

EXPLANATORY STATEMENT

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

Higher Education Support Act 2003

Higher Education Support (Notice of Approval – Polytechnic Institute Australia Pty Ltd) Instrument 2023

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.

Paragraph 16-50(1)(a) of the Act provides the Minister must decide an application by a body corporate for approval as a higher education provider, and under paragraph 16-50(1)(b) of the Act, 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 also provides that a notice of approval under paragraph 16-50(1)(b) of the Act 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 in the Department of Education 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 *Higher Education Support (Notice of Approval – Polytechnic Institute Australia Pty Ltd) Instrument 2023* (the Instrument) is to approve Polytechnic Institute Australia Pty Ltd (Polytechnic Institute Australia) as a higher education provider for the purposes of the Act and notify Polytechnic Institute Australia 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 Polytechnic Institute Australia satisfies all applicable criteria in subsection 16-25(1).

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

An approval of a higher education provider given under subsection 16-25(1) is exempt from sunseting under item 33 in the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. It is not appropriate to subject approvals given under subsection 16-25(1) to sunseting as stringent statutory review processes under the Act currently apply to approvals of higher education providers, and approvals are able to be revoked for a number of reasons under the Act. Division 22 of the Act provides circumstances where a higher education provider's approval will be revoked, for example, see section 22-15 which provides that the Minister for Education may revoke a higher education provider's approval if that provider breaches any conditions on its approval or the quality and accountability requirements in Division 19 of the Act.

IMPACT ANALYSIS

The Office of Impact Analysis has advised that the Instrument is unlikely to have more than a minor regulatory impact and therefore an Impact Analysis is not required for this Instrument (OIA reference 02827).

COMMENCEMENT

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

CONSULTATION

The department undertook consultation with Polytechnic Institute Australia to assist the delegate of the Minister when deciding whether to approve the body as a higher education provider. This consultation informed the delegate's ultimate decision to approve Polytechnic Institute Australia. A public consultation was not undertaken or considered necessary as Polytechnic Institute Australia 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 (Notice of Approval – Polytechnic Institute Australia Pty Ltd) Instrument 2023

The *Higher Education Support (Notice of Approval – Polytechnic Institute Australia Pty Ltd) Instrument 2023* (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 Polytechnic Institute Australia Pty Ltd (Polytechnic Institute Australia) as a higher education provider for the purposes of the *Higher Education Support Act 2003* (the Act) and notify Polytechnic Institute Australia of its approval. 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 Polytechnic Institute Australia satisfies all applicable criteria in subsection 16-25(1).

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

An approval of a higher education provider given under subsection 16-25(1) is exempt from sunseting under item 33 in the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. It is not appropriate to subject approvals given under subsection 16-25(1) to sunseting as stringent statutory review processes under the Act currently apply to approvals of higher education providers, and approvals are able to be revoked for a number of reasons under the Act. Division 22 of the Act provides circumstances where a higher education provider's approval will be revoked (for example, see section 22-15 which provides that the Minister for Education may revoke a higher education provider's approval if that provider breaches any conditions on its approval or the quality and accountability requirements in Division 19 of the Act).

Human rights implications

The Instrument engages the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to education

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'.

As an approved higher education provider, Polytechnic Institute Australia 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 Polytechnic Institute Australia 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 supports the right to education.

Delegate of the Minister for Education, Annette Cannell

**HIGHER EDUCATION SUPPORT (NOTICE OF APPROVAL – POLYTECHNIC INSTITUTE
AUSTRALIA PTY LTD) INSTRUMENT 2023**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section specifies the name of the instrument as the *Higher Education Support (Notice of Approval – Polytechnic Institute Australia Pty Ltd) Instrument 2023* (the Instrument).

Section 2: Commencement

2. This section provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3: Authority

3. This section provides that the Instrument is made under section 16-25 and paragraph 16-50(1)(b) of the *Higher Education Support Act 2003* (the Act).

Section 4: Definitions

4. This section provides the definition of 'Act', which is the *Higher Education Support Act 2003*, because this term is used in the Instrument.

Section 5: Approval of higher education provider

5. This section provides that, for the purposes of section 16-25 and paragraph 16-50(1)(b) of the Act, Polytechnic Institute Australia Pty Ltd is approved as a higher education provider.