

Western Australia

Higher Education Act 2004

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Higher Education Act 2004

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Western Australia

Higher Education Act 2004

An Act to provide for recognition of Australian and overseas universities, authorisation of other higher education institutions and accreditation of higher education courses, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Higher Education Act 2004*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears —

accredited, in relation to a course of study, means accredited for the purposes of this Act as provided by section 16;

Australian university means an education institution that —

- (a) was originally established in Australia; and
- (b) is established or recognised as a university by or under a written law of this State, the Commonwealth, another State, the Australian Capital Territory or the Northern Territory;

authorised non-university institution means a non-university institution that is authorised under section 12 to provide a higher education course;

company has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

course provider, in relation to a higher education course, means the education institution that provides, offers to provide or proposes to provide the course;

education institution means a company or other body that provides, offers to provide or proposes to provide a course of study;

education Minister means the Minister of State of the Commonwealth, for a State, the Australian Capital Territory or the Northern Territory who is principally responsible for the administration of the law relating to higher education in the respective jurisdiction;

higher education advisory committee means a person or persons appointed under section 20;

higher education award means —

- (a) a degree or higher degree;
- (b) a diploma, advanced diploma, graduate diploma or certificate, if the course of study relating to it is classified as higher education in the course descriptions published by the Australian Qualifications Framework Advisory Board; or
- (c) any other award, if the course of study relating to it is classified as higher education in the course descriptions published by the Australian Qualifications Framework Advisory Board;

higher education course means a course of study that entitles a person who satisfies the course requirements to the conferral of a higher education award;

National Protocols means the National Protocols for Higher Education Approval Processes approved by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000, as amended from time to time;

ministerial accreditation, in relation to a higher education course, means accreditation under section 18;

non-university institution means an education institution that is not —

- (a) a recognised Australian university; or
- (b) a recognised overseas university;

overseas university means an education institution that —

- (a) was originally established in another country; and

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(b) is established, recognised or accredited as a university by the appropriate authorities of that country;

provider's authorisation means authorisation given to a non-university institution under section 14;

recognised Australian university has the meaning given in section 7;

recognised overseas university has the meaning given in section 8;

represent has the meaning given in section 5;

section 10 determination, in relation to an education institution, means a determination under section 10 that the institution meets the criteria for recognition as a university.

4. Providing a course of study — interpretation

For the purposes of this Act, a person provides a course of study if the institution or an agent of the institution enrolls or offers to enrol students to undertake the course, whether the course is provided face-to-face or at a distance by post, fax, email or any other means.

5. Making representations — interpretation

For the purposes of this Act, a person represents that a state of affairs exists if the person does or says anything, 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.

Part 2 — Establishing and maintaining standards for higher education

6. Protection of titles and awards

- (1) An education institution or an agent of an education institution must not, by use of the title “university” or in any other way, represent that the education institution is a university or part of a university unless it is —
- (a) a recognised Australian university; or
 - (b) a recognised overseas university.
- Penalty: \$20 000.
- (2) Subsection (1) does not apply to —
- (a) the organisation known as “U3A” (the “University of the Third Age”); or
 - (b) a prescribed person or organisation.
- (3) A person must not confer or offer to confer or purport to confer a higher education award on anyone unless the person is —
- (a) a recognised Australian university;
 - (b) a recognised overseas university;
 - (c) an authorised non-university institution; or
 - (d) an agent of an institution referred to in paragraph (a), (b) or (c).
- Penalty: \$20 000.
- (4) A person must not represent that a course of study leads to, or would entitle a person who satisfies the course requirements to, the conferral of a higher education award, unless —
- (a) the course provider is a recognised Australian university, a recognised overseas university or an authorised non-university institution; and

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- (b) the course is accredited.

Penalty: \$20 000.

7. Recognised Australian universities

An education institution is a recognised Australian university for the purposes of this Act if the institution is an Australian university or part of an Australian university.

8. Recognised overseas universities

An education institution is a recognised overseas university for the purposes of this Act if —

- (a) it is part of an overseas university; and
- (b) a section 10 determination is in force in respect of the institution.

9. Applications for section 10 determination

- (1) An education institution may apply to the Minister for a section 10 determination.
- (2) An application must —
 - (a) be accompanied by the fee prescribed by, or calculated under, the regulations; and
 - (b) include the prescribed information.

10. Recognition of university standards

- (1) The Minister may determine that an education institution meets the criteria for recognition as a university if satisfied that —
 - (a) the institution is or will be providing higher education courses across a range of fields at a standard that is at least equal or equivalent to the Australian standards appropriate to the courses;

- (b) the institution demonstrates teaching and learning in those fields that engage with knowledge and inquiry at a level that is at least equal or equivalent to the levels of teaching, learning and research carried on at recognised Australian universities;
 - (c) the institution fosters a culture of sustained scholarship and the extension of knowledge through research and original creative endeavour in those fields that is comparable to the culture of scholarship, research and creative endeavour in those fields in recognised Australian universities;
 - (d) the institution and its teachers, researchers, course designers and assessors are committed to free inquiry and the systematic advancement of knowledge in those fields;
 - (e) the institution's governance, procedural rules, organisation, admission policies, financial arrangements and quality assurance processes promote the establishment and maintenance of the values and goals referred to in paragraphs (a), (b), (c) and (d);
 - (f) the institution has sufficient financial and other resources to enable the institution to deliver its courses and research programmes in the future;
 - (g) the institution meets any other criteria set out in the National Protocols in relation to the standards and qualities required of a university; and
 - (h) the institution satisfies any other prescribed criteria.
- (2) Before making a determination, the Minister must have regard to the report of the higher education advisory committee appointed to consider the matter.
- (3) When making a determination, the Minister may also have regard to any or all of the following —
- (a) any national policies and agreements about the governance and other characteristics of Australian

