



# Higher Education (General Provisions) Act 2008

Reprinted as in force on 1 August 2008

Reprint No. 1

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This Act is reprinted as at 1 August 2008.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

## Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘judgement’ has replaced ‘judgment’).

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Queensland

# Higher Education (General Provisions) Act 2008

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	9
2	Commencement . . . . .	9
3	Act binds all persons . . . . .	9
4	Definitions . . . . .	9
5	Objects of Act . . . . .	10
<b>Part 2</b>	<b>Non self-accrediting higher education institutions</b>	
<b>Division 1</b>	<b>Preliminary</b>	
6	Definition for pt 2 . . . . .	11
7	Limitation on operation of non self-accrediting higher education institution . . . . .	11
<b>Division 2</b>	<b>Application for registration</b>	
8	Procedural requirements for application . . . . .	11
9	Further information or document to support application . . . . .	12
10	Decision on application . . . . .	12
11	Further consideration of application . . . . .	13
12	Term of registration . . . . .	14
13	Standard condition . . . . .	14
14	Imposition of conditions . . . . .	14
<b>Division 3</b>	<b>Renewal of registration</b>	
15	Procedural requirements for applying for renewal . . . . .	15
16	Decision on application . . . . .	15
17	Term of renewed registration . . . . .	16
18	Conditions of a renewed registration . . . . .	16
19	Registration taken to be in force while application is considered .	16

Contents

---

<b>Division 4</b>	<b>Cancellation of registration</b>	
20	Grounds for cancellation. . . . .	17
21	Lapse of accreditation of courses. . . . .	17
<b>Division 5</b>	<b>Changes to conditions of registration</b>	
22	Changing conditions of registration . . . . .	18
<b>Division 6</b>	<b>Application for accreditation</b>	
23	Procedural requirements for application. . . . .	19
24	Decision on application . . . . .	19
25	Term of accreditation . . . . .	20
26	Standard condition . . . . .	20
27	Imposition of conditions . . . . .	21
<b>Division 7</b>	<b>Renewal of accreditation</b>	
28	Procedural requirements for applying for renewal . . . . .	21
29	Decision on application . . . . .	21
30	Term of renewed accreditation . . . . .	22
31	Conditions of a renewed accreditation . . . . .	22
32	Accreditation taken to be in force while application is considered	22
<b>Division 8</b>	<b>Cancellation of accreditation</b>	
33	Grounds for cancellation. . . . .	23
34	Lapse of registration as non self-accrediting higher education institution . . . . .	24
<b>Division 9</b>	<b>Changes to conditions of accreditation</b>	
35	Changing conditions of accreditation . . . . .	24
<b>Division 10</b>	<b>Major changes to institution or course</b>	
36	Application for approval to make major change . . . . .	25
37	Meaning of major change. . . . .	25
38	Decision on application . . . . .	26
<b>Division 11</b>	<b>Other provisions</b>	
39	Conferring of higher education award by non self-accrediting higher education institution. . . . .	27
40	Annual report . . . . .	28
<b>Part 3</b>	<b>Self-accrediting higher education institutions</b>	
<b>Division 1</b>	<b>Preliminary</b>	
41	Definition for pt 3 . . . . .	28
42	Limitation on operation of self-accrediting higher education institution . . . . .	29

<b>Division 2</b>	<b>Self-accrediting higher education institutions (other than interstate)</b>	
<b>Subdivision 1</b>	<b>Application for self-accrediting authority</b>	
43	Procedural requirements for application . . . . .	29
44	Further information or document to support application. . . . .	30
45	Decision on application . . . . .	30
46	Further consideration of application . . . . .	31
47	Term of self-accrediting authority . . . . .	31
48	Standard condition . . . . .	31
49	Imposition of conditions . . . . .	32
<b>Subdivision 2</b>	<b>Renewal of self-accrediting authority</b>	
50	Procedural requirements for applying for renewal . . . . .	32
51	Decision on application . . . . .	33
52	Term of renewed self-accrediting authority. . . . .	33
53	Conditions of a renewed self-accrediting authority. . . . .	34
54	Self-accrediting authority taken to be in force while application is considered . . . . .	34
<b>Subdivision 3</b>	<b>Cancellation of self-accrediting authority</b>	
55	Grounds for cancellation. . . . .	34
<b>Subdivision 4</b>	<b>Changes to conditions of self-accrediting authority</b>	
56	Changing conditions of self-accrediting authority. . . . .	35
<b>Subdivision 5</b>	<b>Major changes to self-accrediting higher education institution</b>	
57	Application for approval to make major change . . . . .	36
58	Meaning of major change. . . . .	36
59	Decision on application . . . . .	37
<b>Subdivision 6</b>	<b>Changes to scope of self-accrediting authority</b>	
60	Procedural requirements for application. . . . .	38
61	Decision on application . . . . .	38
62	Term of self-accrediting authority . . . . .	39
63	Imposition of conditions . . . . .	39
<b>Subdivision 7</b>	<b>Other provisions</b>	
64	Conferring of higher education award by self-accrediting higher education institution. . . . .	40
65	Annual report . . . . .	40
<b>Division 3</b>	<b>Interstate self-accrediting higher education institutions</b>	
66	Definitions for div 3. . . . .	41

Contents

---

67	Operating under a recognised self-accrediting authority . . . . .	41
68	Term of recognised self-accrediting authority. . . . .	42
69	Standard condition . . . . .	42
70	Notification of change to scope of authority . . . . .	43
71	Grounds for withdrawal of recognised self-accrediting authority .	43
72	Conferring of higher education award by interstate self-accrediting higher education institution . . . . .	44
<b>Part 4</b>	<b>Universities, specialised universities, university colleges and specialised university colleges</b>	
<b>Division 1</b>	<b>Preliminary</b>	
73	Definition for pt 4 . . . . .	44
<b>Division 2</b>	<b>Universities etc. (other than interstate)</b>	
<b>Subdivision 1</b>	<b>Application for approval</b>	
74	Procedural requirements for application. . . . .	45
75	Public notification . . . . .	45
76	Further information or document to support application. . . . .	46
77	Decision on application . . . . .	46
78	Further consideration of application. . . . .	47
79	Imposition of conditions . . . . .	47
<b>Subdivision 2</b>	<b>Review of operation of university or specialised university</b>	
80	Review . . . . .	48
<b>Division 3</b>	<b>Interstate universities etc.</b>	
81	Recognised authority for interstate higher education institutions .	48
82	Standard condition . . . . .	49
83	Grounds for withdrawal of recognised authority . . . . .	49
<b>Part 5</b>	<b>Overseas higher education institutions</b>	
<b>Division 1</b>	<b>Preliminary</b>	
84	Definition for pt 5 . . . . .	50
85	Limitation on operation of overseas higher education institution .	50
<b>Division 2</b>	<b>Application for approval</b>	
86	Procedural requirements for application. . . . .	50
87	Further information or document to support application. . . . .	51
88	Decision on application . . . . .	51
89	Further consideration of application. . . . .	52
90	Term of approval. . . . .	53
91	Standard condition . . . . .	53

92	Imposition of conditions . . . . .	53
<b>Division 3</b>	<b>Renewal of approval</b>	
93	Procedural requirements for applying for renewal . . . . .	54
94	Decision on application . . . . .	54
95	Term of renewed approval . . . . .	55
96	Conditions of a renewed approval . . . . .	55
97	Approval taken to be in force while application is considered . . .	55
<b>Division 4</b>	<b>Cancellation of approval</b>	
98	Grounds for cancellation. . . . .	56
<b>Division 5</b>	<b>Changes to conditions of approval</b>	
99	Changing conditions of approval . . . . .	56
<b>Division 6</b>	<b>Major changes to overseas higher education institutions</b>	
100	Application for approval to make major change . . . . .	57
101	Meaning of major change. . . . .	58
102	Decision on application . . . . .	58
<b>Division 7</b>	<b>Other changes to overseas higher education institutions</b>	
103	Notification of other changes to overseas higher education institutions . . . . .	59
<b>Division 8</b>	<b>Other provisions</b>	
104	Conferring of higher education award by overseas higher education institution . . . . .	60
105	Annual report . . . . .	60
<b>Part 6</b>	<b>Appeals</b>	
106	Who may appeal. . . . .	61
107	Starting appeals . . . . .	61
108	Hearing procedures . . . . .	62
109	Powers of court on appeal . . . . .	62
<b>Part 7</b>	<b>Evidence and legal proceedings</b>	
<b>Division 1</b>	<b>Evidence</b>	
110	Evidentiary aids . . . . .	63
<b>Division 2</b>	<b>Proceedings</b>	
111	Summary proceedings for offences . . . . .	64
112	Responsibility for acts or omissions of representatives . . . . .	65
113	Executive officers must ensure corporation complies with Act. . .	65
<b>Part 8</b>	<b>Offences</b>	
114	Definitions for pt 8. . . . .	66

Contents

---

115	Self-accrediting higher education institution . . . . .	67
116	University title . . . . .	68
117	Specialised university title . . . . .	69
118	University college title . . . . .	69
119	Specialised university college title . . . . .	69
120	Restriction on operating a higher education institution . . . . .	70
121	Conferring of higher education award without course being undertaken . . . . .	70
<b>Part 9</b>	<b>Miscellaneous provisions</b>	
<b>Division 1</b>	<b>Show cause process</b>	
122	Definitions for div 1 . . . . .	71
123	Application of div 1 . . . . .	72
124	Show cause notice . . . . .	72
125	Representations about show cause notice . . . . .	72
126	Ending show cause process without further action . . . . .	72
127	Cancellation of relevant authority . . . . .	73
<b>Division 2</b>	<b>Other provisions</b>	
128	Applied provisions . . . . .	73
129	Protection from liability . . . . .	74
130	Disclosure of information to relevant entities . . . . .	74
131	Committees and other sources of advice . . . . .	75
132	Guidelines . . . . .	75
133	Delegation by Minister . . . . .	76
134	Annual report . . . . .	76
135	Failure to decide application . . . . .	77
136	Approval of forms . . . . .	77
137	Regulation-making power . . . . .	77
<b>Part 10</b>	<b>Repeal and transitional provisions</b>	
<b>Division 1</b>	<b>Repeal</b>	
138	Repeal . . . . .	78
<b>Division 2</b>	<b>Transitional provisions</b>	
139	Definitions for div 2 . . . . .	78
140	References to repealed Act . . . . .	78
141	Application for approval to be established or recognised as a university . . . . .	79
142	Approval to operate overseas higher education institution . . . . .	79



---

143	Application for approval to operate overseas higher education institution . . . . .	79
144	Cancellation of approval to operate overseas higher education institution . . . . .	80
145	References to non-university provider . . . . .	80
146	Non-university provider taken to be non self-accrediting higher education institution . . . . .	80
147	Application for accreditation of higher education course . . . . .	81
148	Cancellation of accreditation of an accredited course . . . . .	82
149	Approval to operate interstate university . . . . .	82
150	Application for approval to operate interstate university . . . . .	82
151	Cancellation of approval to operate interstate university . . . . .	83
152	Appeals . . . . .	83
153	Offences . . . . .	84
<b>Schedule 2</b>	<b>Dictionary . . . . .</b>	<b>85</b>



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# Higher Education (General Provisions) Act 2008

[reprinted as in force on 1 August 2008]

**An Act to provide for the establishment, recognition, registration and operation of higher education institutions and the accreditation of courses offered by certain higher education institutions, and for related and other purposes**

## **Part 1                      Preliminary**

### **1                      Short title**

This Act may be cited as the *Higher Education (General Provisions) Act 2008*.

