

## **EXPLANATORY STATEMENT**

Approval and notice of approval under subclauses 6(1) and 11(1) of Schedule 1A to the *Higher Education Support Act 2003*

VET Provider Approval No. 24 of 2012

**Issued by the authority of the Minister for Tertiary Education, Skills, Science and Research**

### **Authority**

Subclause 6(1) of Schedule 1A to the *Higher Education Support Act 2003* (the Act) provides for the approval of bodies as VET providers by the Minister. Paragraph 11(1)(a) of Schedule 1A to the Act provides that the Minister must decide an application for approval as a VET provider and under paragraph 11(1)(b) cause the applicant to be notified in writing whether or not the applicant is approved as a VET provider.

Under section 238-5 of the Act the Minister has delegated his powers under clauses 6 and 11 of Schedule 1A to the Act to the position of General Manager of the Student Support Branch in the Tertiary Quality and Participation Division of the Department of Industry, Innovation, Science, Research and Tertiary Education (the Department).

Subclause 12(1) Schedule 1A to the Act stipulates that a notice of approval of a body as a VET provider is a legislative instrument (the Instrument) for the purposes of the *Legislative Instruments Act 2003*.

### **Purpose**

The Instrument:

- a. approves TAFE SA (ABN: 67 828 419 300) as a VET provider under subclause 6(1) of Schedule 1A to the Act;
- b. decides the application of TAFE SA for the purposes of paragraph 11(1)(a) of Schedule 1A to the Act; and
- c. gives TAFE SA notice of that approval for the purposes of paragraph 11(1)(b) of Schedule 1A to the Act.

### **Background**

On 4 October 2012 a delegate of the Minister for Tertiary Education, Skills, Science and Research was notified in writing that the functions of the approved VET provider, the Minister for Employment, Higher Education and Skills (SA), were being transferred to TAFE SA, an emanation of the Crown in the state of South Australia and transition to TAFE SA would not alter ownership. For the purposes of subclause 9(1) of Schedule 1A to the Act the notification received on 4 October 2012 and the original application lodged by the Minister for Employment, Higher Education and Skills (SA) were approved by the delegate as being an application by TAFE SA for VET provider approval.

The retrospective approval of this Instrument will ensure that there is no disadvantage to students currently or previously enrolled with the Minister for Employment, Higher Education and Skills (SA) for the purposes of VET FEE-HELP. Therefore, this will allow approximately three hundred students to continue to receive VET FEE-HELP for the entirety of the VET course of study they are currently undertaking. The approval will also maintain the students' rights to study and protections afforded under the Scheme, thereby ensuring that students are not compromised due to a transfer of functions by the provider.

### **Commencement**

The Instrument commenced on 16 June 2012. Retrospective commencement of the Instrument is required to ensure there is no disadvantage to students currently or previously enrolled and existing protections under the Scheme are maintained as a result of the transfer of functions to the newly established TAFE SA. To avoid doubt, TAFE SA is taken to have been an approved VET Provider from 16 June 2012.

The retrospective commencement of the Instrument does not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because the Instrument is beneficial in nature and does not affect the rights and liabilities of a person (other than the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

### **Consultation**

Consultation was not considered necessary in this case because the notice confers a benefit on TAFE SA and this body is the only body affected by the notice. This notice will not have a direct or substantial indirect effect on business, nor will it restrict competition.

### **Statement of compatibility with human rights**

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

### **Notice of approval**

The 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 Legislative Instrument**

The Instrument is made by the Minister under subclause 6(1), paragraph 11(1)(b) and subclause 12(1) of Schedule 1A to the Act. The purpose of the Instrument is to approve TAFE SA as a VET provider for the purposes of VET FEE-HELP under the Act. For approval as a VET provider the Minister must be satisfied that the body meets the requirements of subclause 6(1) of Schedule 1A to the Act.

**Human rights implications**

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, the Instrument has an effect on the provision of vocational education and training by TAFE SA by approving it as a VET provider for the purposes of the VET FEE-HELP under the Act, enabling it to offer VET FEE-HELP assistance to its eligible students.

The objective of the Instrument is to approve TAFE SA as a VET provider under the Act and thereby enable eligible students of TAFE SA to access VET FEE-HELP assistance for VET courses of study.

To the extent that the right to education is engaged, this right is promoted by the Instrument as the Instrument approves TAFE SA as a VET provider, thereby extending VET FEE-HELP assistance and the availability of education to its eligible students.

**Conclusion**

The Instrument is compatible with human rights because it advances the protection of human rights.