EXPLANATORY STATEMENT

Approval and notice of approval under section 16-25 and subsection 16-50(1) of the Higher Education Support Act 2003

Higher Education Provider Approval No. 8 of 2012

Issued by the authority of the
Minister for Tertiary Education, Skills, Science and Research

Subject: Higher Education Support Act 2003 (HESA)
Higher Education Provider approval and notice of approval under section 16-25 and subsection 16-50(1) of HESA

Authority
Section 16-25 of HESA provides for the approval of bodies as Higher Education Providers by the Minister, while subsection 16-50(1) of HESA provides that the Minister must decide an application for approval as a Higher Education Provider (paragraph 16-50(1)(a)) and cause the applicant to be notified in writing whether or not the applicant is approved as a Higher Education Provider (paragraph 16-50(1)(b)).
Subsection 16-55(1) of HESA stipulates that a notice of approval of a body as a Higher Education Provider is a legislative instrument.
Under section 238-5 of HESA the Minister has delegated his powers under section 16-25 and subsection 16-50(1) of HESA to an APS employee in the Department.

Purpose
This instrument approves Australian College of the Arts Pty Ltd (ACN: 082 799 282 ABN: 96 082 799 282) as a Higher Education Provider under section 16-25 of HESA and as a consequence decides the application of Australian College of the Arts Pty Ltd for the purposes of subsection 16-50(1)(a) of HESA. The instrument also gives Australian College of the Arts Pty Ltd notice of that approval for the purposes of subsection 16-50(1)(b) of HESA.

Commencement
In accordance with paragraph 16-55(2) of HESA and paragraph 12(1)(d) of the Legislative Instruments Act 2003, the notice and the decision to approve Australian College of the Arts Pty Ltd as a Higher Education Provider takes effect on the day after the notice is registered on the Federal Register of Legislative Instruments.

Consultation
Consultation was not undertaken and was not considered necessary in this case because the notice confers a benefit on Australian College of the Arts Pty Ltd and this body is the only body affected by the notice. This notice will not have a direct or substantial indirect effect on business, nor will it restrict competition.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Notice of Approval – Higher Education Provider Approval

This Legislative Instrument (the 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 Instrument is made by the Minister under Section 16-25(1) of HESA, subsection 16-50(1)(b) and subsection 16-55(1) of HESA.

The purpose of the Instrument is to approve Australian College of the Arts Pty Ltd as a Higher Education provider for the purposes of FEE-HELP Assistance under HESA.

For the Minister to approve a body corporate as a Higher Education provider the Minister must be satisfied that the body meets the requirements of paragraph 16-25 of HESA.

Human rights implications

Right to education

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this Instrument has an effect on the provision of education by Australian College of the Arts Pty Ltd by approving it as a Higher Education provider for the purposes of FEE-HELP Assistance under HESA, enabling it to offer FEE-HELP Assistance to its eligible students.

The objective of the Instrument is to approve Australian College of the Arts Pty Ltd as a Higher Education provider under HESA and thereby enable eligible students of Australian College of the Arts Pty Ltd to access FEE-HELP Assistance for courses of study.

To the extent that the right to education is engaged, this right is promoted by the Instrument as the Instrument approves Australian College of the Arts Pty Ltd as a Higher Education provider, thereby extending FEE HELP Assistance and the availability of education to its eligible students.

Conclusion

This Instrument is compatible with human rights because it advances the protection of human rights.