### **2                      Commencement**

This Act commences on a day to be fixed by proclamation.

### **3                      Act binds all persons**

- (1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

### **4                      Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

[s 5]

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## **5 Objects of Act**

- (1) The objects of this Act are—
  - (a) to uphold the standards of education delivered by higher education institutions operating in the State; and
  - (b) to uphold the standards of education delivered by higher education institutions approved to be established or recognised, authorised to operate, or registered, under this Act, when operating outside the State; and
  - (c) to maintain public confidence in the higher education sector in the State.
- (2) The objects are to be achieved mainly by the following—
  - (a) establishing a process for the registration of non self-accrediting higher education institutions;
  - (b) providing for the accreditation of higher education courses proposed to be offered by non self-accrediting higher education institutions;
  - (c) establishing a process for granting self-accrediting authority to higher education institutions other than universities;
  - (d) providing for the recognition of higher education institutions that have authority to operate as self-accrediting higher education institutions in another Australian jurisdiction;
  - (e) establishing a process for the establishment or recognition of universities, specialised universities, university colleges and specialised university colleges in the State;
  - (f) providing for the approval of the operation of interstate universities, interstate specialised universities, interstate university colleges and interstate specialised university colleges in the State;
  - (g) providing for the approval of the operation of overseas higher education institutions in the State;

- (h) limiting the use of a title that consists of, or includes, the word 'university'.

## **Part 2                      Non self-accrediting higher    education institutions**

### **Division 1                Preliminary**

#### **6                      Definition for pt 2**

In this part—

*national guidelines* means the document entitled 'National Guidelines for Higher Education Approval Processes—Guidelines for the registration of non self-accrediting higher education institutions and the accreditation of their course/s' that was approved by the Ministerial Council on 31 October 2007.

#### **7                      Limitation on operation of non self-accrediting higher    education institution**

A non self-accrediting higher education institution must not offer a higher education course unless the course is an accredited course for the institution.

Maximum penalty—200 penalty units.

### **Division 2                Application for registration**

#### **8                      Procedural requirements for application**

- (1) The governing body of an entity may apply to the Minister for registration of the entity as a non self-accrediting higher education institution.

[s 9]

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- (2) The application must—
  - (a) be in writing; and
  - (b) state the place where the entity is to operate; and
  - (c) include the information required to be provided under the national guidelines; and
  - (d) be accompanied by an application under section 23 for accreditation of a course proposed to be offered by the entity; and
  - (e) be accompanied by the fee prescribed under a regulation.

## **9 Further information or document to support application**

- (1) The Minister may, by notice given to the applicant, require the applicant to give the Minister, within the reasonable time of at least 14 days stated in the notice, further information or a document the Minister reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement within the stated time.

## **10 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister—
  - (a) is satisfied the entity complies with the national protocols and national guidelines; and
  - (b) at the same time, grants accreditation of at least 1 higher education course the entity proposes to offer.
- (3) In deciding the application, the Minister may—
  - (a) examine the proposed operation of the entity both inside and outside the State; and

- 
- (b) make any other enquiries the Minister considers appropriate.
- (4) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant notice of the decision.
- (5) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.
- (6) If the Minister fails to decide the application within 18 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
- (7) Subsection (6) is subject to section 11.

## 11 Further consideration of application

- (1) This section applies if the Minister considers further time is needed to make a decision on the application because of the complexity of the matters that need to be considered.
- (2) The applicant and the Minister may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the decision is to be made.
- (3) Also, the applicant and the Minister may at any time before the agreed extended day again agree in writing on a day (the *further extended day*) by which the decision is to be made.
- (4) The Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by—
- (a) the agreed extended day; or
  - (b) if the applicant and the Minister have agreed on a further extended day—the further extended day.
- (5) In this section—

*final consideration day* means the day that is 18 months after the application was received by the Minister.

[s 12]

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## 12 Term of registration

Registration as a non self-accrediting higher education institution remains in force for the term of not more than 5 years stated in the notice given to the applicant for the registration under section 10(4).

*Note—*

Under section 34, the registration lapses if the accreditation of all courses accredited for the institution is cancelled.

## 13 Standard condition

- (1) It is a condition (a *standard condition*) of registration as a non self-accrediting higher education institution that the governing body of the institution—
  - (a) allows the Minister to enter a place at any reasonable time to examine the operation of the institution both inside and outside the State; and
  - (b) complies with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.
- (2) The standard condition applies to help the Minister decide whether—
  - (a) the institution is complying with the national protocols and national guidelines; or
  - (b) the institution and its governing body are complying with any other conditions of the registration.

## 14 Imposition of conditions

- (1) The Minister may, in granting the application, decide to impose conditions on the registration that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the registration, the Minister must as soon as practicable give the applicant an information notice about the decision.



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## **Division 3                      Renewal of registration**

### **15            Procedural requirements for applying for renewal**

- (1) The governing body of a non self-accrediting higher education institution may apply to the Minister for renewal of the institution's registration within the period starting 18 months, and ending 9 months, before the term of the registration ends.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.
- (3) Section 9 applies to an application under this section.

*Note—*

See section 128 in relation to the operation of applied provisions.

### **16            Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied—
  - (a) the institution is complying with the national protocols and national guidelines; and
  - (b) the institution and its governing body are complying with any conditions of the institution's registration.
- (3) In deciding the application, the Minister may—
  - (a) examine the operation of the institution both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.

[s 17]

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- (4) Sections 10(4) to (7) and 11 apply to the making of a decision under this section.

## **17 Term of renewed registration**

Registration as a non self-accrediting higher education institution, renewed under section 16, remains in force for the further term of not more than 5 years stated in the notice given to the applicant for the renewal under section 10(4) as applied by section 16(4).

*Note—*

Under section 34, the registration lapses if the accreditation of all courses accredited for the institution is cancelled.

## **18 Conditions of a renewed registration**

- (1) Sections 13 and 14 apply to a registration renewed under this division.
- (2) For applying section 14—  
*impose*, a condition, includes change or confirm the condition.

## **19 Registration taken to be in force while application is considered**

- (1) If an application for renewal of registration as a non self-accrediting higher education institution is made under section 15, the registration is taken to continue in force from the day that it would, apart from this section, have expired until—
- (a) if the Minister decides to renew the registration—the day a notice about the decision is given to the applicant under section 10(4) as applied by section 16(4); or
- (b) if the Minister decides to refuse to renew the registration—
- (i) the last day to appeal against the decision; or

- (ii) if an appeal is instituted against the decision—the day the appeal is decided.
- (2) Subsection (1) does not apply if the registration is earlier cancelled.

## **Division 4                      Cancellation of registration**

### **20                      Grounds for cancellation**

- (1) Each of the following is a ground for cancelling a higher education institution's registration as a non self-accrediting higher education institution—
- (a) the institution—
    - (i) is not complying, or has not complied, with the national protocols and national guidelines; or
    - (ii) has contravened a condition of the registration;
  - (b) the governing body of the institution—
    - (i) has contravened a condition of the registration; or
    - (ii) has made a major change to the institution without the Minister's approval under section 38; or
    - (iii) has not given the Minister an annual report under section 40;
  - (c) the Minister's decision to grant or renew the registration was based on false or misleading information.
- (2) If the Minister reasonably believes a ground exists for cancelling a registration, the Minister must follow the process under part 9, division 1.

### **21                      Lapse of accreditation of courses**

- (1) This section applies if a registration as a non self-accrediting higher education institution is cancelled under part 9, division 1.

[s 22]

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- (2) The accreditation of all courses accredited for the institution lapses on the day the cancellation of the registration takes effect.

## **Division 5                      Changes to conditions of registration**

### **22            Changing conditions of registration**

- (1) The Minister may change the conditions of a registration as a non self-accrediting higher education institution imposed by the Minister if the Minister reasonably believes the change is appropriate.
- (2) Before deciding to change the conditions, the Minister must—
  - (a) give notice to the holder of the registration—
    - (i) of the particulars of the proposed change; and
    - (ii) that the holder may make written submissions to the Minister about the proposed change within a reasonable period of at least 21 days stated in the notice; and
  - (b) have regard to written submissions made to the Minister by the holder before the end of the stated period.
- (3) If the Minister decides to change the conditions, the Minister must as soon as practicable give the holder an information notice about the decision.
- (4) The decision does not take effect until—
  - (a) the last day to appeal against the decision; or
  - (b) if an appeal is instituted against the decision—the day the appeal is decided.
- (5) The power of the Minister under subsection (1) includes the power to add conditions to a registration that is not subject to conditions imposed by the Minister.

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## **Division 6                      Application for accreditation**

### **23            Procedural requirements for application**

- (1) Either of the following may apply to the Minister for accreditation of a higher education course—
  - (a) the governing body of a non self-accrediting higher education institution that proposes to offer the course;
  - (b) the governing body of an entity applying under section 8 for registration of the entity as a non self-accrediting higher education institution.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the place where the institution or entity proposes to offer the course; and
  - (c) include the information required to be provided under the national guidelines; and
  - (d) be accompanied by the fee prescribed under a regulation.
- (3) Section 9 applies to an application under this section.

### **24            Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister—
  - (a) is satisfied the course complies with the national protocols and national guidelines; and
  - (b) for an applicant mentioned in section 23(1)(b)—at the same time, grants registration of the entity as a non self-accrediting higher education institution.
- (3) In deciding the application, the Minister may—

[s 25]

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- (a) examine the operation of the institution or entity in relation to the course both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) Sections 10(4) to (7) and 11 apply to the making of a decision under this section.

## 25 Term of accreditation

The accreditation of an accredited course remains in force for the term of not more than 5 years stated in the notice given to the applicant for the accreditation under section 10(4) as applied by section 24(4).

*Note—*

See section 21 in relation to the lapsing of the accreditation of a course if the institution's registration is cancelled.

