



New South Wales

# Higher Education Act 2001 No 102

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New South Wales

## Higher Education Act 2001 No 102

Act No 102, 2001

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An Act to make provision with respect to the recognition of Australian and overseas universities and higher education institutions, the accreditation of courses of study and the approval of universities and higher education institutions for the purposes of certain Commonwealth legislation; to repeal the *Higher Education Act 1988*; and for other purposes. [Assented to 11 December 2001]

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Higher Education Act 2001*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Definitions**

(1) In this Act:

*Australian higher education institution* means an education institution that is registered as an Australian higher education institution under Division 1 of Part 2.

*Australian institution* means:

- (a) a company (including a foreign company) that is registered under the *Corporations Act 2001* of the Commonwealth, or
- (b) any other body corporate constituted in Australia, or
- (c) an unincorporated body of persons associated together in Australia, or
- (d) any other institution established in Australia.

*Australian university* means an education institution that meets all relevant criteria set out in the National Protocols, that is established or recognised as a university by or under an Act of the Commonwealth, or by or under an Act of this or any other State or Territory, and that is listed in Schedule 1.

*degree* includes a degree of any kind, including in particular the degrees of doctor, master and bachelor.

*degree course* means a course of study that leads to a degree.

*Department* means the Department of Education and Training.

*Director-General* means the Director-General of the Department.

***education institution*** means:

- (a) a company (including a foreign company) that is registered under the *Corporations Act 2001* of the Commonwealth, or
- (b) any other body corporate constituted in Australia, that provides or proposes to provide courses of study.

***exercise*** a function includes perform a duty.

***function*** includes a power, authority or duty.

***higher education course*** means a course of study that leads to a higher education qualification.

***higher education qualification*** means:

- (a) a degree, or
- (b) a post-graduate qualification, or
- (c) a diploma or advanced diploma.

***National Code*** means the code established under Part 4 of the Commonwealth Act, as amended from time to time.

***National Protocols*** means the *National Protocols for Higher Education Approval Processes* (first endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000), as in force from time to time.

***overseas higher education institution*** means an education institution that is registered as an overseas higher education institution under Division 1 of Part 2.

***overseas student*** has the same meaning as it has in the Commonwealth Act.

***overseas university*** means an education institution that is registered as an overseas university under Division 1 of Part 2.

***post-graduate course*** means a course of study that leads to a post-graduate qualification.

***post-graduate qualification*** means:

- (a) any qualification that is described as a graduate diploma or a graduate certificate, or
- (b) any other qualification (other than a degree) that is declared by the regulations to be a post-graduate qualification,

but does not include a graduate diploma or graduate certificate awarded in connection with a person's successful completion of an accredited vocational course within the meaning of the *Vocational Education and Training Accreditation Act 1990*.

**the Commonwealth Act** means the *Education Services for Overseas Students Act 2000* of the Commonwealth.

- (2) For the purposes of this Act:
- (a) a person represents that a state of affairs exists if the person does or says anything, or causes or allows anything to be done or said, by which it is represented, or by which a belief may be induced, that the state of affairs exists, and
  - (b) a person provides a course of study if the person enrolls or registers students to undertake such a course, provides face-to-face instruction in connection with such a course or provides distance education facilities for the conduct of such a course (for example, facilities for students to undertake such a course by means of post, facsimile or electronic mail).

#### 4 Amendment of Schedule 1

- (1) The Governor may, on the recommendation of the Minister, by proclamation published in the Gazette:
- (a) include the name of an education institution in Schedule 1, or
  - (b) vary the name of an education institution listed in Schedule 1 as a consequence of any change in its corporate name, or
  - (c) omit the name of an education institution from Schedule 1.
- (2) A recommendation to include the name of an education institution in Schedule 1 may be given only in relation to an education institution that is established or recognised as a university:
- (a) by or under an Act of the Commonwealth, or
  - (b) by or under an Act of this or some other State or Territory.
- (3) In deciding whether to make such a recommendation, the Minister must have regard to the National Protocols.
- (4) A proclamation under this section is not invalid only because of a failure of the Minister to comply with the requirements of subsection (2) or (3).

