

**HIGHER EDUCATION ACT.**

**New South Wales**



ANNO VICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 47, 1975.**

**An Act to constitute the New South Wales Higher Education Board to replace the New South Wales Higher Education Authority, the New South Wales Advanced Education Board and the New South Wales Universities Board and to define its powers, authorities, duties and functions; to repeal the Higher Education Act, 1969, and to make consequential amendments to certain other Acts; and for purposes connected therewith. [Assented to, 7th October, 1975.]**

**BE**

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**No. 47, 1975** **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**Short title.** **1.** This Act may be cited as the "Higher Education Act, 1975".

**Commence-ment.** **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Subject to subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Repeals and savings.** **3.** (1) The Acts specified in Schedule 1 are, to the extent specified in that Schedule, hereby repealed.

(2) Schedule 2 has effect.

**Interpre-tation.** **4.** In this Act, except to the extent that the context or subject-matter otherwise indicates or requires—

"advanced education course" means a course of study approved under section 11 (4);

"Board" means the New South Wales Higher Education Board constituted under section 5;

"college"

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"college" means— No. 47, 1975

- (a) an institution declared under section 4 of the Colleges of Advanced Education Act, 1975, to be a college of advanced education; and
- (b) a college of advanced education constituted under section 5 of that Act;

"corporate college" means a college of advanced education constituted under section 5 of the Colleges of Advanced Education Act, 1975;

"higher education" means education—

- (a) in a university;
- (b) in a college of advanced education; or
- (c) by means of an advanced education course otherwise than in a university or college of advanced education;

"regulations" means regulations made under this Act;

"repealed Acts" means the enactments repealed by this Act;

"university" means a university established by an Act.

5. (1) The New South Wales Higher Education Board shall be constituted by the appointment by the Governor, as members of the Board, of not more than fourteen persons nominated by the Minister. Constitution of Higher Education Board.

(2) One member of the Board shall, by the instrument of his appointment or by another instrument, be appointed by the Governor as chairman of the Board and another member of the Board shall, in like manner, be appointed as deputy chairman of the Board.

(3)

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(3) The chairman or, in his absence, the deputy chairman, of the Board shall preside at any meeting of the Board but, if both the chairman and deputy chairman are absent from a meeting, a member of the Board elected by a majority of the votes of members present for the meeting shall preside at the meeting.

(4) At a meeting of the Board, the person who presides at the meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(5) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of a member of the Board and a member of the Board is not, as such a member, subject to those provisions.

**Tenure of  
office of  
member  
of Board.**

6. (1) A full-time member of the Board is a member so designated by the instrument of his appointment or so designated by the Governor by another instrument.

(2) Subject to this Act, the term of office of a member of the Board shall be such period not exceeding—

- (a) in the case of a full-time member—seven years; or
- (b) in any other case—five years,

as is specified in the instrument of his appointment, and any member is eligible for re-appointment as a member of the Board.

(3) Notwithstanding subsection (2), section 30 of the Interpretation Act, 1897, applies to and in respect of an appointment made under section 5 (1).

(4)

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(4) A person shall not be appointed as a member of No. 47, 1975 the Board if—

- (a) in the case of a full-time member—he is of or above the age of sixty-five years; or
- (b) in any other case—he is of or above the age of seventy years.

7. (1) A member of the Board ceases to hold office as such a member, and there is a casual vacancy in his office, if—

Casual  
vacancies  
in office of  
member of  
Board.

- (a) in the case of a full-time member—
  - (i) he attains the age of sixty-five years; or
  - (ii) without the approval in writing of the Minister, he engages in any paid employment outside the duties of his office as a member;
- (b) in the case of a member, other than a full-time member—he attains the age of seventy years;
- (c) he dies;
- (d) he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or expenses as a member of the Board, or of his estate, for their benefit;

(f)

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- (f) he is convicted in New South Wales of a felony or of a misdemeanour punishable by imprisonment for twelve months or longer, or if he is convicted outside New South Wales of an offence which, if committed in New South Wales, would be a felony or a misdemeanour so punishable;
- (g) he resigns his office by writing under his hand addressed to the Minister and the Governor accepts the resignation; or
- (h) he is absent from three consecutive meetings of the Board of which reasonable notice has been given to him personally or in the ordinary course of post and is not, within six weeks after the last of those meetings, excused by the Board for his absence.

