

COMMONWEALTH OF AUSTRALIA

Higher Education Support Act 2003

**SPECIFIED MATTERS TO BE TAKEN INTO ACCOUNT FOR DECIDING
WHETHER A PERSON IS FIT AND PROPER FOR THE PURPOSES OF
SUBSECTION 16-25 (3) OF, AND SUBCLAUSE 6(3) OF SCHEDULE 1A TO,
THE HIGHER EDUCATION SUPPORT ACT 2003**

I, Chris Evans, Minister for Tertiary Education, Skills, Science and Research pursuant to subsection 16-25(4) of, and subclause 6(4) of Schedule 1A to, the Act specify the matters set out in this instrument as those to be taken into account for the purposes of subsection 16-25(3) of, and subclause 6(3) of Schedule 1A to, the Act, respectively.

Dated this 9th day of March 2012

SIGNED

CHRIS EVANS
Minister for Tertiary Education, Skills, Science and Research

1 Citation

This legislative instrument may be cited as the *Fit and Proper Person Specified Matters 2012*.

2 Authority

These Fit and Proper Person Specified Matters are made under subsection 16-25(4) of, and subclause 6(4) of Schedule 1A to, the *Act*.

3 Commencement

This legislative instrument commences on the day after registration on the Federal Register of Legislative Instruments.

4 Application

The requirements of this legislative instrument apply in respect of all bodies corporate seeking approval as a provider under section 16-25 of the Act or under clause 6 of Schedule 1A to the Act.

5 Definitions

5.1 In this legislative instrument, unless the contrary intention appears:

Act means the *Higher Education Support Act 2003*

National Register has the meaning given by clause 1 of Schedule 1 to the Act

National VET Regulator has the meaning given by clause 1 of Schedule 1 to the Act

Officer of a corporation has the meaning given by section 9 of the *Corporations Act 2001*

registered training organisation has the meaning given by clause 1 of Schedule 1 to the Act

VET Regulator has the meaning given by section 3 of the *National Vocational Education and Training Regulator Act 2011*

Fit and Proper Person Requirements

6.1 Criteria of suitability for approval

In assessing whether a body corporate, who is:

- (a) an applicant for approval as a higher education provider; or
 - (b) an applicant for approval as a VET provider,
- under the Act, or

each person who makes, or participates in making, decisions that affect the whole or a substantial part, of the body corporate's affairs is a fit and proper person, the Minister must have regard to the following matters:

Matters in relation to a body corporate

- (a) whether the body corporate has ever had a condition imposed on its approval as a higher education provider or VET provider; and
- (b) whether the body corporate has ever breached a condition of approval as a higher education provider or a VET provider; and
- (c) whether the body corporate has ever breached a requirement under Division 19 of the Act or Division 4 of Schedule 1A to the Act; and
- (d) whether the body corporate has been suspended or has ceased to be a higher education provider under Division 22 of the Act or a VET provider under Division 5 of Schedule 1A to the Act; and
- (e) whether the body corporate has ever become insolvent, applied to take the benefit of a law for the benefit of insolvent debtors, or entered arrangements with its creditors; and
- (f) whether the body corporate has ever provided the Minister with false or misleading information or made a false or misleading statement to the Minister, and whether the body corporate could have reasonably known that the statement made or information provided to the Minister was false or misleading; and
- (g) whether the body corporate has ever been found not to be a fit and proper person for the purposes of the *Education Services for Overseas Students Act 2000*, the *National Vocational Education and Training Regulator Act 2011*, the *Tertiary Education Quality and Standards Agency Act 2011*, the Act or by a VET Regulator; and
- (h) any other relevant matter relating to the body corporate's business dealings.

Matters in relation to a person who makes, or participates in making decisions that affect the whole, or a substantial part of the body's affairs.

- (i) whether the person has ever become bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors; or
- (j) whether the person has ever been disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001; and
- (k) whether the person has previously been involved with a higher education provider, who had a condition imposed, breached a condition or breached a requirement under Division 19, or a VET provider who had a condition imposed, breached a condition or breached a requirement under Division 4 of Schedule 1A to the Act; and
- (l) whether the person has previously been involved with a higher education provider, who has had their approval revoked under Division 22 of the Act, or a VET provider who has had their approval revoked under Division 5 of Schedule 1A to the Act; and
- (m) whether the person has ever provided the Minister with false or misleading information or made a false or misleading statement to the Minister, and whether the person could have reasonably known that the statement made or information provided to the Minister was false or misleading; and
- (n) whether the person has ever been found not to be a fit and proper person for the purposes of the *Education Services for Overseas Students Act 2000*, the *National Vocational Education and Training Regulator Act 2011* or the *Tertiary Education Quality and Standards Agency Act 2011*, the Act or by a VET Regulator; and
- (o) any other relevant matter relating to the person's honesty, knowledge and ability.

6.2 Persons subject to Fit and Proper Person Requirements

For the purposes of paragraph 6.1(i) to 6.1(o) a *person* includes an officer of a corporation as defined in paragraph 5.1 of this Instrument.