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 Institute of Personal Trainers 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 assistance.

Subclause 39(1) of Schedule 1A to the Act requires 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.

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 and in the Higher Education Support (VET) Guideline 2015 (Guidelines) as if the body were still approved as a VET provider. For the purposes of sub-paragraph 39(2A)(b)(ii) of Schedule 1A to the Act, the provisions in the Act that will continue to apply are clauses 17-19, 24, 25A, 26, 27, 27A, 39, 39B, 43-56, 59-62, 69, 70, 83-89, 91-97 of Schedule 1A to the Act. The provisions in the Guidelines that will continue to apply are sections 30, 41-66, 71-83 and 88-93.

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 provides that a notice of revocation under subclause 39(3) is a legislative instrument for the purposes of the Legislation Act 2003.

Subclause 39(5) of Schedule 1A to the Act provides 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 clause 39 of Schedule 1A to the Act to an SES Employee Band 1 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 Australian Institute of Personal Trainers Pty Ltd (Australian Institute of Personal Trainers); and
(b) to revoke the legislative instrument Higher Education Support Act 2003 - VET Provider Approval (No. 12 of 2013) (F2013L00621).

Background

The Australian Institute of Personal Trainers was approved by the Minister’s delegate as a VET provider pursuant to Higher Education Support Act 2003 - VET Provider Approval (No. 12 of 2013) which was registered on the Federal Register of Legislation on 5 April 2013 (F2013L00621).

On 18 December 2017, Australian Institute of Personal Trainers 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 30 days after the request was made.

This Instrument is a notice of revocation given under subclause 39(3) of Schedule 1A to the Act.

Consistent with the requirements of subclause 39(5) of Schedule 1A to the Act, the revocation takes effect on 17 January 2018.

Consultation

Consultation was not undertaken and was not considered necessary as the revocation of Australian Institute of Personal Trainers’ approval as a VET provider is for the purposes of Australian Institute of Personal Trainers’ ability to offer VET FEE-HELP assistance to students, and Australian Institute of Personal Trainers 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 (Australian Institute of Personal Trainers) VET Provider Approval Revocation 2017**

**Section 1 - Name**

This section provides that the name of the Instrument is the *Higher Education Support (Australian Institute of Personal Trainers) VET Provider Approval Revocation 2017* (the Instrument).

**Section 2 - Commencement**

This section provides that the Instrument commences on 17 January 2018. 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 clause 39 of Schedule 1A to the Act.

**Section 4 – Repeal**

This section provides that the instrument is repealed three years after it is registered on the Federal Register of Legislation.

**Section 5 - Definitions**

This section provides definitions for terms used in the Instrument.

**Section 6 – Notice of Decision to Revoke Approval as a VET Provider**

This section makes it clear that Australian Institute of Personal Trainers’ approval as a VET provider is revoked.

It also makes clear that Australian Institute of Personal Trainers’ approval as a VET provider is revoked by revoking the legislative instrument which notified its original approval (*Higher Education Support Act 2003 - VET Provider Approval (No. 12 of 2013)* (F2013L00621)).

**Section 7 – Provisions of the Act and VET Guidelines which continue to apply**

This section makes it clear that in accordance with subclause 39(2A) of Schedule 1A to the Act, certain provisions of the Act and the Guidelines continue to apply to Australian Institute of Personal Trainers as if it were still approved as a VET provider.
Statement of Compatibility with Human Rights

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

Higher Education Support (Australian Institute of Personal Trainers 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 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 Australian Institute of Personal Trainers Pty Ltd ACN 147 569 168 (Australian Institute of Personal Trainers) 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 Australian Institute of Personal Trainers 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 Australian Institute of Personal Trainers to continue to deliver education and training; it only removes its ability to offer VET FEE-HELP to students enrolled in its courses. Existing students may obtain access to VET FEE-HELP assistance 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