(2) Where a casual vacancy occurs in the office of a member of the Board, the Governor may, on the nomination of the Minister, appoint a person to fill the vacant office.

**Remuneration, etc., of member of Board.**

**8.** (1) A full-time member of the Board is entitled to such expenses and remuneration as the Governor from time to time determines.

(2) A member, other than a full-time member, of the Board is entitled to such fees and expenses as the Minister from time to time determines.

**Saving of rights of certain members of Board.**

**9.** (1) In this section "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

(2)

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(2) Where a person who is an officer of the Public Service or a member of the Teaching Service is appointed as a full-time member of the Board and subsequently vacates his office as such a member otherwise than pursuant to section 7 (1) (paragraph (g) excepted) he is entitled, if he has not attained the age of sixty years, to be appointed to an office in the Service from which he was appointed as a member of the Board, being an office not lower in classification and salary than the office he held immediately before his appointment as a member of the Board.

(3) Subject to subsection (4) and to the terms of his appointment as a member of the Board, where a full-time member of the Board was, immediately before his appointment as such a member—

- (a) an officer of the Public Service;
- (b) a member of the Teaching Service; or
- (c) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (d) shall retain any rights accrued or accruing to him as such an officer, member or person;
- (e) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a member of the Board; and
- (f) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer, member or person and—

- (g) his service as a member of the Board shall be deemed to be service as an officer, member or employee for the purposes of any law under which

those

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those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and

- (h) he shall be deemed to be an officer, member or employee for the purposes of any superannuation scheme to which, by the operation of this subsection, he is entitled to contribute.

(4) A member of the Board who, but for this subsection, would be entitled under subsection (3) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming a contributor to any other superannuation scheme, and the provisions of subsection (3) (h) cease to apply to or in respect of him in any case where he becomes a contributor to another superannuation scheme.

(5) Subsection (4) does not prevent the payment to a member of the Board upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer, member or employee for the purposes of that scheme.

(6) A member of the Board is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

Meetings  
of  
Board.

**10.** (1) Subject to the regulations, the procedure for calling meetings of the Board and for the conduct of business at those meetings shall be as determined by the Board.

(2) A majority of the number of members of the Board constitutes a quorum at a meeting of the Board.

(3) A decision supported by a majority of votes at a meeting of the Board at which a quorum is present is a decision of the Board.

**11.**

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11. (1) The Board may, of its own motion, and shall, at No. 47, 1975  
the request of the Minister, make reports and  
recommendations to the Minister with respect to—

Powers,  
etc., of  
Board.

- (a) the development of higher educational institutions and the establishment of new higher educational institutions;
- (b) the establishment of new programmes of study in the field of higher education for the purposes of rationalisation and avoidance of unnecessary duplication of resources, particularly with respect to courses and accommodation;
- (c) the acquisition and reservation of sites for the purposes of higher education; and
- (d) any other matter relating to higher education.

(2) Where the Board makes a report or recommendation to the Minister with respect to any matter, the Board shall, at the request of a member, or a group of members, of the Board, also forward to the Minister any minority report or recommendation with respect to that matter made by that member or group of members.

(3) The Board shall—

- (a) for the purpose of reporting to the Minister thereon, consider and co-ordinate requests and submissions relating to financial assistance from State or Commonwealth resources made by universities, by colleges of advanced education and by Government Departments offering courses of study approved as advanced education courses;
- (b) confer and collaborate, in matters relating to higher education, with educational institutions and with State and Commonwealth bodies;

(c)

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- (c) foster research into matters relevant to the development and improvement of higher education;
- (d) assess the suitability of courses of study as advanced education courses;
- (e) determine the nomenclature of the academic award on completion of an advanced education course;
- (f) take such action with respect to non-government institutions offering advanced education courses as the Minister directs;
- (g) determine the academic staff establishment of each college of advanced education; and
- (h) perform such other functions as the Minister directs.

