

## **REPLACEMENT EXPLANATORY STATEMENT**

Higher Education Provider Approval No 1 of 2021

### **Issued by the authority of the Minister or the Minister's Delegate for Education**

#### **Authority**

Section 16-25 of the *Higher Education Support Act 2003* ('the Act') provides for the approval of bodies as higher education providers by the Minister. Paragraph 16-50(1)(a) of the Act provides that the Minister must decide an application for approval as a higher education provider and, under paragraph 16-50(1)(b), cause the applicant to be notified in writing whether or not the applicant is approved as a higher education provider.

Subsection 16-55(1) of the Act stipulates that a notice of approval under paragraph 16-50(1)(b) of the Act is a legislative instrument.

Under section 238-5 of the Act the Minister has delegated his powers under section 16-25, subsection 16-50(1) and subsection 16-60(1) of the Act to APS employees, in specific positions in the Department of Education, Skills and Employment, with responsibility for administering the Act.

#### **Purpose**

The Higher Education Provider Approval No 1 of 2021 ('the Instrument'):

- a. approves the Ozford Institute of Higher Education Pty Ltd (ABN: 33 165 694 351, ACN: 165 694 351) as a higher education provider under section 16-25 of the Act;
- b. imposes conditions on the approval of the Ozford Institute of Higher Education Pty Ltd as a higher education provider under section 16-60 of the Act;
- c. decides the application of the Ozford Institute of Higher Education Pty Ltd for the purposes of paragraph 16-50(1)(a) of the Act; and
- d. gives the Ozford Institute of Higher Education Pty Ltd notice of that approval for the purposes of paragraph 16-50(1)(b) of the Act.

#### **Conditions**

The Minister has the power, under section 16-60 of the Act, to impose or vary conditions on a body's approval as a higher education provider. Although section 16-60 does not require the Minister to impose conditions at the time notice of approval is given to the provider, in this case the delegate of the Minister has granted the approval under section 16-25 of the Act and imposed conditions simultaneously under section 16-60. Conditions imposed in accordance with section 16-60 of the Act are set out in sections 1 to 9 of the notice of approval for the Ozford Institute of Higher Education Pty Ltd as a higher education provider.

In accordance with subsections 22-15(1) and 22-30(1), the Minister may suspend or revoke the Ozford Institute of Higher Education Pty Ltd's approval as a higher education provider if the Ozford Institute of Higher Education Pty Ltd breaches any of the conditions imposed on the Ozford Institute of Higher Education Pty Ltd's approval as a higher education provider.

The obligations imposed by the majority of the conditions are clear on the face of the condition. The condition imposed by section 6 of the Instrument requires the approved entity to advise the department in writing within 10 days of any event that may significantly affect the approved entity's (or a related entity's) capacity to meet the quality and accountability requirements under the Act for the period of its approval.

The quality and accountability requirements are established under Division 19 of the Act, with the term specifically defined by section 19-1 of the Act as follows:

The **quality and accountability requirements** are:

- (a) the \*financial viability requirements (see Subdivision 19-B); and
- (b) the \*quality requirements (see Subdivision 19-C); and
- (c) the \*fairness requirements (see Subdivision 19-D); and
- (d) the \*compliance requirements (see Subdivision 19-E); and
- (e) the \*contribution and fee requirements (see Subdivision 19-F); and
- (f) the \*compact and academic freedom requirements (see Subdivision 19-G).

Before the Minister can approve a body, the Minister must be satisfied that the body is willing and able to meet the quality and accountability requirements (see paragraph 16-25(1)(f) of the Act). A breach of the quality and accountability requirements may provide a ground on which the Minister may revoke a body's approval as a higher education provider under section 22-15 of the Act. A breach of a condition imposed on the body's approval (like section 6 of the Instrument) may also provide a basis on which to revoke a body's approval under section 22-15.

It is not possible to set out an exhaustive list of circumstances that may affect an entity's ability to meet the quality and accountability requirements. One such requirement is that under section 19-5 of the Act, a higher education provider must be financially viable and must be likely to remain financially viable. Events that might significantly affect the provider's capacity to meet that requirement could be any event having a severe adverse effect on the entity's financial position, for example, a significant liability arising from the outcome of litigation, or a failure in a given study period to obtain sufficient enrolments to meet ongoing costs of operating.

### **Commencement**

In accordance with subsection 16-55(2) of the Act and section 12 of the *Legislation Act 2003*, the notice and the decision to approve the Ozford Institute of Higher Education Pty Ltd as a higher education provider take effect on the day after the notice is registered on the Federal Register of Legislation.

### **Consultation**

Consultation was not undertaken and was not considered necessary in this case because the notice confers a benefit on the Ozford Institute of Higher Education Pty Ltd 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*

### Higher Education Provider Approval No 1 of 2021

#### **Notice of approval**

The Higher Education Provider Approval No 1 of 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 Legislative Instrument**

The Instrument is made by the Minister or the Minister's Delegate under paragraph 16-55(1)(b) of the *Higher Education Support Act 2003* ('the Act'). The purpose of the Instrument is to approve the Ozford Institute of Higher Education Pty Ltd as a higher education provider. For approval as a higher education provider the Minister must be satisfied that the body meets the requirements of section 16-25 of the Act.

#### **Human rights implications**

##### *Right to education*

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this Instrument has an effect on the provision of higher education and training by the Ozford Institute of Higher Education Pty Ltd by approving it as a higher education provider, enabling it to offer FEE-HELP assistance to its eligible students.

The objective of the Instrument is to approve the Ozford Institute of Higher Education Pty Ltd as a higher education provider under the Act and thereby enable eligible students of the Ozford Institute of Higher Education Pty Ltd to access FEE-HELP assistance for courses of study.

To the extent that the right to education is engaged, this right is promoted by the Instrument as the Instrument approves the Ozford Institute of Higher Education Pty Ltd as a higher education provider, thereby extending 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.