HIGHER EDUCATION (GENERAL PROVISIONS) BILL 2003

EXPLANATORY NOTES

Short Title of the Bill

The short title of the Bill is the *Higher Education (General Provisions) Bill 2003*.

Policy Objectives of the Bill

The primary policy objectives of the Bill are to:

- uphold the standards of education delivered by higher education institutions; and
- maintain public confidence in the higher education sector in the State.

Reason that the proposed legislation is necessary

The *National Protocols for Higher Education Approval Processes* (National Protocols) were approved by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) on 21 March 2000. These National Protocols are a key element of a new national quality assurance framework for Australian higher education. They have been designed to ensure consistent criteria and standards for higher education approval processes across Australia.

The Australian States and mainland Territories, which have responsibility for managing higher education accreditation and approval processes in their jurisdictions, have agreed to the adoption and implementation of the National Protocols. Accordingly, to meet the standards in the National Protocols, New South Wales has enacted new legislation; Victoria, South Australia and the Australian Capital Territory have made amendments to their legislation and guidelines; and Western Australia is progressing legislation and guidelines.

In 2002, the Queensland Office of Higher Education, which assists the Minister in administering the Act, reviewed the Act in this national context. The review found that although the Act is mostly compliant with the National Protocols, it required some amendment to be fully compliant.

The Bill gives effect to the recommendations of the review by providing that the criteria in the National Protocols are to be considered in the approval processes for higher education institutions.

Both the current legislation and the Bill deal only with higher education institutions and do not provide for vocational education courses.

How the Policy Objectives will be Achieved

The higher education sector in Queensland is currently regulated by the *Higher Education (General Provisions) Act 1993 (*the Act) and the *Higher Education (General Provisions) Regulation 1996* (the Regulation). The Bill repeals the Act and provides an updated and more transparent approval process for higher education institutions.

Establishment of, or Recognition as, a University

Part 2 of the Bill implements protocol 1 of the National Protocols. The Minister is to have regard to the National Protocols when approving an application to enable a higher education institution to be established or recognised under an Act as a university.

The Bill also enables the Minister to review the university's operations after the fifth anniversary of the establishment or recognition of the university under an Act.

Overseas Higher Education Institutions

Currently, overseas higher education institutions (including overseas universities) may be approved by the Minister to operate in Queensland. However, the Minister must be satisfied that the institution has bona fide accreditation in its country of origin. The Act does not provide for an assessment of the comparability of the higher education to be delivered in Queensland by the overseas institution to similar higher education courses accredited in Australia. Further, there is no power for the Minister to scrutinise the delivery arrangements, and there is no time limit on the period of authorisation. Protocol 2 sets the criteria for the authorisation of overseas institutions to operate in Australia. In particular, the National Protocols require an assessment of the higher education courses for comparability in requirements and learning outcomes with similar higher

education courses offered by Australian institutions, and an assessment of the suitability of delivery arrangements.

The Bill provides for the assessment of applications for approval to operate in Queensland according to the criteria outlined in the National Protocols. For overseas higher education institutions to gain approval to operate in Queensland under Part 3, the institution must submit an operational plan to the Minister for approval. The applicant will be required to provide a range of key details in the plan based on the relevant criteria outlined in the National Protocols. The Bill also provides for a renewal process whereby an overseas higher education institution must apply for renewal after five years. This allows the Minister to have an ongoing role in the operation of overseas higher education institutions operating in the State.

Non-University Providers

The Bill implements protocol 3 of the National Protocols by enabling the Minister to carry out assessment and approval functions for the accreditation of higher education courses to be offered by non-university providers.

The Minister may accredit a course offered by a non-university provider for a period up to five years, after which time the provider must apply for reaccreditation of the course.

The Bill provides, as a condition of on-going accreditation, that non-university providers are required to submit an annual report to the Minister. The aim of the report is to maintain up-to-date information for the purposes of ensuring ongoing provider adherence to the relevant criteria and monitor aspects of the provider's operations on behalf of the Minister. The requirements to be addressed in the annual report will be based on the criteria listed in the National Protocol and information included in the guidelines made under the Bill.

There will also be a requirement for non-university providers to provide particular data on courses that have been accredited by the Minister.

Interstate Universities

The Bill implements protocol 4 of the National Protocols by allowing the Minister to investigate, if necessary, an interstate university that is operating through an agent in Queensland.

Currently, the Act provides for the automatic recognition of the operation of interstate universities in Queensland. Part 5 of the Bill provides for the Minister to grant automatic approval to any interstate

universities that operate in Queensland through an agent only if the university meets the strict application requirements. The application must provide details of the interstate university's place of operation in the State and details of the agent. The university must also provide an undertaking that it will comply with the National Protocols by taking full responsibility for the operation through an agent. A standard condition of the approval is that the Minister is allowed to investigate the Queensland operations of an interstate university by an agent if there is reasonable cause to believe the operation is not complying with the National Protocols. The investigation will only be conducted following consultation with the relevant interstate Minister. The Minister may cancel the approval if the interstate university's delivery of a course is not compliant with protocol 4.

Limiting use of the Title 'University' and Conferral of Higher Education Awards

The Bill continues to protect of the term 'university' by prohibiting its use except by institutions that are universities under the Act.

The Bill also prohibits the offering of courses leading to higher education awards, and conferring of those awards, without the Minister's approval.

Alternative Method of Achieving the Policy Objectives

There are no appropriate or reasonable alternative ways of achieving the policy objectives. The MCEETYA commitment is to provide for recognition of the National Protocols through legislation.

Estimated Cost for Government Implementation

Implementation of the proposed amendments will not result in any additional costs to the Department of Education that cannot be met from within the existing budget.

Consistency with Fundamental Legislative Principles

Aspects of the Bill that raise possible fundamental legislative principles are outlined below.

Use of the National Protocols and Australian Qualifications Framework (AQF)

The Parts of the Bill that provide for approvals of higher education institutions (i.e. Parts 2 to 5) refer to the National Protocols as the key document to which the Minister must refer when assessing applications. The criteria contained in the National Protocols are used as the guiding criteria for reaching decisions under the Act.

The Bill imposes an additional requirement on interstate universities, that is, in order to be recognised, a university must be listed on the Australian Qualifications Framework Register (see Schedule 2).

It is arguable that referring to the National Protocols and the Australian Qualifications Framework does not have sufficient regard to the institution of Parliament in that it allows for the delegation of legislative power and does not subject the exercise of the delegated legislative power to the scrutiny of the Legislative Assembly.

The management of the National Protocols and AQF are the responsibility of MCEETYA. The Minister for Education is a member of MCEETYA and is involved in the maintenance and operation of the National Protocols and the AQF.

The National Protocols and the AQF are an integral part of a national framework for higher education in Australia that ensures national consistency.