## 26 Standard condition

- (1) It is a condition (a *standard condition*) of the accreditation of a course that the governing body of the non self-accrediting higher education institution offering the course—
- (a) allows the Minister to enter a place at any reasonable time to examine the operation of the institution in relation to the course both inside and outside the State; and
  - (b) complies with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.
- (2) The standard condition applies to help the Minister decide whether—
- (a) the course complies with the national protocols and national guidelines; or

- 
- (b) the institution and its governing body are complying with any other conditions of the accreditation.

## **27 Imposition of conditions**

- (1) The Minister may, in granting the application, decide to impose conditions on the accreditation that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the accreditation, the Minister must as soon as practicable give the applicant an information notice about the decision.

## **Division 7 Renewal of accreditation**

### **28 Procedural requirements for applying for renewal**

- (1) The governing body of a non self-accrediting higher education institution may apply to the Minister for renewal of the accreditation of a higher education course, offered by the institution, within the period starting 18 months, and ending 9 months, before the term of the accreditation ends.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.
- (3) Section 9 applies to an application under this section.

### **29 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied—

[s 30]

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- (a) the course complies with the national protocols and national guidelines; and
  - (b) the institution and its governing body are complying with any conditions of the accreditation.
- (3) In deciding the application, the Minister may—
- (a) examine the operation of the institution in relation to the course both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) Sections 10(4) to (7) and 11 apply to the making of a decision under this section.

### **30 Term of renewed accreditation**

Accreditation of a course, renewed under section 29, remains in force for the further term of not more than 5 years stated in the notice given to the applicant for the renewal under section 10(4) as applied by section 29(4).

*Note—*

See section 21 in relation to the lapsing of the accreditation of a course if the institution's registration is cancelled.

### **31 Conditions of a renewed accreditation**

- (1) Sections 26 and 27 apply to an accreditation renewed under this division.
- (2) For applying section 27—  
*impose*, a condition, includes change or confirm the condition.

### **32 Accreditation taken to be in force while application is considered**

- (1) If an application for renewal of accreditation of a course is made under section 28, the accreditation is taken to continue in force from the day that it would, apart from this section, have expired until—



- 
- (a) if the Minister decides to renew the accreditation—the day a notice about the decision is given to the applicant under section 10(4) as applied by section 29(4); or
  - (b) if the Minister decides to refuse to renew the accreditation—
    - (i) the last day to appeal against the decision; or
    - (ii) if an appeal is instituted against the decision—the day the appeal is decided.
- (2) Subsection (1) does not apply if the accreditation is earlier cancelled.

## **Division 8                      Cancellation of accreditation**

### **33                      Grounds for cancellation**

- (1) Each of the following is a ground for cancelling the accreditation of a course accredited for a non self-accrediting higher education institution—
- (a) the institution—
    - (i) is not complying, or has not complied, with the national protocols and national guidelines; or
    - (ii) has contravened a condition of the accreditation;
  - (b) the governing body of the institution—
    - (i) has contravened a condition of the accreditation; or
    - (ii) has made a major change to the course without the Minister's approval under section 38; or
    - (iii) has not given the Minister an annual report under section 40;
  - (c) the Minister's decision to grant or renew the accreditation was based on false or misleading information.

[s 34]

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- (2) If the Minister reasonably believes a ground exists for cancelling the accreditation of an accredited course, the Minister must follow the process under part 9, division 1.

### **34 Lapse of registration as non self-accrediting higher education institution**

- (1) This section applies if the accreditation of all courses accredited for a non self-accrediting higher education institution is cancelled under part 9, division 1.
- (2) The institution's registration as a non self-accrediting higher education institution lapses on the day the cancellation of the accreditation of all the courses takes effect.

## **Division 9 Changes to conditions of accreditation**

### **35 Changing conditions of accreditation**

- (1) The Minister may change the conditions of the accreditation of an accredited course imposed by the Minister if the Minister reasonably believes the change is appropriate.
- (2) Before deciding to change the conditions, the Minister must—
  - (a) give notice to the holder of the accreditation—
    - (i) of the particulars of the proposed change; and
    - (ii) that the holder may make written submissions to the Minister about the proposed change within a reasonable period of at least 21 days stated in the notice; and
  - (b) have regard to written submissions made to the Minister by the holder before the end of the stated period.
- (3) If the Minister decides to change the conditions, the Minister must as soon as practicable give the holder an information notice about the decision.
- (4) The decision does not take effect until—

- 
- (a) the last day to appeal against the decision; or
  - (b) if an appeal is instituted against the decision—the day the appeal is decided.
- (5) The power of the Minister under subsection (1) includes the power to add conditions to the accreditation of an accredited course that is not subject to conditions imposed by the Minister.

## **Division 10                    Major changes to institution or course**

### **36            Application for approval to make major change**

- (1) The governing body of a non self-accrediting higher education institution may apply to the Minister for approval to make a major change to the institution or to a course accredited under this part for the institution.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.

### **37            Meaning of *major change***

- (1) A *major change*, to a non self-accrediting higher education institution or to a course accredited under this part for the institution, means a change that—
  - (a) may affect the institution’s capacity to comply with the national protocols and national guidelines; and
  - (b) is described as a major change in the national guidelines.
- (2) A major change to the institution includes—

[s 38]

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- (a) a merger of the institution with another entity; or
  - (b) a change to the institution's corporate status; or
  - (c) a change in the ownership of, or shareholding in, the institution; or
  - (d) a change that may result in a significant decline in the financial position of the institution; or
  - (e) a change to the place or places where the institution operates.
- (3) A major change to a course accredited under this part for the institution includes—
- (a) a change to the way of providing the course, for example a change from face-to-face delivery to providing the course electronically or by distance education; or
  - (b) a change that may result in the course no longer being recognised by relevant professional or industry associations, for example, graduates of the course may no longer be able to obtain professional registration; or
  - (c) a change that involves substituting new subjects for more than 25% of the subjects in the course or deleting more than 25% of the subjects in the course; or
  - (d) a significant reduction in the number of student contact hours for the course.

### **38 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the institution will comply with the national protocols and national guidelines after the change is effected.
- (3) In deciding the application, the Minister may—
  - (a) examine the operation of the institution both inside and outside the State; and

- 
- (b) make any other enquiries the Minister considers appropriate.
  - (4) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant a notice stating—
    - (a) the decision; and
    - (b) the day by which the change must be effected.
  - (5) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.
  - (6) Subject to subsection (7), if the Minister fails to decide the application within 6 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
  - (7) Section 11 applies to the making of a decision under this section.
  - (8) In applying section 11—  
*final consideration day* means the day that is 6 months after the application was received by the Minister.

## Division 11            Other provisions

### 39            **Conferring of higher education award by non self-accrediting higher education institution**

- (1) A non self-accrediting higher education institution must not confer, or hold out that the institution is authorised to confer, a higher education award unless the course leading to the award is an accredited course for the institution.

Maximum penalty—200 penalty units.

- (2) A person must not hold out that a non self-accrediting higher education institution is authorised to confer a higher education award unless the course leading to the award is an accredited course for the institution.

Maximum penalty—200 penalty units.

[s 40]

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## **40 Annual report**

- (1) The governing body of a non self-accrediting higher education institution must, on or before 31 May in each year (the *reporting day*), give the Minister a report (an *annual report*).
- (2) The annual report must—
  - (a) be given—
    - (i) in the way required by the Minister; and
    - (ii) for the period from 1 January to 31 December immediately before the reporting day; and
  - (b) contain information to help the Minister assess whether—
    - (i) the institution is complying with the national protocols and national guidelines; and
    - (ii) the institution and its governing body are complying with the conditions of the registration and accreditation.
- (3) The annual report must be accompanied by the assessment fee prescribed under a regulation.
- (4) The annual report is taken not to have been given until the assessment fee is paid.

# **Part 3 Self-accrediting higher education institutions**

## **Division 1 Preliminary**

### **41 Definition for pt 3**

In this part—

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*national guidelines* means the document entitled ‘National Guidelines for Higher Education Approval Processes—Guidelines for awarding self-accrediting authority to higher education institutions other than universities’ that was approved by the Ministerial Council on 31 October 2007.

**42 Limitation on operation of self-accrediting higher education institution**

A self-accrediting higher education institution must not accredit a course other than in relation to a field of study or AQF qualification level for which the institution holds a self-accrediting authority.

Maximum penalty—200 penalty units.

**Division 2 Self-accrediting higher education institutions (other than interstate)**

**Subdivision 1 Application for self-accrediting authority**

**43 Procedural requirements for application**

- (1) The governing body of an entity may apply to the Minister for authority for the entity to operate as a self-accrediting higher education institution (a *self-accrediting authority*).
- (2) The application must—
  - (a) be in writing; and
  - (b) state the fields of study and the AQF qualification levels for which the governing body is seeking the self-accrediting authority; and
  - (c) include the information required to be provided under the national guidelines; and

[s 44]

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- (d) be accompanied by the fee prescribed under a regulation.

#### **44 Further information or document to support application**

- (1) The Minister may, by notice given to the applicant, require the applicant to give the Minister, within the reasonable time of at least 14 days stated in the notice, further information or a document the Minister reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement within the stated time.

#### **45 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the entity complies with the national protocols and national guidelines.
- (3) In deciding the application, the Minister may—
  - (a) examine the proposed operation of the entity both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) If the Minister decides to grant the application, the Minister must decide the fields of study and the AQF qualification levels for which the self-accrediting authority is to be given (the *scope* of the self-accrediting authority).
- (5) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant notice of the decision.
- (6) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.



- 
- (7) If the Minister fails to decide the application within 18 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
  - (8) Subsection (7) is subject to section 46.

#### **46 Further consideration of application**

- (1) This section applies if the Minister considers further time is needed to make a decision on the application because of the complexity of the matters that need to be considered.
- (2) The applicant and the Minister may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the decision is to be made.
- (3) Also, the applicant and the Minister may at any time before the agreed extended day again agree in writing on a day (the *further extended day*) by which the decision is to be made.
- (4) The Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by—
  - (a) the agreed extended day; or
  - (b) if the applicant and the Minister have agreed on a further extended day—the further extended day.
- (5) In this section—

*final consideration day* means the day that is 18 months after the application was received by the Minister.

#### **47 Term of self-accrediting authority**

A self-accrediting authority remains in force for the term of not more than 5 years stated in the notice given to the applicant for the authority under section 45(5).

#### **48 Standard condition**

- (1) It is a condition (a *standard condition*) of a self-accrediting authority that the governing body of the higher education institution that holds the authority—

[s 49]

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- (a) allows the Minister to enter a place at any reasonable time to examine the operation of the institution both inside and outside the State; and
  - (b) complies with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.
- (2) The standard condition applies to help the Minister decide whether—
- (a) the institution is complying with the national protocols and national guidelines; or
  - (b) the institution and its governing body are complying with any other conditions of the authority.

