EXPLANATORY STATEMENT

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

Higher Education Support Act 2003

Higher Education Support (Franklyn Scholar (Australia) 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 (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.

A body’s approval as a VET provider may be revoked by the Minister in certain circumstances, some of which are set out in Subdivision 5-B of Schedule 1A to the Act.

Clause 33 of Schedule 1A to the Act provides that the Minister may revoke a body’s approval as a VET provider for a breach of the VET quality and accountability requirements or conditions. Before doing so, the Minister must comply with the requirements of clause 34, which sets out the process for revoking approval.

Under paragraph 238-5(1)(b) of the Act, the Minister has delegated his powers pursuant to clauses 33 and 34 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.

Purpose

The purpose of this legislative instrument (the Instrument) is:

(a) to provide notice to Franklyn Scholar (Australia) Pty Ltd (Franklyn Scholar) of the decision to revoke its approval as a VET provider; and
(b) to revoke the legislative instrument Higher Education Support Act 2003 - VET Provider Approval (No. 31 of 2013) (F2013L01410).

Background

Franklyn Scholar was approved by the Minister’s delegate as a VET provider pursuant to Higher Education Support Act 2003 - VET Provider Approval (No. 31 of 2013) which was registered on the Federal Register of Legislation on 19 July 2013) (F2013L01410).
On 18 January 2017 a delegate of the Minister gave Franklyn Scholar notice in writing of an intention to revoke Franklyn Scholar as a VET provider on the basis that it may be in breach of the VET quality and accountability requirements by not complying with the VET tuition assurance requirements. The notice was issued in accordance with subclause 34(1) of Schedule 1A to the Act and invited Franklyn Scholar to make written submissions within 28 days concerning why its approval should not be revoked.

Franklyn Scholar made written submissions on 15 February 2017 stating reasons its approval as VET provider should not be revoked. After careful consideration of Franklyn Scholar’s submissions, the delegate is satisfied that Franklyn Scholar has breached the VET quality and accountability requirements and that it is appropriate to revoke Franklyn Scholar’s approval as a VET provider.

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, 5-B or 5-D.

This Instrument is a notice of revocation given under clause 34 of Schedule 1A to the Act.

Consistent with the requirements of subclause 34(5) of Schedule 1A to the Act, the revocation takes effect on the day that the Instrument is registered.

**Consultation**

Consultation was undertaken with Franklyn Scholar in accordance with the process established under subclause 34(1) of Schedule 1A to the Act. Written submissions were made by Franklyn Scholar within the prescribed statutory timeframe in response to the proposed notice of intention to revoke it as a VET provider. As Franklyn Scholar is the only body affected by the Instrument, further consultation with other entities was considered not necessary.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (subclause 34(3A) 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 (Franklyn Scholar (Australia) Pty Ltd) VET Provider Approval Revocation 2017**

Section 1 - Name

This section provides that the name of the Instrument is the *Higher Education Support (Franklyn Scholar (Australia) 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 34(5) of Schedule 1A to the Act.

Section 3 - Authority

This section provides that the authority for the Instrument is under clauses 33 and 34 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 provides for the notice required to be given under subclause 34(3) by the Minister or his delegate following a decision to revoke a body’s approval as a VET Provider under the Act.

It also makes clear that Franklyn Scholar’s approval as a VET provider is revoked by revoking 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 (Franklyn Scholar (Australia) 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

Clauses 33 and 34 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 under Subdivision 5-B of Schedule 1A to the Act.

The purpose of this Instrument is to provide notice to Franklyn Scholar (Australia) Pty Ltd (Franklyn Scholar) of a decision to revoke its approval as a VET provider for a breach of the VET quality and accountability requirements or of conditions, and to revoke the legislative instrument Higher Education Support Act 2003 - VET Provider Approval (No. 31 of 2013) (F2013L01410).

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 Franklyn Scholar 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 Franklyn Scholar 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.

Brendan Morling
Delegate of the Minister