

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Education**

***Higher Education Support Act 2003***

***Higher Education Support Provider (AIE Institute Limited) Approval 2022***

### **AUTHORITY**

Subsection 16-25(1) of the *Higher Education Support Act 2003* (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. These requirements include making an application to the Minister under section 16-40 for approval as a higher education provider.

Paragraphs 16-50(1)(a) and (b) of the Act respectively require the Minister to decide the application and cause the applicant to be notified in writing whether or not the applicant is approved as a higher education provider. Subsection 16-55 specifies that a notice of approval under paragraph 16-50(1)(b) is a legislative instrument.

In accordance with section 238-5 of the Act, the functions and powers of the Minister under subsections 16-25(1) and 16-50(1) have been delegated to certain persons, including SES employees who hold a position that is classified as a Senior Executive Band 1 under the *Public Service Classification Rules 2000*. These delegations are subject to the general direction issued by the Minister under subsection 238-5(2) of the Act. The general direction provides that the employee must not exercise the delegated power unless they have responsibility for, or involvement with, the administration of a program for which it is necessary to exercise the delegation.

### **PURPOSE AND OPERATION**

The purpose of the Instrument is to approve AIE Institute Limited as a higher education provider for the purposes of the Act and notify AIE Institute Limited of its approval. As indicated above, a body corporate must satisfy the criteria in subsection 16-25(1) relating to the body corporate's suitability and ability to be an approved higher education provider before the Minister or delegate can approve it as a higher education provider. The delegate is satisfied that AIE Institute Limited satisfies all applicable criteria in subsection 16-25(1).

As an approved higher education provider, AIE Institute Limited is eligible to receive certain grants made under the Act and its students are eligible to receive certain financial assistance from the Commonwealth.

### **REGULATORY IMPACT**

The Office of Best Practice Regulation (OBPR) has advised that the instrument is unlikely to have more than a minor regulatory impact and therefore a regulation impact statement is not required for this Instrument (OPBR reference 22-02827).

**COMMENCEMENT**

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

**CONSULTATION**

The department undertook consultation with AIE Institute Limited to assist the delegate of the Minister in deciding whether to approve the body as a higher education provider. Public consultation was not undertaken or considered necessary as AIE Institute Limited 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 Support Provider (AIE Institute Limited) Approval 2022

The *Higher Education Support Provider (AIE Institute Limited) Approval 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 purpose of the Instrument is to approve AIE Institute Limited as a higher education provider for the purposes of the Act and notify AIE Institute Limited 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.'* The UN Committee on Economic, Social and Cultural Rights has stated that that the 'capacity' of individuals should be assessed by reference to all their relevant expertise and experience.

As an approved higher education provider, AIE Institute Limited is eligible to receive certain grants made under the Act and its students are eligible to receive certain financial assistance from the Commonwealth.

Grants to both AIE Institute Limited and its students promote the right to education by enabling students and prospective students to access financial assistance to assist them to undertake courses of study based on capacity, rather than on financial means.

#### **Conclusion**

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

**Minister for Education**

# HIGHER EDUCATION SUPPORT PROVIDER (AIE INSTITUTE LIMITED) APPROVAL 2022

## EXPLANATION OF PROVISIONS

### Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support Provider (AIE Institute Limited) Approval 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. The Instrument is made by the delegate of the Minister under section 16-25 of paragraph 16-50(1)(b) of the *Higher Education Support Act 2003*.

### Section 4: Definitions

4. This section defines the term **Act** for the purposes of the Instrument, which is defined as meaning the *Higher Education Support Act 2003*.

### Section 5: Approval

5. In accordance with section 16-25 of the Act, this section approves AIE Institute Limited as a higher education provider for the purposes of the Act.
6. As an approved higher education provider, AIE Institute Limited is eligible to receive certain grants made under the Act and its students may be eligible to receive certain financial assistance from the Commonwealth.