As such, the provisions are justifiable given the status the national framework and the fact that all states and territories recognise the National Protocols and the AQF.

Making of Guidelines

Clause 84 of the Bill enables the Minister to make guidelines for the Act. As the Minister, rather than the Legislative Assembly, has responsibility for the making of these guidelines, it may be contended that this approach does not have sufficient regard to the institution of Parliament.

The guidelines will include detailed information about administrative requirements and how an applicant should deal with issues and supporting material for each type of application under the Act. Therefore, the guidelines will not be easily translated into a legislative format.

Reversal of the Onus of Proof

Clause 78 of the Bill effectively provides that an act or omission of a person's representative (relating to a proceeding for an offence under the Bill) is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. The person will therefore be taken to have committed the relevant offence unless the person can prove that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 79 of the Bill provides that, if a corporation is convicted of an offence against the legislation, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with that provision. This clause therefore presumes an executive officer of the corporation to be guilty until the officer can prove that the officer took all reasonable steps to ensure the corporation complied with the provision; or that the officer was not in a position to influence the conduct of the corporation in relation to the offence.

These provisions effectively provide for the reversal of the onus of proof. Given that the objects of the Bill are to uphold the standards of education delivered by higher education institutions operating in Queensland and to maintain public confidence in the higher education sector in the State, it is appropriate that:

- persons be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation;
- an executive officer, who is in a position to influence the conduct of the corporation, be required to ensure that the corporation complies with the legislation; and
- an executive officer who is responsible for a contravention of the legislation, be accountable for his or her actions and not able to 'hide' behind the corporation.

As such, the provisions are warranted to ensure that there is effective accountability at a corporate level.

Transitioning of Overseas Higher Education Institutions

Overseas higher education institutions are approved under Part 3 of the Bill. Under the current Act holders of approvals to operate as foreign institutions are effectively given an on-going approval on the basis that

their accreditation in their home jurisdiction remains valid. These approvals will be revoked upon the commencement of the new Act, and replaced with an automatic twelve-month approval to operate as an overseas higher education institution under the new Act. Those overseas providers wanting to continue operating past this twelve-month period will be required to apply for renewal under the new Act.

The effect of the new legislative provisions will be to remove an existing right held by the three overseas providers currently operating in Queensland. These providers were approved prior to 2000 and consequently have not undergone an assessment process according to the National Protocols. There is a quality risk in permitting these providers to continue operating outside the new nationally agreed framework. The new approval process is therefore warranted to ensure the integrity of overseas higher education institutions. The Bill provides for sufficient time for the institutions to apply for renewal of an approval.

Transitioning of Interstate Non-University Providers

Higher education courses offered by non-university providers are accredited under Part 4 of the Bill. Currently, interstate non-university providers properly accredited in another state or territory are permitted to operate in Queensland under the automatic recognition provided by the definition of higher education in the Act. With the omission of the definition from the new Act, this automatic recognition will no longer apply, and interstate non-university providers will need to seek Ministerial approval to operate in Queensland in the same way as local non-university providers. By way of transition, interstate non-university providers will be granted an automatic twelve-month approval to operate as a non-university provider under the new Act. Those interstate providers wanting to continue operating past this twelve-month period will then be required to apply for accreditation under the new Act.

This change will remove the existing freedom to operate in Queensland without approval. However, it will address the quality risk in the current arrangement where interstate non-university providers are able to operate in Queensland without any scrutiny of their operations. All other states and territories have implemented, or are in the process of implementing, similar systems. The new accreditation requirements contained in the Bill are warranted to ensure integrity of the operation in Queensland of interstate non-university providers. The Bill provides for sufficient time for the providers to apply for accreditation.

Transitioning of Interstate Universities Operating through an Agent

Interstate universities are approved under Part 5 of the Bill. Currently, interstate universities are permitted to operate in Queensland via an agency arrangement without restriction. This system will end upon commencement of the new Act. Current interstate universities operating in Queensland through an agency arrangement will have three months after the Act commences to apply to the Minister for approval of the arrangement.

It is considered appropriate that the Minister approves interstate universities operating through an agent to ensure that the delivery of a higher education course complies with the National Protocols.

Consultation

In 2002, the Office of Higher Education held workshops for major stakeholders to discuss the review of the Act. The stakeholders included all non-university providers in Queensland and course-assessment panel members (including representatives from Queensland Universities) appointed under the Act.

In 2003, the following stakeholders were consulted on an exposure draft of the Bill:

- Queensland University of Technology
- University of Queensland
- James Cook University
- Griffith University
- University of the Sunshine Coast
- Central Queensland University
- University of Southern Queensland
- Australian Catholic University
- Bond University
- Asian Pacific Institute
- Australian College of Theology
- Brisbane College of Theology
- Chartered Secretaries Australia

- Christian Heritage College
- ICI College
- Institute of Chartered Accountants in Australia
- International Management Centres Australia
- Nazarene Theological College
- Shafston International College
- Australian College of Natural Medicine
- Gestalt Therapy & Training Centre
- QANTM
- Queensland Baptist College of Ministries
- Queensland Institute of Business & Technology
- Royal Australian College of General Practitioners
- Russo Institute of Technology.

The following government departments and agencies were consulted in relation to the Bill:

- Department of the Premier and Cabinet
- Queensland Treasury
- State Development
- Department of Employment and Training
- Department of Justice and Attorney-General
- Crown Law
- Department of Health
- Department of Primary Industries.

Interstate Ministers responsible for higher education in all mainland states and territories were also consulted on an exposure draft of the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the Act.

Clause 3 provides that the Act binds all persons including the State and the Commonwealth and other States. However, nothing in the Act makes the Commonwealth or a State liable to be prosecuted for an offence.

Division 2—Interpretation

Clause 4 provides that particular words used in the Act are defined in the Dictionary in Schedule 2 (located at the end of the Bill).

Division 3—Objects

Clause 5 provides for the objects of the Bill. The objects set out in subsection 5(1) are important for guiding the administration of the legislation. These objects are:

- to uphold the standards of education delivered by higher education institutions operating in Queensland; and
- to maintain public confidence in the higher education sector in the State.

This clause also sets out the ways in which the objects of the Act are to be achieved. The matters listed in subsection (2) are the principal mechanisms that enable the objects of the Act to be achieved, namely:

- establishing a process for the establishment or recognition of a university in the State;
- providing for the approval of the operation of overseas higher education institutions in Queensland;

- providing for the accreditation of higher education courses proposed to be offered by non-university providers;
- providing for the approval of the operation of interstate universities under an agency arrangement in Queensland; and
- limiting the use of a title that consists of, or includes, the word 'university'.

PART 2—ESTABLISHMENT OF, AND OR RECOGNITION AS, A UNIVERSITY

Division 1—Application for Minister's approval

Clause 6 provides for the procedural requirements for the Minister to approve an application for a higher education institution to be established or recognised under an Act. Once the Minister has approved an application, an institution can be either established under its own enabling Act, or recognised via an Act, as a university.