## **Part 2 Registration, accreditation and approvals**

### **Division 1 Registration of higher education institutions**

#### **5 Registration of higher education institutions and overseas universities**

- (1) On the application of an education institution, the Director-General may register the institution:
  - (a) as an Australian or overseas higher education institution, or
  - (b) if the Minister so approves, as an overseas university.
- (2) An approval referred to in subsection (1) (b) may be given only if the Minister is satisfied that the education institution will be able to operate in New South Wales to a standard no lower than that of Australian universities.
- (3) An education institution is to be registered as an overseas university or higher education institution only if it operates as a university or higher education institution in its country of origin.
- (4) An education institution is not eligible to be registered under this section unless at least one course of study is accredited in relation to the institution as a higher education course under Division 2.
- (5) Registration may be unconditional or subject to such conditions as the Director-General determines.
- (6) An education institution's registration must be reviewed by the Director-General at intervals of not more than 5 years.

#### **6 Variation, suspension and cancellation of registration**

- (1) The Director-General may at any time:
  - (a) suspend or cancel an education institution's registration, or
  - (b) vary or revoke any condition to which an education institution's registration is subject, or
  - (c) impose additional conditions on an education institution's registration.
- (2) The Director-General may suspend or cancel an education institution's registration only on one or more of the following grounds:
  - (a) that the institution requests the suspension or cancellation,

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- (b) that the institution no longer exists,
- (c) that the institution has contravened this Act, the regulations or a condition of its registration,
- (d) that there is no longer any course of study accredited in relation to the institution under Division 2.

## **Division 2      Accreditation of higher education courses**

### **7      Accreditation of higher education courses**

- (1) On the application of an education institution that is:
  - (a) an overseas university or an Australian or overseas higher education institution, or
  - (b) an applicant for registration as an overseas university or as an Australian or overseas higher education institution,
 the Director-General may accredit any course of study to be provided by the institution as a higher education course.
- (2) A course of study may be accredited in relation to an education institution only if the Director-General is satisfied that the course complies with the requirements of the Australian Qualifications Framework.
- (3) Accreditation may be unconditional or subject to such conditions as the Director-General determines.
- (4) Accreditation of a course of study in relation to an education institution must be reviewed by the Director-General at intervals of not more than 5 years.
- (5) In this section, *Australian Qualifications Framework* means the current edition of the document entitled *Australian Qualifications Framework*, as published by the Australian Qualifications Framework Advisory Board.

### **8      Variation, suspension and cancellation of accreditation**

- (1) The Director-General may at any time:
  - (a) suspend or cancel the accreditation of a course of study in relation to an education institution, or



- (b) vary or revoke any condition to which the accreditation of a course of study in relation to an education institution is subject, or
  - (c) impose additional conditions on the accreditation of a course of study in relation to an education institution.
- (2) The Director-General may suspend or cancel the accreditation of a course of study in relation to an education institution only on one or more of the following grounds:
- (a) that the institution requests the suspension or cancellation,
  - (b) that the institution no longer exists,
  - (c) that the institution has contravened this Act, the regulations, or a condition to which accreditation of the course is subject.

### **Division 3      Approval to provide courses of study to overseas students**

#### **9      Director-General to be designated authority under Commonwealth Act**

For the purposes of the Commonwealth Act, the Director-General is the person responsible for approving providers to provide courses to overseas students in New South Wales.

#### **10      Approval of courses provided by universities and higher education institutions**

- (1) On the application of an education institution that is:
- (a) an Australian or overseas university, or
  - (b) an Australian or overseas higher education institution,
- the Director-General may approve the institution to provide specified courses of study to overseas students.
- (2) An approval may be granted in respect of a course of study only if the Director-General is satisfied that the education institution complies with the relevant requirements of the National Code.
- (3) In the case of an Australian university, the Director-General is to rely on a statement by the governing body of the university as to the university's compliance with the relevant requirements of the National Code unless the Director-General has reason to believe that those requirements have not been complied with.

