

[Act 2001 No 102]



New South Wales

Higher Education Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

This Bill is cognate with the *Universities Legislation Amendment (Financial and Other Powers) Bill 2001*.

Overview of Bill

The objects of this Bill are:

- (a) to make provision for the statutory recognition of certain universities and higher education institutions, and
- (b) to make provision for the accreditation of courses of study provided by certain universities and higher education institutions, and
- (c) to make provision for the approval of certain universities and higher education institutions in connection with their provision of courses of study to overseas students, and

* Amended in committee—see table at end of volume.

- (d) to prohibit the unlawful use of the title “university”, the unlawful conferral of certain higher education qualifications and the unlawful provision of higher education courses, and
- (e) to enact other provisions of a minor, consequential and ancillary nature.

The Bill also repeals the *Higher Education Act 1988*, makes consequential amendments to other Acts and instruments and enacts savings and transitional provisions.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides for the amendment of Schedule 1 (Australian universities) by proclamation made on the recommendation of the Minister. Such a recommendation is required to comply with certain national protocols.

Part 2 Registration, accreditation and approvals

Division 1 Registration of higher education institutions

Clause 5 provides for the registration of education institutions as Australian or overseas higher education institutions or overseas universities. Registration is reviewable at intervals of not more than 5 years.

Clause 6 provides for the variation, suspension and cancellation of an education institution’s registration.

Division 2 Accreditation of higher education courses

Clause 7 provides for the accreditation of certain courses of study in relation to universities and higher education institutions. Accreditation will be granted only to those courses that comply with the requirements of the Australian Qualifications Framework. Accreditation is reviewable at intervals of not more than 5 years.

Clause 8 provides for the variation, suspension and cancellation of the accreditation of a course of study in relation to an education institution.

Division 3 Approval to provide courses of study to overseas students

Clause 9 provides that the Director-General of the Department of Education and Training is to be the person responsible for approving providers to provide courses to overseas students in New South Wales for the purposes of the *Education Services for Overseas Students Act 2000* of the Commonwealth (*the Commonwealth Act*).

Clause 10 provides for the approval of certain universities and higher education institutions in connection with the provision of specified courses of study to overseas students. Approval will be granted only to those courses that comply with the requirements of the National Code established under Part 4 of the Commonwealth Act. Approval is reviewable at intervals of not more than 5 years.

Clause 11 provides for the variation, suspension and cancellation of an education institution's approval in relation to a course of study.

Division 4 Offences

Clause 12 prohibits the use of the title "university" by an Australian institution that is not recognised as a university under the proposed Act.

Clause 13 prohibits a person from representing that an Australian institution provides degree or post-graduate courses unless the institution is a university or higher education institution and (in the case of a degree or post-graduate qualification conferred by an overseas university or an Australian or overseas higher education institution) unless the courses are accredited in relation to the institution.

Clause 14 prohibits a person from representing that an Australian institution has conferred, or is authorised to confer, degrees or post-graduate qualifications unless:

- (a) the institution was or is a university or higher education institution, and
- (b) the degree or post-graduate qualification was conferred, or is authorised to be conferred, in connection with a higher education course or a body of research, and
- (c) in the case of a degree or post-graduate qualification conferred by an overseas university or an Australian or overseas higher education institution in connection with a higher education course, the course was or is accredited in relation to the institution.

Clause 15 prohibits a person from making false or misleading statements in or in connection with any application under the proposed Act.

Division 5 Miscellaneous

Clause 16 provides for the review by the Administrative Decisions Tribunal of certain decisions of the Director-General under the proposed Act.

Clause 17 requires the Director-General to maintain a Register of Higher Education and provides that a certificate by the Director-General that, as at a specified date or during a specified period, particulars contained in the Register as to specified matters were as so specified is admissible in any proceedings as evidence of the matters so certified.

Part 3 General provisions

Clause 18 empowers the Minister to issue guidelines for the purposes of the proposed Act, and requires persons involved in the administration of the proposed Act to comply with any such guidelines. The guidelines are required to give effect to certain national protocols.

Clause 19 empowers the Director-General to appoint advisory committees to assist in the administration of the proposed Act.

Clause 20 empowers the Minister and the Director-General to delegate their functions under the proposed Act.

Clause 21 provides that any fees payable under the proposed Act are recoverable by the Crown as a debt in any court of competent jurisdiction.

Clause 22 excludes certain persons involved in the administration of the proposed Act from personal liability in respect of certain acts and omissions.

Clause 23 provides that the proposed Act is to bind the Crown.

Clause 24 enables regulations to be made for the purposes of the proposed Act. In particular, it provides for the making of regulations with respect to the exemption of any person or body from the operation of the proposed Act or any of its provisions.

Clause 25 repeals the *Higher Education Act 1988*.

Clause 26 is a formal provision that gives effect to Schedule 2, which contains consequential amendments to certain other Acts and instruments.

Clause 27 is a formal provision that gives effect to Schedule 3, which contains consequential savings and transitional provisions.

Clause 28 provides for the review of the proposed Act after 5 years from its date of assent.

Schedules

Schedule 1 contains a list of the Australian universities recognised by the proposed Act. As mentioned above, clause 4 provides for the amendment of that Schedule by proclamation.

Schedule 2 contains a number of consequential amendments to the following Acts and instruments:

- (a) the *Environmental Planning and Assessment Regulation 2000*,
- (b) the *Protection of the Environment Operations (Penalty Notices) Regulation 1999*,
- (c) the *Vocational Education and Training Accreditation Act 1990*.

Schedule 3 contains a number of consequential savings and transitional provisions, including a provision that allows the regulations under the proposed Act to make further provision of a savings or transitional nature.