(4) The Board may, by order, approve a course of study as an advanced education course.

(5) The Board may, by instrument in writing, delegate to a corporate college its powers under subsection (3) (g), or such part of those powers as is specified in the instrument and may, by a like instrument, revoke any such delegation.

(6) A delegation under subsection (5) is subject to any conditions specified in the instrument of delegation.

(7) In the exercise and performance of its powers, authorities, duties and functions under this Act, the Board shall have regard to the needs of the State and to the financial and other resources of the State.

Board  
may  
appoint  
committees.

**12.** (1) The Board may appoint committees to assist and advise it in connection with the exercise and performance of its powers, authorities, duties and functions.

(2)

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(2) A committee appointed under subsection (1) **No. 47, 1975** may consist of members of the Board, persons who are not members of the Board or partly of persons who are, and partly of persons who are not, members of the Board.

(3) A member of a committee who is not a member of the Board is entitled to receive such expenses and fees as a member of the committee as the Minister from time to time approves.

**13.** The Board shall, not later than the thirty-first day of <sup>Annual</sup> March in each year, cause a report of its work and activities <sup>report.</sup> during the year that ended on the last preceding thirty-first day of December to be forwarded to the Minister for presentation to Parliament.

**14.** (1) A person contravenes this section if he represents **Offences.** that—

- (a) a corporation incorporated in the Commonwealth or a Territory of the Commonwealth;
- (b) an unincorporated body of persons associated together in the Commonwealth or a Territory of the Commonwealth; or
- (c) an institution established in the Commonwealth or in a Territory of the Commonwealth,

is (whether within the meaning of this Act or not) a university or a college of advanced education unless—

- (d) in so far as the representation relates to a university—the university was established by an Act, or by an Act of the Parliament of the Commonwealth or of another State, or by an ordinance in force in a Territory of the Commonwealth, or by the executive government of the State or of the Commonwealth or of another State; and

(e)

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(e) in so far as the representation relates to a college of advanced education—it relates to a college of advanced education so established.

(2) A person contravenes this section if—

(a) he represents that a corporation, body or institution referred to in subsection (1) (a), (b) or (c)—

(i) has conferred, or will confer, a degree (being a degree that evidences academic distinction); or

(ii) has presented, or will present, a document that is evidence that such a degree has been conferred; or

(b) acting, or purporting to act, on behalf of such a corporation, body or institution, he confers or offers to confer such a degree, or presents or offers to present, such a certificate,

unless that degree or document or certificate—

(c) is conferred or presented by a university or college established as referred to in section 14 (1) (d) and (e);

(d) evidences the completion of a course approved under section 11 (4); or

(e) is conferred or presented by or on behalf of a corporation, body or institution approved by the Minister for the purposes of this section on the recommendation of the Board.

(3) For the purposes of subsections (1) and (2) a person represents that a state of affairs exists if he does or says anything, or causes or permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

(4) A penalty for a contravention of this section may be recovered in a court of petty sessions held before a stipendiary magistrate.

Penalty: \$500.

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**15.** The Governor may make regulations prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient for carrying out or giving effect to this Act. No. 47, 1975  
Regulations.

**16.** A provision of the Colleges of Advanced Education Act, 1975, specified in the First Column of Schedule 3 is amended in the manner specified opposite that provision in the Second Column of that Schedule. Amendment of Act No. 11, 1975.

**17.** The Medical Practitioners Act, 1938, is amended by omitting section 5 (3) (d) (iii) and by inserting instead the following subparagraph :— Amendment of Act No. 37, 1938.  
Sec. 5.

(iii) the New South Wales Higher Education Board.

(Constitution of board.)

**18.** The Technical and Further Education Act, 1974, is amended by omitting from section 5 the matter "1969" and by inserting instead the matter "1975". Amendment of Act No. 72, 1974.  
Sec. 5.

(Higher Education Act, 1975, not affected.)

## SCHEDULE 1.

Sec. 3 (1).