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- universities made by the Minister with other education Ministers;
- (b) in the case of an overseas university — the national and international standing and reputation of the university;
 - (c) any other relevant information.
- (4) Even if an education institution that is part of, or is affiliated with, an overseas university does not offer higher education courses across a wide range of fields, the Minister may make a determination in respect of the institution if satisfied that —
- (a) the overseas university meets the criteria set out in subsection (1); and
 - (b) the institution meets the criteria in relation to the higher education courses it provides or proposes to provide in Western Australia.
- (5) If the Minister makes a determination, the Minister must arrange for a copy of the determination to be laid before each House of the Parliament.

11. Suspension or revocation of section 10 determination

- (1) The Minister may suspend or revoke a section 10 determination if no longer satisfied of the matters referred to in section 10(1) or (4).
- (2) Before suspending or revoking a determination, the Minister must —
 - (a) give the education institution an opportunity to make representations on the matter;
 - (b) consider any representations made; and
 - (c) have regard to the interests of students enrolled in higher education courses at the institution.
- (3) A suspension or revocation under subsection (1) is to be given to the education institution in writing signed by the Minister and is to state the grounds relied on in making the decision.

12. Authorised non-university institutions

A non-university institution is authorised to provide a higher education course if —

- (a) a provider's authorisation is in force for the institution; and
- (b) ministerial accreditation is in force for the course.

13. Applications for provider's authorisations

- (1) A non-university institution may apply to the Minister for a provider's authorisation.
- (2) An application must —
 - (a) be accompanied by the fee prescribed by, or calculated under, the regulations; and
 - (b) include the prescribed information.

14. Authorisation of non-university institutions

- (1) The Minister may authorise a non-university institution to provide a higher education course if satisfied that —
 - (a) the governance, financial resources, facilities, staffing and student services of the institution are or will be appropriate to the provision of the course; and
 - (b) the institution otherwise meets the criteria set out in the National Protocols in relation to non-university institutions.
- (2) When deciding whether to give a provider's authorisation, the Minister must have regard to the report of the higher education advisory committee appointed to consider the matter.
- (3) When deciding whether to give a provider's authorisation, the Minister may also have regard to the following —
 - (a) the governance, financial resources, facilities, staffing and student services of comparable institutions;
 - (b) any other relevant information.

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- (4) The Minister may give a provider's authorisation subject to any conditions relevant to ensuring that the non-university institution meets or continues to meet the criteria referred to in subsection (1).

15. Suspension or revocation of provider's authorisation

- (1) The Minister may suspend or revoke a provider's authorisation if no longer satisfied that the non-university institution is qualified to provide a higher education course.
- (2) Before suspending or revoking a provider's authorisation, the Minister must —
 - (a) give the non-university institution an opportunity to make representations on the matter;
 - (b) consider any representations made; and
 - (c) have regard to the interests of students enrolled in the courses provided by the institution.
- (3) A suspension or revocation under subsection (1) is to be given to the non-university institution in writing signed by the Minister and is to state the grounds relied on in making the decision.

16. Accredited higher education courses

- (1) A higher education course provided by a recognised Australian university is accredited for the purposes of this Act.
- (2) A higher education course provided by a recognised overseas university or a non-university institution is accredited for the purposes of this Act if ministerial accreditation is in force for the course.

17. Applications for ministerial accreditation

- (1) A course provider may apply to the Minister for accreditation of a higher education course.

- (2) An application must —
 - (a) be accompanied by the fee prescribed by, or calculated under, the regulations; and
 - (b) include the prescribed information.

18. Ministerial accreditations

- (1) The Minister may accredit a higher education course leading to a particular higher education award if satisfied that —
 - (a) the standard of the course and the way in which it is being or will be provided are appropriate to the award; and
 - (b) the course meets any other applicable criteria set out in the National Protocols in relation to the standards to be met by courses leading to an award of that kind.
- (2) When deciding whether to accredit a higher education course, the Minister must have regard to the report of the higher education advisory committee appointed to consider the matter.
- (3) When deciding whether to accredit a higher education course, the Minister may also have regard to the following —
 - (a) the standard and provision of comparable courses provided by recognised Australian universities or recognised overseas universities;
 - (b) any other relevant information.
- (4) Ministerial accreditation of a higher education course is subject to the condition that the course provider gives to the Minister as much access to the course provider's premises, and as much information, as the Minister from time to time requires for any or all of the following purposes —
 - (a) to determine whether any conditions to which the accreditation is subject under subsection (7) are being complied with;

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- (b) to determine whether the provision and standard of the course meet or continue to meet the criteria referred to in subsection (1); or
 - (c) to carry out a review under section 22(c) of the provision and standard of the course.
- (5) A right of access under subsection (4) may be exercised —
 - (a) without notice during ordinary and actual business hours on any day; or
 - (b) after giving written notice of not less than 24 hours if access is to occur at any other time.
- (6) A requirement under subsection (4) —
 - (a) is to be in writing identifying the form and content of the information or described by reference to a class or type of information that corresponds to that in the requirement; and
 - (b) is to state the purpose of the requirement and require the information to an extent that is proportionate in scope and content to that purpose.
- (7) The Minister may make the accreditation of a higher education course subject to any conditions relevant to ensuring that the course meets or continues to meet the criteria referred to in subsection (1).