Subsection 6(2) identifies that the application is to be made in writing to the Minister and is to be accompanied by a fee to be prescribed under a regulation.

Clause 7 requires the Minister to establish a committee to consider an application made under section 6. The committee must consist of three or more persons who are appointed by the Minister. When considering the appointment of a committee member the Minister must be satisfied that the person has a substantial knowledge and experience of either academic affairs, university management, the design development and delivery of higher education courses or business management. The purpose is to ensure that persons with relevant experience and knowledge consider applications.

Division 2—Public notification of application

Clause 8 requires the committee to publish a notice about the application as soon as practicable. This notice must be published on the same day, in a

newspaper circulating throughout Queensland and any regional newspaper circulating generally in the region in which the institution is located or proposed to be located. The notice must include certain information including the name of the applicant; the institution's location or proposed location; where the description statement for the application may be inspected; the description statement is posted on the department's website; the statement that anyone is able to make a submission to the committee about the application; and how to properly make a submission. The notice should also state the period during which submissions may be made. This period must be at least 14 days after the publication of the notice.

Clause 9 requires the committee to prepare a description statement as soon as practicable after the application is referred. The statement must be available for inspection free of charge at the department's head office during ordinary office hours. The statement must also be made available on the department's web site. The statement is intended to provide information to the community for the purpose of making a submission to the committee regarding the application.

Clause 10 provides that a person has the right to make a submission to the committee about the submission.

Clause 11 requires the committee to accept a submission if it is a "properly made submission". Subsection (1) sets out the criteria that a submission must meet in order to be a "properly made submission". However, the committee may accept a submission even if it is not a properly made submission.

Division 3—Recommendation by committee

Clause 12 provides that the committee must consider the extent to which the proposal meets the relevant criteria in the National Protocols. These criteria include:

- authorisation by law to award higher education qualifications across a range of fields and to set standards for those qualifications which are equivalent to Australian and international standards;
- teaching and learning that engage with advanced knowledge and inquiry;
- a culture of sustained scholarship extending from that which informs inquiry and basic teaching and learning, to the creation

of new knowledge through research, and original creative endeavour;

- commitment of teachers, researchers, course designers and assessors to free inquiry and the systematic advancement of knowledge;
- governance, procedural rules, organisation, admission policies, financial arrangements and quality assurance processes, which are underpinned by the values and goals outlined above, and which are sufficient to ensure the integrity of the institution's academic programs; and
- sufficient financial and other resources to enable the institution's program to be delivered and sustained into the future.

Clause 13 enables the committee to request further information or documents at any time from the point when the application is initially received until the committee makes its recommendation. The committee must give the applicant a minimum of 14 days to comply with the committee's request. If the applicant fails to comply with the requirements within the time required by the notice the applicant is taken to have withdrawn the application.

Clause 14 states that after the committee has considered the application the committee must provide a report to the Minister and to the applicant. The report advises the Minister of the committee's recommendation as to whether the university should be established or recognised, and any conditions that the committee deems necessary. The recommendation provided by the committee must include the reasons for the recommendation. By providing the applicant with the report including reasons, the applicant is informed of the recommendations that may affect the application. The applicant may make representations to the Minister under clause 15 about any conditions recommended in the report.

Clause 15 applies if the committee has recommended to the Minister to grant the application subject to conditions. The applicant may make written representations to the Minister within 14 days of receipt of the committee's report.

Division 4—Decision of Minister

Clause 16 requires the Minister to either grant or refuse the application. The Minister must consider the committee's report but is not bound by any

of the recommendations in the report. The Minister must be satisfied that the institution will comply with the relevant criteria mentioned in the National Protocols.

If the Minister decides to grant the application the Minister must as soon as practicable provide the applicant with a notice of the decision. If the Minister decides to refuse the application, the Minister must as soon as practicable provide an information notice. The information notice for a decision made by the Minister, is a notice that must state the decision made by the Minister; the reasons for the decision; note that the person may appeal the decision within 28 days; and note the way the person may appeal against the decision.

If the Minister does not make a decision on the application within 12 months after its receipt, the Minister is taken to have decided to refuse the application. However, subsection (8) provides that if the Minister and the applicant agree under clause 17 to an agreed extended day by which the decision is to be made, clause 16(7) is subject to clause 17.

The Minister's decision is only to approve the establishment or recognition of a proposed university under an Act. Legislation must be subsequently enacted to establish or recognise a university.

Clause 17 enables the Minister to extend timeframes in which to make a decision because of the complexity of the issues that need to be considered in reaching a decision. Extension of timeframes can only occur if, prior to the day that is 12 months after the application was received by the Minister ('final consideration day'), the Minister and the applicant agree in writing on a new date (the 'agreed extended day') by which the application is to be decided. If by this 'agreed extended day' the Minister has not decided an application, the Minister is taken to have refused the application.

Clause 18 enables the Minister to impose conditions when granting an application. These conditions must be relevant and reasonable. For example, a condition may be imposed on a new university where the assessment of the proposal is based on a plan (rather than an existing institution) requiring a period of sponsorship or mentoring by an established higher education institution. Other conditions may relate to:

- the conduct of teaching and learning;
- the conduct of research;
- governance arrangements, procedural rules, organisation, admission policies and quality assurance systems; and
- financial and other resources.

The Minister must give the applicant as soon as practicable an information notice about the decision to impose conditions. This is to provide the applicant with an opportunity to appeal the decision of the Minister to impose conditions.

Division 5—Review of university's operation

Clause 19 requires that the Minister must review a newly established or recognised university after its fifth anniversary. The review will identify whether the university is complying with the relevant criteria in the National Protocols. This process is to ensure that newly established universities continue to maintain high-level standards of higher education.

PART 3—OVERSEAS HIGHER EDUCATION INSTITUTIONS

Division 1—Interpretation

Clause 20 provides definitions for the purpose of Part 3.

The term 'operate' is defined to include the operation of an overseas higher education institution in Queensland by means of an electronic communication (e.g. the internet).

Clause 21 defines an operational plan for an overseas higher education institution as a document that details the operation of the institution in Queensland by reference to the relevant criteria in the National Protocols. The plan must address the following nine 'key details':

(a) the accreditation of the course;

(b) the institution's governing body (i.e. the applicant);

(c) the premises where the institution is to operate in Queensland;

(d) the facilities and resources for the operation, at the premises to enable the institution to deliver the courses described in the operational plan;

(e) if the course is be delivered through an agent of the institution, the name and address of the agent

(f) the mode of delivery of education to be used in the operation (e.g. internal education or distance education);

(g) the learning outcomes of the course to be offered by the institution operation;

(h) the requirements of the course to achieve the learning outcomes. This information may comprise of a document that outlines the course structure and desired learning outcomes; and

(i) the level and name of the award that may be attained on successful completion of the course.