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- (4) An approval may be granted unconditionally or subject to such conditions as the Director-General determines.
- (5) An approval under this Division must be reviewed by the Director-General at intervals of not more than 5 years.

### **11 Variation, suspension and cancellation of approval**

- (1) The Director-General may at any time:
  - (a) suspend or cancel an education institution's approval, or
  - (b) vary or revoke any condition to which an education institution's approval is subject, or
  - (c) impose additional conditions on an education institution's approval.
- (2) The Director-General may suspend or cancel an education institution's approval only on one or more of the following grounds:
  - (a) that the institution requests the suspension or cancellation,
  - (b) that the institution no longer exists,
  - (c) that the institution has contravened this Act, the regulations or a condition to which the approval is subject,
  - (d) that the institution has failed to comply with a requirement of the National Code.

### **12 Delivery of courses overseas**

- (1) If an Australian university operates outside Australia, and issues higher education qualifications under its own name while so operating, the governing body of the university must ensure that the courses of study it provides while so operating are of a standard no lower than that of comparable courses provided by Australian universities within Australia.
- (2) If a course of study is being delivered outside Australia on behalf of, or in the name of, an Australian university, and the organisation delivering the course issues higher education qualifications under the name of the university, the governing body of the university must ensure that:
  - (a) the quality and standards of the course are comparable with those of the course, as delivered by the university, and

- (b) the staff delivering the course have qualifications equivalent to those held by persons delivering the course in Australia, and
- (c) the organisation has appropriate financial and other arrangements in place to ensure successful delivery of the course.

## **Division 4      Offences**

### **13    Unlawful use of title “university”**

A person must not represent that an Australian institution is a university unless the institution is an Australian or overseas university.

Maximum penalty: 200 penalty units.

### **14    Unlawful provision of higher education courses**

A person must not represent that an Australian institution provides any degree or post-graduate course, or is authorised to provide any degree or post-graduate course, unless:

- (a) the institution is:
  - (i) an Australian or overseas university, or
  - (ii) an Australian or overseas higher education institution, and
- (b) if the course is provided, or is authorised to be provided, by:
  - (i) an overseas university, or
  - (ii) an Australian or overseas higher education institution, the course is accredited in relation to the institution under Division 2.

Maximum penalty: 200 penalty units.

### **15    Unlawful conferral of higher education qualifications**

(1) A person must not represent that an Australian institution has conferred, or is authorised to confer, a degree or post-graduate qualification unless:

- (a) the institution was or is, as the case requires:
  - (i) an Australian or overseas university, or
  - (ii) an Australian or overseas higher education institution, and

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Part 2 Registration, accreditation and approvals

Division 4 Offences

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- (b) the degree or post-graduate qualification was conferred or is authorised to be conferred, as the case requires, in connection with a person's successful completion of:
  - (i) a higher education course, or
  - (ii) a thesis, dissertation or other body of research, and
- (c) if the degree or post-graduate qualification was conferred or is authorised to be conferred in connection with a person's successful completion of a higher education course:
  - (i) by an overseas university, or
  - (ii) by an Australian or overseas higher education institution,

the course was or is accredited, as the case requires, in relation to the institution.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) (b) and (c) do not apply to the conferral of honorary degrees:
  - (a) by an Australian or overseas university, or
  - (b) by any other education institution that the Minister may from time to time authorise to confer honorary degrees.

## **16 Provision of false or misleading information**

A person must not, in or in connection with any application under this Act, make any statement that the person knows to be false or misleading.

Maximum penalty: 200 penalty units.

## **Division 5 Miscellaneous**

### **17 Review of decisions**

An education institution that is aggrieved by any of the following decisions of the Director-General may apply to the Administrative Decisions Tribunal for a review of the decision:

- (a) a decision to refuse the institution's application for registration or approval, or for accreditation of a course of study, under this Part,

- (b) a decision to impose conditions on the institution's registration or approval, or on a course of study's accreditation in relation to the institution, under this Part,
- (c) a decision to suspend or cancel the institution's registration or approval, or a course of study's accreditation in relation to the institution, under this Part,
- (d) a decision to vary the conditions of the institution's registration or approval, or of a course of study's accreditation in relation to the institution, under this Part.

