

Higher Education Amendment Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

Higher Education Amendment Bill 2009

A Bill for

An Act to amend the *Higher Education Act 2004*.

The Parliament of Western Australia enacts as follows:

1 **1. Short title**

2 This is the *Higher Education Amendment Act 2009*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Higher Education Act 2004*.

11 **4. Section 3 amended**

12 (1) In section 3 delete the definitions of:

13 ***higher education award***

14 ***National Protocols***

15 ***recognised Australian university***

16 ***section 10 determination***

17 (2) In section 3 insert in alphabetical order:

18

19 ***Australian Qualifications Framework*** means the
20 framework of educational qualification stated in the
21 implementation handbook for that framework
22 published by the Australian Qualifications Framework
23 Advisory Board as in force from time to time;

24 ***Australian university college*** means an education
25 institution, or part of an education institution, that —

- 26 (a) was originally established in Australia; and
27 (b) is established or recognised as a university
28 college by or under a written law of this State,

- 1 the Commonwealth, another State, the
2 Australian Capital Territory or the Northern
3 Territory;
- 4 **higher education award** means a qualification referred
5 to in the Australian Qualifications Framework as a
6 qualification that is issued in the higher education
7 sector;
- 8 **National Protocols** means —
- 9 (a) the National Protocols for Higher Education
10 Approval Processes approved by the Ministerial
11 Council on Education, Employment, Training
12 and Youth Affairs on 31 March 2000, as
13 amended from time to time; or
- 14 (b) if the regulations declare a document to be in
15 substitution for that protocol — a reference to
16 the substitute document, as amended from time
17 to time;
- 18 **payment agreement** means an agreement referred to in
19 section 28;
- 20 **section 10 determination**, in relation to an education
21 institution, means a determination made under
22 section 10;
- 23 **self-accrediting authorisation** means an authorisation
24 granted for a non-university institution under
25 section 13B.
- 26
- 27 (3) In section 3 in the definition of *Australian university* delete
28 “institution” and insert:
29
- 30 institution, or part of an education institution,
31

s. 5

1 (4) In section 3 in the definition of *non-university institution*:

2 (a) in paragraph (a) delete “a recognised” and insert:

3

4 an

5

6 (b) after paragraph (a) insert:

7

8 (ba) an Australian university college; or

9

10 (5) In section 3 in the definition of *provider’s authorisation* delete
11 “authorisation given to” and insert:

12

13 an authorisation granted for

14

15 **5. Part 2 Division 1 heading inserted**

16 Before section 6 insert:

17

18 **Division 1 — Protection of standards for**
19 **higher education**

20

21 **6. Section 6 amended**

22 (1) In section 6(1):

23 (a) in paragraph (a) delete “a recognised” and insert:

24

25 an

26

- 1 (b) after “Penalty:” insert:
2
3 a fine of
4
- 5 (2) In section 6(2):
6 (a) in paragraph (b) delete “organisation.” and insert:
7
8 organisation; or
9
- 10 (b) after paragraph (b) insert:
11
- 12 (c) an Australian university college or an agent of
13 such an institution that represents that the
14 institution is a university college or part of a
15 university college —
16 (i) by use of a title that includes the words
17 “university college”; or
18 (ii) in any other way.
19
- 20 (3) In section 6(3):
21 (a) in paragraph (a) delete “a recognised” and insert:
22
23 an
24
- 25 (b) after paragraph (a) insert:
26
- 27 (ba) an Australian university college; or
28
- 29 (c) in paragraph (d) after “(a),” insert:
30
31 (ba),
32

s. 7

- 1 (d) after each of paragraphs (a) and (b) insert:
2
3 or
4
5 (e) after “Penalty:” insert:
6
7 a fine of
8
9 (4) Delete section 6(4) and insert:
10
11 (4) A person must not represent that a course of study
12 leads to, will partially satisfy the requirements for, or
13 would entitle a person who satisfies the course
14 requirements to, the conferral of a higher education
15 award, unless —
16 (a) the course provider is —
17 (i) an Australian university; or
18 (ii) an Australian university college; or
19 (iii) a recognised overseas university;
20 or
21 (b) the course provider is an authorised
22 non-university institution and the course is
23 accredited.
24 Penalty: a fine of \$20 000.
25

26 **7. Sections 7A and 7B inserted**

27 After section 6 insert:
28

29 **7A. Representations about authorisation to accredit**
30 **higher education courses**

31 An education institution or an agent of an education
32 institution must not represent that the institution is

1 authorised to accredit a higher education course
2 unless a self-accrediting authorisation is in force for the
3 institution authorising it to accredit such a course.
4 Penalty: a fine of \$20 000.

