

EXPLANATORY STATEMENT

Issued by the authority of the delegate of the Minister for Education and Youth

Higher Education Support Act 2003

*Higher Education Support (Australian Institute of Music) Higher Education Provider
Approval Suspension Determination 2021*

Overview

The *Higher Education Support Act 2003* (**the Act**) provides the Commonwealth with powers to give financial support for higher education through grants and other payments to providers, and through financial assistance to students (in the form of HELP loans).

Under the Act, FEE-HELP loans are available to students where the student is enrolled with a higher education provider that is approved under sections 16-1 and 16-25 of the Act.

Where a higher education provider is in breach of a condition of its approval under the Act, or the quality and accountability requirements (referred to in Division 19 of the Act), including the requirement that it be and remain financially viable under section 19-5, the Minister, or a delegate of the Minister, may revoke the provider's approval under Division 22 of the Act. Under section 22-30, the Minister (or delegate) may, by legislative instrument, determine that, with effect from a specified day, a body's approval as a higher education provider is suspended pending the making of a decision under Subdivision 22-B as to whether to revoke the body's approval as a provider.

Purpose and authority

The purpose of this legislative instrument (**the Instrument**) is to suspend the approval of Australian Institute of Music Limited (ACN 003 261 112) (**AIM**) under subsection 22-30(1) of the Act, pending the making of a decision under Subdivision 22-B as to whether to revoke its approval as a provider.

Background

AIM was approved as a higher education provider in accordance with section 16-25 of the Act (Legislative Instrument Number G2004S45401) on 9 November 2004. It has been operating as a higher education provider under the Act since that time with its eligible students able to access FEE-HELP loans to meet the cost of their tuition fees.

Commencement

The Instrument commences on 18 February 2021.

Consultation

Since December 2019, ongoing discussions have been held with AIM regarding its compliance with section 19-5 of the Act. AIM was issued several notices under section 19-70 of the Act throughout 2020 to obtain further information to determine whether it was continuing to meet those requirements. AIM has subsequently provided ongoing information to the department as requested and have had the opportunity to respond to concerns.

The department has also met with AIM's executive and Board several times throughout 2020 and 2021.

AIM has continued to encounter financial difficulty which now appears likely to extend into 2021. AIM was issued a notice of intention to suspend its approval as a higher education provider under subsection 22-30(2A) of the Act on 25 January 2021 and given the opportunity to provide information in response.

The decision to suspend AIM's approval as a higher education provider is based on AIM's failure to meet the requirement that it be and remain financially viable under section 19-5 of the Act. Consultation with students at AIM was not considered appropriate and not reasonably practicable due to the nature of the suspension decision which is limited to the consideration of AIM's financial viability.

The Instrument suspends, but does not revoke AIM's approval as a higher education provider. No decision regarding the revocation of AIM's approval as a higher education provider has yet been made and AIM will be given a further opportunity to provide reasons as to why its approval should not be revoked.

Regulatory Impact

The Office of Best Practice Regulation (**OBPR**) has advised given the proposal is likely to have a minor regulatory impact, a regulatory impact statement is not required (OBPR ID 43679).

Description of provisions

Section 1 - Name

This section provides that the name of the Instrument is the *Higher Education Support (Australian Institute of Music) Higher Education Provider Approval Suspension Determination 2021* (**the Instrument**).

Section 2 - Commencement

This section provides that the Instrument commences at the start of 18 February 2021, which is the “specified day” for the purposes of subsection 22-30(1) of the Act.

Section 3 - Authority

This section provides that the authority for the Instrument is subsection 22-30(1) of the Act.

Section 4 - Definition

This section defines the term “Act” as meaning the *Higher Education Support Act 2003*.

Section 5 – Approval suspension determination

This section determines that the approval of Australian Institute of Music Limited (ACN 003 261 112) as a higher education provider is suspended under section 22-30 of the Act with effect from 18 February 2021.

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 Music) Higher Education Provider
Approval Suspension Determination 2021*

The Higher Education Support (Australian Institute of Music) Higher Education Provider Approval Suspension Determination 2021 (**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 Instrument

The *Higher Education Support Act 2003* (**the Act**) provides the Commonwealth with powers to give financial support for higher education through grants and other payments to providers, and through financial assistance to students (in the form of HELP loans).

Under the Act, FEE-HELP loans are available to students where the student is enrolled with a higher education provider that is approved under sections 16-1 and 16-25 of the Act.

Where a higher education provider is in breach of a condition of its approval under the Act, or the quality and accountability requirements (referred to in Division 19 of the Act), including the requirement that it be and remain financially viable under section 19-5, the Minister, or a delegate of the Minister, may revoke the provider's approval under Division 22 of the Act. Under section 22-30, the Minister (or delegate) may, by legislative instrument, determine that, with effect from a specified day, a body's approval as a higher education provider is suspended pending the making of a decision under Subdivision 22-B as to whether to revoke the body's approval as a provider.

Human rights implications

The Instrument engages 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. To the extent the Instrument may limit the right to education, the limitation is a permissible limitation to achieve the legitimate objective of ensuring that providers that are approved under the Act meet the key quality and accountability requirements.

The Instrument engages the right to education to the extent that may affect the provision of higher education by AIM as the decision to suspend its approval as a higher education provider for the purposes of FEE-HELP under the Act will remove their ability to offer FEE-HELP assistance to students. The decision to suspend AIM's approval has been taken in response to ongoing financial issues experienced by AIM and after consideration of AIM's submissions in response to the notice of intention to suspend its approval as a higher education provider issued under subsection 22-30(2A) of the Act on 25 January 2021.

To maintain approval as a higher education provider, organisations must maintain compliance with the quality and accountability requirements under section 19-1 of the Act. This includes the requirement that higher education providers be financially viable and likely to remain financially viable. This requirement is necessary in order to protect students from incurring liabilities in the event of a cessation of a provider's operations, and to ensure the delivery of quality education.

Therefore, to the extent that the Instrument may limit a student's right to education at AIM (to access FEE-HELP), this limitation is reasonable, necessary and proportionate to ensure the overall protection of students at a provider that is financially viable and likely to remain financially viable as required under the Act.

The Instrument suspends, but does not revoke AIM's approval as a higher education provider. No decision regarding the revocation of AIM's approval as a higher education provider has yet been made and AIM will be given a further opportunity to provide reasons as to why its approval should not be revoked.

Conclusion

This Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Delegate of the Minister for Education and Youth