#### **49 Imposition of conditions**

- (1) The Minister may, in granting the application, decide to impose conditions on the self-accrediting authority that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the authority, the Minister must as soon as practicable give the applicant an information notice about the decision.

### **Subdivision 2 Renewal of self-accrediting authority**

#### **50 Procedural requirements for applying for renewal**

- (1) The governing body of a self-accrediting higher education institution may apply to the Minister for renewal of the institution's self-accrediting authority within the period starting 18 months, and ending 9 months, before the term of the authority ends.
- (2) The application must—
  - (a) be in writing; and

- 
- (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.
- (3) Section 44 applies to an application under this section.

*Note—*

See section 128 in relation to the operation of applied provisions.

## **51 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied—
  - (a) the institution—
    - (i) is operating within the scope of its authority; and
    - (ii) is complying with the national protocols and national guidelines; and
  - (b) the institution and its governing body are complying with any conditions of the authority.
- (3) In deciding the application, the Minister may—
  - (a) examine the operation of the institution both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) Sections 45(5) to (8) and 46 apply to the making of a decision under this section.

## **52 Term of renewed self-accrediting authority**

A self-accrediting authority, renewed under section 51, remains in force for the further term of not more than 5 years stated in the notice given to the applicant for the renewal under section 45(5) as applied by section 51(4).

[s 53]

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**53 Conditions of a renewed self-accrediting authority**

- (1) Sections 48 and 49 apply to a self-accrediting authority renewed under this division.
- (2) For applying section 49—  
*impose*, a condition, includes change or confirm the condition.

**54 Self-accrediting authority taken to be in force while application is considered**

- (1) If an application for renewal of a self-accrediting authority is made under section 50, the authority is taken to continue in force from the day that it would, apart from this section, have expired until—
  - (a) if the Minister decides to renew the authority—the day a notice about the decision is given to the applicant under section 45(5) as applied by section 51(4); or
  - (b) if the Minister decides to refuse to renew the authority—
    - (i) the last day to appeal against the decision; or
    - (ii) if an appeal is instituted against the decision—the day the appeal is decided.
- (2) Subsection (1) does not apply if the authority is earlier cancelled.

**Subdivision 3 Cancellation of self-accrediting authority**

**55 Grounds for cancellation**

- (1) Each of the following is a ground for cancelling a self-accrediting higher education institution's self-accrediting authority—
  - (a) the institution—
    - (i) is not complying, or has not complied, with the national protocols and national guidelines; or

- 
- (ii) has contravened a condition of the authority;
  - (b) the governing body of the institution—
    - (i) has contravened a condition of the authority; or
    - (ii) has accredited a course that was not within the scope of its authority; or
    - (iii) has made a major change to the institution without the Minister’s approval under section 59; or
    - (iv) has not given the Minister an annual report under section 65;
  - (c) the Minister’s decision to grant or renew the authority was based on false or misleading information.
- (2) If the Minister reasonably believes a ground exists for cancelling a self-accrediting authority, the Minister must follow the process under part 9, division 1.

## **Subdivision 4      Changes to conditions of self-accrediting authority**

### **56      Changing conditions of self-accrediting authority**

- (1) The Minister may change the conditions of a self-accrediting authority imposed by the Minister if the Minister reasonably believes the change is appropriate.
- (2) Before deciding to change the conditions, the Minister must—
  - (a) give notice to the holder of the authority—
    - (i) of the particulars of the proposed change; and
    - (ii) that the holder may make written submissions to the Minister about the proposed change within a reasonable period of at least 21 days stated in the notice; and
  - (b) have regard to written submissions made to the Minister by the holder before the end of the stated period.

[s 57]

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- (3) If the Minister decides to change the conditions, the Minister must as soon as practicable give the holder an information notice about the decision.
- (4) The decision does not take effect until—
  - (a) the last day to appeal against the decision; or
  - (b) if an appeal is instituted against the decision—the day the appeal is decided.
- (5) The power of the Minister under subsection (1) includes the power to add conditions to a self-accrediting authority that is not subject to conditions imposed by the Minister.

## **Subdivision 5 Major changes to self-accrediting higher education institution**

### **57 Application for approval to make major change**

- (1) The governing body of a self-accrediting higher education institution may apply to the Minister for approval to make a major change to the institution.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.

### **58 Meaning of *major change***

- (1) A *major change*, to a self-accrediting higher education institution, means a change that—
  - (a) may affect the institution's capacity to comply with the national protocols and national guidelines; and
  - (b) is described as a major change in the national guidelines.

- 
- (2) A major change includes—
    - (a) a merger of the institution with another entity; or
    - (b) a change to the institution's corporate status; or
    - (c) a change in the ownership of, or shareholding in, the institution; or
    - (d) a change that may result in a significant decline in the financial position of the institution.
  - (3) A change to the scope of the institution's self-accrediting authority is not a major change.

## **59 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the institution will comply with the national protocols and national guidelines after the change is effected.
- (3) In deciding the application, the Minister may—
  - (a) examine the operation of the institution both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant a notice stating—
  - (a) the decision; and
  - (b) the day by which the change must be effected.
- (5) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.
- (6) Subject to subsection (7), if the Minister fails to decide the application within 6 months after its receipt, the Minister is taken to have decided to refuse to grant the application.

[s 60]

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- (7) Section 46 applies to the making of a decision under this section.
- (8) In applying section 46—  
*final consideration day* means the day that is 6 months after the application was received by the Minister.

## **Subdivision 6      Changes to scope of self-accrediting authority**

### **60      Procedural requirements for application**

- (1) The governing body of a self-accrediting higher education institution may apply to the Minister for approval to change the scope of the institution's self-accrediting authority.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the proposed change to the scope of the authority; and
  - (c) include the information required to be provided under the national guidelines; and
  - (d) be accompanied by the fee prescribed under a regulation.
- (3) Section 44 applies to an application under this section.

### **61      Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the institution will comply with the national protocols and national guidelines after the change is effected.
- (3) In deciding the application, the Minister may—



- 
- (a) examine the operation of the institution both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) If the Minister decides to grant the application, the Minister must change the scope of the authority in the way mentioned in the application.
  - (5) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant notice of the decision.
  - (6) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.
  - (7) Subject to subsection (8), if the Minister fails to decide the application within 12 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
  - (8) Section 46 applies to the making of a decision under this section.
  - (9) In applying section 46—  
*final consideration day* means the day that is 12 months after the application was received by the Minister.

## **62 Term of self-accrediting authority**

The term of a self-accrediting authority is not affected by a change to the scope of the authority.

## **63 Imposition of conditions**

- (1) The Minister may, in granting the application, decide to impose conditions on the self-accrediting authority that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the authority, the Minister must as soon as practicable give the applicant an information notice about the decision.

[s 64]

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- (3) In this section—  
*impose*, a condition, includes change or confirm the condition.

## **Subdivision 7 Other provisions**

### **64 Conferring of higher education award by self-accrediting higher education institution**

- (1) A self-accrediting higher education institution must not confer, or hold out that the institution is authorised to confer, a higher education award unless the course leading to the award is accredited under the scope of the institution's self-accrediting authority.

Maximum penalty—200 penalty units.

- (2) A person must not hold out that a self-accrediting higher education institution is authorised to confer a higher education award unless the course leading to the award is accredited under the scope of the institution's self-accrediting authority.

Maximum penalty—200 penalty units.

### **65 Annual report**

- (1) The governing body of a self-accrediting higher education institution must, on or before 31 May in each year (the *reporting day*), give the Minister a report (an *annual report*).

- (2) The annual report must—

(a) be given—

(i) in the way required by the Minister; and

(ii) for the period from 1 January to 31 December immediately before the reporting day; and

(b) contain information to help the Minister assess whether—

(i) the institution is—

- 
- (A) operating within the scope of its authority;  
and
  - (B) complying with the national protocols and  
national guidelines; and
- (ii) the institution and its governing body are  
complying with the conditions of the authority.
- (3) The annual report must be accompanied by the assessment fee  
prescribed under a regulation.
  - (4) The annual report is taken not to have been given until the  
assessment fee is paid.

### **Division 3                    Interstate self-accrediting higher education institutions**

#### **66        Definitions for div 3**

In this division—

*interstate self-accrediting authority* means an authority under  
an Act of the Commonwealth or another State for a higher  
education institution to operate as a self-accrediting higher  
education institution.

*interstate self-accrediting higher education institution*  
means a higher education institution that holds an interstate  
self-accrediting authority.

*recognised self-accrediting authority* see section 67(2).

*scope*, of an interstate self-accrediting authority, see section  
67(3).

#### **67        Operating under a recognised self-accrediting authority**

- (1) The governing body of an interstate self-accrediting higher  
education institution that intends operating in the State must  
give the Minister—

[s 68]

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- (a) a copy of the institution's interstate self-accrediting authority and any other documents or information, reasonably required by the Minister, including documents or information about the authority's scope or term; and
- (b) notice of—
  - (i) the institution's intention to operate in the State; and
  - (ii) the place where the institution intends operating.
- (2) The Minister must, as soon as practicable after receiving the documents or information mentioned in subsection (1), give the governing body a notice acknowledging the institution's intention (a *recognised self-accrediting authority*).
- (3) The recognised self-accrediting authority applies only to a field of study or AQF qualification level for which the institution's interstate self-accrediting authority is held (the *scope* of the interstate self-accrediting authority).

## **68 Term of recognised self-accrediting authority**

- (1) A recognised self-accrediting authority remains in force, for an interstate self-accrediting higher education institution, while the institution's interstate self-accrediting authority remains in force.
- (2) Subsection (1) is subject to the withdrawal of the recognised self-accrediting authority under section 71 and part 9, division 1.

## **69 Standard condition**

- (1) It is a condition (a *standard condition*) of a recognised self-accrediting authority that the governing body of the higher education institution that holds the authority—
  - (a) allows the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and

- (b) complies with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.
- (2) The standard condition applies to help the Minister decide whether the institution is complying with the national protocols and national guidelines.

## **70 Notification of change to scope of authority**

- (1) The governing body of an interstate self-accrediting higher education institution to which a recognised self-accrediting authority relates must give the Minister notice of any change to the scope of the institution's interstate self-accrediting authority or the cancellation of that authority.
- (2) The notice must be given within 14 days after the change happens.

## **71 Grounds for withdrawal of recognised self-accrediting authority**

- (1) Each of the following is a ground for withdrawing an interstate self-accrediting higher education institution's recognised self-accrediting authority—
  - (a) the institution is not complying, or has not complied, with the national protocols and national guidelines;
  - (b) the governing body of the institution—
    - (i) has contravened the standard condition under section 69; or
    - (ii) has not given the Minister notice of a change under section 70.
- (2) If the Minister reasonably believes a ground exists for withdrawing a recognised self-accrediting authority, the Minister must follow the process under part 9, division 1.

