

Western Australia

Higher Education Act 2004

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No. 73 of 2004

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Western Australia

Higher Education Act 2004

No. 73 of 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.

[Assented to 8 December 2004]

The Parliament of Western Australia enacts as follows:

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

- (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 enroll 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

- (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 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.
- (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;
 - (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.

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.

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