#### **18 Register of higher education institutions**

- (1) The Director-General must maintain a register (to be called the *Register of Higher Education*) in relation to:
  - (a) each education institution that is registered under Division 1, and
  - (b) each course of study that is accredited in relation to an education institution as a higher education course under Division 2, and
  - (c) each education institution that is approved under Division 3 in relation to any course of study,
- (2) The regulations may make provision for or with respect to:
  - (a) the particulars to be recorded in the register, and
  - (b) the manner and form in which the register is to be maintained.
- (3) The Director-General is to cause the register to be made available free of charge to the public at the Department's head office and on the Department's website on the Internet.
- (4) A certificate:
  - (a) that is signed by the Director-General, and
  - (b) that certifies that, on a specified date or during a specified period, the particulars contained in the register as to specified matters were as so specified,

is admissible in any proceedings and is evidence of the matters so certified.

## Part 3 General provisions

### 19 Administrative guidelines

- (1) The Minister may from time to time issue guidelines (not inconsistent with this Act, the regulations or the National Protocols) for or with respect to the following matters:
  - (a) the procedure for assessing a proposal to recommend the making of a proclamation to include the name of an education institution in Schedule 1, as referred to in section 4 (1),
  - (b) the procedure for assessing a proposal for legislation to establish or recognise a university within New South Wales,
  - (c) the procedure for making an application for registration, accreditation or approval under this Act,
  - (d) the requirements to be satisfied by an applicant for registration, accreditation or approval under this Act,
  - (e) the procedure for assessing an application for registration, accreditation or approval under this Act,
  - (f) the conditions to be imposed on an education institution's registration or approval, or on a course of study's accreditation in relation to an education institution, under this Act, including conditions with respect to:
    - (i) the provision of statistical data and other information, and
    - (ii) the provision of access to the institution's premises, records, documents and staff,
  - (g) the procedure for determining whether to vary, suspend or cancel an education institution's registration or approval, or a course of study's accreditation in relation to an education institution, under this Act,
  - (h) such other matters relevant to an education institution's registration or approval, or to a course of study's accreditation in relation to an education institution, under this Act as the Minister determines.
- (2) In particular, the guidelines under this section must give effect to the National Protocols.

- (3) It is the duty of any person involved in the administration of this Act to comply with the requirements of the guidelines under this section.

#### **20 Appointment of advisory committees**

- (1) The Director-General may appoint advisory committees to assist in the administration of this Act.
- (2) The constitution, functions and procedure of an advisory committee are to be as determined by the Director-General.

#### **21 Delegation**

- (1) The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.
- (2) The Director-General may delegate to any person any of the Director-General's functions under this Act, other than a function delegated to the Director-General by the Minister and other than this power of delegation.

#### **22 Recovery of fees**

Any fee payable under this Act may be recovered by the Crown as a debt in any court of competent jurisdiction.

#### **23 Exclusion of personal liability**

An act or omission of:

- (a) the Minister, or
- (b) the Director-General, or
- (c) any person acting under the direction of the Minister or Director-General,

does not subject the Minister, the Director-General or person so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this Act or the regulations.

#### **24 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

**25 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:
- (a) the procedure for assessing a proposal to recommend the making of a proclamation to include the name of an education institution in Schedule 1, as referred to in section 4 (1),
  - (b) the procedure for assessing a proposal for legislation to establish or recognise a university within New South Wales,
  - (c) the procedure for making an application for registration, accreditation or approval under this Act,
  - (d) the requirements to be satisfied by an applicant for registration, accreditation or approval under this Act,
  - (e) the procedure for assessing an application for registration, accreditation or approval under this Act,
  - (f) the conditions to be imposed on an education institution's registration or approval, or on a course of study's accreditation in relation to an education institution, under this Act, including conditions with respect to:
    - (i) the provision of statistical data and other information, and
    - (ii) the provision of access to the institution's premises, records, documents and staff,
  - (g) the procedure for determining whether to vary, suspend or cancel an education institution's registration or approval, or a course of study's accreditation in relation to an education institution, under this Act,
  - (h) the fees payable under this Act, including the waiving, remittal, reduction and refund of any such fee,
  - (i) transitional arrangements arising from the suspension or cancellation of an education institution's registration or approval, or on a course of study's accreditation in relation to an education institution, under this Act.
- (2) A regulation may make provision for or with respect to the exemption of any person or body from the operation of this Act, or any specified provision of this Act, either unconditionally or subject to conditions.



