



New South Wales

Higher Education Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Higher Education Act 2001* (***the Act***), as a consequence of changes to the *National Protocols for Higher Education Approval Processes* (***the National Protocols***) that have been approved by the Ministerial Council on Education, Employment, Training and Youth Affairs, so as:

- (a) to provide for the recognition of certain universities for a provisional period, and
- (b) to require the National Protocols to be taken into account in connection with the registration of education institutions and accreditation of courses under the Act, and
- (c) to remove the requirement for an education institution seeking registration as an overseas university or overseas higher education institution to obtain accreditation under the Act of at least one of its courses before it can be registered as such, and
- (d) to enable certain education institutions to be allowed to accredit their own courses, and
- (e) to make other provision of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Higher Education Act 2001* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Recognition of universities

Schedule 1 [2] substitutes section 4 of the Act. The new section provides for education institutions to become Australian universities by inclusion in Part 1 or Part 2 of Schedule 1 to the Act. Part 1 will contain all universities that are currently listed in the Schedule. Other education institutions will only be capable of being included in Part 1 if they are established or recognised by an Act (rather than by or under an Act, as is presently the case). Part 2 will contain education institutions that, in accordance with the National Protocols, are to be recognised as universities for a provisional period. **Schedule 1 [11], [12], [14] and [17]** make consequential amendments to sections 19 and 25 and Schedule 1.

Application of National Protocols

Schedule 1 [4] inserts proposed subsection (5A) into section 5 of the Act. The new subsection will require decisions with respect to the registration of an education institution to have regard to the National Protocols.

Schedule 1 [7] inserts proposed subsection (3A) into section 7 of the Act. The new subsection will require decisions with respect to the accreditation of courses to have regard to the National Protocols.

Accreditation of overseas courses

Schedule 1 [3] amends section 5 (4) of the Act, which requires an education institution to obtain accreditation for at least one of its courses, so as to restrict the application of that subsection to institutions seeking registration as an Australian higher education institution. **Schedule 1 [8] and [9]** make consequential amendments to sections 14 and 15.

Self-accreditation of courses

Schedule 1 [5] amends section 7 (1) of the Act so as to enable an education institution to be authorised to accredit its own courses. Courses currently have to be accredited by the Director-General of the Department of Education and Training. **Schedule 1 [6] and [10]** make consequential amendments to sections 7 and 18.

Miscellaneous amendments

Schedule 1 [1] updates the definitions of *Australian university*, *degree* and *National Protocols* in section 3 (1) of the Act.

Schedule 1 [13] corrects a typographical error in section 25 (1) (i) of the Act.

Schedule 1 [15] and [16] amend Schedule 1 to the Act so as to change Victoria University of Technology to Victoria University, and Northern Territory University to Charles Darwin University, to reflect recent changes of name.

Schedule 1 [18] amends clause 1 of Schedule 3 to the Act so as to enable savings and transitional regulations to be made in connection with the enactment of the proposed Act.

First print



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Higher Education Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Higher Education Act 2001* as a consequence of amendments to the *National Protocols for Higher Education Approval Processes* that have been approved by the Ministerial Council on Education, Employment, Training and Youth Affairs; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Higher Education Amendment Act 2008</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Higher Education Act 2001 No 102	6
The <i>Higher Education Act 2001</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Omit the definitions of <i>Australian university</i> , <i>degree</i> and <i>National Protocols</i> from section 3 (1).	4
	Insert instead in alphabetical order:	6
	<i>Australian university</i> means an education institution listed in Part 1 or 2 of Schedule 1.	7
	<i>degree</i> includes a degree of any kind, including an associate degree and, in particular, the degrees of doctor, master and bachelor.	9
	<i>National Protocols</i> means the <i>National Protocols for Higher Education Approval Processes</i> (as approved by the Ministerial Council on Education, Employment, Training and Youth Affairs on 7 July 2006), as in force from time to time, and includes any guidelines established under those Protocols.	12
[2]	Section 4	17
	Omit the section. Insert instead:	18
	4 Australian universities	19
	(1) On the recommendation of the Minister, the Governor may, by proclamation published in the Gazette, amend Schedule 1 so as:	20
	(a) to include the name of an education institution in Part 1 or 2 of that Schedule, or	22
	(b) to vary the name of an education institution listed in Part 1 or 2 of that Schedule as a consequence of any change in its corporate name, or	24
	(c) to omit the name of an education institution from Part 1 or 2 of that Schedule.	26
	(2) A recommendation to include the name of an education institution in Part 1 of Schedule 1 may be given only in relation to an education institution that is established or recognised as a university:	29
	(a) by an Act of the Commonwealth, or	30
	(b) by an Act of this or some other State or Territory.	31