**72 Conferring of higher education award by interstate self-accrediting higher education institution**

- (1) An interstate self-accrediting higher education institution must not confer, or hold out that the institution is authorised to confer, a higher education award in the State unless—
- (a) the institution holds a recognised self-accrediting authority; and
  - (b) the course leading to the award is accredited under the scope of the institution’s interstate self-accrediting authority.

Maximum penalty—200 penalty units.

- (2) A person must not hold out that an interstate self-accrediting higher education institution is authorised to confer a higher education award unless the course leading to the award is accredited under the scope of the institution’s interstate self-accrediting authority.

Maximum penalty—200 penalty units.

**Part 4 Universities, specialised universities, university colleges and specialised university colleges**

**Division 1 Preliminary**

**73 Definition for pt 4**

In this part—

*national guidelines* means the document entitled ‘National Guidelines for Higher Education Approval Processes—Guidelines for establishing Australian

universities' that was approved by the Ministerial Council on 31 October 2007.

## **Division 2                      Universities etc. (other than interstate)**

### **Subdivision 1                  Application for approval**

#### **74                      Procedural requirements for application**

- (1) The governing body of an entity may apply to the Minister for approval that the entity is suitable to be established or recognised in the State, under an Act, as—
  - (a) a university; or
  - (b) a specialised university; or
  - (c) a university college; or
  - (d) a specialised university college.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.

#### **75                      Public notification**

As soon as practicable after receiving an application under section 74, the Minister must carry out a public notification process about the application as provided by the national guidelines.

## **76 Further information or document to support application**

- (1) The Minister may, by notice given to the applicant, require the applicant to give the Minister, within the reasonable time of at least 14 days stated in the notice, further information or a document the Minister reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement within the stated time.

## **77 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the entity will comply with the national protocols and national guidelines on its establishment or recognition in the State, under an Act, as—
  - (a) a university; or
  - (b) a specialised university; or
  - (c) a university college; or
  - (d) a specialised university college.
- (3) In deciding the application, the Minister may—
  - (a) examine the proposed operation of the entity both inside and outside the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant notice of the decision.
- (5) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.



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- (6) If the Minister fails to decide the application within 18 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
  - (7) Subsection (6) is subject to section 78.

## 78 Further consideration of application

- (1) This section applies if the Minister considers further time is needed to make a decision on the application because of the complexity of the matters that need to be considered.
- (2) The applicant and the Minister may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the decision is to be made.
- (3) Also, the applicant and the Minister may at any time before the agreed extended day again agree in writing on a day (the *further extended day*) by which the decision is to be made.
- (4) The Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by—
  - (a) the agreed extended day; or
  - (b) if the applicant and the Minister have agreed on a further extended day—the further extended day.
- (5) In this section—

*final consideration day* means the day that is 18 months after the application was received by the Minister.

## 79 Imposition of conditions

- (1) The Minister may, in granting the application, decide to impose conditions on the approval that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the approval, the Minister must as soon as practicable give the applicant an information notice about the decision.

## **Subdivision 2      Review of operation of university or specialised university**

### **80      Review**

- (1) The Minister may, after the fifth anniversary of the establishment or recognition under an Act of a university or specialised university, review the operation of the university or specialised university.
- (2) The review must involve a consideration of whether the university or specialised university is complying with the national protocols and national guidelines.
- (3) In conducting the review, the Minister may examine the operation of the university or specialised university both inside and outside the State.

## **Division 3            Interstate universities etc.**

### **81      Recognised authority for interstate higher education institutions**

- (1) Each of the following higher education institutions is taken to hold an authority to operate the institution in the State (a *recognised authority*)—
  - (a) an interstate university;
  - (b) an interstate specialised university;
  - (c) an interstate university college;
  - (d) an interstate specialised university college.
- (2) Subsection (1) is subject to the withdrawal of the recognised authority under section 83 and part 9, division 1.

## **82 Standard condition**

- (1) It is a condition (a *standard condition*) of a recognised authority that the governing body of the higher education institution that holds the authority—
  - (a) allows the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and
  - (b) complies with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.
- (2) The standard condition applies to help the Minister decide whether the institution is complying with the national protocols and national guidelines.

## **83 Grounds for withdrawal of recognised authority**

- (1) Each of the following is a ground for withdrawing a higher education institution's recognised authority—
  - (a) the institution is not complying, or has not complied, with the national protocols and national guidelines;
  - (b) the governing body of the institution has contravened the standard condition under section 82.
- (2) If the Minister reasonably believes a ground exists for withdrawing a recognised authority, the Minister must follow the process under part 9, division 1.

## **Part 5 Overseas higher education institutions**

### **Division 1 Preliminary**

#### **84 Definition for pt 5**

In this part—

*national guidelines* means the document entitled ‘National Guidelines for Higher Education Approval Processes—Guidelines for overseas higher education institutions seeking to operate in Australia’ that was approved by the Ministerial Council on 31 October 2007.

#### **85 Limitation on operation of overseas higher education institution**

An overseas higher education institution must not offer a higher education course in the State unless the course is offered under an approval under this part.

Maximum penalty—200 penalty units.

### **Division 2 Application for approval**

#### **86 Procedural requirements for application**

- (1) The governing body of an overseas higher education institution may apply to the Minister for approval for the institution to operate in the State.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the courses the institution proposes to offer in the State; and

- (c) if a course is to be offered under an arrangement with a partner or agent of the institution—state the name of the partner or agent and details of the arrangement; and
- (d) include the information required to be provided under the national guidelines; and
- (e) be accompanied by the fee prescribed under a regulation.

### **87 Further information or document to support application**

- (1) The Minister may, by notice given to the applicant, require the applicant to give the Minister, within the reasonable time of at least 14 days stated in the notice, further information or a document the Minister reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement within the stated time.

### **88 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the entity complies with the national protocols and national guidelines.
- (3) In deciding the application, the Minister may—
  - (a) examine the proposed operation of the entity in the State; and
  - (b) make any other enquiries the Minister considers appropriate.
- (4) If the Minister decides to grant the application, the Minister must—
  - (a) decide the courses for which the approval is to be given; and

[s 89]

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- (b) if a course is to be offered under an arrangement with a partner or agent of the institution—approve the partner or agent and details of the arrangement.
- (5) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant notice of the decision.
- (6) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.
- (7) If the Minister fails to decide the application within 18 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
- (8) Subsection (7) is subject to section 89.

## **89 Further consideration of application**

- (1) This section applies if the Minister considers further time is needed to make a decision on the application because of the complexity of the matters that need to be considered.
- (2) The applicant and the Minister may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the decision is to be made.
- (3) Also, the applicant and the Minister may at any time before the agreed extended day again agree in writing on a day (the *further extended day*) by which the decision is to be made.
- (4) The Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by—
  - (a) the agreed extended day; or
  - (b) if the applicant and the Minister have agreed on a further extended day—the further extended day.
- (5) In this section—

*final consideration day* means the day that is 18 months after the application was received by the Minister.

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**90 Term of approval**

An approval under section 88 remains in force for the term of not more than 5 years stated in the notice given to the applicant for the approval under section 88(5).

**91 Standard condition**

- (1) It is a condition (a *standard condition*) of an approval under section 88 that the governing body of the overseas higher education institution that holds the approval—
  - (a) allows the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and
  - (b) complies with all reasonable requests by the Minister to give the Minister information or records, or a copy of the records, the governing body is keeping, or has control of, that are appropriate.
- (2) The standard condition applies to help the Minister decide whether—
  - (a) the institution is complying with the national protocols and national guidelines; or
  - (b) the institution and its governing body are complying with any other conditions of the approval.

**92 Imposition of conditions**

- (1) The Minister may, in granting the application, decide to impose conditions on the approval that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the approval, the Minister must as soon as practicable give the applicant an information notice about the decision.

## **Division 3                      Renewal of approval**

### **93            Procedural requirements for applying for renewal**

- (1) The governing body of an overseas higher education institution that holds an approval under section 88 may apply to the Minister for renewal of the approval within the period starting 18 months, and ending 9 months, before the term of the approval ends.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and
  - (c) be accompanied by the fee prescribed under a regulation.
- (3) Section 87 applies to an application under this section.

*Note—*

See section 128 in relation to the operation of applied provisions.

### **94            Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied—
  - (a) the institution is complying with the national protocols and national guidelines; and
  - (b) the institution and its governing body are complying with any conditions of the approval.
- (3) In deciding the application, the Minister may—
  - (a) examine the operation of the institution in the State; and
  - (b) make any other enquiries the Minister considers appropriate.



- (4) Sections 88(5) to (8) and 89 apply to the making of a decision under this section.

**95 Term of renewed approval**

An approval renewed under section 94 remains in force for the further term of not more than 5 years stated in the notice given to the applicant for the renewal under section 88(5) as applied by section 94(4).

**96 Conditions of a renewed approval**

- (1) Sections 91 and 92 apply to an approval renewed under this division.
- (2) For applying section 92—  
*impose*, a condition, includes change or confirm the condition.

**97 Approval taken to be in force while application is considered**

- (1) If an application is made under section 93, the applicant's approval under this part is taken to continue in force from the day that it would, apart from this section, have expired until—
- (a) if the Minister decides to renew the approval—the day a notice about the decision is given to the applicant under section 88(5) as applied by section 94(4); or
  - (b) if the Minister decides to refuse to renew the approval—
    - (i) the last day to appeal against the decision; or
    - (ii) if an appeal is instituted against the decision—the day the appeal is decided.
- (2) Subsection (1) does not apply if the approval is earlier cancelled.

[s 98]

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## **Division 4                      Cancellation of approval**

### **98            Grounds for cancellation**

- (1) Each of the following is a ground for cancelling an overseas higher education institution's approval under this part to operate in the State—
  - (a) the institution—
    - (i) is not complying, or has not complied, with the national protocols and national guidelines; or
    - (ii) has contravened a condition of the approval;
  - (b) the governing body of the institution—
    - (i) has contravened a condition of the approval; or
    - (ii) has made a major change to the operation of the institution in the State without the Minister's approval under section 102; or
    - (iii) has not given the Minister notice of a change under section 103; or
    - (iv) has not given the Minister an annual report under section 105;
  - (c) the Minister's decision to grant or renew the approval was based on false or misleading information.
- (2) If the Minister reasonably believes a ground exists for cancelling an approval under this part, the Minister must follow the process under part 9, division 1.

## **Division 5                      Changes to conditions of approval**

### **99            Changing conditions of approval**

- (1) The Minister may change the conditions of an approval under this part imposed by the Minister if the Minister reasonably believes the change is appropriate.

