EXPLANATORY STATEMENT

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

Higher Education Support Act 2003

Higher Education Support (Australian School of Management Pty Ltd)
Higher Education 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 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.

A body’s approval as a higher education provider must be revoked by the Minister in certain circumstances set out in Subdivision 22-AA of the Act. Subsection 22-2(1) of the Act provides that the Minister must revoke a body’s approval as a higher education provider if:

- the body is no longer a registered higher education provider (within the meaning in the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)); and
- in a case where the Tertiary Education Quality and Standards Agency (TEQSA) has made either of the following decisions under the TEQSA Act, the decision has not been set aside or quashed, and is no longer subject to review:
  - a decision under section 36 of that Act to refuse an application to renew the body’s registration under Part 3 of that Act;
  - a decision under section 101 of that Act to cancel the body’s registration under Part 3 of that Act.

Subsection 22-2(2) of the Act provides that the Minister must notify the body in writing of the revocation. Subsection 22-2(3) provides that such a notice of revocation is a legislative instrument.

Under paragraph 238-5(1)(b) of the Act, the Minister has delegated his powers under section 22-2 of the Act to an APS employee with a classification of SES Employee Band 1 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 the Australian School of Management Pty Ltd of the revocation of its approval as a higher education provider, pursuant to subdivision 22-AA, section 22-2 of the Act; and

(b) to repeal the original notice of approval of the Australian School of Management Pty Ltd as a higher education provider. Notices of approval under paragraph 16-50(1)(b) are legislative instruments for the purposes of the Act.
Background

Australian School of Management Pty Ltd (ACN: 138 545 605 ABN: 42 138 545 605) was approved by the Minister’s delegate as a higher education provider on 26 April 2012 and the approval was registered on the Federal Register of Instruments on 2 May 2012 in Higher Education Provider Approval No. 2 of 2012 (F2012L00977).

Australian School of Management Pty Ltd (ASM) is a wholly owned subsidiary of Careers Australia Group which went into voluntary administration on 25 May 2017 at which time ASM was also placed in administration.

In March 2017 TEQSA initiated a compliance assessment of ASM’s higher education operations. ASM’s registration as a higher education provider under the TEQSA Act has been cancelled by TEQSA effective as of 7 July 2017.

Section 16-27 of the Act provides that the Minister must not approve a body corporate as a higher education provider under section 16-25 of the Act unless the body is a ‘registered higher education provider’. A ‘registered higher education provider’ is a higher education provider registered by TEQSA under Part 3 of the TEQSA Act and listed by TEQSA on the National Register of Higher Education Providers.

Subsection 22-2(1) of the Act provides that the Minister must revoke a body’s approval as a ‘higher education provider’ if the body is no longer a ‘registered higher education provider’, and a decision under the TEQSA Act to refuse an application to renew the body’s registration or to cancel the body’s registration, has not been set aside or quashed, and is no longer subject to review. Pursuant to subsection 22-2(2) of the Act, the Instrument notifies the Australian School of Management Pty Ltd in writing of the revocation of its approval in accordance with subsection 22-2(1) of the Act.

Consultation

The TEQSA National Register confirms that the ASM has ceased to be registered as higher education provider, and any decision by TEQSA to refuse an application to renew a body’s registration or to cancel a body’s registration, had not been set aside or quashed, and were no longer subject to review. Further, the Department of Education and Training’s records show that the ASM has not been providing higher education to students since it went into administration in May 2017.

TEQSA has advised that ASM has activated its tuition assurance schemes with the Tuition Protection Service (TPS) for its international students and TAFE Directors Australia (TDA) for its domestic students.

Procedural Fairness

The procedural fairness requirements in subdivision 22-C of HESA do not apply to the Minister’s obligations to revoke approval in the circumstances provided for under subdivision 22-AA.
Section 1 - Name

This section provides that the name of the Instrument is the Higher Education Support (Australian School of Management Pty Ltd) Higher Education Provider Approval Revocation 2017.

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 subsection 22-2(2) of the Act.

Section 3 - Authority

This section provides that the authority for the Instrument is section 22-2 of the Act.

Section 4 - Definitions

This section provides a definition for the Act as it is used in the Instrument. A note clarifies that the term higher education provider has the same meaning as given in the Act.

Section 5 - Notice of Revocation of Approval as a Higher Education Provider

This section notifies the Australian School of Management Pty Ltd of the revocation of its approval as a higher education provider. It also repeals the legislative instrument which notified the Australian School of Management Pty Ltd of 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 (Australian School of Management Pty Ltd) Higher Education Provider Approval Revocation 2017

The legislative instrument (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 22-2(1) of the Higher Education Support Act 2003 (the Act) provides that the Minister must revoke a body’s approval as a higher education provider if:

- the body is no longer a registered higher education provider (within the meaning in the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)); and
- in a case where the Tertiary Education Quality and Standards Agency (TEQSA) has made either of the following decisions under the TEQSA Act, the decision has not been set aside or quashed, and is no longer subject to review:
  - a decision under section 36 of that Act to refuse an application to renew the body’s registration under Part 3 of that Act;
  - a decision under section 101 of that Act to cancel the body’s registration under Part 3 of that Act.

Subsection 22-2(2) of the Act provides that the Minister must notify the body in writing of the revocation. Subsection 22-2(3) provides that such a notice of revocation is a legislative instrument.

The purpose of the Instrument is:

- to provide notice to the Australian School of Management Pty Ltd (ASM) of the revocation of its approval as a higher education provider pursuant to section 22-2 of the Act; and
- to repeal the notice of approval of ASM as a higher education provider.

Human rights implications

The Instrument engages, but does not limit the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. Article 13 recognises the right of everyone to education, which is directed towards the full development of the human personality and the sense of its dignity and to enable all persons to participate effectively in society.

The Instrument engages the right to education to the extent that may affect the provision of higher education by ASM as it revokes its approval as a higher education provider for the purposes of FEE-HELP under the Act thereby removing its ability to offer FEE-HELP assistance to students.

As ASM ceased providing higher education to students when it went into administration and has activated its tuition assurance schemes for both its domestic and international students, no students will be disadvantaged as a result of these revocations.

Conclusion

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

Katerina Lawler
Delegate of the Minister

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