5 **7B. Representations about admissions into higher**
6 **education courses**

7 A person must not represent that successful completion
8 of a course of study would satisfy, or partially satisfy,
9 the academic prerequisites for admission into a higher
10 education course unless the higher education course
11 provider has authorised that representation.
12 Penalty: a fine of \$20 000.
13

14 **8. Part 2 Division 2 heading and Part 2 Division 2**
15 **Subdivision 1 heading inserted**

16 Before section 7 insert:

17

18 **Division 2 — Universities**

19

20 **Subdivision 1 — Report about criteria for establishing**
21 **Australian university**

22 **9. Section 7 replaced**

23 Delete section 7 and insert:

24

25 **7. Report about criteria for establishing Australian**
26 **university**

- 27 (1) An education institution may request the Minister to
28 appoint a higher education advisory committee to
29 consider and report to the Minister on —
30 (a) whether the committee considers that the
31 institution meets the criteria set out in the

s. 10

- 1 National Protocols for establishing an
2 Australian university; and
3 (b) any other matter relevant to a decision on
4 whether the institution should be established as
5 an Australian university.
- 6 (2) A request must —
7 (a) be accompanied by a payment agreement; and
8 (b) include the prescribed information.
- 9 (3) The Minister may in writing, require the institution
10 making the request to provide further information in
11 relation to the request.
- 12 (4) The requirement is to specify a reasonable time within
13 which the institution must comply with the
14 requirement.
- 15 (5) The Minister may refuse to appoint a higher education
16 advisory committee, or may discharge a committee that
17 has been appointed, if the institution does not comply
18 with a requirement under subsection (3) within the time
19 specified in the requirement.
- 20 (6) The Minister must, as soon as practicable after
21 receiving the report of a higher education advisory
22 committee regarding an education institution, give a
23 copy of the report to the institution.
24

25 **10. Part 2 Division 2 Subdivision 2 heading inserted**

26 After section 7 insert:
27

28 **Subdivision 2 — Recognition of overseas universities**
29

1 **11. Section 8 amended**

2 In section 8(a) after “is” insert:

3

4 an overseas university or

5

6 **12. Section 9 amended**

7 (1) In section 9(1) after “institution” insert:

8

9 that is an overseas university, or part of an overseas university,

10

11 (2) Delete section 9(2)(a) and insert:

12

13 (a) be accompanied by a payment agreement; and

14

15 (3) After section 9(2) insert:

16

17 (3) The Minister may in writing, require the applicant to
18 provide further information in relation to the
19 application.

20 (4) The requirement is to specify a reasonable time within
21 which the applicant must comply with the requirement.

22 (5) The Minister may refuse the application if the applicant
23 does not comply with a requirement under
24 subsection (3) within the time specified in the
25 requirement.
26

1 **13. Section 10 replaced**

2 Delete section 10 and insert:

3

4 **10. Recognition of overseas universities**

5 (1) The Minister may determine that an education
6 institution meets the criteria for recognition as an
7 overseas university if satisfied that the institution meets
8 the criteria set out in the National Protocols for
9 overseas universities seeking to operate in Australia.

10 (2) Before making a determination, the Minister must have
11 regard to the report of the higher education committee
12 appointed to consider the matter.

13 (3) When making a determination, the Minister may also
14 have regard to the following —

15 (a) any national policies and agreements about the
16 governance and other characteristics of
17 overseas universities made by the Minister with
18 other education Ministers;

19 (b) any other relevant information.

20 (4) The Minister may make a determination subject to any
21 conditions relevant to —

22 (a) ensuring that the education institution meets or
23 continues to meet the criteria referred to in
24 section 10(1); or

25 (b) protecting the interests of the students enrolled
26 in the higher education courses provided by the
27 institution.

