EXPLANATORY STATEMENT

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

Higher Education Support Act 2003

Higher Education Support (Cornerstone Investment Aust Pty Ltd) VET Provider Approval Revocation 2017

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.

Clause 29B of Schedule 1A to the Act provides that the Minister must revoke the approval of a body if the body ceases to be listed as a registered training organisation on the National Register maintained in accordance with section 216 of the National Vocational Education and Training Regulator Act 2011. In cases where the body’s registration has ceased following a decision by the relevant VET regulator, the Minister may only make a decision under clause 29B once the body’s rights of review or appeal of that decision have either expired or been exhausted.

Under paragraph 238-5(1)(b) of the Act, the Minister has delegated the Minister’s powers under subclauses 29B(1) and 29B(2) of Schedule 1A to the Act to an APS employee with a classification of SES Employee Band 1 or higher with responsibility for the administration of the VET FEE-HELP scheme.

Under subsection 33(3) of the Acts Interpretation Act 1901, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of this legislative instrument (the Instrument) is

(a) to revoke the approval of Cornerstone Investment Aust Pty Ltd (Cornerstone) as a VET provider; and
(b) to revoke the legislative instrument Higher Education Support Act 2003 - VET Provider Approval (No.20 of 2011) (F2011L02178).
Background

Cornerstone was approved by the Minister’s delegate as a VET provider pursuant to Higher Education Support Act 2003 - VET Provider Approval (No. 20 of 2011) which was registered on the Federal Register of Legislation on 1 November 2011 (F2011L02178).

Cornerstone ceased to be listed as a registered training organisation on the National Register on 16 November 2016.

This Instrument is a notice of revocation given under subclause 29B(2) 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-AA.

Consistent with the requirements of subclauses 29B(2) and 29B(4) of Schedule 1A to the Act, the revocation takes effect on the day that the Instrument is registered.

Consultation

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

The Instrument is a legislative instrument for the purposes of the Legislation Act 2003 (subclause 29B(3) 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 (Cornerstone Investment Aust Pty Ltd) VET Provider Approval Revocation 2017

Section 1 - Name

This section provides that the name of the Instrument is the Higher Education Support (Cornerstone Investment Aust Pty Ltd) VET Provider Approval Revocation 2017 (the Instrument).

Section 2 - Commencement

This section provides that the Instrument commences on the day that the Instrument is registered on the Federal Register of Legislation. This is consistent with the requirement in subclause 29B(2) of Schedule 1A to the Act.

Section 3 - Authority

This section provides that the authority for the Instrument is under clause 29B of Schedule 1A to the Act.

Section 4 - Definitions

This section provides definitions for terms used in the Instrument.

Section 5 – Notice of Decision to Revoke Approval As A VET Provider

This section makes it clear that Cornerstone Investment Aust 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 (Cornerstone Investment Aust Pty Ltd) VET Provider Approval Revocation 2017

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 29B of Schedule 1A to the Higher Education Support Act 2003 (the Act) provides that the Minister must, by legislative instrument, revoke a body’s approval as a VET provider if the body ceases to be a registered training organisation.

The purpose of this Instrument is to revoke the approval of Cornerstone Investment Aust Pty Ltd as a VET provider under clause 29B 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 Cornerstone Investment Aust 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 Cornerstone Investment Aust 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. In addition 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.

Brendan Morling
Delegate of the Minister for Education and Training