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- (2) Before deciding to change the conditions, the Minister must—
    - (a) give notice to the holder of the approval—
      - (i) of the particulars of the proposed change; and
      - (ii) that the holder may make written submissions to the Minister about the proposed change within a reasonable period of at least 21 days stated in the notice; and
    - (b) have regard to written submissions made to the Minister by the holder before the end of the stated period.
  - (3) If the Minister decides to change the conditions, the Minister must as soon as practicable give the holder an information notice about the decision.
  - (4) The decision does not take effect until—
    - (a) the last day to appeal against the decision; or
    - (b) if an appeal is instituted against the decision—the day the appeal is decided.
  - (5) The power of the Minister under subsection (1) includes the power to add conditions to an approval that is not subject to conditions imposed by the Minister.

## **Division 6                      Major changes to overseas higher education institutions**

### **100      Application for approval to make major change**

- (1) The governing body of an overseas higher education institution that holds an approval under this part may apply to the Minister for approval to make a major change to the operation of the institution in the State.
- (2) The application must—
  - (a) be in writing; and
  - (b) include the information required to be provided under the national guidelines; and

[s 101]

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- (c) be accompanied by the fee prescribed under a regulation.

### **101 Meaning of *major change***

- (1) A *major change*, to the operation of an overseas higher education institution in the State, means a change that—
  - (a) may affect the institution's capacity to comply with the national protocols and national guidelines; and
  - (b) is described as a major change in the national guidelines.
- (2) A major change includes—
  - (a) a merger of the institution, in the State, with another entity; or
  - (b) a change to offer a course other than a course approved under this part; or
  - (c) a change in the arrangement under which a course is approved to be offered, including the addition of a new partner or agent; or
  - (d) a change that may result in a significant decline in the financial position of the institution.

### **102 Decision on application**

- (1) The Minister must consider the application and either grant, or refuse to grant, the application.
- (2) The Minister may grant the application only if the Minister is satisfied the institution will comply with the national protocols and national guidelines after the change is effected.
- (3) In deciding the application, the Minister may—
  - (a) examine the operation of the institution in the State; and
  - (b) make any other enquiries the Minister considers appropriate.

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- (4) If the Minister decides to grant the application, the Minister must as soon as practicable give the applicant a notice stating—
    - (a) the decision; and
    - (b) the day by which the change must be effected.
  - (5) If the Minister decides to refuse to grant the application, the Minister must as soon as practicable give the applicant an information notice about the decision.
  - (6) Subject to subsection (7), if the Minister fails to decide the application within 6 months after its receipt, the Minister is taken to have decided to refuse to grant the application.
  - (7) Section 89 applies to the making of a decision under this section.
  - (8) In applying section 89—

*final consideration day* means the day that is 6 months after the application was received by the Minister.

## **Division 7                      Other changes to overseas higher education institutions**

### **103      Notification of other changes to overseas higher education institutions**

- (1) The governing body of an overseas higher education institution that holds an approval under this part must give the Minister notice of the following—
  - (a) a change to—
    - (i) the status or approval of the institution in its country of origin; or
    - (ii) the basis on which the institution is established or operates in its country of origin;
  - (b) a change to—

[s 104]

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- (i) the status or approval of a course offered by the institution in its country of origin; or
  - (ii) the basis on which the institution offers a course in its country of origin;  
if the course is also offered in the State;
  - (c) a merger of the institution with another entity in the institution's country of origin.
- (2) The notice must be given within 14 days after the change or merger happens.

## **Division 8            Other provisions**

### **104    Conferring of higher education award by overseas higher education institution**

- (1) An overseas higher education institution must not confer, or hold out that the institution is authorised to confer, a higher education award unless the institution is approved, under this part, to offer the course leading to the award.

Maximum penalty—200 penalty units.

- (2) A person must not hold out that an overseas higher education institution is authorised to confer a higher education award unless the institution is approved, under this part, to offer the course leading to the award.

Maximum penalty—200 penalty units.

### **105    Annual report**

- (1) The governing body of an overseas higher education institution must, on or before 31 May in each year (the *reporting day*), give the Minister a report (an *annual report*).

- (2) The annual report must—

(a) be given—

(i) in the way required by the Minister; and

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- (ii) for the period from 1 January to 31 December immediately before the reporting day; and
  - (b) contain information to help the Minister assess whether—
    - (i) the institution is—
      - (A) operating within its approval; and
      - (B) complying with the national protocols and national guidelines; and
    - (ii) the institution and its governing body are complying with the conditions of the approval.
  - (3) The annual report must be accompanied by the assessment fee prescribed under a regulation.
  - (4) The annual report is taken not to have been given until the assessment fee is paid.

## Part 6 Appeals

### 106 Who may appeal

A person (the *appellant*) who is given, or is entitled to be given, an information notice for a decision of the Minister (the *original decision*) may appeal against the decision to the District Court.

*Note—*

The *Uniform Civil Procedure Rules 1999* contain provisions about appeals to the District Court.

### 107 Starting appeals

- (1) The appeal may be started at—
  - (a) the District Court at the place where the appellant resides or carries on business; or

[s 108]

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- (b) the District Court at Brisbane.
- (2) Subsection (1) does not limit the District Court at which the appeal may be started under the *Uniform Civil Procedure Rules 1999*.
- (3) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—
  - (a) if the appellant is given an information notice for the original decision—the day the appellant is given the notice; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the original decision.
- (4) The court may, at any time, extend the period for filing the notice of appeal.

### **108 Hearing procedures**

- (1) In deciding the appeal, the court—
  - (a) has the same powers as the Minister; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) The appeal is by way of rehearing, unaffected by the original decision, on the material before the Minister and any further evidence allowed by the court.

### **109 Powers of court on appeal**

- (1) In deciding the appeal, the court may—
  - (a) confirm the original decision; or
  - (b) amend the original decision; or
  - (c) substitute another decision for the original decision; or



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- (d) set aside the original decision and return the issue to the Minister with the directions the court considers appropriate.
- (2) In substituting another decision for the original decision, the court has the same powers as the Minister.

*Example—*

If a non self-accrediting higher education institution is unsuccessful in obtaining, under section 24, accreditation of a course proposed to be offered by the institution, the court may decide that the course be accredited on particular conditions.

- (3) If the court amends the original decision or substitutes another decision for the original decision, the amended or substituted decision is, for this Act, other than this part, taken to be the decision of the Minister.

## **Part 7                      Evidence and legal proceedings**

### **Division 1                Evidence**

#### **110      Evidentiary aids**

- (1) This section applies to a proceeding under this Act.
- (2) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
- (a) a stated document is one of the following things made, issued, given or kept under this Act—
- (i) an accreditation, approval, authority, decision or registration;
  - (ii) a notice;
  - (iii) a report;

[s 111]

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- (b) a stated document is a copy of a thing mentioned in paragraph (a);
  - (c) an accreditation, approval, authority or registration issued or given under this Act—
    - (i) was or was not issued or given for a stated term; or
    - (ii) was or was not in force on a stated day or during a stated period; or
    - (iii) was or was not subject to a stated condition;
  - (d) on a stated day, an accreditation, approval, authority or registration issued or given under this Act was cancelled or withdrawn;
  - (e) on a stated day, a stated entity was given a stated notice under this Act.
- (3) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

## **Division 2                      Proceedings**

### **111      Summary proceedings for offences**

- (1) Proceedings for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start within whichever is the longer of the following—
  - (a) 1 year after the commission of the offence;
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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## **112 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

  - (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

  - (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

## **113 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits

[s 114]

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an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) otherwise, the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## Part 8 Offences

### 114 Definitions for pt 8

In this part—

***relevant educational institution*** means an educational institution, educational facility, school, college or other place that delivers a course of education.

***type of specialisation***—

- (a) for a specialised university or specialised university college, means the field of study for which, under an Act, the specialised university or specialised university college was established or recognised; or
- (b) for an interstate specialised university or interstate specialised university college, means the field of study for which, under an Act of the Commonwealth or

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another State, the interstate specialised university or interstate specialised university college was established or recognised.

## **115 Self-accrediting higher education institution**

- (1) A person must not, in relation to a relevant educational institution, use a title that consists of, or includes, the words ‘self-accrediting higher education institution’ to promote the institution’s operation in the State unless it is—
- (a) a self-accrediting higher education institution; or
  - (b) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority.

Maximum penalty—200 penalty units.

- (2) A person must not hold out a relevant educational institution as being a self-accrediting higher education institution operating in the State unless it is—
- (a) a self-accrediting higher education institution; or
  - (b) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority.

Maximum penalty—200 penalty units.

- (3) A person must not, in relation to a self-accrediting higher education institution, hold out that the institution is authorised to operate in a way that is outside the scope of its self-accrediting authority.

Maximum penalty—200 penalty units.

- (4) A person must not, in relation to an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority, hold out that the institution is authorised to operate in the State in a way that is outside the scope of its recognised self-accrediting authority.

Maximum penalty—200 penalty units.

## **116 University title**

- (1) A person must not, in relation to a relevant educational institution, use a title that consists of, or includes, the word ‘university’ unless it is—
- (a) a university; or
  - (b) an interstate university; or
  - (c) an overseas university.

Maximum penalty—200 penalty units.

- (2) A person does not commit an offence against subsection (1) by using—

- (a) in relation to a specialised university, or an interstate specialised university, a title that includes its type of specialisation; or

*Example of title that includes type of specialisation—*

The Brisbane University of the Performing Arts

- (b) in relation to a university college, or an interstate university college, a title that includes the words ‘university college’; or
- (c) in relation to a specialised university college, or an interstate specialised university college, a title that includes its type of specialisation and the words ‘university college’.

*Example of title that includes type of specialisation and words ‘university college’—*

The Townsville University College of Marine Biology

- (3) A person must not hold out a relevant educational institution as being a university unless it is—

- (a) a university; or
- (b) an interstate university; or
- (c) an overseas university.

Maximum penalty—200 penalty units.

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- (4) A person does not commit an offence against subsection (3) by holding out—
- (a) a specialised university, or an interstate specialised university, as a university for the field of study that is its type of specialisation; or
  - (b) a university college, or an interstate university college, as a university college; or
  - (c) a specialised university college, or an interstate specialised university college, as a university college for the field of study that is its type of specialisation.
- (5) Subsections (1) and (3) do not apply in relation to the educational institution known as ‘University of the Third Age’.

### **117 Specialised university title**

A person must not, in relation to a specialised university or an interstate specialised university, use a title to identify the specialised university or interstate specialised university, unless the title includes its type of specialisation.

*Example of title that includes type of specialisation—*

The Brisbane University of the Performing Arts

Maximum penalty—200 penalty units.

### **118 University college title**

A person must not, in relation to a university college or an interstate university college, use a title to identify the university college or interstate university college unless the title includes the words ‘university college’.

Maximum penalty—200 penalty units.

### **119 Specialised university college title**

- (1) A person must not, in relation to a specialised university college or an interstate specialised university college, use a

[s 120]

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title to identify the specialised university college or interstate specialised university college, unless the title includes its type of specialisation and the words ‘university college’.