- 1 (5) If the Minister makes a determination under this
2 section, the Minister must arrange for a copy of the
3 determination to be laid before each House of
4 Parliament.
5

6 **14. Section 11A inserted**

7 After section 10 insert:
8

9 **11A. Further conditions on section 10 determination**

- 10 (1) The Minister may, at any time after making a
11 section 10 determination, make the determination
12 subject to any conditions relevant to —
13 (a) ensuring that the education institution meets or
14 continues to meet the criteria referred to in
15 section 10(1); or
16 (b) protecting the interests of the students enrolled
17 in the higher education courses provided by the
18 institution.
- 19 (2) Before making a section 10 determination subject to
20 conditions under subsection (1), the Minister must —
21 (a) give the institution an opportunity to make
22 representations on the matter; and
23 (b) consider any representations made; and
24 (c) have regard to the interests of the students
25 enrolled in the higher education courses
26 provided by the institution.
27

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- 1 **15. Section 11 amended**
- 2 (1) Delete section 11(1) and insert:
- 3
- 4 (1) The Minister may suspend or revoke a section 10
- 5 determination if —
- 6 (a) the education institution does not comply with a
- 7 condition to which the determination has been
- 8 made subject under section 10(4) or 11A(1); or
- 9 (b) the Minister is no longer satisfied that the
- 10 education institution meets the criteria referred
- 11 to in section 10(1).
- 12
- 13 (2) In section 11(2)(c) delete “higher education courses at” and
- 14 insert:
- 15
- 16 the higher education courses provided by
- 17
- 18 (3) After section 11(3) insert:
- 19
- 20 (4) If the Minister revokes a section 10 determination, the
- 21 Minister must arrange for a copy of the revocation to
- 22 be laid before each House of Parliament.
- 23
- 24 **16. Part 2 Division 3 heading and Part 2 Division 3**
- 25 **Subdivision 1 heading inserted**
- 26 After section 11 insert:
- 27
- 28 **Division 3 — Non-university institutions**
- 29 **Subdivision 1 — Authorised non-university institutions**
- 30

1 **17. Section 12 replaced**

2 Delete section 12 and insert:

3

4 **12. Authorised non-university institutions**

5 A non-university institution is authorised to provide a
6 higher education course —

7 (a) if —

8 (i) a self-accrediting authorisation is in
9 force for the institution; and

10 (ii) the course is accredited by the
11 institution in accordance with that
12 authorisation;

13 or

14 (b) if —

15 (i) a provider's authorisation is in force for
16 the institution; and

17 (ii) ministerial accreditation is in force for
18 the course.
19

20 **18. Part 2 Division 3 Subdivision 2 inserted**

21 After section 12 insert:

22 **Subdivision 2 — Self-accrediting authorisation of**
23 **non-university institutions**

24 **13A. Applications for grant of self-accrediting**
25 **authorisation**

26 (1) A non-university institution may apply to the Minister
27 for the grant of a self-accrediting authorisation.

28 (2) An application request must —

29 (a) be accompanied by a payment agreement; and

- 1 (b) include the prescribed information.
- 2 (3) The Minister may in writing, require the applicant to
3 provide further information in relation to the
4 application.
- 5 (4) The requirement is to specify a reasonable time within
6 which the applicant must comply with the requirement.
- 7 (5) The Minister may refuse the application if the applicant
8 does not comply with a requirement under
9 subsection (3) within the time specified in the
10 requirement.
- 11 **13B. Self-accrediting authorisation of non-university**
12 **institutions**
- 13 (1) The Minister may grant a self-accrediting authorisation
14 for a non-university institution if satisfied that —
- 15 (a) the governance, financial resources, facilities,
16 staffing and student services of the institution
17 are or will be appropriate to the provision of
18 higher education courses; and
- 19 (b) the institution has structures and processes to
20 set standards for higher education courses that
21 are at least equal or equivalent to the Australian
22 standards appropriate to courses of that type;
23 and
- 24 (c) the institution meets any other criteria set out in
25 the National Protocols in relation to the
26 standards and qualities required for approval of
27 an institution to self-accredit its courses.
- 28 (2) When deciding whether to grant a self-accrediting
29 authorisation, the Minister must have regard to the
30 report of the higher education advisory committee
31 appointed to consider the matter.

- 1 (3) When deciding whether to grant a self-accrediting
2 authorisation, the Minister may also have regard to the
3 following —
4 (a) the governance, financial resources, facilities,
5 staffing and student services of comparable
6 institutions;
7 (b) any other relevant information.
- 8 (4) A self-accrediting authorisation may authorise the
9 institution to do one or more of the following —
10 (a) accredit higher education courses leading to a
11 higher education award within a field or a range
12 of fields specified in the authorisation;
13 (b) accredit higher education courses leading to a
14 higher education award of a type or types
15 specified in the authorisation.
- 16 (5) The Minister may grant a self-accrediting authorisation
17 subject to any conditions relevant to —
18 (a) ensuring that the non-university institution
19 meets or continues to meet the criteria referred
20 to in section 13B(1); or
21 (b) protecting the interests of the students enrolled
22 in the higher education courses provided by the
23 institution.

