

HIGHER EDUCATION ACT 1988 No. 12

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Advanced education courses
4. Offences relating to unofficial universities etc.
5. Proceedings for offences
6. Regulations
7. Repeal of Higher Education Act 1975 No. 47
8. Abolition of Higher Education Board
9. Savings and transitional provisions

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

THE UNIVERSITY OF CHICAGO



HIGHER EDUCATION ACT 1988 No. 12

NEW SOUTH WALES



Act No. 12, 1988

An Act to repeal the Higher Education Act 1975 so as to abolish the Higher Education Board; and to continue certain provisions of that Act relating to higher education. [Assented to 21 June 1988]

See also Miscellaneous Acts (Higher Education) Amendment Act 1988.

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Higher Education Act 1988.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Advanced education courses

3. (1) In this section—

“authorised officer” means the Secretary of the Ministry of Education and Youth Affairs.

- (2) The authorised officer may, by order—

- (a) approve a course of study as an advanced education course (generally or in relation to any particular institution); and
- (b) determine the nomenclature of the academic award to be granted on completion of any such advanced education course.

- (3) The authorised officer may delegate to an officer of the Ministry of Education and Youth Affairs the power to make an order under this section.

- (4) The authorised officer may delegate to an institution—

- (a) with the approval of the Minister—the power to make an order under this section in relation to the institution; or
- (b) any function associated with the making of such an order (including the assessment of the suitability of courses of study as advanced education courses).

- (5) The regulations may make provision for or with respect to the making of orders under this section and, in particular, the assessment of the suitability of courses of study as advanced education courses.

- (6) The authorised officer may, for the purposes of this section, establish committees of suitably qualified persons to advise the authorised officer.

Offences relating to unofficial universities etc.

4. (1) In this section—

“Australian institution” means—

- (a) a corporation incorporated in Australia; or
- (b) an unincorporated body of persons associated together in Australia; or
- (c) any other institution established in Australia;

“degree” means a degree that evidences academic distinction;

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“official university or college of advanced education” means a university or college of advanced education—

- (a) established by an Act or Ordinance of the Commonwealth, a State or a Territory ; or
- (b) established by an instrument made under an Act or Ordinance of the Commonwealth, a State or a Territory, being an Act or Ordinance relating to the establishment of universities or colleges of advanced education generally; or
- (c) established by the Government of the Commonwealth, a State or a Territory; or
- (d) authorised by an Act or Ordinance of the Commonwealth, a State or a Territory to be called a university or a college of advanced education.

(2) A person who represents that an Australian institution is a university or a college of advanced education is guilty of an offence unless it is an official university or college of advanced education.

Maximum penalty: 5 penalty units.

(3) A person who represents that an Australian institution has conferred, or will or may confer, a degree is guilty of an offence unless—

- (a) the degree was or is to be conferred by or on behalf of an official university or college of advanced education; or
- (b) the degree evidences the completion of an advanced education course approved under this Act; or
- (c) the degree was or is to be conferred by or on behalf of a corporation, body or institution approved by the regulations for the purposes of this section.

Maximum penalty: 5 penalty units.

(4) For the purposes of this section, a person represents that a state of affairs exists if the person does or says anything, or causes or allows anything to be done or said, by which it is represented, or by which a belief may be induced, that the state of affairs exists.

Proceedings for offences

5. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

6. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of Higher Education Act 1975 No. 47

7. The Higher Education Act 1975 is repealed.

Abolition of Higher Education Board

8. The New South Wales Higher Education Board constituted under the Higher Education Act 1975 is abolished.

Savings and transitional provisions

9. Schedule 1 has effect.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 9)

PART 1—GENERAL**Definition**

1. In this Schedule—

“Higher Education Board” means the New South Wales Higher Education Board constituted under the Higher Education Act 1975.

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act.