**26 Repeal of Higher Education Act 1988**

The *Higher Education Act 1988* is repealed.

**27 Amendment of other Acts and instruments**

Each Act and instrument specified in Schedule 2 is amended as set out in that Schedule.

**28 Savings and transitional provisions**

Schedule 3 has effect.

**29 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Australian universities**

(Sections 3 and 4)

### **New South Wales**

Australian Catholic University  
Australian William E. Simon University  
Charles Sturt University  
Macquarie University  
Southern Cross University  
The University of New England  
The University of New South Wales  
The University of Newcastle  
The University of Sydney  
University of Technology, Sydney  
University of Western Sydney  
University of Wollongong

### **Queensland**

Bond University  
Central Queensland University  
Griffith University  
James Cook University  
Queensland University of Technology  
The University of Queensland  
University of Southern Queensland  
University of the Sunshine Coast

**South Australia**

The Flinders University of South Australia

The University of Adelaide

University of South Australia

**Tasmania**

University of Tasmania

**Victoria**

Deakin University

La Trobe University

Monash University

Royal Melbourne Institute of Technology

Swinburne University of Technology

University of Ballarat

University of Melbourne

Victoria University of Technology

**Western Australia**

Curtin University of Technology

Edith Cowan University

Murdoch University

The University of Notre Dame Australia

The University of Western Australia

**Australian Capital Territory**

The Australian National University

University of Canberra

**Northern Territory**

Northern Territory University

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## Schedule 2 Amendment of other Acts and instruments

(Section 27)

### 2.1 Environmental Planning and Assessment Regulation 2000

#### Clause 226 Prescribed persons: section 116B

Omit clause 226 (1) (c). Insert instead:

- (c) an Australian university within the meaning of the *Higher Education Act 2001*,

### 2.2 Protection of the Environment Operations (Penalty Notices) Regulation 1999

#### Clause 6 Authorised officers: section 226

Omit clause 6 (5) (j). Insert instead:

- (j) class 10—an officer or employee of an Australian university within the meaning of the *Higher Education Act 2001*,

### 2.3 Vocational Education and Training Accreditation Act 1990 No 120

#### [1] Section 4 Definitions

Omit the definition of *official university* from section 4 (1). Insert instead:

*official university* means an Australian or overseas university within the meaning of the *Higher Education Act 2001*.

**[2] Section 4 (1), definition of “the Commonwealth Act”**

Omit “*Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*”.

Insert instead “*Education Services for Overseas Students Act 2000*”.

**[3] Section 4 (1), definition of “vocational course”**

Omit the definition. Insert instead:

*vocational course* means a course or proposed course of vocational education or vocational training, other than a course that leads to, or is part of a course of study that leads to, a degree.

**[4] Schedule 2 Savings and transitional provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Vocational Education and Training Accreditation (Amendment) Act 1993*

*Higher Education Act 2001*

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## Schedule 3 Savings and transitional provisions

(Section 28)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definition

In this Part, *the 1988 Act* means the *Higher Education Act 1988*, as in force immediately before its repeal by this Act.

#### 3 Approvals to conduct advanced education courses

Any course of study that, immediately before the commencement of this clause, was approved under section 3 of the 1988 Act is taken to have been accredited, on that commencement, under Division 2 of Part 2 of this Act.

**4 Approvals to conduct courses for overseas students**

Any university that, immediately before the commencement of this clause, was approved under section 4B of the 1988 Act in relation to a course of education or training is taken to have been approved in relation to that course, on that commencement, under Division 3 of Part 2 of this Act.

[Minister's second reading speech made in—  
Legislative Assembly on 7 November 2001  
Legislative Council on 28 November 2001]