Citation	Short title	Extent of Repeal
No. 29, 1969 ..	Higher Education Act, 1969 ..	The whole Act.
No. 65, 1971 ..	Higher Education (Amendment) Act, 1971.	The whole Act.
No. 72, 1974 ..	Technical and Further Education Act, 1974.	So much of Schedule 2 as amends Act No. 29, 1969.
No. 11, 1975 ..	Colleges of Advanced Education Act, 1975.	Section 29 and Schedule 2.

## SCHEDULE

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## SCHEDULE 2.

**Sec. 3 (2).**  
Interpreta-  
tion.

## 1. In this Schedule—

“Advanced Education Board” means the New South Wales Advanced Education Board constituted under the repealed Acts;

“appointed day” means the day appointed and notified under section 2 (2);

“Higher Education Authority” means the New South Wales Higher Education Authority constituted under the repealed Acts;

“statutory bodies” means the Advanced Education Board, the Higher Education Authority and the Universities Board;

“Universities Board” means the New South Wales Universities Board constituted under the repealed Acts.

Saving of  
certain  
reports,  
etc.

2. For the purposes of this Act, a report or recommendation made to the Minister before the appointed day by one of the statutory bodies shall be deemed to be a report or recommendation made by the Board.

Continua-  
tion in  
office of  
certain  
persons.

3. A person who, immediately before the appointed day, held office as a full-time member of the Advanced Education Board or the Universities Board shall be deemed to have been, on that day, appointed as a member of the Board under section 5 (1) and to have been designated under section 6 (1) as a full-time member of the Board.

Chairman  
of Board.

4. The person who, immediately before the appointed day, held office as chairman of the Advanced Education Board shall be deemed to have been, on that day, appointed as chairman of the Board under section 5 (2).

Advanced  
education  
courses.

5. (1) To the extent to which an order made by the Minister under the repealed Acts approved a course of study as an advanced education course and was in force immediately before the appointed day, the order shall be deemed to be an order made by the Board under section 11 (4).

(2)

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(2) A course of study that, immediately before the appointed day, was an advanced education course approved under the provisions of section 10 (1) (b) of the Colleges of Advanced Education Act, 1975, in respect of a corporate college shall be deemed to be an advanced education course approved by the Board under those provisions by an order made on that day in relation to that college. No. 47, 1975

6. To the extent to which an instrument of delegation was, immediately before the appointed day, in force under section 6 (1B) of the Higher Education Act, 1969, as then in force, the instrument shall, on and from that day, be deemed to be an instrument executed by the Board under the provisions of section 11 (5) and to be subject to those provisions and the provisions of section 11 (6). Certain delegations to continue in force.

7. To the extent to which a regulation made under the repealed Acts would, but for this clause, have ceased on the appointed day to have any force or effect but could have taken effect on that day had it been made under this Act, the regulation shall be deemed to have been made under this Act and to have taken effect on that day. Saving of certain regulations.

8. On and after the appointed day, a reference in any other Act, or in any regulation, by-law or statutory instrument, or in any other instrument, to one of the statutory bodies shall be construed as a reference to the Board. Construction of cross-references.

9. The amendment made by section 17—

- (a) does not affect the tenure of office of the member of the New South Wales Medical Board who, immediately before the appointed day, held office pursuant to section 5 (3) (d) (iii) of the Medical Practitioners Act, 1938; and

**New South  
Wales  
Medical  
Board.**

- (b) does not, while that member continues in that office, affect the constitution of that Board.

10. Nothing in this Schedule affects any saving effected by the Interpretation Act, 1897. Other savings.

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## SCHEDULE 3.

Sec. 16.

## AMENDMENTS TO COLLEGES OF ADVANCED EDUCATION ACT, 1975.

First Column	Second Column
Provision to be amended	Amendment
Sec. 3 (1) .. ..	Omit "1969" from the definition of "advanced education course"; insert "1975". Omit the definition of "Board"; insert the following definition:— "Board" means the New South Wales Higher Education Board constituted under the Higher Education Act, 1975.
Sec. 10 (1) (b) ..	Omit "so approved"; insert "approved by the Board by an order relating to that college".
Sec. 12 (2) .. ..	Omit "section 6 (1B) of the Higher Education Act, 1969"; insert "section 11 (5) of the Higher Education Act, 1975".

LOTTERIES