19. Duration of accreditation

- (1) A ministerial accreditation of a higher education course continues in force for 5 years from the day on which the course is registered under section 23(3), unless the accreditation is revoked before then.
- (2) The Minister may suspend or revoke the ministerial accreditation of a higher education course if —
 - (a) the course provider does not comply with a condition of the accreditation imposed under section 18(4) or (7); or

- (b) the Minister is no longer satisfied of the matters referred to in section 18(1) in relation to the course.
- (3) Before suspending or revoking the ministerial accreditation, the Minister must —
 - (a) give the course provider an opportunity to make representations on the matter;
 - (b) consider any representations made;
 - (c) have regard to the interests of students enrolled in the course.
- (4) A suspension or revocation under subsection (2) is to be given to the course provider in writing signed by the Minister and is to state the grounds relied on in making the decision.

20. Higher education advisory committees

- (1) The Minister must appoint a person or persons who is or are suitably qualified and experienced to constitute a higher education advisory committee to consider and report to the Minister on an application made under section 9, 13 or 17.
- (2) The Minister may —
 - (a) appoint a person or persons who is or are suitably qualified and experienced to constitute a higher education advisory committee to consider and report to the Minister on any other matter related to the Minister's functions under this Act; and
 - (b) have regard to the committee's report on the matter when making a decision or carrying out any other function in relation to the matter.
- (3) A higher education advisory committee may be appointed ad hoc or as a standing committee.

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21. Remuneration of advisory committee members

- (1) The remuneration and allowances of a person appointed to a higher education advisory committee are to be determined by the Minister.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the person.
- (3) A determination is only to be made after having regard to the recommendation of the Minister for Public Sector Management.

22. Review of operations

The Minister may at any time review —

- (a) the operation of a recognised overseas university;
 - (b) the operation of an authorised higher education provider;
- or
- (c) the provision and standard of an accredited course provided by a recognised overseas university or an authorised higher education provider.

Part 3 — Other matters

23. Register of Higher Education

- (1) The Minister must ensure that a Register of Higher Education is established and maintained.
- (2) The register may be kept electronically or by any other means.
- (3) If the Minister accredits a higher education course, the Minister must arrange for the course to be registered by entering in the register —
 - (a) the name of the course;
 - (b) the name of the education institution that provides or proposes to provide the course;
 - (c) the name of the higher education award to be conferred on successful completion of the course; and
 - (d) any other relevant particulars.
- (4) The register must be made available for public inspection at reasonable times.

24. Delegation by Minister

- (1) The Minister may delegate to the chief executive officer any function of the Minister under another provision of this Act.
- (2) A delegation must be in writing signed by the Minister.
- (3) The chief executive officer, when carrying out a function that has been delegated under this section, is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

25. Act binds Crown

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

26. Disclosure of information

- (1) A person who acquires any information about the affairs of another person as a result of carrying out a function under or for the purposes of this Act must not, directly or indirectly, make a record of, or divulge or communicate the information to a third person.
- (2) However, subsection (1) does not prohibit recording, divulging or communicating information —
 - (a) in the performance of a function under or in connection with this Act or the *Consumer Affairs Act 1971*;
 - (b) for the purposes of any proceedings under this Act or the *Consumer Affairs Act 1971*; or
 - (c) in the course of an exchange of information with a person or body performing a function under or in connection with a law of the Commonwealth or of another State or a Territory, being a law that is relevant to the administration of higher education courses in Australia.
- (3) Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

27. Vicarious liability for corporations

- (1) If a body corporate is convicted of an offence against this Act, each director and each other person concerned in the management of the body corporate is guilty of a like offence if the act that constituted the offence took place with his or her authority, permission or consent.

- (2) If an agent or employee of an education institution is convicted of an offence against this Act, the institution is guilty of a like offence unless the institution proves that —
- (a) the offence was committed without its knowledge; and
 - (b) it exercised all due diligence to prevent the commission of the offence.

28. Consent to institution of proceedings for an offence

Proceedings for an offence against this Act cannot be commenced without the approval of the Minister.

29. Recovery of fees

A fee payable under this Act is recoverable by the Crown in a court of competent jurisdiction.

30. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for any or all of the following matters —
- (a) the records to be kept by education institutions;
 - (b) information and returns to be provided by education institutions;
 - (c) controlling, regulating or prohibiting advertising by education institutions;
 - (d) procedures relating to the suspension or revocation, or proposed suspension or revocation, of a section 10 determination, a provider's authorisation or ministerial accreditation;
 - (e) the fees payable for services provided under this Act;

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- (f) the waiver, rebate or refund of fees payable under this Act;
- (g) penalties not exceeding \$5 000 for an offence against the regulations.

