EXPLANATORY STATEMENT

Issued by the Authority of the Delegate for the Minister for Education and Training

Higher Education Support Act 2003

Higher Education Support (Tabor College Tasmania Inc)
Higher Education Provider Approval Revocation 2016

Authority

The Higher Education Support Act 2003 (the Act) provides the Commonwealth with powers to give financial support for higher education and certain vocational education and training (VET) through grants and other payments to providers, and through financial assistance to students (usually in the form of loans).

The Act provides for loans, called FEE-HELP assistance, to be made available to students enrolled in certain higher education courses. A body has to be approved by the Minister as a higher education provider before its students can receive FEE-HELP.

Subsections 22-40(1) and 22-40(2) of the Act require the Minister to revoke the approval of a body as a higher education provider if the body requests in writing that the Minister revoke its approval at least 30 days before the day on which the revocation is requested to have effect.

Subsection 22-40(3) of the Act requires the Minister to notify the body of the revocation in writing at least 14 days before the day on which the revocation is to take effect.

Subsection 22-40(3A) of the Act stipulates that a notice of revocation under subsection 22-40(3) of the Act is a legislative instrument for the purposes of the Legislation Act 2003.

Subsection 22-40(4) of the Act stipulates that the revocation has effect on the day requested by the body unless another day is specified in the notice of revocation.

Under paragraph 238-5(1)(b) of the Act, the Minister has delegated the Minister’s powers under subsections 22-40(1) and 22-40(3) of the Act to an APS employee with a classification of APS Executive Level 2 or higher with responsibility for the administration of the FEE-HELP scheme.

Purpose

The purpose of this legislative instrument (the Instrument) is

(a) to provide notice to Tabor College Tasmania Inc of its revocation of approval as a higher education provider; and
(b) to revoke the legislative instrument Higher Education Support Act 2003 – Higher Education Provider Approval (No. 1 of 2006) (F2006L00330)
Background

Tabor College Tasmania Inc was approved by the Minister’s delegate as a higher education provider pursuant to *Higher Education Support Act 2003 – Higher Education Provider Approval (No. 1 of 2006)* which was registered on the Federal Register of Legislation on 7 February 2006 (F2006L00330).

On 8 July 2016, Mr Gary Lottering wrote to the Minister to request that its approval as a higher education provider be revoked under section 22-40 of the Act with effect from 8 August 2016.

This Instrument is a notice of revocation given under subsection 22-40(3) of the Act.

In accordance with paragraph 22-1(1)(a) of the Act, a body ceases to be approved as a higher education provider if a decision to revoke the approval is in effect under Subdivision 22-AA, 22-B or 22-D.

Consistent with the requirements of subsection 22-40(4) of the Act, the revocation takes effect on the day requested by the body unless another day is specified in the Instrument.

Consultation

Consultation was undertaken with Tabor College Tasmania Inc to ensure no disadvantage to transferring students and completion of all data reporting responsibilities.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (subsection 22-40(3A) of the Act).

The Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

Details of the Higher Education Support (Tabor College Tasmania Inc) Higher Education Provider Approval Revocation 2016

Section 1 - Name

This section provides that the name of the Instrument is the *Higher Education Support (Tabor College Tasmania Inc) Higher Education Provider Approval Revocation 2016* (the Instrument).

Section 2 - Commencement

This section provides the day on which the Instrument commences. This is consistent with the requirement in subsection 22-40(4) of the Act.

Section 3 - Authority
This section provides that the authority for the Instrument is under section 22-40 of the Act.

Section 4 - Definitions

This section provides definitions for terms used in the Instrument.

Section 5 – Notice of Revocation of Approval As A Higher Education Provider

This section makes it clear that Tabor College Tasmania Inc’s approval as a higher education provider is revoked.

It also revokes the legislative instrument which notified its original approval.
Statement of Compatibility with Human Rights

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

Higher Education Support (Tabor College Tasmania Inc)
Higher Education Provider Approval Revocation 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 Instrument
Subsection 22-40(1) of the Higher Education Support Act 2003 (the Act) provides that the Minister may, by legislative instrument, revoke a body’s approval as a higher education provider if the body requests the Minister to revoke the approval.

The purpose of this Instrument is to provide notice to Tabor College Tasmania Inc of its revocation of approval as a higher education provider under section 22-40 of the Act (revocation of approval as a provider on application).

Human rights implications
This 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 affect the provision of higher education by Tabor College Tasmania Inc as it revokes its approval as a higher education provider for the purposes of FEE-HELP under the Act, which removes its ability to offer FEE-HELP assistance to certain students.

However, this instrument does not affect the capacity of Tabor College Tasmania Inc to continue to deliver education and training, it only removes its ability to offer FEE-HELP to students enrolled in its courses; existing and prospective students may access FEE-HELP from another higher education provider. Consequently, the right to education for affected students remains engaged.

Conclusion
This Instrument is compatible with human rights as it does not raise any human rights issues.

Shelley Owen
Delegate of the Minister