*Example of title that includes type of specialisation and words ‘university college’—*

The Townsville University College of Marine Biology

Maximum penalty—200 penalty units.

## **120 Restriction on operating a higher education institution**

A person must not operate, or hold out that the person operates, a higher education institution in the State unless the institution is—

- (a) a non self-accrediting higher education institution; or
- (b) a self-accrediting higher education institution; or
- (c) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority; or
- (d) a university, specialised university, university college or specialised university college; or
- (e) an interstate university, interstate specialised university, interstate university college or interstate specialised university college that holds a recognised authority; or
- (f) an overseas higher education institution that holds an approval under part 5.

Maximum penalty—200 penalty units.

## **121 Conferring of higher education award without course being undertaken**

- (1) A person, other than a relevant entity, must not confer a higher education award on another person unless the other person has undertaken a course leading to the award.

Maximum penalty—200 penalty units.

- (2) In this section—



*relevant entity* means—

- (a) a university; or
- (b) a specialised university; or
- (c) an interstate university that holds a recognised authority;  
or
- (d) an interstate specialised university that holds a  
recognised authority; or
- (e) an overseas university that holds an approval under part  
5.

## **Part 9                      Miscellaneous provisions**

### **Division 1                Show cause process**

#### **122      Definitions for div 1**

In this division—

*cancel*, for a recognised self-accrediting authority or a  
recognised authority, means withdraw.

*relevant authority* means—

- (a) a registration as a non self-accrediting higher education  
institution; or
- (b) the accreditation of an accredited course; or
- (c) a self-accrediting authority; or
- (d) a recognised self-accrediting authority; or
- (e) a recognised authority; or
- (f) an approval to operate an overseas higher education  
institution in the State.

[s 123]

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### **123 Application of div 1**

This division applies if the Minister reasonably believes a ground exists for cancelling a relevant authority.

### **124 Show cause notice**

- (1) The Minister must give the holder of the relevant authority a notice under this section (a *show cause notice*).
- (2) The show cause notice must state the following—
  - (a) that the Minister proposes to cancel the relevant authority (the *proposed action*);
  - (b) the ground for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) an invitation to the holder to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (3) The show cause period must be a period ending at least 30 days after the show cause notice is given to the holder.

### **125 Representations about show cause notice**

- (1) The holder of the relevant authority may make written representations about the show cause notice to the Minister in the show cause period.
- (2) The Minister must consider all written representations (the *accepted representations*) made under subsection (1).

### **126 Ending show cause process without further action**

If, after considering the accepted representations for the show cause notice, the Minister no longer believes the ground exists to cancel the relevant authority, the Minister—

- (a) must not take further action about the show cause notice; and
- (b) must, as soon as practicable, give notice to the holder of the relevant authority that no further action will be taken about the show cause notice.

## **127 Cancellation of relevant authority**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the Minister—
  - (a) still believes the ground exists to cancel the relevant authority; and
  - (b) believes cancellation of the relevant authority is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The Minister may decide to cancel the relevant authority.
- (4) The Minister must, as soon as practicable, give an information notice about the decision to the holder of the relevant authority.
- (5) The decision does not take effect until—
  - (a) the last day to appeal against the decision; or
  - (b) if an appeal is instituted against the decision—the day the appeal is decided.

## **Division 2 Other provisions**

### **128 Applied provisions**

If a provision of this Act (an *applied provision*) applies under another provision, the applied provision must be read with the changes necessary or convenient for the other provision to have effect.

[s 129]

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*Example of applied provision—*

Section 15 applies section 9 (an applied provision) to an application under section 15. Section 9 applies as if a reference in section 9 to an application were a reference to an application under section 15.

**129 Protection from liability**

- (1) The Minister does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the Minister, the liability attaches instead to the State.

**130 Disclosure of information to relevant entities**

- (1) The Minister may disclose information to a relevant entity if—
  - (a) the information was obtained in the course of the administration of this Act or the repealed Act; and
  - (b) the Minister considers the disclosure is necessary for the relevant entity to perform its functions.

- (2) In this section—

*relevant entity* means any of the following—

- (a) an entity listed as a government accreditation authority on the AQF Register;
- (b) a designated authority under the *Education Services for Overseas Students Act 2000* (Cwlth);
- (c) a person involved in the administration of the *Education Services for Overseas Students Act 2000* (Cwlth);
- (d) a person involved in the administration of the *Higher Education Support Act 2003* (Cwlth).

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### **131 Committees and other sources of advice**

- (1) The Minister may establish 1 or more committees to advise the Minister on—
  - (a) deciding applications under this Act; and
  - (b) any other matter under this Act referred to the committee by the Minister.
- (2) The Minister may also seek advice on a matter under this Act from any other person the Minister considers has appropriate knowledge or experience of the matter.

### **132 Guidelines**

- (1) The Minister may issue guidelines for this Act.
- (2) Without limiting subsection (1), a guideline may give guidance about—
  - (a) administrative matters relevant to applications under this Act; or
  - (b) how an applicant under this Act should deal with issues involved in the proper formulation of the application or supporting material related to the application; or
  - (c) the type of information to be included in an annual report given under section 40, 65 or 105.
- (3) A guideline may be replaced or varied by a later guideline issued under this section.
- (4) The chief executive must keep a copy of a guideline, issued under this section, available for inspection and permit a person—
  - (a) to inspect the guideline without fee; and
  - (b) to take extracts from the guideline without fee.
- (5) For subsection (4)—
  - (a) a copy of the guideline—
    - (i) must be kept at the head office of the department; and

[s 133]

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- (ii) may be kept at any other place the chief executive considers appropriate; and
- (b) the copy kept under paragraph (a) must be available for inspection during office hours on business days for the office or place.
- (6) Also, the chief executive must keep a copy of a guideline, issued under this section, available for supply to a person and permit a person to obtain a copy of the guideline, or a part of the guideline, without fee.
- (7) In addition, the chief executive must keep a copy of a guideline, issued under this section, posted on the department's website.

*Editor's note—*

The department's website address is <[www.deta.qld.gov.au](http://www.deta.qld.gov.au)>.

### **133 Delegation by Minister**

- (1) The Minister may delegate the Minister's functions under this Act to an appropriately qualified public service employee.
- (2) In this section—

*appropriately qualified*, for a public service employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function.

*Example of standing for a public service employee—*

the employee's classification or level in a department

*functions* includes powers.

### **134 Annual report**

As soon as practicable after the end of each financial year, the Minister must prepare a report about the operation of this Act during that year and lay a copy of the report before the Legislative Assembly.

**135 Failure to decide application**

- (1) This section applies if, under this Act, the Minister is taken to have decided to refuse to grant an application.
- (2) To remove any doubt, it is declared the Minister must as soon as practicable give the applicant an information notice about the decision.

**136 Approval of forms**

The Minister may approve forms for use under this Act.

**137 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
  - (a) the fees payable under this Act and the matters for which fees are to be paid, including fees for the Minister to do either of the following in deciding an application—
    - (i) examine the operation or proposed operation of a higher education institution;
    - (ii) make any other enquiries the Minister considers appropriate;
  - (b) the recovery, waiving or refunding of fees;
  - (c) imposing a penalty of not more than 20 penalty units for a contravention of a regulation.

## **Part 10**                      **Repeal and transitional provisions**

### **Division 1**                      **Repeal**

#### **138**      **Repeal**

The Higher Education (General Provisions) Act 2003, No. 59 is repealed.

### **Division 2**                      **Transitional provisions**

#### **139**      **Definitions for div 2**

In this division—

*commencement* means commencement of this section.

*continuing accreditation* see section 146(2)(b).

*continuing approval* see section 142(2)(a).

*existing accreditation* see section 146(1).

*existing approval* see section 142(1).

*existing approval to operate* see section 149(1).

*non-university provider* means an entity, other than a university or overseas higher education institution under the repealed Act, that, immediately before the commencement, provided a higher education course under that Act.

*repealed Act* means the *Higher Education (General Provisions) Act 2003*.

#### **140**      **References to repealed Act**

In an Act or document, a reference to the repealed Act may, if the context permits, be taken to be a reference to this Act.



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**141 Application for approval to be established or recognised as a university**

An application made under part 2 of the repealed Act and not finally decided before the commencement—

- (a) is taken to be an application under part 4 of this Act; and
- (b) must be decided under this Act.

**142 Approval to operate overseas higher education institution**

- (1) This section applies if, immediately before the commencement, the governing body of an overseas higher education institution held an approval under part 3 of the repealed Act to operate the institution in the State (an *existing approval*).
- (2) The existing approval—
  - (a) is taken to be an approval under part 5 of this Act (a *continuing approval*); and
  - (b) continues in force until it would have expired under the repealed Act.
- (3) If the existing approval was subject to a condition, the continuing approval is taken to be subject to the same condition.
- (4) Subsection (2)(b) applies unless the continuing approval is earlier cancelled or renewed under this Act.

**143 Application for approval to operate overseas higher education institution**

An application made under part 3 of the repealed Act and not finally decided before the commencement—

- (a) is taken to be an application under part 5 of this Act; and
- (b) must be decided under this Act.

[s 144]

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**144 Cancellation of approval to operate overseas higher education institution**

- (1) This section applies if, immediately before the commencement, a show cause process had started in relation to an existing approval but had not been completed.
- (2) Subject to subsection (3), the show cause process may be completed under part 9, division 1 of this Act.
- (3) If the show cause process had started in relation to a ground for cancellation mentioned in the repealed Act, section 36(c) the process lapses on the commencement.
- (4) In this section—  
*show cause process*, for an existing approval, means the process mentioned in part 3, division 5 of the repealed Act.

**145 References to non-university provider**

A reference in an Act or document to a non-university provider may, if the context permits, be taken to be a reference to a non self-accrediting higher education institution.

**146 Non-university provider taken to be non self-accrediting higher education institution**

- (1) This section applies if, immediately before the commencement, the governing body of a non-university provider held an accreditation for 1 or more higher education courses under part 4 of the repealed Act (an *existing accreditation*).
- (2) On the commencement—
  - (a) the provider is taken to hold registration under part 2 of this Act as a non self-accrediting higher education institution (a *deemed registration*); and
  - (b) each existing accreditation is taken to be an accreditation under part 2 of this Act for the institution (a *continuing accreditation*).

- 
- (3) If the existing accreditation was subject to a condition, the continuing accreditation is taken to be subject to the same condition.
  - (4) The deemed registration for the institution expires when the term of all continuing accreditations has ended.
  - (5) Subsection (4) applies unless the deemed registration is earlier cancelled or renewed under part 2.
  - (6) Each continuing accreditation expires when the existing accreditation would have expired under the repealed Act if this Act had not commenced unless the continuing accreditation is earlier cancelled or renewed under part 2.
  - (7) In subsection (4)—  
*term*, of a continuing accreditation, does not include any renewal of the term that happens after the commencement.