Notes

¹ This is a compilation of the *Higher Education Act 2004*. The following table contains information about that Act ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Higher Education Act 2004</i>	73 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Higher Education Amendment Act 2009</i> s. 3-44 ²	40 of 2009	3 Dec 2009	To be proclaimed (see s. 2(b))

² On the date as at which this compilation was prepared, the *Higher Education Amendment Act 2009* s. 3-44 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Higher Education Act 2004*.

4. Section 3 amended

(1) In section 3 delete the definitions of:

higher education award

National Protocols

recognised Australian university

section 10 determination

(2) In section 3 insert in alphabetical order:

Australian Qualifications Framework means the framework of educational qualification stated in the implementation handbook

for that framework published by the Australian Qualifications Framework Advisory Board as in force from time to time;

Australian university college means an education institution, or part of an education institution, that —

- (a) was originally established in Australia; and
- (b) is established or recognised as a university college by or under a written law of this State, the Commonwealth, another State, the Australian Capital Territory or the Northern Territory;

higher education award means a qualification referred to in the Australian Qualifications Framework as a qualification that is issued in the higher education sector;

National Protocols means —

- (a) the National Protocols for Higher Education Approval Processes approved by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000, as amended from time to time; or
- (b) if the regulations declare a document to be in substitution for that protocol — a reference to the substitute document, as amended from time to time;

payment agreement means an agreement referred to in section 28;

section 10 determination, in relation to an education institution, means a determination made under section 10;

self-accrediting authorisation means an authorisation granted for a non-university institution under section 13B.

- (3) In section 3 in the definition of **Australian university** delete “institution” and insert:

institution, or part of an education institution,

- (4) In section 3 in the definition of **non-university institution**:

- (a) in paragraph (a) delete “a recognised” and insert:

an

- (b) after paragraph (a) insert:

- (ba) an Australian university college; or

- (5) In section 3 in the definition of *provider's authorisation* delete "authorisation given to" and insert:

an authorisation granted for

5. Part 2 Division 1 heading inserted

Before section 6 insert:

Division 1 — Protection of standards for higher education

6. Section 6 amended

- (1) In section 6(1):

- (a) in paragraph (a) delete "a recognised" and insert:

an

- (b) after "Penalty:" insert:

a fine of

- (2) In section 6(2):

- (a) in paragraph (b) delete "organisation." and insert:

organisation; or

- (b) after paragraph (b) insert:

- (c) an Australian university college or an agent of such an institution that represents that the institution is a university college or part of a university college —

- (i) by use of a title that includes the words "university college"; or
(ii) in any other way.

- (3) In section 6(3):

- (a) in paragraph (a) delete "a recognised" and insert:

an

(b) after paragraph (a) insert:

(ba) an Australian university college; or

(c) in paragraph (d) after “(a),” insert:

(ba),

(d) after each of paragraphs (a) and (b) insert:

or

(e) after “Penalty:” insert:

a fine of

(4) Delete section 6(4) and insert:

(4) A person must not represent that a course of study leads to, will partially satisfy the requirements for, or would entitle a person who satisfies the course requirements to, the conferral of a higher education award, unless —

(a) the course provider is —

(i) an Australian university; or

(ii) an Australian university college; or

(iii) a recognised overseas university;

or

(b) the course provider is an authorised non-university institution and the course is accredited.

Penalty: a fine of \$20 000.

7. Sections 7A and 7B inserted

After section 6 insert:

7A. Representations about authorisation to accredit higher education courses

An education institution or an agent of an education institution must not represent that the institution is authorised to accredit a higher education course unless a self-accrediting authorisation is in force for the institution authorising it to accredit such a course.
Penalty: a fine of \$20 000.

7B. Representations about admissions into higher education courses

A person must not represent that successful completion of a course of study would satisfy, or partially satisfy, the academic prerequisites for admission into a higher education course unless the higher education course provider has authorised that representation.
Penalty: a fine of \$20 000.

8. Part 2 Division 2 heading and Part 2 Division 2 Subdivision 1 heading inserted

Before section 7 insert:

Division 2 — Universities

Subdivision 1 — Report about criteria for establishing Australian university

9. Section 7 replaced

Delete section 7 and insert:

7. Report about criteria for establishing Australian university

- (1) An education institution may request the Minister to appoint a higher education advisory committee to consider and report to the Minister on —
 - (a) whether the committee considers that the institution meets the criteria set out in the National Protocols for establishing an Australian university; and
 - (b) any other matter relevant to a decision on whether the institution should be established as an Australian university.

- (2) A request must —
 - (a) be accompanied by a payment agreement; and
 - (b) include the prescribed information.
- (3) The Minister may in writing, require the institution making the request to provide further information in relation to the request.
- (4) The requirement is to specify a reasonable time within which the institution must comply with the requirement.
- (5) The Minister may refuse to appoint a higher education advisory committee, or may discharge a committee that has been appointed, if the institution does not comply with a requirement under subsection (3) within the time specified in the requirement.
- (6) The Minister must, as soon as practicable after receiving the report of a higher education advisory committee regarding an education institution, give a copy of the report to the institution.

