EXPLANATORY STATEMENT

Determination under subclause 45D(6) of Schedule 1A to the Higher Education Support Act 2003

VET Provider Credits Determination No. 2 of 2016

Issued by the authority of the Minister

Authority

Subclause 45D(6) of Schedule 1A to the Higher Education Support Act 2003 (HESA) provides that the Minister may, by legislative instrument, determine that credits arise in the VET FEE-HELP accounts of specified vocational education and training (VET) providers, and the amounts of such credits, when another body ceases to be a VET provider.

Under section 238-5 of HESA the Minister has delegated his powers under subclause 45D(6) of Schedule 1A to HESA to certain Australian Public Service employees in the Department of Education and Training.

Purpose

Phoenix Institute of Australia Pty Ltd (ABN: 37 084 806 575) has ceased to be a VET provider. This instrument:

(a) determines that credits arise in the VET FEE-HELP account, established by subclause 45D(1) of Schedule 1A to HESA, of Proteus Technologies Pty Ltd (ABN: 95 112 989 581); and

(b) determines that the amount of such credits shall be $481,950.

Background

Subclause 45D(1) of Schedule 1A to HESA establishes a notional VET FEE-HELP account for each VET provider. That account is credited and debited with the amounts, and at the times, set out in subclauses 45D(2) to (7).

Subclause 45D(7) of Schedule 1A to HESA provides for the debiting of a provider’s account in line with student entitlements to VET FEE-HELP assistance. Should a VET provider’s VET FEE-HELP account be in deficit at the end of a calendar year, clause 45E of Schedule 1A to HESA provides for the payment to the Commonwealth of an amount equal to that deficit.

Subclause 45D(6) of Schedule 1A to HESA provides that the Minister may determine, by legislative instrument, that further credits arise in the VET FEE-HELP accounts of specified VET providers, and the amount of those credits, when another body ceases to be a VET provider.
Commencement

In accordance with subparagraph 45D(2)(e)(i) of Schedule 1A to HESA the credits arise in the VET FEE-HELP account of Proteus Technologies Pty Ltd at the time Phoenix Institute of Australia Pty Ltd ceased to be a VET provider.

This Determination therefore commenced on 31 March 2016, which is when Phoenix Institute of Australia Pty Ltd ceased to be a VET provider. This retrospective commencement does not adversely affect the rights of any person as it enables Proteus Technologies Pty Ltd to offer VET FEE-HELP assistance to students previously enrolled with Phoenix Institute of Australia Pty Ltd without putting its VET FEE-HELP account into deficit at the end of the calendar year.

The retrospective commencement is appropriate and does not trigger subsection 12(2) of the Legislation Act 2003.

Consultation

Consultation with Proteus Technologies Pty Ltd was undertaken. Broader consultation was not considered necessary in this case because the notice confers a benefit on Proteus Technologies 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

VET Provider Credits Determination No. 2 of 2016

This 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’s delegate under subclause 45D(6) of Schedule 1A to HESA. The purpose of the Instrument is to determine that credits arise, and the amount of those credits, in the VET FEE-HELP account of Proteus Technologies Pty Ltd.

The condition precedent to the making of the determination is that another body ceases to be a VET provider. This condition is satisfied by Phoenix Institute of Australia Pty Ltd having ceased to be a VET provider.

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 vocational education and training by Proteus Technologies Pty Ltd by enabling it to offer VET FEE-HELP assistance to students previously enrolled with Phoenix Institute of Australia Pty Ltd without putting its VET FEE-HELP account into deficit at the end of the calendar year.

The objective of the Instrument is to enable eligible students of Phoenix Institute of Australia Pty Ltd to access VET FEE-HELP assistance for VET courses of study with Proteus Technologies Pty Ltd.

To the extent that the right to education is engaged, this right is promoted by the Instrument as the Instrument enables eligible students of Phoenix Institute of Australia Pty Ltd to access VET FEE-HELP assistance for VET courses of study with Proteus Technologies Pty Ltd.

Conclusion

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