

## **EXPLANATORY STATEMENT**

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

### ***Higher Education Support Act 2003***

### ***Higher Education Provider Approvals (Nos 1 and 2 of 2021) Amendment Instrument 2022***

#### **AUTHORITY**

The *Higher Education Provider Approvals (Nos 1 and 2 of 2021) Amendment Instrument 2022* (the Instrument) is made under subsection 16-60(2) of the *Higher Education Support Act 2003* ('the Act'). Subsection 16-60(2) of the Act provides that the Minister may vary a condition imposed on the approval of a higher education provider under subsection 16-60(1).

#### **PURPOSE AND OPERATION**

The purpose of the Instrument is to amend the *Higher Education Provider Approval (No 1 of 2021)* and the *Higher Education Provider Approval (No 2 of 2021)* to include an omitted word in one of the conditions of approval specified in each of the approval instruments. The relevant conditions require an approved higher education provider to notify the department responsible for administering the Act of any regulatory activity undertaken or being undertaken by the Tertiary Education Quality and Standards Authority or any other regulatory body which may impact upon its operation for the period of its approval.

#### **REGULATORY IMPACT**

The Office of Best Practice Regulation (OBPR) has advised that the measures included in the Instrument are unlikely to have a more than minor regulatory impact, and therefore the preparation of a Regulation Impact Statement is not required (OBPR reference no: 22-02044).

#### **COMMENCEMENT**

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

#### **CONSULTATION**

The department has not undertaken any consultation in relation to this instrument as the sole purpose of the Instrument is to address a minor omission in the drafting of a condition of approval included on the instruments of approval.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### Higher Education Provider Approvals (Nos 1 and 2 of 2021) Amendment Instrument 2022

The *Higher Education Provider Approvals (Nos 1 and 2 of 2021) Amendment Instrument 2022* ('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 under subsection 16-60(2) of the *Higher Education Support Act 2003* ('the Act'). Subsection 16-60(2) of the Act provides that the Minister may vary a condition imposed on the approval of a higher education provider under subsection 16-60(1).

The purpose of the Instrument is to amend the *Higher Education Provider Approval (No 1 of 2021)* and the *Higher Education Provider Approval (No 2 of 2021)* to include an omitted word in one of the conditions of approval specified in the approval instruments. The relevant conditions require an approved higher education provider to notify the department responsible for administering the Act of any regulatory activity undertaken or being undertaken by the Tertiary Education Quality and Standards Authority or any other regulatory body which may impact upon its operation for the period of its approval.

#### **Human rights implications**

The Instrument engages the right to education.

##### Right to education

The Instrument promotes the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'). Article 13(2)(c) of the ICESCR provides that '*higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.*'

Approved higher education providers are eligible to receive certain grants and its students may be eligible to receive certain financial assistance from the Commonwealth. The conditions placed on the approval of higher education provider include reporting conditions that provide the transparency required for the Australian Government to determine whether it is appropriate for the provider to continue to be approved under the Act. This Instrument ensures that one of the reporting conditions, placed on two approved higher education providers, is drafted so-as-to effectively obligate the providers to report in accordance with the condition. Ensuring that only appropriate entities continue to receive grant funding supports the right to education by promoting effective use of education funding which advances the rights in Article 13(2)(c) of the ICESCR.

**Conclusion**

The Instrument is compatible with human rights because it promotes the right to education under the ICESCR.

## Higher Education Provider Approvals (Nos 1 and 2 of 2021) Amendment Instrument 2022

### EXPLANATION OF PROVISIONS

#### **Section 1: Name**

1. This section specifies the name of the instrument as *Higher Education Provider Approvals (Nos 1 and 2 of 2021) Amendment Instrument 2022* ('the Instrument').

#### **Section 2: Commencement**

2. This section specifies that the Instrument commences on the day after registration on the Federal Register of Legislation.

#### **Section 3: Authority**

3. This section specifies that this instrument is made under subsection 16-60(2) of the *Higher Education Support Act 2003* ('the Act').

#### **Section 4: Schedules**

4. This section provides that the instruments specified in Schedule 1 are amended as set out in the applicable items in that Schedule.

#### **SCHEDULE 1 – Amendments**

##### *Higher Education Provider Approval (No 1 of 2021)*

#### **Item 1**

5. This item repeals and substitutes section 8 to include the omitted word 'must' following the name of the approved provider to ensure that the condition operate as originally intended. The condition requires the approved higher education provider to notify the department, responsible for administering the Act, of any regulatory activity undertaken or being undertaken by the Tertiary Education Quality and Standards Authority or any other regulatory body which may impact upon its operation for the period of its approval.

*Higher Education Provider Approval (No 2 of 2021)*

Item 2

6. This item repeals and substitutes section 8 to include the omitted word 'must' following the name of the approved provider to ensure that the condition operate as originally intended. The condition requires the approved higher education provider to notify the department, responsible for administering the Act, of any regulatory activity undertaken or being undertaken by the Tertiary Education Quality and Standards Authority or any other regulatory body which may impact upon its operation for the period of its approval.