10. Part 2 Division 2 Subdivision 2 heading inserted

After section 7 insert:

Subdivision 2 — Recognition of overseas universities

11. Section 8 amended

In section 8(a) after “is” insert:

an overseas university or

12. Section 9 amended

- (1) In section 9(1) after “institution” insert:

that is an overseas university, or part of an overseas university,

- (2) Delete section 9(2)(a) and insert:

- (a) be accompanied by a payment agreement; and

- (3) After section 9(2) insert:

- (3) The Minister may in writing, require the applicant to provide further information in relation to the application.
- (4) The requirement is to specify a reasonable time within which the applicant must comply with the requirement.
- (5) The Minister may refuse the application if the applicant does not comply with a requirement under subsection (3) within the time specified in the requirement.

13. Section 10 replaced

Delete section 10 and insert:

10. Recognition of overseas universities

- (1) The Minister may determine that an education institution meets the criteria for recognition as an overseas university if satisfied that the institution meets the criteria set out in the National Protocols for overseas universities seeking to operate in Australia.
- (2) Before making a determination, the Minister must have regard to the report of the higher education committee appointed to consider the matter.
- (3) When making a determination, the Minister may also have regard to the following —
 - (a) any national policies and agreements about the governance and other characteristics of overseas universities made by the Minister with other education Ministers;
 - (b) any other relevant information.
- (4) The Minister may make a determination subject to any conditions relevant to —
 - (a) ensuring that the education institution meets or continues to meet the criteria referred to in section 10(1); or
 - (b) protecting the interests of the students enrolled in the higher education courses provided by the institution.
- (5) If the Minister makes a determination under this section, the Minister must arrange for a copy of the determination to be laid before each House of Parliament.

14. Section 11A inserted

After section 10 insert:

11A. Further conditions on section 10 determination

- (1) The Minister may, at any time after making a section 10 determination, make the determination subject to any conditions relevant to —
 - (a) ensuring that the education institution meets or continues to meet the criteria referred to in section 10(1); or
 - (b) protecting the interests of the students enrolled in the higher education courses provided by the institution.
- (2) Before making a section 10 determination subject to conditions under subsection (1), the Minister must —
 - (a) give the institution an opportunity to make representations on the matter; and
 - (b) consider any representations made; and
 - (c) have regard to the interests of the students enrolled in the higher education courses provided by the institution.

15. Section 11 amended

- (1) Delete section 11(1) and insert:
 - (1) The Minister may suspend or revoke a section 10 determination if —
 - (a) the education institution does not comply with a condition to which the determination has been made subject under section 10(4) or 11A(1); or
 - (b) the Minister is no longer satisfied that the education institution meets the criteria referred to in section 10(1).
 - (2) In section 11(2)(c) delete “higher education courses at” and insert:

the higher education courses provided by
- (3) After section 11(3) insert:

- (4) If the Minister revokes a section 10 determination, the Minister must arrange for a copy of the revocation to be laid before each House of Parliament.

16. Part 2 Division 3 heading and Part 2 Division 3 Subdivision 1 heading inserted

After section 11 insert:

Division 3 — Non-university institutions

Subdivision 1 — Authorised non-university institutions

17. Section 12 replaced

Delete section 12 and insert:

12. Authorised non-university institutions

A non-university institution is authorised to provide a higher education course —

- (a) if —
- (i) a self-accrediting authorisation is in force for the institution; and
 - (ii) the course is accredited by the institution in accordance with that authorisation;
- or
- (b) if —
- (i) a provider's authorisation is in force for the institution; and
 - (ii) ministerial accreditation is in force for the course.

18. Part 2 Division 3 Subdivision 2 inserted

After section 12 insert:

Subdivision 2 — Self-accrediting authorisation of non-university institutions

13A. Applications for grant of self-accrediting authorisation

- (1) A non-university institution may apply to the Minister for the grant of a self-accrediting authorisation.
- (2) An application request must —
 - (a) be accompanied by a payment agreement; and
 - (b) include the prescribed information.
- (3) The Minister may in writing, require the applicant to provide further information in relation to the application.
- (4) The requirement is to specify a reasonable time within which the applicant must comply with the requirement.
- (5) The Minister may refuse the application if the applicant does not comply with a requirement under subsection (3) within the time specified in the requirement.

13B. Self-accrediting authorisation of non-university institutions

- (1) The Minister may grant a self-accrediting authorisation for a non-university institution if satisfied that —
 - (a) the governance, financial resources, facilities, staffing and student services of the institution are or will be appropriate to the provision of higher education courses; and
 - (b) the institution has structures and processes to set standards for higher education courses that are at least equal or equivalent to the Australian standards appropriate to courses of that type; and
 - (c) the institution meets any other criteria set out in the National Protocols in relation to the standards and qualities required for approval of an institution to self-accredit its courses.
- (2) When deciding whether to grant a self-accrediting authorisation, the Minister must have regard to the report of the higher education advisory committee appointed to consider the matter.
- (3) When deciding whether to grant a self-accrediting authorisation, the Minister may also have regard to the following —
 - (a) the governance, financial resources, facilities, staffing and student services of comparable institutions;
 - (b) any other relevant information.

- (4) A self-accrediting authorisation may authorise the institution to do one or more of the following —
 - (a) accredit higher education courses leading to a higher education award within a field or a range of fields specified in the authorisation;
 - (b) accredit higher education courses leading to a higher education award of a type or types specified in the authorisation.
- (5) The Minister may grant a self-accrediting authorisation subject to any conditions relevant to —
 - (a) ensuring that the non-university institution meets or continues to meet the criteria referred to in section 13B(1); or
 - (b) protecting the interests of the students enrolled in the higher education courses provided by the institution.