Miscellaneous Acts (Higher Education) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect from the commencement of the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON ABOLITION OF HIGHER EDUCATION BOARD**Members of Higher Education Board**

3. (1) A person who, immediately before the commencement of this Act, held office as a member of the Higher Education Board—

- (a) ceases to hold office as such on that commencement; and

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(b) is not entitled to any remuneration or compensation because of the loss of that office.

(2) Nothing in this Act affects any arrangement for the appointment of any such person to a position in the service of the Government.

Transfer of assets, liabilities etc. of Board

4. On and from the commencement of this Act, any assets, rights, liabilities or obligations of the Higher Education Board shall become assets, rights, liabilities or obligations of the Crown in right of the State.

Construction of references

5. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to—

- (a) the Higher Education Board or the Chairman or any member of that Board; or
- (b) the New South Wales Advanced Education Board, the New South Wales Higher Education Authority or the New South Wales Universities Board or the Chairman or any member of either of those Boards or of that Authority,

shall be read as a reference to the Secretary of the Ministry of Education and Youth Affairs.

Saving of existing approvals of advanced education courses

6. An order or a determination made by the Higher Education Board and in force immediately before the abolition of that Board (being an order approving a course of study as an advanced education course or a determination of the nomenclature of the academic award to be granted on completion of the course) shall be taken to be an order under section 3.

Saving of existing approvals of institutions etc. conferring degrees

7. A corporation, body or institution approved for the purposes of section 14 of the Higher Education Act 1975 immediately before the commencement of this Act shall (subject to the regulations) be taken to be a corporation, body or institution approved by the regulations for the purposes of section 4 of this Act.

HIGHER EDUCATION BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Miscellaneous Acts (Higher Education) Amendment Bill 1988 is cognate with this Bill.

The object of this Bill is to repeal the Higher Education Act 1975 so as to abolish the New South Wales Higher Education Board. It is proposed that some of the functions of the Board will be undertaken by an Office of Higher Education which is to be established within the Ministry of Education and Youth Affairs.

The Bill continues (with modifications) certain provisions of the Higher Education Act 1975, including—

- (a) provisions for the approval of advanced education courses; and
- (b) prohibitions relating to unofficial universities and colleges of advanced education.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day to be appointed by proclamation.

Clause 3 continues the existing provisions of the Higher Education Act 1975 (section 11(3), (4)) relating to the approval of advanced education courses and the nomenclature of the academic awards for those courses. Colleges of advanced education are required by the legislation under which they are established to have their advanced education courses approved and private higher education institutions seek approval of their courses to gain recognition. The role of the Higher Education Board in granting approvals is to be transferred to the Secretary of the Ministry of Education and Youth Affairs and to any other officer of that Ministry delegated by the Secretary (such as the Director of the proposed Office of Higher Education). The clause provides for an institution to approve (by delegation made with the Minister's consent) its own advanced education courses or carry out its own assessment of courses etc.

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Clause 4 continues the existing provision of the Higher Education Act 1975 (section 14) which prohibits Australian institutions from being represented as universities or colleges of advanced education unless they are established by an Act or Ordinance, or by the Government, of the Commonwealth, a State or a Territory. The clause also continues the existing prohibition on an Australian institution conferring a "degree" unless it is such a university or college of advanced education or an institution approved by the Minister or unless the "degree" evidences the completion of an approved advanced education course referred to in clause 3 above. The existing provision has been modified to ensure that institutions such as the Bond University in Queensland may also be recognised.

Clause 5 provides that the offences created by or under the proposed Act are to be dealt with summarily by a Local Court.

Clause 6 empowers the Governor to make regulations.

Clause 7 repeals the Higher Education Act 1975.

Clause 8 abolishes the Higher Education Board.

Clause 9 is a formal provision that gives effect to the Schedule of savings and transitional provisions.

