

Higher Education Act 2001 No 102

[2001-102]



New South Wales

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Higher Education Act 2001 No 102



New South Wales

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.

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 listed in Part 1 or 2 of Schedule 1.

degree includes a degree of any kind, including an associate degree and, 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.

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* (as approved by the Ministerial Council on Education, Employment, Training and Youth Affairs on 7 July 2006), as in force from time to time, and includes any guidelines established under those Protocols.

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 a VET accredited course within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

Secretary means the Secretary of the Department.

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 Australian universities

- (1) On the recommendation of the Minister, the Governor may, by proclamation published on the NSW legislation website, amend Schedule 1 so as:
 - (a) to include the name of an education institution in Part 1 or 2 of that Schedule, or
 - (b) to vary the name of an education institution listed in Part 1 or 2 of that Schedule as a consequence of any change in its corporate name, or
 - (c) to omit the name of an education institution from Part 1 or 2 of that Schedule.
- (2) A recommendation to include the name of an education institution in Part 1 of Schedule 1 may be given only in relation to an education institution that is established or recognised as a university:
 - (a) by an Act of the Commonwealth, or
 - (b) by an Act of this or some other State or Territory.
- (3) A recommendation to omit the name of an education institution from Part 1 of

Schedule 1 may be given only in relation to an education institution that is no longer established or recognised as a university by an Act referred to in subsection (2) (a) or (b).

(4) In deciding whether to make a recommendation:

- (a) to include the name of an education institution in Part 2 of Schedule 1, or
- (b) to vary the name of an education institution listed in Part 2 of Schedule 1, or
- (c) to omit the name of an education institution from Part 2 of Schedule 1,

the Minister must have regard to the National Protocols, any guidelines made for the purposes of section 19 (1) (a) and any regulations made for the purposes of section 25 (1) (a).

(5) A proclamation is not invalid only because of a failure of the Minister to comply with the requirements of subsection (4).

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 Secretary 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 as an Australian higher education institution 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 Secretary determines.

(5A) In deciding whether to register an education institution, or what conditions to impose on its registration, the Secretary must have regard to the National Protocols.

- (6) An education institution's registration must be reviewed by the Secretary at intervals of not more than 5 years.

6 Variation, suspension and cancellation of registration

- (1) The Secretary 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 Secretary 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,
 - (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 Secretary may accredit any course of study to be provided by the institution as a higher education course or may authorise the institution to accredit any such course.
- (1A) In deciding whether to authorise an education institution to accredit any courses to be provided by the institution, the Secretary must have regard to the National Protocols.
- (2) A course of study may be accredited in relation to an education institution only if the Secretary or institution, as the case requires, 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 Secretary or

institution, as the case requires, determines.

- (3A) In deciding whether to accredit a course of study, or what conditions to impose on its accreditation, the Secretary or institution, as the case requires, must have regard to the National Protocols.
- (4) Accreditation of a course of study in relation to an education institution must be reviewed by the Secretary or institution, as the case requires, 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 Secretary 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 Secretary 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 and delivery of courses overseas

9 Secretary to be designated authority under Commonwealth Act

For the purposes of the Commonwealth Act, the Secretary 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 Secretary 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 Secretary is satisfied that the education institution complies with the relevant requirements of the National Code.
- (3) In the case of an Australian university, the Secretary 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 Secretary has reason to believe that those requirements have not been complied with.
- (4) An approval may be granted unconditionally or subject to such conditions as the Secretary determines.
- (5) An approval under this Division must be reviewed by the Secretary at intervals of not more than 5 years.

11 Variation, suspension and cancellation of approval

- (1) The Secretary 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 Secretary 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) in the case of a course provided otherwise than by an Australian university:
- (i) the course is accredited under Division 2 in relation to the institution, or
 - (ii) if the institution is an overseas university or higher education institution, the course is approved in accordance with the National Protocols.

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
- (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) in the case of a degree or post-graduate qualification conferred, otherwise than by an Australian university, in connection with a person's successful completion of a higher education course:
- (i) the course was or is, as the case requires, accredited under Division 2 in relation to the institution, or
 - (ii) if the institution was or is an overseas university or higher education institution, the course was or is, as the case requires, approved in accordance with the National Protocols.

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 Administrative review of decisions

An education institution that is aggrieved by any of the following decisions of the Secretary may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) 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 Secretary 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 by the Secretary under Division 2 in relation to an education institution, 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 Secretary 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 Secretary, 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 under 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 Secretary 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 Secretary.

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 Secretary may delegate to any person any of the Secretary's functions under this

Act, other than a function delegated to the Secretary 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 Secretary, or
- (c) any person acting under the direction of the Minister or Secretary,

does not subject the Minister, the Secretary 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 under 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 of 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 (Repealed)

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)

Part 1 Universities established or recognised by an Act

New South Wales

Australian Catholic 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
Western Sydney University
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

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

Charles Darwin University

Part 2 Universities established or recognised otherwise than by an Act

Schedule 2 (Repealed)

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

[*Higher Education Amendment Act 2008*](#)

- (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.