13C. Further conditions on self-accrediting authorisation

- (1) The Minister may, at any time after a self-accrediting authorisation has been granted, make the authorisation subject to any conditions relevant to —
 - (a) ensuring that the non-university institution meets or continues to meet the criteria referred to in section 13B(1); or
 - (b) protecting the interests of the students enrolled in the higher education courses provided by the institution.
- (2) Before making a self-accrediting authorisation subject to conditions under subsection (1), the Minister must —
 - (a) give the non-university institution an opportunity to make representations on the matter; and
 - (b) consider any representations made; and
 - (c) have regard to the interests of the students enrolled in the higher education courses provided by the institution.

13D. Suspension or revocation of self-accrediting authorisation

- (1) The Minister may suspend or revoke a self-accrediting authorisation if —
 - (a) the non-university institution does not comply with a condition to which the authorisation has been made subject under section 13B(5) or 13C(1); or
 - (b) the Minister is no longer satisfied that the non-university institution meets the criteria referred to in section 13B(1).

- (2) The suspension or revocation of a self-accrediting authorisation may be in respect of one or more of the higher education courses that the non-university institution is authorised to accredit.
- (3) Before suspending or revoking a self-accrediting authorisation, the Minister must —
 - (a) give the non-university institution an opportunity to make representations on the matter; and
 - (b) consider any representations made; and
 - (c) have regard to the interests of the students enrolled in the higher education courses provided by the institution.
- (4) A suspension or revocation under subsection (1) is to be given to the non-university institution in writing signed by the Minister and is to —
 - (a) state the grounds relied on in making the decision; and
 - (b) where relevant, specify the higher education courses to which it applies.
- (5) A suspension or revocation has effect to the extent specified in the written notice.

19. Part 2 Division 3 Subdivision 3 heading inserted

Before section 13 insert:

Subdivision 3 — Provider’s authorisation of non-university institutions

20. Section 13 amended

- (1) In section 13(1) after “for” insert:

the grant or renewal of
- (2) After section 13(2) insert:
- (3) The Minister may in writing, require the applicant to provide further information in relation to the application.
- (4) The requirement is to specify a reasonable time within which the applicant must comply with the requirement.
- (5) The Minister may refuse the application if the applicant does not comply with a requirement under subsection (3) within the time specified in the requirement.

21. Section 14 amended

- (1) In section 14(1):
- (a) delete “authorise a non-university institution to provide a higher education course” and insert:

grant or renew a provider’s authorisation for a non-university institution
 - (b) in paragraph (a) delete “the course; and” and insert:

higher education courses; and
- (2) In section 14(2) and (3) delete “give” and insert:

grant or renew
- (3) Delete section 14(4) and insert:
- (4) The Minister may grant or renew a provider’s authorisation subject to any conditions relevant to —
- (a) ensuring that the non-university institution meets or continues to meet the criteria referred to in section 14(1); or
 - (b) protecting the interests of the students enrolled in the higher education courses provided by the institution.

22. Sections 15A and 15B inserted

After section 14 insert:

15A. Duration of provider’s authorisation

- (1) Unless otherwise provided under this Act, a provider’s authorisation continues in force —
- (a) for 5 years from the day on which the authorisation is granted; or
 - (b) if an earlier day is specified in the authorisation, until that day.

- (2) The Minister may extend a provider's authorisation, in writing given to the non-university institution, for a period of up to 6 months after the day on which it would otherwise have ceased to be in force if —
- (a) an application for the renewal of the authorisation was made —
 - (i) 6 months or more before that day; or
 - (ii) less than 6 months before that day, if that day is less than 6 months after the commencement of the *Higher Education Amendment Act 2009* section 22;
- and
- (b) the Minister has not made a final decision on that application before that day.

15B. Further conditions on provider's authorisation

- (1) The Minister may, at any time after a provider's authorisation has been granted, make the authorisation subject to any conditions relevant to —
- (a) ensuring that the non-university institution meets or continues to meet the criteria referred to in section 14(1); or
 - (b) protecting the interests of the students enrolled in the higher education courses provided by the institution.
- (2) Before making a provider's authorisation subject to conditions under subsection (1), the Minister must —
- (a) give the non-university institution an opportunity to make representations on the matter; and
 - (b) consider any representations made; and
 - (c) have regard to the interests of the students enrolled in the higher education courses provided by the institution.

23. Section 15 amended

- (1) Delete section 15(1) and insert:
- (1) The Minister may suspend or revoke a provider's authorisation if —
- (a) the non-university institution does not comply with a condition to which the authorisation has been made subject under section 14(4) or 15B(1); or

- (b) the Minister is no longer satisfied that the non-university institution meets the criteria referred to in section 14(1).

- (2) In section 15(2)(c) before “courses” insert:

higher education

24. Part 2 Division 3 Subdivision 4 heading inserted

Before section 16 insert:

Subdivision 4 — Accredited higher education courses

25. Section 16 replaced

Delete section 16 and insert:

16. Accredited higher education courses

A higher education course provided by a non-university institution is accredited for the purposes of this Act if —

- (a) a self-accrediting authorisation is in force for the institution and the course is accredited by the institution in accordance with that authorisation; or
- (b) ministerial accreditation is in force for the course; or
- (c) the course is accredited by or under a written law of the Commonwealth, another State, the Australian Capital Territory or the Northern Territory.

