

EXPLANATORY STATEMENT

Issued by the authority of a delegate of the Minister for Education

Higher Education Support Act 2003

Higher Education Provider Approval (No. 12 of 2006) Amendment Instrument 2024

AUTHORITY

The *Higher Education Provider Approval (No. 12 of 2006) Amendment Instrument 2024* (the Amendment Instrument) is made under section 16-25, paragraph 16-50(1)(b) and subsection 16-70(2) of the *Higher Education Support Act 2003* (the Act). Section 16-25 of the Act provides that the Minister may approve a body corporate as a higher education provider if the body satisfies the requirements listed in that section, and paragraph 16-50(1)(b) provides that the Minister, in deciding an application for approval as a higher education provider, must cause the applicant to be notified in writing whether or not the applicant is approved as a higher education provider. Section 16-70 of the Act provides that if a body corporate is approved as a higher education provider and the body's name changes, the Minister may vary the approval to include the new name, and if the Minister varies the approval to include the new name, the Minister must notify the body in writing of the variation.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendment made by the Amendment Instrument to the *Higher Education Provider Approval (No. 12 of 2006)* (the Principal Instrument) to make changes that do not relate to updating the higher education provider's name rely on this provision.

PURPOSE AND OPERATION

The *Higher Education Provider Approval (No. 12 of 2006)* (the Principal Instrument) approves the Australian Guild of Music Education Incorporated (AGME) as a higher education provider for the purposes of the Act. However, AGME transferred its incorporation, and changed from an incorporated association to a Proprietary Limited company under the *Associations Incorporation Reform Act 2012* (Vic) (the AIR Act). Subsection 115(2) of the AIR Act provides that the transfer of incorporation by an incorporated association under that Act does not affect the identity of the association, which is taken to be the same body before and after the transfer.

While AGME is still the same body before and after its transfer of incorporation, its name has changed to the 'Australian Guild of Education Pty Ltd' to reflect that the body is now a Proprietary Limited company. The purpose of the Amendment Instrument is to amend the

Principal Instrument to refer to AGME's new name. This is a technical amendment to reflect the updated name of the approved higher education provider.

The Amendment Instrument also repeals Attachment 1 to the Principal Instrument to remove some outdated references to the Act. The changes made by the Amendment Instrument do not affect the provision of higher education by AGME or their obligations as a higher education provider under the Act.

IMPACT ANALYSIS

The Office of Impact Analysis (OIA) has advised that the Instrument is unlikely to have more than a minor impact as this amendment does not affect the provision of higher education by AGME and therefore an Impact Analysis is not required for this Instrument (reference number OIA24-06650).

COMMENCEMENT

The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

CONSULTATION

The department undertook consultation with AGME to ensure they had no questions, comments or concerns with the proposal to amend the Principal Instrument. AGME were supportive of the proposal. Public consultation was not undertaken or considered necessary as AGME is the only body affected by the notice.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Provider Approval (No. 12 of 2006) Amendment Instrument 2024

The *Higher Education Provider Approval (No. 12 of 2006) Amendment Instrument 2024* (the Amendment 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 *Higher Education Provider Approval (No. 12 of 2006)* (the Principal Instrument) approves the Australian Guild of Music Education Incorporated (AGME) as a higher education provider for the purposes of the *Higher Education Support Act 2003* (the Act). However, AGME transferred its incorporation, and changed from an incorporated association to a Proprietary Limited company under the *Associations Incorporation Reform Act 2012* (Vic) (the AIR Act). Subsection 115(2) of the AIR Act provides that the transfer of incorporation by an incorporated association under that Act does not affect the identity of the association, which is taken to be the same body before and after the transfer.

While AGME is still the same body before and after its transfer of incorporation, its name has changed to the 'Australian Guild of Education Pty Ltd' to reflect that the body is now a Proprietary Limited company. The purpose of the Amendment Instrument is to amend the Principal Instrument to refer to AGME's new name. This is a technical amendment to reflect the updated name of the approved higher education provider.

The Amendment Instrument also repeals Attachment 1 to the Principal Instrument to remove some outdated references to the Act. The changes made by the Amendment Instrument do not affect the provision of higher education by AGME or their obligations as a higher education provider under the Act.

Human rights implications

The purpose of the Amendment Instrument is to make a minor technical amendment to reflect AGME's updated name and to remove some outdated references to the Act from the Principal Instrument. This amendment does not affect the provision of higher education by AGME or their obligations as a higher education provider under the Act.

As the Amendment Instrument only makes a technical change to the approval of AGME, it does not impact any human rights.

Conclusion

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

Delegate of the Minister for Education, Larissa Hinds

HIGHER EDUCATION PROVIDER APPROVAL (NO. 12 OF 2006) AMENDMENT INSTRUMENT 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Provider Approval (No. 12 of 2006) Amendment Instrument 2024* (the Amendment Instrument).

Section 2: Commencement

2. This section provides that the Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Amendment Instrument is made under section 16-25, paragraph 16-50(1)(b) and subsection 16-70(2) of the *Higher Education Support Act 2003* (the Act).

Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

Higher Education Provider Approval (No. 12 of 2006)

Item 1

5. Item 1 amends the *Higher Education Provider Approval (No. 12 of 2006)* (the Principal Instrument) to change the higher education provider's name from the 'Australian Guild of Music Education Incorporated' to the 'Australian Guild of Education Pty Ltd (ACN 671 463 853)'.

Item 2

6. Item 2 repeals Attachment 1 of the Principal Instrument. Old Attachment 1 in the Principal Instrument provided information about the higher education provider's obligations under the Act. The references in this Attachment 1 are out of date as the Act has been amended since the Principal Instrument was made, and providers are already required to comply with the obligations under the Act (even without the inclusion of Attachment 1 in the Principal Instrument), due to the operation of the Act.