EXPLANATORY STATEMENT

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

Higher Education Support Act 2003

Higher Education Support (Open Training Institute Pty Ltd) VET 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).

Schedule 1A to the Act provides for loans, called VET FEE-HELP assistance, to be made available to students enrolled in certain VET courses. A body has to be approved by the Minister as a VET provider before its students can receive VET FEE-HELP.

Subclauses 39(1) and 39(2) of Schedule 1A to the Act require the Minister to revoke the approval of a body as a VET 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.

Subclause 39(2A) of Schedule 1A to the Act provides that, after the revocation, the body will continue to be subject to a number of provisions in the Act as if the body were still approved as a VET provider. The provisions in Schedule 1A to the Act that will continue to apply are clause 45E (‘Effect of VET FEE-HELP account being in deficit at the end of a calendar year) and clause 46B (Re-crediting a person’s FEE-HELP balance – VET FEE-HELP account in deficit at the end of a calendar year), as well as any other provisions of the Act or the Higher Education Support (VET) Guideline 2015 (VET Guidelines) that relate to VET FEE-HELP assistance entitlements arising before the revocation which are specified in the notice of revocation.

Subclause 39(3) of Schedule 1A to 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.

Subclause 39(4) of Schedule 1A to the Act stipulates that a notice of revocation under subclause 39(3) of Schedule 1A to the Act is a legislative instrument for the purposes of the Legislation Act 2003.

Subclause 39(5) of Schedule 1A to 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 subclauses 39(1) and 39(3) of Schedule 1A to the Act to an APS employee with a classification of APS Executive Level 2 or higher with responsibility for the administration of the VET FEE-HELP scheme.
Purpose

The purpose of this legislative instrument (the Instrument) is

(a) to revoke the approval of Open Training Institute Pty Ltd as a VET provider; and
(b) to revoke the legislative instrument *Higher Education Support Act 2003 - VET Provider Approval (No.38 of 2015)* (F2016L00023).

Background

Open Training Institute Pty Ltd was approved by the Minister’s delegate as a VET provider pursuant to *Higher Education Support Act 2003 - VET Provider Approval No. 38 of 2015* which was registered on the Federal Register of Legislation on 5 January 2016 (F2016L00023).

On 9 August 2016 Open Training Institute Pty Ltd wrote to the Minister to request that its approval as a VET provider be revoked under clause 39 of Schedule 1A to the Act with effect from 8 September 2016.

This Instrument provides Open Training Institute Pty Ltd with notice of its revocation as required by subclause 39(3) of Schedule 1A to the Act.

In accordance with paragraph 29(a) of Schedule 1A to the Act, a body ceases to be approved as a VET provider if a decision to revoke the approval is in effect under Subdivision 5-D.

Consistent with the requirements of subclause 39(5) of Schedule 1A to the Act, the revocation takes effect on the day requested by the body unless another day is specified in the Instrument.

Consultation

Consultation was not undertaken and was not considered necessary as the revocation of the approval as a VET provider of Open Training Institute Pty Ltd is for the purposes of VET FEE-HELP, and Open Training Institute Pty Ltd is the only body affected by the Instrument.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (subclause 39(4) of Schedule 1A to 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 (Open Training Institute Pty Ltd) VET Provider Approval Revocation 2016*

Section 1 - Name

This section provides that the name of the Instrument is the *Higher Education Support (Open Training Institute Pty Ltd) VET 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 subclause 39(5) of Schedule 1A to the Act.

Section 3 - Authority

This section provides that the authority for the Instrument is under clause 39 of Schedule 1A to the Act.

Section 4 - Definitions

This section provides definitions for terms used in the Instrument.

Section 5 – Notice of Revocation of Approval As A VET Provider

This section makes it clear that Open Training Institute Pty Ltd’s approval as a VET 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 (Open Training Institute Pty Ltd) VET Provider Approval
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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

Clause 39 of Schedule 1A to the Higher Education Support Act 2003 (the Act) provides that the Minister may, by legislative instrument, revoke a body’s approval as a VET provider if the body requests the Minister to revoke the approval.

The purpose of this Instrument is to revoke the approval of Open Training Institute Pty Ltd as a VET provider under subclause 39(1) of Schedule 1A to the Act.

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 vocational education and training (VET) by Open Training Institute Pty Ltd as it revokes its approval as a VET provider for the purposes of VET FEE-HELP under the Act which removes its ability to offer VET FEE-HELP assistance to certain students.

However, this instrument does not affect the capacity of Open Training Institute Pty Ltd to continue to deliver education and training, it only removes its ability to offer VET FEE-HELP to students enrolled in its courses; existing and prospective students may obtain VET FEE-HELP training from another VET 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