26. Part 2 Division 3 Subdivision 5 heading inserted

After section 16 insert:

Subdivision 5 — Ministerial accreditation of higher education courses

27. Section 17A inserted

Before section 17 insert:

17A. Application of this Subdivision

This Subdivision applies to a course provider that is a non-university institution.

28. Section 17 amended

- (1) In section 17(1) after “accreditation” insert:

or renewal of accreditation
- (2) After section 17(2) insert:
- (3) The Minister may in writing, require the applicant to provide further information in relation to the application.
- (4) The requirement is to specify a reasonable time within which the applicant must comply with the requirement.
- (5) The Minister may refuse the application if the applicant does not comply with a requirement under subsection (3) within the time specified in the requirement.

29. Section 18 amended

- (1) In section 18(1) and (2) delete “accredit” and insert:

accredit, or renew the accreditation of,
- (2) In section 18(3):
 - (a) delete “accredit” and insert:

accredit, or renew the accreditation of,
 - (b) in paragraph (a) delete “recognised” (first occurrence).
- (3) Delete section 18(4), (5) and (6).
- (4) Delete section 18(7) and insert:
- (7) The Minister may make the accreditation of a higher education course subject to any conditions relevant to —

- (a) ensuring the course meets or continues to meet the criteria referred to in section 18(1); or
- (b) protecting the interests of the students enrolled in the course.

30. Sections 19A and 19B inserted

After section 18 insert:

19A. Duration of accreditation

- (1) Unless otherwise provided under this Act, ministerial accreditation of a higher education course continues in force until —
 - (a) the day that is 5 years after the day on which the course is registered under section 23(3); or
 - (b) if an earlier day is specified in the accreditation, that day.
- (2) The Minister may extend accreditation of a higher education course, in writing given to the course provider, for a period of up to 6 months after the day on which it would otherwise have ceased to be in force if —
 - (a) an application for the renewal of the accreditation was made —
 - (i) 6 months or more before that day; or
 - (ii) less than 6 months before that day, if that day is less than 6 months after the commencement of the *Higher Education Amendment Act 2009* section 30;and
 - (b) the Minister has not made a final decision on that application before that day.

19B. Further conditions on accreditation

- (1) The Minister may, at any time after accrediting a higher education course, make the accreditation subject to any conditions relevant to —
 - (a) ensuring the course meets or continues to meet the criteria referred to in section 18(1); or
 - (b) protecting the interests of the students enrolled in the course.
- (2) Before making accreditation of a higher education course subject to conditions under subsection (1), the Minister must —

- (a) give the course provider an opportunity to make representations on the matter; and
- (b) consider any representations made; and
- (c) have regard to the interests of the students enrolled in the course.

31. Section 19 amended

- (1) Delete section 19(1).
- (2) Delete section 19(2) and insert:
 - (2) The Minister may suspend or revoke the accreditation of a higher education course if —
 - (a) the course provider does not comply with a condition to which the accreditation is subject under section 18(7) or 19B(1); or
 - (b) the Minister is no longer satisfied that the course meets the criteria referred to in section 18(1).
- (3) In section 19(3) delete “the ministerial accreditation,” and insert:

accreditation of a higher education course,

Note: The heading to amended section 19 is to read:
Suspension or revocation of ministerial accreditation

32. Part 2 Division 4 heading inserted

After section 19 insert:

Division 4 — Higher education advisory committees

33. Section 20 amended

- (1) Delete section 20(1) and insert:
 - (1) The Minister must appoint a person who is or persons who are suitably qualified and experienced to constitute a higher education advisory committee to consider and report to the Minister —
 - (a) on the receipt of a request made under section 7(1);
 - (b) on an application made under section 9, 13A, 13 or 17.

(2) After section 20(1) insert:

- (2A) Before appointing a person or persons to constitute a higher education advisory committee under subsection (1) in respect of a particular request or application, the Minister must —
- (a) provide to the person making the request or application an opportunity to comment on the composition and membership of the committee; and
 - (b) take into account the comments (if any) provided to the Minister by the person making the request or application.

34. Section 21A inserted

After section 20 insert:

21A. Report of higher education advisory committee to be provided to applicant

- (1) The Minister must, as soon as is practicable after receiving the report on an application referred to in section 20(1)(b) (the *report*), give a copy of the report to the applicant.
- (2) The applicant may request the Minister to undertake a review of the report.
- (3) A request to undertake a review of a report must —
 - (a) be made within 30 days after the receipt by the applicant of a copy of the report; and
 - (b) set out the grounds on which the applicant is seeking a review of the report; and
 - (c) be accompanied by the fee prescribed by, or calculated under, the regulations.
- (4) On receipt of a request to undertake a review of a report the Minister may refer the request to any suitably qualified person or persons to consider and report to the Minister on the request.
- (5) The Minister must not make a decision on an application referred to in section 20(1)(b) until —
 - (a) the applicant advises the Minister in writing that the applicant accepts the report; or
 - (b) 31 days have elapsed since the date on which the applicant is given a copy of the report and the applicant has not requested a review of the report; or

- (c) the applicant has requested a review of the report and that review has been completed.