24 **13C. Further conditions on self-accrediting authorisation**

- 25 (1) The Minister may, at any time after a self-accrediting
26 authorisation has been granted, make the authorisation
27 subject to any conditions relevant to —
28 (a) ensuring that the non-university institution
29 meets or continues to meet the criteria referred
30 to in section 13B(1); or

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- 1 (b) protecting the interests of the students enrolled
2 in the higher education courses provided by the
3 institution.
- 4 (2) Before making a self-accrediting authorisation subject
5 to conditions under subsection (1), the Minister
6 must —
- 7 (a) give the non-university institution an
8 opportunity to make representations on the
9 matter; and
- 10 (b) consider any representations made; and
- 11 (c) have regard to the interests of the students
12 enrolled in the higher education courses
13 provided by the institution.

14 **13D. Suspension or revocation of self-accrediting**
15 **authorisation**

- 16 (1) The Minister may suspend or revoke a self-accrediting
17 authorisation if —
- 18 (a) the non-university institution does not comply
19 with a condition to which the authorisation has
20 been made subject under section 13B(5) or
21 13C(1); or
- 22 (b) the Minister is no longer satisfied that the
23 non-university institution meets the criteria
24 referred to in section 13B(1).
- 25 (2) The suspension or revocation of a self-accrediting
26 authorisation may be in respect of one or more of the
27 higher education courses that the non-university
28 institution is authorised to accredit.

- 1 (3) Before suspending or revoking a self-accrediting
2 authorisation, the Minister must —
- 3 (a) give the non-university institution an
4 opportunity to make representations on the
5 matter; and
- 6 (b) consider any representations made; and
- 7 (c) have regard to the interests of the students
8 enrolled in the higher education courses
9 provided by the institution.
- 10 (4) A suspension or revocation under subsection (1) is to
11 be given to the non-university institution in writing
12 signed by the Minister and is to —
- 13 (a) state the grounds relied on in making the
14 decision; and
- 15 (b) where relevant, specify the higher education
16 courses to which it applies.
- 17 (5) A suspension or revocation has effect to the extent
18 specified in the written notice.
19

20 **19. Part 2 Division 3 Subdivision 3 heading inserted**

21 Before section 13 insert:
22

23 **Subdivision 3 — Provider’s authorisation of**
24 **non-university institutions**
25

26 **20. Section 13 amended**

27 (1) In section 13(1) after “for” insert:
28

29 the grant or renewal of
30

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- 1 (2) After section 13(2) insert:
2
- 3 (3) The Minister may in writing, require the applicant to
4 provide further information in relation to the
5 application.
- 6 (4) The requirement is to specify a reasonable time within
7 which the applicant must comply with the requirement.
- 8 (5) The Minister may refuse the application if the applicant
9 does not comply with a requirement under
10 subsection (3) within the time specified in the
11 requirement.
12

13 **21. Section 14 amended**

- 14 (1) In section 14(1):
15 (a) delete “authorise a non-university institution to provide
16 a higher education course” and insert:
17
- 18 grant or renew a provider’s authorisation for a
19 non-university institution
20
- 21 (b) in paragraph (a) delete “the course; and” and insert:
22
- 23 higher education courses; and
24
- 25 (2) In section 14(2) and (3) delete “give” and insert:
26
- 27 grant or renew
28

- 1 (3) Delete section 14(4) and insert:
2
- 3 (4) The Minister may grant or renew a provider's
4 authorisation subject to any conditions relevant to —
5 (a) ensuring that the non-university institution
6 meets or continues to meet the criteria referred
7 to in section 14(1); or
8 (b) protecting the interests of the students enrolled
9 in the higher education courses provided by the
10 institution.
11

12 **22. Sections 15A and 15B inserted**

13 After section 14 insert:
14

15 **15A. Duration of provider's authorisation**

- 16 (1) Unless otherwise provided under this Act, a provider's
17 authorisation continues in force —
18 (a) for 5 years from the day on which the
19 authorisation is granted; or
20 (b) if an earlier day is specified in the
21 authorisation, until that day.
- 22 (2) The Minister may extend a provider's authorisation, in
23 writing given to the non-university institution, for a
24 period of up to 6 months after the day on which it
25 would otherwise have ceased to be in force if —
26 (a) an application for the renewal of the
27 authorisation was made —
28 (i) 6 months or more before that day; or