Division 2—Preliminary

Clause 22 makes it an offence for a person to operate as an overseas higher education institution in Queensland unless the person has gained the Minister's approval under this part of the Act.

Clause 23 provides that if an overseas higher education institution has an approval under this Part, the operational plan for the institution must be made available for inspection free of change at the institution's premises in Queensland during ordinary office hours (i.e. 9.00 am-5.00 pm).

Division 3—Applications for Approval

Clause 24 mandates the procedural requirements for an approval of an overseas higher education institution to operate in Queensland. The application must be made to the Minister in writing and include the proposed operational plan for the institution. The application is also to be accompanied by the prescribed fee.

Clause 25 requires the Minister to make a decision to grant, or refuse to grant, the application. When making the decision the Minister must be satisfied that the institution has complied with the relevant criteria mentioned in the National Protocols. For example, the Minister may consider the operational plan to determine whether the criteria have been addressed.

The relevant criteria mentioned in the National Protocols include:

- that it is a bona fide institution, legally established in its country of origin;
- that the courses offered have been properly accredited in the provider's country of origin by an authority that, in the opinion of the Minister, is the appropriate authority;
- where the standing of the institution's accreditation status is not acceptable to the Minister, the Minister may require that the proposed courses to be subject to a full accreditation process;
- the course or courses are to be comparable with the requirements and learning outcomes of courses at the same level in a similar field in Australia;
- that the delivery arrangements, including the arrangements for academic oversight and quality assurance proposed by the overseas institutions, are comparable to those offered by accredited Australian providers; and
- that the appropriate financial and other arrangements exist to permit the successful delivery of the course in the Australian jurisdictions (i.e. Queensland).

Subsection (3) enables the Minister to examine the proposed operation in Queensland when assessing the application.

Subsection (4) provides that if the Minister decides to grant the application, the Minister must as soon as practicable provide the applicant with notice of the decision. This notice is to include the term of approval (clause 27) and that the Minister has approved the operational plan (clause 28).

Subsection (5) provides that if the Minister decides to refuse the application, the Minister must as soon as practicable provide an information notice.

Subsection (6) provides that if the Minister does not make a decision on the application within 12 months after its receipt, the Minister is taken to have decided to refuse the application. The Minister must as soon as practicable provide an information notice under clause 87.

Subsection (7) provides that if the Minister and the applicant agree under clause 26 to an agreed extended day by which the decision is to be made, clause 25(6) is subject to clause 26.

Clause 26 enables the Minister to extend the decision-making period for an application under clause 25. The extension is designed to allow for evaluation of applications that are of a complex nature. Extension of timeframes can only occur if, prior to the day that is 12 months after the final application was received by the Minister ('final consideration day'), the Minister and the applicant agree in writing on a new date (the 'agreed extended day') by which the application is to be decided. If by this agreed extended day the Minister has not decided an application, the Minister is taken to have refused the application.

Clause 27 provides that the term of approval for institutions to operate in Queensland must not be more than 5 years. Clause 30 enables a holder of an approval to renew the approval before the term the approval ends.

Clause 28 requires that if the Minister has given approval for the institution to operate in Queensland, the Minister must endorse the plan with the Minister's written approval and provide this endorsed plan to the applicant.

Clause 29 enables the Minister to impose conditions when granting an application. These conditions must be relevant and reasonable. Conditions may apply to:

- the institution's governing body;
- the premises where the institution is to operate in Queensland;
- the facilities and resources, for the operation, at the premises;
- the agent and arrangement, if the operation is to be under an agency arrangement;
- the mode of delivery of education to be used in the operation;
- the learning outcomes of the course to be offered by the institution; and
- the requirements of the course to achieve the learning outcomes.

If the Minister decides to impose conditions, the Minister must as soon as practicable provide the applicant with an information notice about the decision to impose conditions.

Division 4—Renewal of Approvals

Clause 30 provides for the holder of an approval to apply for renewal within the period starting 12 months and ending 9 months before the term of the approval ends. This application must be in writing and be accompanied by the fee prescribed under a regulation and the proposed operational plan for the institution that is subject to the approval. The operational plan submitted with the application for renewal is either the holder's current operational plan or a new operational plan.

Subsection (3) provides that the Minister must consider the application and decide to renew the approval or refuse to renew the approval. Under subsection (4), the Minister may examine the operation of the institution in Queensland when deciding the application.

Subsection (5) provides that the Minister may decide to renew the approval only if the Minister is satisfied the institution is complying with the relevant criteria mentioned in the National Protocols. Subsection (6) provides that if the Minister decides to renew the approval, the Minister must give notice of the decision to the applicant.

Subsection (7) provides that if the Minister decides to refuse the application, the Minister must as soon as practicable provide an information notice.

Subsection (8) provides that if the Minister does not make a decision on the application within 1 year after its receipt, the Minister is taken to have decided to refuse the application. The Minister must as soon as practicable provide an information notice under clause 87.

Subsection (9) provides that if the Minister and the applicant agree under clause 31 to an agreed extended day by which the decision is to be made, clause 30(8) is subject to clause 31.

Clause 31 enables the Minister to extend the decision-making period for an application under clause 30. The extension is designed to allow for evaluation of applications that are of a complex nature. Extension of timeframes can only occur if, prior to the day that is 1 year after the final application was received by the Minister ('final consideration day'), the Minister and the applicant agree in writing on a new date (the 'agreed extended day') that the application is to be decided. If by this agreed extended day the Minister has not decided an application, the Minister is taken to have refused the application.

Clause 32 provides that the term of renewed approval for institutions to operate in Queensland must not be more than 5 years.

Clause 33 requires that if the Minister has given approval for the institution to operate in Queensland, the Minister must endorse the plan with the Minister's written approval and provide this endorsed plan to the applicant.

Clause 34 enables the Minister to impose conditions when granting an application. These conditions must be relevant and reasonable. Conditions may apply to:

- the institution's governing body;
- the premises where the institution is to operate in Queensland;
- the facilities and resources, for the operation, at the premises;
- the agent and arrangement, if the operation is to be under an agency arrangement;
- the mode of delivery of education to be used in the operation;
- the learning outcomes of the course to be offered by the institution; and
- the requirements of the course to achieve the learning outcomes.

If the Minister decides to impose conditions, the Minister must as soon as practicable provide the applicant with an information notice about the decision to impose conditions.

Clause 35 provides that if an applicant makes an application to renew their approval within the specified period, their approval is considered to continue until the Minister has made a decision for renewal. However, if the applicant's renewal is refused, the current approval only continues until the last day to appeal against the decision or an appeal from the decision has been decided.

Subsection (2) provides that an approval cannot be continued if the approval has been cancelled.