35. Part 3A heading inserted

After section 21 insert:

Part 3A — Reviews and investigation

36. Section 22 amended

In section 22:

- (a) in paragraph (b) delete “higher education provider; or” and insert:

non-university institution; or

- (b) delete paragraph (c) and insert:

- (c) the provision and standard of an accredited course provided by an authorised non-university institution.

- (c) after paragraph (a) insert:

or

37. Sections 23A to 23C inserted

After section 22 insert:

23A. Inspectors, appointment of

- (1) In this section —
certificate means a certificate given under subsection (3).
- (2) The Minister, in writing, may appoint persons to investigate —
 - (a) compliance with any condition to which a provider’s authorisation or a self-accrediting authorisation is subject; or
 - (b) compliance with any condition to which ministerial accreditation of a higher education course is subject; or
 - (c) suspected contraventions of this Act; or

- (d) any matters relevant to carrying out a review under section 22,
on any terms the Minister decides and specifies in the appointment.
- (3) The Minister must give each inspector a certificate of his or her appointment.
- (4) A person who ceases to be an inspector must return his or her certificate to the Minister within 21 days.
Penalty: a fine of \$400.
- (5) A certificate that purports to be signed by the Minister is, in the absence of evidence to the contrary, evidence of its contents.
- (6) If requested to do so and if practicable, an inspector must produce his or her certificate for inspection when exercising a function of an inspector.

23B. Inspectors' powers

- (1) For the purpose of investigating any matter that he or she is authorised to investigate, an inspector may do any or all of the following —
 - (a) at any reasonable time, enter, inspect and search any place, other than a dwelling, that the inspector suspects on reasonable grounds is a place where a higher education course is provided;
 - (b) give a person a written direction to produce to the inspector the records that are specified or described in the direction and that are in the person's possession;
 - (c) read and seize or copy any record the inspector suspects on reasonable grounds is or may be relevant to the matter being investigated;
 - (d) direct a person to answer any question that is relevant to the matter being investigated.
- (2) A person who is given a written direction under subsection (1)(b) must obey it.
Penalty: a fine of \$10 000.
- (3) A person who is directed under subsection (1)(d) to answer a question must not refuse to answer unless the answer would tend to incriminate the person or make the person liable to a penalty.
Penalty: a fine of \$10 000.
- (4) A person must not give an inspector information that the person knows is false or misleading.
Penalty: a fine of \$10 000.

23C. Consequences of investigations

- (1) An inspector may give the Minister any information that the Minister may need in relation to performing his or her functions under this Act.
- (2) A prosecution for an offence under this Act cannot be commenced except by or with the approval of the Minister.

38. Section 23 amended

- (1) After section 23(2) insert:
 - (3A) If the Minister grants a self-accrediting authorisation for a non-university institution, the Minister must arrange for the authorisation to be registered by entering in the register —
 - (a) the name of the institution; and
 - (b) a description of the higher education courses that the institution is authorised under section 13B(4) to accredit; and
 - (c) any other relevant particulars.
- (2) In section 23(4) delete “at reasonable times.” and insert:

during normal office hours.

39. Section 24A inserted

After section 23 insert:

24A. Minister to make National Protocols available for inspection

The Minister must ensure that a copy of the National Protocols is available for public inspection during normal office hours.

40. Section 26A inserted

After section 25 insert:

26A. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

- (2) The protection given by this Act applies even if the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the State of any liability it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

41. Section 27A inserted

After section 26 insert:

27A. Evidentiary matters

A certificate that purports to be issued by the Minister stating —

- (a) that at a specified time, a non-university institution did or did not have a provider's authorisation; or
- (b) a condition to which a provider's authorisation was subject at the time specified in the certificate; or
- (c) that at a specified time, a non-university institution did or did not have a self-accrediting authorisation; or
- (d) a condition to which a self-accrediting authorisation was subject at the time specified in the certificate; or
- (e) that at a specified time, a higher education course was or was not accredited; or
- (f) a condition to which a ministerial accreditation of a higher education course was subject at the time specified in the certificate,

is, in the absence of evidence to the contrary, evidence of its contents.

42. Section 28 replaced

Delete section 28 and insert:

28. Agreement to pay costs of considering application or request

- (1) The Minister may enter into a written arrangement with a person who intends to make a request under section 7 or an application under section 9 or 13A for the person to pay —

- (a) the reasonable costs and expenses incurred by the Minister in considering the request or application; and
 - (b) the reasonable costs and expenses incurred by, or by the Minister on behalf of, a higher education advisory committee appointed to consider and report to the Minister on the request or application.
- (2) Regulations may make provision for and in relation to an agreement referred to in subsection (1) including in connection with —
- (a) the ambit of the agreement;
 - (b) the making of the agreement;
 - (c) the costs and expenses to be paid under the agreement, including as to the method of calculating the costs and expenses;
 - (d) the methods for resolving any dispute about the costs and expenses that are to be paid under the agreement.

43. Section 29 amended

In section 29 delete “jurisdiction.” and insert:

jurisdiction as a debt due to the Crown.

44. Section 30 amended

- (1) In section 30(2)(d) after “determination,” insert:

self-accrediting authorisation,

- (2) After section 30(2) insert:

- (3) The regulations may provide for a method of calculating a fee referred to in subsection (2)(e), including calculation according to the costs and expenses incurred in providing the service.