Schedule 1 contains savings and transitional provisions. Part 1 confers authority for the making of savings and transitional regulations consequent on the enactment of the proposed Act and cognate Act. Part 2 contains provisions consequent on the abolition of the Higher Education Board, including provisions which terminate the appointment of the existing members of the Board without compensation, transfer its assets, liabilities etc. to the Crown and preserve existing approvals of advanced education courses.

HIGHER EDUCATION BILL 1988

NEW SOUTH WALES



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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Higher Education Act 1988.

Commencement

- 5 2. This Act commences on a day to be appointed by proclamation.

Advanced education courses

3. (1) In this section—

“authorised officer” means the Secretary of the Ministry of Education and Youth Affairs.

- 10 (2) The authorised officer may, by order—

(a) approve a course of study as an advanced education course (generally or in relation to any particular institution); and

(b) determine the nomenclature of the academic award to be granted on completion of any such advanced education course.

- 15 (3) The authorised officer may delegate to an officer of the Ministry of Education and Youth Affairs the power to make an order under this section.

- (4) The authorised officer may delegate to an institution—

(a) with the approval of the Minister—the power to make an order under this section in relation to the institution; or

- 20 (b) any function associated with the making of such an order (including the assessment of the suitability of courses of study as advanced education courses).

- 25 (5) The regulations may make provision for or with respect to the making of orders under this section and, in particular, the assessment of the suitability of courses of study as advanced education courses.

(6) The authorised officer may, for the purposes of this section, establish committees of suitably qualified persons to advise the authorised officer.

Offences relating to unofficial universities etc.

4. (1) In this section—

- 30 “Australian institution” means—

(a) a corporation incorporated in Australia; or

(b) an unincorporated body of persons associated together in Australia; or

(c) any other institution established in Australia;

- 35 “degree” means a degree that evidences academic distinction;

Higher Education 1988

“official university or college of advanced education” means a university or college of advanced education—

- (a) established by an Act or Ordinance of the Commonwealth, a State or a Territory ; or
- 5 (b) established by an instrument made under an Act or Ordinance of the Commonwealth, a State or a Territory, being an Act or Ordinance relating to the establishment of universities or colleges of advanced education generally; or
- 10 (c) established by the Government of the Commonwealth, a State or a Territory; or
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Maximum penalty: 5 penalty units.

(3) A person who represents that an Australian institution has conferred, or will or may confer, a degree is guilty of an offence unless—

- 20 (a) the degree was or is to be conferred by or on behalf of an official university or college of advanced education; or
- (b) the degree evidences the completion of an advanced education course approved under this Act; or
- 25 (c) the degree was or is to be conferred by or on behalf of a corporation, body or institution approved by the regulations for the purposes of this section.

Maximum penalty: 5 penalty units.

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5. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

6. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

HIGHER EDUCATION BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to repeal the Higher Education Act 1975 so as to abolish the Higher Education Board; and to continue certain provisions of that Act relating to higher education.

See also Miscellaneous Acts (Higher Education) Amendment Bill 1988.

Higher Education 1988

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Repeal of Higher Education Act 1975 No. 47

7. The Higher Education Act 1975 is repealed.

5 Abolition of Higher Education Board

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9. Schedule 1 has effect.

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(2) Any such provision may, if the regulations so provide, take effect from the commencement of the Act concerned or a later day.

25 (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

30 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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*Higher Education 1988*SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(b) is not entitled to any remuneration or compensation because of the loss of that office.

(2) Nothing in this Act affects any arrangement for the appointment of any such person to a position in the service of the Government.

5 Transfer of assets, liabilities etc. of Board

4. On and from the commencement of this Act, any assets, rights, liabilities or obligations of the Higher Education Board shall become assets, rights, liabilities or obligations of the Crown in right of the State.

Construction of references

10 5. A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to—

(a) the Higher Education Board or the Chairman or any member of that Board; or

15 (b) the New South Wales Advanced Education Board, the New South Wales Higher Education Authority or the New South Wales Universities Board or the Chairman or any member of either of those Boards or of that Authority,

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