Division 5—Cancellation of Approvals

Clause 36 sets out the grounds for cancellation of an overseas higher education institution's approval under Part 3. The approval can be cancelled on the following grounds:

- the institution is not complying, or has not complied with, the relevant criteria mentioned in the national protocols;
- there has been a change to the key details in the operational plan without the Minister's approval under clause 42; or
- the holder has contravened a condition of the approval imposed under clause 29 or clause 34.

Clause 37 requires the Minister to give the overseas higher education institution a show cause notice where the Minister reasonably believes a ground under clause 36 exists to cancel an approval under this part. The show cause notice must set out:

- the action the Minister proposes to take;
- the grounds for the proposed action;
- an outline of the facts and circumstances forming the basis for the grounds;
- an invitation to the holder to show why the action proposed by the Minister should not be taken.

To allow the holder of the approval sufficient time to respond, the show cause period must be at least 30 days after the show cause notice is given to the holder.

Clause 38 provides that a holder of an approval may make representations in writing to a show cause notice issued under clause 37. These submissions must be made within the show cause period.

Subsection (2) provides that the Minister must consider all written submissions. This requirement ensures that the Minister gives consideration to any documented submission by the approval holder.

Clause 39 sets out the circumstance in which the Minister must end the show cause process without further action. The circumstance occurs when the Minister has considered the written representations by the approval holder and the Minister no longer believes the ground exists to cancel the accreditation. In this situation, the Minister is further required to give notice that no further action will be taken against the holder in respect of the show cause notice.

Clause 40 provides that the Minister may decide to cancel approval where:

- the Minister has considered the written submissions made by the holder in response to a show cause notice, and still believes that

grounds exist to cancel the accreditation and that cancellation is still warranted; or

- the holder has not made any written submissions in response to the show cause notice issued by the Minister.

Subsection (4) provides that where the Minister decides to cancel an approval, the Minister is required to give the approval holder an information notice to that effect as soon as is practicable.

Subsection (5) provides that a decision to cancel an approval takes effect on:

- the last day to appeal against the decision under Part 6; or
- the day an appeal is decided under Part 6.

Division 6—Change to Key Details

Clause 41 enables an overseas higher education institution that has an approval to operate in Queensland to apply to the Minister if there is a change to the key detail mentioned in the operational plan. This application must be in writing and be accompanied by the prescribed fee.

Subsection (2) provides that if there is a change to key details of the type mentioned in clause 21(2)(d) or clause 21(2)(h), an application to the Minister is only required in the following circumstances:

- the changes will have the effect of changing the learning outcomes for the course offered by the institution under the approval; or
- the changes will adversely affect the institution's ability to deliver the learning outcomes outlined in the endorsed operational plan.

Clause 42 requires the Minister to make a decision to grant, or refuse to grant, the application.

Subsection (2) provides that the Minister must be satisfied that the applicant will comply with the relevant criteria mentioned in the National Protocols.

Subsection (3) provides that if the Minister decides to grant the application, the Minister must as soon as practicable provide the applicant with a notice of the decision (a 'change notice'). The change notice must

include the decision and note the day before which the change must be effected (the 'change day').

Subsection (4) provides that if the Minister decides to refuse the application, the Minister must as soon as practicable provide an information notice to the applicant.

Subsection (5) provides that if the Minister does not make a decision on the application within 6 months after its receipt, the Minister is taken to have decided to refuse the application. The Minister must as soon as practicable provide an information notice to the applicant under clause 87.

Clause 43 provides that the holder of an approval under clause 42 must return the operational plan to the Minister within 14 days after receiving the notice. On receipt on this plan, the Minister must endorse the plan with a written approval and forward the endorsed plan to the approval holder.

Division 7—Other Provisions

Clause 44 makes it an offence for overseas higher education institution to confer, or hold out that they are authorised to confer, a higher education award unless the institution has the Minister's approval to offer the course leading to the award.

Subsection (2) makes it an offence for a person to hold out that an overseas higher education institution is authorised to confer a higher education award unless the institution is approved by the Minister to offer the course leading to the award.

PART 4—NON- UNIVERSITY PROVIDERS

Division 1—Preliminary

Clause 45 makes it an offence for a non-university provider to offer a higher education course unless the Minister accredits the course.

Division 2—Applications for accreditation

Clause 46 provides for the procedural requirements of an application by a non-university provider for accreditation of a course leading to a higher education award. A non-university provider is defined as a person, other than a university or overseas higher education institution, that provides, or proposes to provide, a higher education course.

Subsection (2) provides that the application must be in writing and provided to the Minister and accompanied by a fee to be prescribed under a regulation.

Clause 47 requires the Minister to make a decision to grant, or refuse to grant, the application. When making the decision the Minister must be satisfied that the institution has complied with the relevant criteria mentioned in the National Protocols.

The relevant criteria mentioned in the National Protocols include:

- a course design and content that satisfies the requirements set out in the AQF for the award level;
- a course that is comparable in requirements and learning outcomes to a course at the same level in a similar field at Australian universities;
- delivery arrangements, including matters of institutional governance, facilities, staffing, and student services that are appropriate to higher education and enable successful delivery of the course at the level proposed; and
- a provider with appropriate financial and other arrangements to permit the successful delivery of the course, and is a fit and proper person to accept responsibility for the course.

Subsection (3) enables the Minister to examine the proposed operation in Queensland when assessing the application.

Subsection (4) provides that if the Minister decides to grant the application, the Minister must as soon as practicable provide the applicant with a notice of the decision. This notice is to include the term of accreditation (clause 49).

Subsection (5) provides that if the Minister decides to refuse the application, the Minister must as soon as practicable provide an information notice.

Subsection (6) provides that if the Minister does not make a decision on the application within 1 year after its receipt, the Minister is taken to have decided to refuse the application. The Minister must as soon as practicable provide an information notice under clause 87.

However, subsection (7) provides that if the Minister and the applicant agree under clause 48 to an agreed extended day by which the decision is to be made, clause 47(6) is subject to clause 48.

Clause 48 enables the Minister to extend the decision-making period for an application under clause 47. The extension is designed to allow for evaluation of applications that are of a complex nature. Extension of timeframes can only occur if, prior to the day that is 1 year after the final application was received by the Minister ('final consideration day'), the Minister and the applicant agree in writing on a new date (the 'agreed extended day') by which the application is to be decided. If by this agreed extended day the Minister has not decided an application, the Minister is taken to have refused the application, and the Minister is to provide an information notice to the applicant under clause 87.

Clause 49 provides that the notice given to the applicant under section 47(4) states the term of approval for an accreditation. The term of approval remains in force for not more than 5 years. The non-university provider will have to reapply in accordance with clause 46 for accreditation of the course at the end of the term of approval.