- 1 (ii) less than 6 months before that day, if
2 that day is less than 6 months after the
3 commencement of the *Higher*
4 *Education Amendment Act 2009*
5 section 22;
6 and
7 (b) the Minister has not made a final decision on
8 that application before that day.
- 9 **15B. Further conditions on provider's authorisation**
- 10 (1) The Minister may, at any time after a provider's
11 authorisation has been granted, make the authorisation
12 subject to any conditions relevant to —
- 13 (a) ensuring that the non-university institution
14 meets or continues to meet the criteria referred
15 to in section 14(1); or
16 (b) protecting the interests of the students enrolled
17 in the higher education courses provided by the
18 institution.
- 19 (2) Before making a provider's authorisation subject to
20 conditions under subsection (1), the Minister must —
- 21 (a) give the non-university institution an
22 opportunity to make representations on the
23 matter; and
24 (b) consider any representations made; and
25 (c) have regard to the interests of the students
26 enrolled in the higher education courses
27 provided by the institution.
28

1 **23. Section 15 amended**

2 (1) Delete section 15(1) and insert:

3

4 (1) The Minister may suspend or revoke a provider's
5 authorisation if —

6 (a) the non-university institution does not comply
7 with a condition to which the authorisation has
8 been made subject under section 14(4) or
9 15B(1); or

10 (b) the Minister is no longer satisfied that the
11 non-university institution meets the criteria
12 referred to in section 14(1).
13

14 (2) In section 15(2)(c) before “courses” insert:

15

16 higher education
17

18 **24. Part 2 Division 3 Subdivision 4 heading inserted**

19 Before section 16 insert:

20

21 **Subdivision 4 — Accredited higher education courses**
22

23 **25. Section 16 replaced**

24 Delete section 16 and insert:

25

26 **16. Accredited higher education courses**

27 A higher education course provided by a
28 non-university institution is accredited for the purposes
29 of this Act if —

30 (a) a self-accrediting authorisation is in force for
31 the institution and the course is accredited by

- 1 the institution in accordance with that
2 authorisation; or
3 (b) ministerial accreditation is in force for the
4 course; or
5 (c) the course is accredited by or under a written
6 law of the Commonwealth, another State, the
7 Australian Capital Territory or the Northern
8 Territory.
9

10 **26. Part 2 Division 3 Subdivision 5 heading inserted**

11 After section 16 insert:
12

13 **Subdivision 5 — Ministerial accreditation of higher**
14 **education courses**
15

16 **27. Section 17A inserted**

17 Before section 17 insert:
18

19 **17A. Application of this Subdivision**

20 This Subdivision applies to a course provider that is a
21 non-university institution.
22

23 **28. Section 17 amended**

24 (1) In section 17(1) after “accreditation” insert:
25

26 or renewal of accreditation
27

- 1 (2) After section 17(2) insert:
2
- 3 (3) The Minister may in writing, require the applicant to
4 provide further information in relation to the
5 application.
- 6 (4) The requirement is to specify a reasonable time within
7 which the applicant must comply with the requirement.
- 8 (5) The Minister may refuse the application if the applicant
9 does not comply with a requirement under
10 subsection (3) within the time specified in the
11 requirement.
12

13 **29. Section 18 amended**

- 14 (1) In section 18(1) and (2) delete “accredit” and insert:
15
16 accredit, or renew the accreditation of,
17
- 18 (2) In section 18(3):
19 (a) delete “accredit” and insert:
20
21 accredit, or renew the accreditation of,
22
23 (b) in paragraph (a) delete “recognised” (first occurrence).
- 24 (3) Delete section 18(4), (5) and (6).
- 25 (4) Delete section 18(7) and insert:
26
- 27 (7) The Minister may make the accreditation of a higher
28 education course subject to any conditions relevant
29 to —
30 (a) ensuring the course meets or continues to meet
31 the criteria referred to in section 18(1); or