#### **147 Application for accreditation of higher education course**

- (1) This section applies to an application, by the governing body of a non-university provider for accreditation of a higher education course proposed to be offered by the provider, made under the repealed Act and not finally decided before the commencement.
- (2) The application must be decided under the repealed Act as if this Act had not commenced.
- (3) If the Minister decides to grant the application—
  - (a) if section 146(1) does not apply to the provider—the provider is taken to hold registration under part 2 of this Act as a non self-accrediting higher education institution (a *deemed registration*); and
  - (b) the accreditation granted is taken to be an accreditation under part 2 of this Act for the non self-accrediting higher education institution.
- (4) The deemed registration for the institution expires when the term of the accreditation mentioned in subsection (3)(b) ends.

[s 148]

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- (5) Subsection (4) applies unless the deemed registration is earlier cancelled or renewed under part 2.
- (6) If the Minister decides to refuse to grant the application, the applicant has the right of appeal the applicant had under the repealed Act.
- (7) If, on appeal, the court amends the original decision or substitutes another decision for the original decision, the amended or substituted decision is, for this section, taken to be the decision of the Minister.

#### **148 Cancellation of accreditation of an accredited course**

- (1) This section applies if, immediately before the commencement, a show cause process had started in relation to an existing accreditation but had not been completed.
- (2) The show cause process may be completed under part 9, division 1 of this Act.
- (3) In this section—  
*show cause process*, for an existing accreditation, means the process under part 4, division 3 of the repealed Act.

#### **149 Approval to operate interstate university**

- (1) This section applies if, immediately before the commencement, the governing body of an interstate university held an approval under part 5 of the repealed Act to operate the university in the State (an *existing approval to operate*).
- (2) The existing approval to operate is taken to be a recognised authority under part 4 of this Act.

#### **150 Application for approval to operate interstate university**

An application made under part 5 of the repealed Act and not finally decided before the commencement lapses on the commencement.

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**151 Cancellation of approval to operate interstate university**

- (1) This section applies if, immediately before the commencement, a show cause process had started in relation to an existing approval to operate but had not been completed.
- (2) The show cause process may be completed under part 9, division 1 of this Act.
- (3) In this section—  
*show cause process*, for an existing approval to operate, means the process under part 5, division 3 of the repealed Act.

**152 Appeals**

- (1) Subsection (2) applies if—
  - (a) before the commencement, a person appealed to the District Court under repealed section 72 against a decision of the Minister under the repealed Act; and
  - (b) on the commencement, the appeal has not been decided.
- (2) The District Court may hear, or continue to hear, and decide the appeal under the repealed Act as if this Act had not commenced.
- (3) Subsection (4) applies if—
  - (a) immediately before the commencement, a person could have appealed to the District Court under repealed section 72 against a decision of the Minister under the repealed Act; and
  - (b) on the commencement, the person has not appealed.
- (4) The person may appeal, and the District Court may hear and decide the appeal, under the repealed Act as if this Act had not commenced.
- (5) For giving effect to its decision under subsection (2) or (4), the District Court may make the orders it considers necessary having regard to the provisions of this Act.
- (6) In this section—

[s 153]

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*District Court* includes a District Court judge.

*repealed section 72* means section 72 of the repealed Act.

### **153 Offences**

- (1) Proceedings for an offence against the repealed Act may be started or continued, and the provisions of the repealed Act necessary or convenient to be used in relation to the proceedings continue to apply, as if this Act had not commenced.
- (2) For subsection (1), the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.

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## Schedule 2 Dictionary

## section 4

*accepted representations* see section 125(2).

*accredited course* means a course accredited under section 24.

*appellant* see section 106.

*approved form* means a form approved by the Minister under section 136.

*AQF qualification level* means the level of higher education award to which a course of study described in the Australian Qualifications Framework leads.

*AQF Register* means the Register of Recognised Education Institutions and Authorised Accreditation Authorities in Australia established by the Australian Qualifications Framework Advisory Board under the Australian Qualifications Framework.

*Editor's note—*

The AQF Register may be viewed at the website <[www.aqf.edu.au](http://www.aqf.edu.au)>.

*Australian Qualifications Framework* means the national framework of educational qualifications—

- (a) approved by the Ministerial Council; and
- (b) stated in the implementation handbook for that framework published by the Australian Qualifications Framework Advisory Board;

as in force from time to time.

*Editor's note—*

The implementation handbook may be inspected during office hours on business days at the head office of the department or viewed at the department's website at <[www.aqf.edu.au/implem.htm](http://www.aqf.edu.au/implem.htm)>.

***Australian Qualifications Framework Advisory Board*** means the board by that name established by the Ministerial Council.

***cancel***, for part 9, division 1, see section 122.

***commencement***, for part 10, division 2, see section 139.

***continuing accreditation***, for part 10, division 2, see section 139.

***continuing approval***, for part 10, division 2, see section 139.

***electronically***, in relation to providing a higher education course, includes by email, DVD or through the internet.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***existing accreditation***, for part 10, division 2, see section 139.

***existing approval***, for part 10, division 2, see section 139.

***existing approval to operate***, for part 10, division 2, see section 139.

***higher education award*** means—

- (a) a degree, status, title or description of associate, bachelor, master or doctor; or
- (b) any other award, if the course of study relating to it is classified as higher education in the course descriptions stated in the Australian Qualifications Framework.

***higher education course*** means a course of study, the successful completion of which may lead to the conferral or award of a higher education award.

***higher education institution*** means an educational institution that provides, or proposes to provide, a higher education course.

***information notice***, for a decision made by the Minister, is a notice stating the following—

- (a) the decision;



- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may appeal against the decision within 28 days;
- (d) the way the person may appeal against the decision.

***interstate self-accrediting authority***, for part 3, division 3, see section 66.

***interstate self-accrediting higher education institution***, for part 3, division 3, see section 66.

***interstate specialised university*** means a higher education institution established or recognised as a specialised university under an Act of the Commonwealth or another State.

***interstate specialised university college*** means a higher education institution established or recognised as a specialised university college under an Act of the Commonwealth or another State.

***interstate university*** means a higher education institution established or recognised as a university under an Act of the Commonwealth or another State.

***interstate university college*** means a higher education institution established or recognised as a university college under an Act of the Commonwealth or another State.

***major change***—

- (a) for part 2—see section 37; or
- (b) for part 3—see section 58; or
- (c) for part 5—see section 101.

***Ministerial Council*** means the Ministerial Council on Education, Employment, Training and Youth Affairs.

***national guidelines***—

- (a) for part 2—see section 6; or
- (b) for part 3—see section 41; or
- (c) for part 4—see section 73; or

(d) for part 5—see section 84.

*Editor's note—*

A copy of the national guidelines may be inspected during office hours on business days at the head office of the department and may be viewed on the department's website at <[www.deta.qld.gov.au](http://www.deta.qld.gov.au)>.

***national protocols*** means the document entitled 'National Protocols for Higher Education Approval Processes' that was approved by the Ministerial Council on 31 October 2007.

*Editor's note—*

A copy of the national protocols may be inspected during office hours on business days at the head office of the department and may be viewed on the department's website at <[www.deta.qld.gov.au](http://www.deta.qld.gov.au)>.

***non self-accrediting higher education institution*** means a higher education institution registered under part 2.

***non-university provider***, for part 10, division 2, see section 139.

***notice*** means written notice.

***operating***, in relation to a higher education institution—

- (a) includes the following—
- (i) providing courses or parts of courses leading to higher education awards;
  - (ii) providing the related components of providing courses, including materials, other resources and assessment;
  - (iii) conferring higher education awards, whether or not a course is provided;
  - (iv) providing higher education courses electronically or by distance education from a place inside the State to another place whether inside or outside the State;
  - (v) conducting a business in the State as a higher education institution including by using premises, mail or telecommunication devices for the institution; but

- (b) does not include providing a course or part of a course electronically or by distance education in the State from outside the State.

*Note—*

This definition also applies to references to operating a particular higher education institution, including for example, a non self-accrediting higher education institution.

***original decision*** see section 106.

***overseas higher education institution*** means an educational institution that—

- (a) is established and operates in a foreign country; and
- (b) offers a course—
- (i) recognised as a higher education course by the entity responsible for recognising higher education courses in the foreign country; or
- (ii) leading to an award recognised as a higher education award by the entity responsible for recognising higher education awards in the foreign country.

***overseas university*** means a higher education institution that is—

- (a) established and operates in a foreign country; and
- (b) recognised as a university by the entity responsible for recognising universities in the foreign country; and
- (c) approved under part 5 to operate in the State.

***recognised authority*** see section 81.

***recognised self-accrediting authority***, for part 3, division 3, see section 66.

***relevant authority***, for part 9, division 1, see section 122.

***relevant educational institution***, for part 8, see section 114.

***repealed Act*** see section 139.

***scope—***

- (a) of a self-accrediting authority—see section 45(4); or

(b) of an interstate self-accrediting authority—see section 66.

*self-accrediting authority* see section 43(1).

*self-accrediting higher education institution* means a higher education institution that holds a self-accrediting authority.

*show cause notice* see section 124(1).

*show cause period* see section 124(2)(d).

*specialised university* means a higher education institution established or recognised as a specialised university under an Act.

*specialised university college* means a higher education institution established or recognised as a specialised university college under an Act.

*type of specialisation*, for part 8, see section 114.

*university* means a higher education institution established or recognised as a university under an Act.

*university college* means a higher education institution established or recognised as a university college under an Act.

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	91
3 Key . . . . .	91
4 Table of reprints . . . . .	92
5 List of legislation . . . . .	92
6 List of annotations . . . . .	92

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Higher Education (General Provisions) Act 2008 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	1 July 2008	certain provs commenced
1	none	1 August 2008	certain provs commenced

## 5 List of legislation

### Higher Education (General Provisions) Act 2008 No. 25

date of assent 9 May 2008

ss 1–2 commenced on date of assent

pts 11–12 commenced 1 July 2008 (2008 SL No. 182)

remaining provisions commenced 1 August 2008 (2008 SL No. 242)

## 6 List of annotations

### PART 11—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 2006

pt 11 (ss 154–156) om R0A (see RA ss 7(1)(k) and 40)

### PART 12—AMENDMENT OF VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 2000

pt 12 (ss 157–163) om R0A (see RA ss 7(1)(k) and 40)

### PART 13—AMENDMENT OF OTHER ACTS

pt 13 (s 164) om R1 (see RA ss 7(1)(k) and 40)

### SCHEDULE 1—CONSEQUENTIAL AND MINOR AMENDMENTS OF OTHER ACTS

om R1 (see RA s 40)