Conclusion

The Determination is compatible with human rights because it generally advances the right to education by providing additional funding and widening choice of schooling under the Act.