Clause 50 imposes conditions on a non-university provider once a course has been accredited under clause 47. These conditions are that the governing body of the non-university provider:

- allows the Minister to enter, at any reasonable time, a place to examine the non-university provider's operation for the course at the place; and
- complies with all reasonable requests by the Minister to give the Minister information or records (or a copy of the records) that the governing body is keeping, or has control of, that are appropriate.

The purpose is to allow the Minister to consider whether the course, and the way of delivering it, is appropriate to the award. The Minister is to have regard to relevant criteria in the National Protocols.

Clause 51 enables the Minister to impose conditions on the accreditation that are relevant and reasonable. Conditions may apply to:

- the institution's governance structure;

- the premises where the institution is to operate in Queensland;
- the delivery arrangements for the course, including facilities, staffing, and student services;
- the financial arrangements for delivery of the course;
- the design and content of the course to be offered by the institution;
- the mode of delivery of education to be used in the operation;
- the learning outcomes of the course to be offered by the institution;
- the requirements of the course to achieve the learning outcomes.

If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant.

Division 3—Cancellation of accreditations

Clause 52 enables the Minister to cancel the accreditation of a course leading to a higher education award offered by the non-university provider in any of the following circumstances:

- where the course and the way of delivering it are no longer appropriate to the type of award, having regard to the relevant criteria mentioned in the national protocols; or
- the holder has contravened a condition of the accreditation (i.e. conditions under either clause 50, 51 or 57); or
- the holder does not provide an annual report for the course under clause 60.

Clause 53 requires the Minister to give the holder of accreditation (i.e. a non-university provider) a show cause notice where the Minister reasonably believes a ground exists under clause 52 to cancel the accreditation. The show cause notice must set out:

- the action the Minister proposes to take;
- the grounds for the proposed action;
- an outline of the facts and circumstances forming the basis for the grounds;

- an invitation to the non-university provider to show why the action proposed by the Minister should not be taken.

To allow the holder of the approval sufficient time to respond, the show cause period must be at least 30 days after the show cause notice is given to the non-university provider.

Clause 54 provides that a holder of an approval may make representations in writing to a show cause notice issued under clause 53. These submissions must be made within the show cause period.

Subsection (2) provides that the Minister must consider all written submissions. This requirement ensures that the Minister gives consideration to any documented submission by the holder.

Clause 55 sets out the circumstance in which the Minister must end the show cause process without further action. This occurs if the Minister has considered the written representations by the non-university provider, and the Minister no longer believes that the ground exists to cancel the accreditation. In this situation, the Minister is required to give notice that no further action will be taken against the holder in respect of the show cause notice.

Clause 56 provides that the Minister may decide to cancel the accreditation where:

- the Minister has considered the written submissions made by the non-university provider in response to a show cause notice, and still believes that grounds exist to cancel the accreditation and that cancellation is still warranted; or
- the non-university provider has not made any written submissions in response to the show cause notice issued by the Minister.

Subsection (4) provides that where the Minister decides to cancel an accreditation, the Minister is required to give the non-university provider an information notice to that effect as soon as is practicable.

Subsection (5) provides that a decision to cancel an accreditation takes effect on:

- the last day to appeal against the decision under Part 6; or
- the day an appeal is decided under Part 6.

Division 4—Changing conditions of accreditations

Clause 57 enables the Minister to change the conditions of an accreditation imposed by the Minister when the course was initially accredited, if there is reasonable basis to make the change. The Minister is also able to add conditions to an accreditation. Before the Minister decides to change the condition, the Minister must give a notice to the non-university provider who holds the accreditation. This notice includes:

- the particulars of the proposed change; and
- that the non-university provider may make written submissions to the Minister about the proposed change within a reasonable period of at least 21 days. The period of time is to be stated in the notice.

Subsection (2)(b) provides that the Minister must have regard to the written submissions made to the Minister by the non-university provider before the day stated in the notice.

Subsection (3) provides that if the Minister decided to change the conditions, the Minister must provide the non-university provider with an information notice about the decision.

Subsection (4) provides that the decision does not take effect until the last day to appeal against the decision, or an appeal from the decision has been decided.

Subsection (5) provides that the Minister may add conditions to an accreditation that is not subject to conditions.

Division 5—Other provisions

Clause 58 makes it an offence for a non-university provider to confer, or hold out that it is authorised to confer, a higher education award unless the course leading to the award is an accredited course for the provider.

Subsection (2) makes it an offence for a person to hold out that a non-university provider is authorised to confer a higher education award unless the course leading to the award is an accredited course for the provider.

Clause 59 requires a non-university provider to provide the Minister course survey data within 3 months after the day prescribed in regulation

(the "relevant day'). The information is to be provided in the approved form.

Clause 60 requires a non-university provider offering an accredited course to provide to the Minister a written report (an 'annual report'). The annual report is to be given to the Minister on or before 31 May in each year for the period from 1 January to 31 December of the previous year. The report must contain information about the course and the way of delivering it that will enable the Minister to determine, having regard to the relevant criteria in the National Protocols, whether continued accreditation of the course is justified. The type of information may include:

- the legal status of the provider;
- the financial status of the provider;
- the governance structure and arrangements for oversight of the educational process;
- the premises where the provider operates;
- the facilities and resources for the operation at the premises;
- the level and name of the award that may be attained on successful completion of the course;
- the mode of delivery of education to be used;
- the learning outcomes of the course or courses;
- the requirements of the course or courses to produce those learning outcomes;
- staffing resources to deliver the course or courses.

PART 5—INTERSTATE UNIVERSITIES

Division 1—Preliminary

Clause 61 provides for an offence for a person to operate an interstate university, under an agency arrangement, in Queensland unless the person has the Minister's approval under section 63.

Division 2—Applications for approval

Clause 62 provides that the governing body of an interstate university may apply for the Minister's approval to enable the university to operate, under an agency arrangement, in Queensland. An agency arrangement is defined in Schedule 2 as an arrangement between an interstate university and an educational institution established in Queensland under which the institution delivers a higher education course in Queensland on behalf of the university. For example, a New South Wales university may apply for the Minister's approval to enable the university to operate through a non-university provider in Queensland.

The application must be made to the Minister in writing and be accompanied by:

- the name and address of the agent under the arrangement;
- the place of delivery under the arrangement. The delivery place is defined in Schedule 2 to mean the place at which the higher education course is delivered; and
- a written undertaking by the governing body that it will ensure the delivery of a higher education course, under the arrangement, complies with the relevant criteria mentioned in the National Protocols.

The relevant criteria mentioned in the National Protocols include:

- quality and standards comparable to those on other campuses of the institution;
- teaching by staff qualified at a level comparable to those on other campuses of the institution;
- resources and facilities adequate for the delivery of the course; and
- adequate measures to protect the welfare of students.

Clause 63 requires the Minister to automatically grant an application if the application has strictly complied with requirements set out in clause 62(2). The Minister must as soon as practicable grant the application and give a notice to the applicant that the application has been granted.

