

HIGHER EDUCATION AMENDMENT BILL 2009

Order of the Day Taken Forthwith — Motion

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [3.33 pm] — without notice: I move —

That order of the day 13, Higher Education Amendment Bill 2009, be now taken.

By way of explanation, in the event that the house agrees to deal with this bill now, the minister will move to not require the bill to be sent to the Standing Committee on Uniform Legislation and Statutes and Review Committee. If agreed, he will then read in the second reading speech, and debate will then be adjourned.

Question put and passed.

*Non-referral to Standing Committee on Uniform Legislation and Statutes Review —
Standing Order Suspension — Motion*

HON PETER COLLIER (North Metropolitan — Minister for Energy) [3.34 pm] — without notice. I move —

That —

- (1) The Higher Education Amendment Bill 2009 do not stand referred to the Standing Committee on Uniform Legislation and Statutes Review; and
- (2) Standing order 230A(2) be suspended for the purposes of the Higher Education Amendment Bill 2009.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.35 pm]: The opposition will support the motion that the bill not be referred under standing order 230A to the Standing Committee on Uniform Legislation and Statutes Review. The reason for my speaking to this motion is that I do not want the opposition's agreement in this instance to be seen as setting an ongoing precedent. We will judge each request to consider a similar proposition on its merits. In this case, we think there is merit and good reasons to proceed to allow the chamber, as a whole, to deal with this piece of legislation without the benefit of it going to the Standing Committee on Uniform Legislation and Statutes Review Committee. I again make the point that we will consider each request that is before us on its merits, unless something changes in standing orders at some point in the future. We are happy to agree to this motion on the basis that we have particular support for the contents of the Higher Education Amendment Bill 2009 and we are happy to proceed to have the bill dealt with by the house, as a whole, without its going to that standing committee.

Question put and passed with an absolute majority.

Second Reading

HON PETER COLLIER (North Metropolitan — Minister for Energy) [3.36 pm]: I move —

That the bill be now read a second time.

The Higher Education Amendment Bill 2009 amends the Higher Education Act 2004, the act, to implement revised national protocols for higher education approval processes—the protocols. It also includes amendments to the act arising from operational experience since the act commenced some four years ago.

The state is a signatory to an intergovernmental agreement to implement the protocols that were originally approved by the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000. The protocols are the key element of a national quality assurance framework for Australian higher education. They are designed to ensure that consistent criteria and standards are applied across all states and territories. They provide the framework for regulating the establishment and recognition of Australian universities, the operation of overseas universities in Australia, authorising non-university providers to operate, and accrediting the courses of such providers. The ministerial council approved some revisions to the protocols on 7 July 2006, and some further protocols on 31 October 2007. These revisions were deemed necessary to reflect the experience since 2000 and to deal with emerging challenges. The bill being introduced is required to discharge Western Australia's national obligation to introduce those revisions.

With the significant development of higher education as an exported service, there has been a rapid expansion in the number of Australian institutions offering higher education awards onshore and offshore. The Australian export of education and training services currently earns in excess of \$15 billion, with Western Australia's share being approximately \$1 billion. The strength of the industry is highly reliant on the maintenance of Australia's reputation for quality. The protocols and the associated commonwealth, state and territory legislation are essential elements in the maintenance of quality in higher education. The provisions of this bill maintain and

clarify the state's processes in relation to non-university higher education providers, and for the consideration of applications for a new university, or for overseas universities to operate in Western Australia.

In summary, the bill has 10 main provisions.

Firstly, there is a stronger provision for the protection against fraudulent or negligent representation. Advice from the State Solicitor suggests that certain kinds of fraudulent or negligent representation are not captured under the existing offence provisions of the act. This concern is addressed by clarifying the offence provisions to facilitate proof.

Secondly, a new section provides that a request from an educational institution can be made to the minister to appoint a higher education advisory committee to report to the minister on whether the institution may meet the criteria for establishment as an Australian university. Although the minister will provide this advice to the institution, it is for Parliament to decide whether and in what form an institution will be established either as a university or as a lesser institution, such as a university college, consistent with the provisions of the protocols. There is also a new provision related to establishing a payment agreement to cover the costs incurred when considering whether an applicant meets the criteria for establishment as an Australian university. Since the request or application may require the state to incur considerable costs, the amending bill enables the minister to require the applicant to enter into a written arrangement between the applicant and the minister for the applicant to pay the reasonable costs and expenses incurred in considering the request or application.

Thirdly, a new section provides that an overseas education institution may apply to the minister for a determination that the institution meets the criteria for recognition in Western Australia as an overseas university. Again, an application for a determination may involve an agreement relating to the payment of costs incurred in considering the application.

Fourthly, the bill introduces a new category of application that enables a non-university provider to apply to become self-accrediting, meaning that some or all of its courses would no longer need to be externally accredited. The bill introduces provisions dealing with applications, standards and conditions for non-university providers seeking self-accrediting authorisation. The minister may grant a self-accrediting authorisation based on criteria and standards and advice from a higher education advisory committee. Self-accrediting authorisation will relate to specified courses within a field or a range of fields of study leading to specified awards. An application for self-accrediting status may involve a payment agreement.

Fifthly, the bill includes a provision in relation to determining the duration of a provider's authorisation to operate in Western Australia and a related transition provision. The provision of a time period for the authorisation of providers, which mirrors the time period for the accreditation of courses, is an essential amendment to the act. Under the proposed amendments, the minister may also make a provider's authorisation subject to conditions to ensure that standards in the authorisation are maintained, that the interests of students are protected, and that the authorisation may be suspended or revoked under certain circumstances.

Sixthly, there is a mutual recognition provision such that a course accredited elsewhere in Australia under corresponding legislation that implements the national protocols will be considered as accredited in Western Australia.

Under a seventh key provision, a ministerial accreditation of a higher education course is to be in force for five years after the day on which the course is registered unless otherwise specified, but the minister may extend the accreditation for a further six months under certain conditions. A transitional provision is made for providers who may need to seek an extension of their accreditation but are within the six-month period specified on the commencement of the amended act. The minister may at any time make a provider's authorisation subject to conditions to ensure that standards in the authorisation are maintained or that the interests of students are protected, subject to natural justice provisions.

An eighth provision of the bill is a new section that requires the minister to make a copy of a higher education advisory committee report available to an applicant and provide the applicant with an opportunity to request a review of the proposed report.

A ninth provision addresses the act's inadequate ministerial investigative powers that have made it extremely difficult for the state to exercise some of the key instruments in the act to establish and maintain standards, including the offence provisions. Ministerial investigative powers similar to those in the recently amended Vocational Education and Training Act 1996 are to be incorporated in the act.

Finally, the bill provides for the inclusion of immunity from tortious liability, which indemnifies officers and other persons performing functions under the act in good faith. Without an indemnity provision, it will be increasingly difficult to attract suitable members to higher education committees. The provision will not relieve

the state of liability, which means that a person disadvantaged by the negligent performance of the function under the act has a means of redress.

The bill has been developed following consultation with the commonwealth and all states and territories, as well as staff responsible for the administration of related state acts, including the Education Service Providers (Full Fee Overseas Students) Registration Act 1991 and part 4 of the Vocational Education and Training Act 1996. The act, when amended by the bill, will enable the state to implement the revised protocols in Western Australia. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

Sitting suspended from 3.45 to 4.00 pm