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Schedule 1 Amendments

(3)	A recommendation to omit the name of an education institution from Part 1 of Schedule 1 may be given only in relation to an education institution that is no longer established or recognised as a university by an Act referred to in subsection (2) (a) or (b).	1 2 3 4
(4)	In deciding whether to make a recommendation:	5
(a)	to include the name of an education institution in Part 2 of Schedule 1, or	6 7
(b)	to vary the name of an education institution listed in Part 2 of Schedule 1, or	8 9
(c)	to omit the name of an education institution from Part 2 of Schedule 1,	10 11
	the Minister must have regard to the National Protocols, any guidelines made for the purposes of section 19 (1) (a) and any regulations made for the purposes of section 25 (1) (a).	12 13 14
(5)	A proclamation is not invalid only because of a failure of the Minister to comply with the requirements of subsection (4).	15 16
[3]	Section 5 Registration of higher education institutions and overseas universities	17 18
	Insert “as an Australian higher education institution” after “section” in section 5 (4).	19 20
[4]	Section 5 (5A)	21
	Insert after section 5 (5):	22
(5A)	In deciding whether to register an education institution, or what conditions to impose on its registration, the Director-General must have regard to the National Protocols.	23 24 25
[5]	Section 7 Accreditation of higher education courses	26
	Insert “or may authorise the institution to accredit any such course” after “higher education course” in section 7 (1).	27 28
[6]	Section 7 (2), (3) and (4)	29
	Insert “or institution, as the case requires,” after “Director-General” wherever occurring.	30 31

[7] Section 7 (3A)	1
Insert after section 7 (3):	2
(3A) In deciding whether to accredit a course of study, or what conditions to impose on its accreditation, the Director-General or institution, as the case requires, must have regard to the National Protocols.	3 4 5 6
[8] Section 14 Unlawful provision of higher education courses	7
Omit section 14 (b). Insert instead:	8
(b) in the case of a course provided otherwise than by an Australian university:	9
(i) the course is accredited under Division 2 in relation to the institution, or	10 11 12
(ii) if the institution is an overseas university or higher education institution, the course is approved in accordance with the National Protocols.	13 14 15
[9] Section 15 Unlawful conferral of higher education qualifications	16
Omit section 15 (1) (c). Insert instead:	17
(c) in the case of a degree or post-graduate qualification conferred, otherwise than by an Australian university, in connection with a person's successful completion of a higher education course:	18 19 20 21
(i) the course was or is, as the case requires, accredited under Division 2 in relation to the institution, or	22 23
(ii) if the institution was or is an overseas university or higher education institution, the course was or is, as the case requires, approved in accordance with the National Protocols.	24 25 26 27
[10] Section 18 Register of higher education institutions	28
Omit "accredited in relation to an education institution as a higher education course under Division 2" from section 18 (1) (b).	29 30
Insert instead "accredited by the Director-General under Division 2 in relation to an education institution".	31 32

[11] Section 19 Administrative guidelines	1
Omit section 19 (1) (a). Insert instead:	2
(a) the procedure for assessing a proposal to recommend the making of a proclamation under section 4 (1),	3 4
[12] Section 25 Regulations	5
Omit section 25 (1) (a). Insert instead:	6
(a) the procedure for assessing a proposal to recommend the making of a proclamation under section 4 (1),	7 8
[13] Section 25 (1) (i)	9
Omit “on”. Insert instead “of”.	10
[14] Schedule 1 Australian universities	11
Insert at the beginning of the Schedule:	12
Part 1 Universities established or recognised by an Act	13 14
[15] Schedule 1	15
Omit “Victoria University of Technology” from the matter appearing under the heading Victoria .	16 17
Insert instead “Victoria University”.	18
[16] Schedule 1	19
Omit “Northern Territory University” from the matter appearing under the heading Northern Territory .	20 21
Insert instead “Charles Darwin University”.	22
[17] Schedule 1	23
Insert at the end of the Schedule:	24
Part 2 Universities established or recognised otherwise than by an Act	25 26

[18] Schedule 3 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
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