Clause 64 provides for standard conditions that apply once an approval under section 63 has been granted. The conditions require that the agency under the agency arrangement:

- allows the Minister to enter at any reasonable time, the delivery place under the arrangement; and
- complies with all reasonable requests by the Minister to give the Minister information or records (or a copy of the records) the agent is keeping, or has control of.

The purpose is to allow the Minister to consider whether the delivery of the higher education course, and the way of delivering it, under the arrangements complies with the relevant criteria in the National Protocols.

Division 3—Cancellation of approvals

Clause 65 sets out the grounds for cancellation of an approval for an interstate university to operate, under an agency arrangement, in Queensland. The approval may be cancelled on the following grounds:

- the relevant criteria mentioned in the National Protocols about the delivery of a higher education course is not being complied with under an agency arrangement; or
- the holder has contravened a condition of the approval.

Clause 66 requires the Minister to give the holder of an approval under clause 63 a show cause notice where the Minister reasonably believes a ground under clause 66 exists to cancel an accreditation. The show cause notice must set out:

- the action the Minister proposes to take;
- the grounds for the proposed action;
- an outline of the facts and circumstances forming the basis for the grounds;
- an invitation to the holder of the approval to show why the action proposed by the Minister should not be taken.

To allow the holder of the approval sufficient time to respond, the show cause period must at least 30 days after the show cause notice is given to the holder.

Clause 67 provides that a holder of an approval may make representations in writing to a show cause notice issued under clause 66. These submissions must be made within the show cause period.

Subsection (2) provides that the Minister must consider all written submissions. This requirement ensures that the Minister gives consideration to any documented submission by the approval holder.

Clause 68 sets out the circumstances in which the Minister must end the show cause process without further action. The circumstance occurs when the Minister has considered the written representations by the approval holder, and the Minister no longer believes the ground exists to cancel the accreditation. In this situation, the Minister is required to give notice that no further action will be taken against the holder in respect of the show cause notice.

Clause 69 provides that the Minister may decide to cancel approval where:

- the Minister has considered the written submissions made by the holder in response to a show cause notice, and still believes that grounds exist to cancel the approval and that cancellation is still warranted; or
- the holder has not made any written submissions at all in response to the show cause notice issued by the Minister.

Subsection (4) provides that where the Minister decides to cancel an approval, the Minister is required to give the approval holder an information notice to that effect as soon as is practicable. The Minister is also to give the agent a copy of the information notice.

Subsection (5) provides that a decision to cancel an approval effect on:

- the last day to appeal against the decision under Part 6; or
- the day an appeal is decided under Part 6.

Division 4—Impositions of conditions on approvals

Clause 70 enables the Minister to impose conditions on an approval under clause 63 if there is a reasonable basis for the imposition. As an approval is automatic under clause 63 if the requirements under clause 62(2) are met, the holder is given an opportunity to make written submissions to the Minister about conditions that are subsequently imposed by the Minister.

Under subsection (2) the Minister is required to give a notice to the approval holder about the decision to impose conditions and informing the holder of the opportunity to make written submissions. The Minister must

have regard to the submissions if the submission is made before the day stated in the notice.

Subsection (3) requires the Minister to provide the holder with an information notice about a decision to impose conditions. This provides the approval holder with another opportunity to have the decision to impose conditions reviewed.

Subsection (4) provides that the decision to impose conditions does not take effect until:

- the last day to appeal against the decision; or
- if an appeal has been lodged, the day the appeal is decided.

Division 5—Other provisions

Clause 71 makes it an offence for an interstate university operating in Queensland, under an agency arrangement, to confer or hold out that the university is authorised to confer, a higher education award unless the university is approved, under clause 63, to offer the course leading to the award.

Subsection 71(2) makes it an offence for a person to hold out that an interstate university operating in Queensland under an agency arrangement to confer or hold out that the university is authorised to confer, a higher education award unless the university is approved, under clause 63, to offer the course leading to the award.

PART 6—APPEALS

Clause 72 specifies that persons who are given, or entitled to be given, an information notice for an original decision may appeal against the decision under Part 6 of the Act. An appeal is made to the District Court. Part 6 is to be read in conjunction with the provisions of the *Uniform Civil Procedure Rules 1999*, which deal with appeals to the District Court.

Clause 73 specifies where an appeal may be started and the timeframes for filing the notice of appeal. The court has the power to extend the timeframes for filing the notice of appeal.

Clause 74 specifies the powers that the District Court has in deciding an appeal and provides that an appeal is by way of rehearing.

Clause 75 sets out the powers the court has when deciding the appeal. The court may confirm the original decision; amend the original decision; substitute another decision for the original decision; or set aside the original decision and return the issue to the Minister with directions.

Subsection (2) specifically provides that if a court decides to substitute another decision for the original decision, the court has the same powers as the person who made the original decision. For example, the court has the same powers as the Minister to approve an application under section 25 when hearing an appeal from a decision of the Minister to refuse to approve an overseas higher education institution's application to operate in Queensland.

PART 7—EVIDENCE AND LEGAL PROCEEDINGS

Division 1—Evidence

Clause 76 specifies those matters which do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Division 2—Proceedings

Clause 77 provides for offences under the Act to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Clause 78 specifies that an action or omission of a person's representative, in relation to an offence against the Act, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. However, the person can utilise the defence provided for under this provision and prove that they could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 79 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision; or that they were not in a position to influence the conduct of the corporation in relation to the offence.

PART 8—REGISTER

Clause 80 requires that the Minister maintain a register that captures details of approvals of overseas higher education institutions; accredited courses provided by non-university providers; and approvals of interstate universities operating through an agent.

Subsections (3) to (5) set out the information that must be contained in the register for each of these institutions.

Clause 81 requires the Minister make the register available to the public. A fee may be prescribed under a regulation for the inspection of the register and to copy the register. If such a fee is prescribed, a person must pay the fee.

PART 9—MISCELLANEOUS

Clause 82 makes it an offence for person to use the title 'university' in relation to an education institution, education facility, school, college or other place that delivers a course of education, unless it is a university.

Subsection (2) further provides that a person must not hold out an educational institution, education facility, school, college or other place that delivers a course of education, as being a university unless it is a university. For example, a college that is not a university would commit an offence if it calls its premises a 'university'. This does not prevent a person from using the term 'university' for the purposes of naming a particular

place (e.g. 'University Bookshop' or 'University Avenue'), if the place is not an educational institution.

Subsection (3) provides for a specific exemption from the offences in this clause for the education institution known as 'University of the Third Age'.

Clause 83 provides for protection from liability for the Minister for acts done, or omissions made, honestly and without negligence under the Act. The liability will instead attach to the State.

Clause 84 provides for the Minister to issue guidelines under this Act.

Subsection (2) provides for matters about which a guideline may be made. However, guidelines are not limited to the matters set out in this subsection.

