



Higher Education Support (Fit and Proper Person) Instrument 2019

I, Dan Tehan, Minister for Education, make the following instrument.

Dated 18 December 2019

Dan Tehan
Minister for Education

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Part 1—Preliminary

1 Name

This instrument is the *Higher Education Support (Fit and Proper Person) Instrument 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	21 December 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following provisions of the *Higher Education Support Act 2003*:

- (a) subsection 16-25(4);
- (b) subclause 6(4) of Schedule 1A.

4 Definitions

Note: A number of expressions used in this instrument are defined in Schedule 1 to the Act, including the following:

- (a) higher education provider;
- (b) National VET Regulator;
- (c) TEQSA;
- (d) VET provider.

In this instrument:

Act means the *Higher Education Support Act 2003*.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Fit and proper person

6 Fit and proper person

- (1) This Part is made for the purposes of:
 - (a) subsection 16-25(4) of the Act; and
 - (b) subclause 6(4) of Schedule 1A to the Act.
- (2) The Minister must, in deciding whether the Minister is satisfied that a person is a fit and proper person, take into account the matters specified in this Part.

7 Compliance with the law

- (1) The Minister must have regard to whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, a law of the Commonwealth or a State or Territory.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (2) If the person has been so convicted or ordered, the Minister must have regard to the seriousness of the offence or contravention concerned.
- (3) The Minister must have regard to whether the person is currently involved in proceedings before a court or tribunal.

8 Financial record

The Minister must have regard to whether the person:

- (a) has been insolvent or bankrupt; or
- (b) has taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) has compounded with one or more creditors; or
- (d) has assigned remuneration for the benefit of one or more creditors; or
- (e) has been under external administration (within the meaning of subsection 600H(2) of the *Corporations Act 2001*); or
- (f) has outstanding debts to the Commonwealth.

9 Management history

- (1) The Minister must have regard to whether one or more of the following has been cancelled, revoked or suspended:
 - (a) the person's registration as a registered training organisation or registered higher education provider;
 - (b) the person's approval as an approved course provider (within the meaning of the *VET Student Loans Act 2016*), VET provider or higher education provider;
 - (c) subsidy funding arrangements with a State or Territory for the provision of education by the person.

- (2) The Minister must have regard to whether the provider has:
 - (a) had a condition imposed on a registration, approval or arrangement mentioned in subsection (1); or
 - (b) breached such a condition.
- (3) The Minister must have regard to whether the person has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*.

10 Provision of information

The Minister must have regard to whether the person has provided false or misleading information to any of the following in circumstances where it is reasonable to assume that the person knew that the information was false or misleading:

- (a) a body of a State or Territory that registers educational providers;
- (b) the National VET Regulator;
- (c) TEQSA;
- (d) a tuition assurance administrator (within the meaning of the *Higher Education Provider Guidelines 2012*);
- (e) the Minister, the Department or the Secretary;
- (f) an authority of a State or Territory that deals with subsidy funding arrangements for education.

11 Previous conduct and involvements

- (1) The Minister must have regard to whether the person has previously been found not to be a fit and proper person for the purposes of one or more of the following:
 - (a) the Act;
 - (b) the *Australian Education Act 2013*;
 - (c) the *Education Services for Overseas Students Act 2000*;
 - (d) the *National Vocational Education and Training Regulator Act 2011*;
 - (e) the *Tertiary Education Quality and Standards Agency Act 2011*;
 - (f) the *VET Student Loans Act 2016*;
 - (g) the *Higher Education Standards Framework (Threshold Standards) 2015*;
 - (h) subsidy funding arrangements with a State or Territory for the provision of education.
- (2) The Minister must have regard to whether the person, or any person engaged to act for or on behalf of the person, has engaged in conduct that reasonably suggests a deliberate pattern of unethical behaviour, or of acting inconsistently with laws of the Commonwealth, a State or a Territory, in relation to the provision of education or training.
- (3) The Minister must have regard to:
 - (a) whether the person has previously been involved in a business that provided education; and
 - (b) whether, at the time of that involvement, the business would have been a fit and proper person for the purposes of paragraph 16-25(1)(g) of the Act.

Part 2 Fit and proper person

Section 11

- (4) The Minister must have regard to any other matter relevant to the honesty, knowledge or ability of the person.

Schedule 1—Repeals

Fit and Proper Person Specified Matters 2012

1 The whole of the instrument

Repeal the instrument.