EXPLANATORY STATEMENT

Determination of Suspension of Approval as a VET provider under subclause 36(1) of Schedule 1A to the Higher Education Support Act 2003

Phoenix Institute of Australia Pty Ltd ABN 37 084 806 575

Issued by the authority of the Minister for Vocational Education and Skills

Authority

Subclause 36(1) of Schedule 1A to the Higher Education Support Act 2003 (the Act) provides that the Minister may, by legislative instrument, determine that, with effect from a specified day, a body's approval as a VET provider is suspended pending the making of a decision under Subdivision 5-B of Schedule 1A to the Act as to whether to revoke the body's approval as a provider.

Under section 238-5(1)(b) of the Act the Minister has delegated his powers under subclause 36(1) of Schedule 1A to the Act to an APS employee with a classification of Deputy Secretary with responsibility for the administration of the VET FEE-HELP scheme.

Purpose

This legislative instrument (Instrument) suspends, with effect from the day after the determination is registered, the approval of Phoenix Institute of Australia Pty Ltd ABN 37 084 806 575 (Phoenix) as a VET provider pending the making of a decision under Subdivision 5-B of Schedule 1A to the Act as to whether to revoke Phoenix's approval as a provider.

Background

Phoenix was approved by a delegate of the Minister as a VET provider by Instrument of Approval No. 40 of 2009 and registered on the Federal Register of Legislative Instrument No F2009L04056 on 4 November 2009.

A body's approval as a VET provider may be revoked in certain circumstances set out in Subdivision 5-B of Schedule 1A to the Act. Pending the making of a decision under Subdivision 5-B of Schedule 1A to the Act, the Minister may determine to suspend the body's approval as a VET provider.

On 12 October 2015, a delegate of the Minister gave Phoenix notice in writing in accordance with subclause 36(2A) of Schedule 1A to the Act.

The delegate of the Minister has considered responses received by Phoenix in accordance with subclause 36(2B) of Schedule 1A to the Act.
**Commencement**

The suspension of Phoenix’s approval as a VET provider takes effect on the day after the determination is registered on the Federal Register of Legislative Instruments.

**Consultation**

In accordance with paragraph 36(2A)(c) of Schedule 1A to the Act, Phoenix was invited to respond to the Minister, in writing, within 14 days of the date of the notice issued on 12 October 2015. Phoenix provided a response and this response was considered by the Minister’s delegate in accordance with subclause 36(2B) of Schedule 1A to the Act.

No other consultation was taken as it was not considered by the delegate of the Minister to be appropriate or reasonably practicable in the circumstances.
Statement of Compatibility with Human Rights

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

Determination of Suspension of Approval as a VET provider

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 a delegate of the Minister under subclause 36(1) of Schedule 1A to the Act. The purpose of the Instrument is to determine that Phoenix's approval as a VET provider is suspended pending the making of a decision as to whether to revoke Phoenix's approval as a provider.

In accordance with paragraph 29(b) of Schedule 1A to the Act, a body ceases to be approved as a VET provider while the body's approval is suspended. However, under subclause 37(1) of Schedule 1A to the Act, the Minister may determine, in writing, that a suspension of a body's approval is of no effect for the purposes of VET FEE-HELP assistance payable to certain existing students. A delegate of the Minister has made such a determination in relation to Phoenix.

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 may effect the provision of vocational education and training by Phoenix as it suspends its approval as a VET provider for the purposes of VET FEE-HELP under the Act, removing its ability, while suspended, to offer VET FEE-HELP assistance to certain students.

The right to education is engaged, as the Instrument suspends the approval of Phoenix as a VET provider for the purposes of VET FEE-HELP under the Act, which has the effect of ceasing a body's approval as a VET provider while the approval is suspended in accordance with paragraph 29(b) of Schedule 1A to the Act. However, the right is unaffected as it does not remove Phoenix's approval to deliver education and training to students. Further, a delegate of the Minister has determined, in accordance with subclause 37(1) of Schedule 1A to the Act that the suspension of Phoenix's approval under the Instrument is of no effect for the purposes of VET FEE-HELP assistance payable to Phoenix's existing students.
Additionally this Instrument does not affect the capacity of any of Phoenix’s existing or prospective students to obtain VET FEE-HELP training from another provider.

**Conclusion**

This Instrument is compatible with human rights because it does not affect the protection of human rights.