The chief executive must keep a copy of a guideline:

- available for inspection at the head office of the department;
- available for inspection at any other place the chief executive considers appropriate;
- available for supply to a person; and
- on the department internet site at www.education.qld.gov.au.

Inspection of the guidelines and taking extracts from the guidelines is to be free of charge.

Clause 85 empowers that the Minister may delegate the Minister's powers under this Act to a person that has the qualifications, experience or standing appropriate to exercise the power.

Clause 86 requires that as soon as practicable after the end of each financial year, the Minister is to prepare a report about the operation of this Act during that year. The Minister must cause a copy of the report to be laid before the Legislative Assembly.

Clause 87 clarifies that if the Minister is taken to have decided to refuse to grant an application under the Act, the Minister is required to give the applicant an information notice about the decision.

Clause 88 provides that the Minister may approve forms for use under this Act.

Clause 89 empowers the Governor in Council to make regulations under this Act.

PART 10—REPEAL AND TRANSITIONAL PROVISIONS

Division 1—Repeal

Clause 90 repeals the *Higher Education (General Provisions) Act 1993*.

Division 2—Transitional provisions

Clause 91 provides for definitions of "commencement" and "repealed Act" for the purposes of Division 2.

Clause 92 states that if an Act or document refers to the *Higher Education (General Provisions) Act 1993* the reference may be taken to be a reference to the Bill (if the context permits).

Clause 93 provides that if a proposal is made under the repealed Act for a university to be established or recognised in Queensland at the time this Bill commences, the proposal is taken to be an application under section 6 of this Act.

Subsection (3) provides that sections 6(2)(c) and 19 do not apply to a proposal made under the repealed Act for a university to be established or recognised in Queensland. Therefore, no fee is required under section 6(2)(c) for such a proposal.

Clause 19 (Review of university's operation) of the Bill is not relevant to the transitioning of a proposal for a university to be established or recognised in Queensland made under the repealed Act. Therefore, clause 19 is excluded under subsection (3), as the review cannot operate until the university is established or recognised. However, clause 19 will apply to an application once it is approved under the Bill and the university is established or recognised under an Act (i.e. the university will be subject to a review after its fifth anniversary).

Clause 94 provides that if an institution held an approval to operate as a foreign university under section 6 of the repealed Act, the approval is taken to be an approval under section 25(2) of the Act ('continuing approval'). If the current approval was subject to a condition, the continuing approval is also subject to the condition.

The approval continues until the day that is one year after the commencement, unless the approval is surrendered or cancelled. A holder

of a continuing approval may apply to renew the approval before the expiry of the continuing approval. Under clause 30 of the Bill, (which sets out the requirements for applications for renewal), a holder of a continuing approval needs to apply for renewal within three months after the commencement of the Bill. This entails the preparation of an operational plan for the overseas higher education institution and submitting the operational plan with the application.

Subsection (6) provides that an operational plan under section 23 is not required to be available for inspection by the holder of a continuing approval until at least one year after the commencement of the Bill, as the renewal does not commence until this time. For example, if a holder applies for renewal, and the application is granted within the one-year period after the commencement of the Bill, under clause 23 the operational plan must be available for inspection after the one-year period has expired.

Clause 95 provides that if, at the commencement of the Bill, an application has been made under part 4 of the repealed Act and a decision on the application has not been made, the application is taken to be an application for an approval made under section 24.

However, subsection (3) provides that the applicant is not required to pay a fee or submit an operational plan for such a transitioned application.

Clause 96 provides that if a course has been accredited under section 10(2) the repealed Act and has not been cancelled at the time the Bill commences, the course is taken to be an accreditation of the course under clause 47(2) (the 'continuing accreditation'). If the accreditation was subject to a condition under the repealed Act, the continuing accreditation will also be subject to the condition.

The continuing accreditation continues until the last day the current accreditation expires unless the accreditation is surrendered or cancelled.

Clause 97 provides that if there is an existing application by a non-university provider for accreditation that was made under section 10(2) of the repealed Act, the application will become an application under section 46 of the Bill. However, the fee prescribed under clause 46(2)(c) does not apply.

Clause 98 provides that an interstate non-university provider which immediately before commencement of the Bill was offering a higher education course in Queensland may continue to offer the course until one year after the commencement of the Act (the "exemption period"), without being liable for an offence under section 45 or 58. For example, a New South Wales non-university provider offering a course in Queensland

before the commencement date will be able to continue to offer that course for one year after the commencement of the Bill. During the one-year period the provider must apply under clause 46 of the Bill for accreditation of the higher education course to be able to continue to offer the course in Queensland after the one-year period ends.

Subsection 98(4) provides that if the interstate non-university provider makes application for accreditation in Queensland under clause 46, the exemption period continues until the applicant is given notice of the decision about the application.

Clause 99 provides that clauses 61 and 71 do not apply to an interstate university operating in Queensland, under an agency agreement, for six months after the commencement of the Bill. This enables an interstate university already operating in Queensland to apply for approval within six months after the commencement of the Bill. The interstate university will not be committing an offence under the Bill by continuing to operate during this six-month period.

However, subsection 99(4) provides that if the governing body of the interstate university makes application for approval to operate in Queensland under clause 62, the six-month exemption period continues until the applicant is given notice of the decision about the application.

Clause 100 provides for the commencement and continuation of appeals to the District Court under the repealed Act.

Clause 101 provides for the commencement or continuation of proceedings for an offence against the repealed Act, as if the Bill had not been commenced.

PART 11—AMENDMENTS OF ACTS

Clause 102 provides that Schedule 1 amends the legislation mentioned in it.

SCHEDULE 1

Schedule 1 provides for consequential amendments to be made to certain Acts to omit references to the *Higher Education (General Provisions) Act 1993* and to insert references to the *Higher Education (General Provisions) Act 2003*.

Amendments are also made to the *Medical Practitioners Registration Act 2001* and the *Dental Practitioners Registration Act 2001* to repeal and replace provisions which will be redundant as a consequence of the repeal of section 8(3) of the *Higher Education (General Provisions) Act 1993*.

The new provision in the *Medical Practitioners Registration Act 2001* makes it an offence for health practitioners (other than medical practitioners and dentists) to use the title "doctor" unless they hold a doctorate. To help consumers distinguish between these health practitioners and medical practitioners, the provision also requires these practitioners, when using the title "doctor" in or in connection with the provision of a health service, to also indicate the doctorate held. The new provision in the *Dental Practitioners Registration Act 2001* makes it an offence for a registrant to use the title "doctor" unless used in conjunction with other specified titles (eg. dentist).

As a consequence of the repeal of section 8(3) of the current Act, Schedule 1 repeals section 24A of the *Veterinary Surgeons Act 1936.*

SCHEDULE 2

Schedule 2 sets out the dictionary terms used in this Act.