s. 30

- 1 (b) protecting the interests of the students enrolled
2 in the course.
3

4 **30. Sections 19A and 19B inserted**

5 After section 18 insert:
6

7 **19A. Duration of accreditation**

- 8 (1) Unless otherwise provided under this Act, ministerial
9 accreditation of a higher education course continues in
10 force until —
11 (a) the day that is 5 years after the day on which
12 the course is registered under section 23(3); or
13 (b) if an earlier day is specified in the accreditation,
14 that day.
- 15 (2) The Minister may extend accreditation of a higher
16 education course, in writing given to the course
17 provider, for a period of up to 6 months after the day
18 on which it would otherwise have ceased to be in force
19 if —
20 (a) an application for the renewal of the
21 accreditation was made —
22 (i) 6 months or more before that day; or
23 (ii) less than 6 months before that day, if
24 that day is less than 6 months after the
25 commencement of the *Higher*
26 *Education Amendment Act 2009*
27 section 30;
28 and
29 (b) the Minister has not made a final decision on
30 that application before that day.

- 1 **19B. Further conditions on accreditation**
- 2 (1) The Minister may, at any time after accrediting a
- 3 higher education course, make the accreditation subject
- 4 to any conditions relevant to —
- 5 (a) ensuring the course meets or continues to meet
- 6 the criteria referred to in section 18(1); or
- 7 (b) protecting the interests of the students enrolled
- 8 in the course.
- 9 (2) Before making accreditation of a higher education
- 10 course subject to conditions under subsection (1), the
- 11 Minister must —
- 12 (a) give the course provider an opportunity to make
- 13 representations on the matter; and
- 14 (b) consider any representations made; and
- 15 (c) have regard to the interests of the students
- 16 enrolled in the course.
- 17
- 18 **31. Section 19 amended**
- 19 (1) Delete section 19(1).
- 20 (2) Delete section 19(2) and insert:
- 21
- 22 (2) The Minister may suspend or revoke the accreditation
- 23 of a higher education course if —
- 24 (a) the course provider does not comply with a
- 25 condition to which the accreditation is subject
- 26 under section 18(7) or 19B(1); or
- 27 (b) the Minister is no longer satisfied that the
- 28 course meets the criteria referred to in
- 29 section 18(1).
- 30

s. 32

1 (3) In section 19(3) delete “the ministerial accreditation,” and
2 insert:

3

4 accreditation of a higher education course,

5

6 Note: The heading to amended section 19 is to read:

7

Suspension or revocation of ministerial accreditation

8 **32. Part 2 Division 4 heading inserted**

9 After section 19 insert:

10

11 **Division 4 — Higher education advisory committees**

12

13 **33. Section 20 amended**

14 (1) Delete section 20(1) and insert:

15

16 (1) The Minister must appoint a person who is or persons
17 who are suitably qualified and experienced to
18 constitute a higher education advisory committee to
19 consider and report to the Minister —

20

(a) on the receipt of a request made under
21 section 7(1);

22

(b) on an application made under section 9, 13A,
23 13 or 17.

24

25 (2) After section 20(1) insert:

26

27 (2A) Before appointing a person or persons to constitute a
28 higher education advisory committee under

- 1 subsection (1) in respect of a particular request or
2 application, the Minister must —
- 3 (a) provide to the person making the request or
4 application an opportunity to comment on the
5 composition and membership of the committee;
6 and
- 7 (b) take into account the comments (if any)
8 provided to the Minister by the person making
9 the request or application.
10

11 **34. Section 21A inserted**

12 After section 20 insert:
13

14 **21A. Report of higher education advisory committee to**
15 **be provided to applicant**

- 16 (1) The Minister must, as soon as is practicable after
17 receiving the report on an application referred to in
18 section 20(1)(b) (the *report*), give a copy of the report
19 to the applicant.
- 20 (2) The applicant may request the Minister to undertake a
21 review of the report.
- 22 (3) A request to undertake a review of a report must —
- 23 (a) be made within 30 days after the receipt by the
24 applicant of a copy of the report; and
- 25 (b) set out the grounds on which the applicant is
26 seeking a review of the report; and
- 27 (c) be accompanied by the fee prescribed by, or
28 calculated under, the regulations.
- 29 (4) On receipt of a request to undertake a review of a
30 report the Minister may refer the request to any

s. 35

- 1 suitably qualified person or persons to consider and
2 report to the Minister on the request.
- 3 (5) The Minister must not make a decision on an
4 application referred to in section 20(1)(b) until —
- 5 (a) the applicant advises the Minister in writing
6 that the applicant accepts the report; or
- 7 (b) 31 days have elapsed since the date on which
8 the applicant is given a copy of the report and
9 the applicant has not requested a review of the
10 report; or
- 11 (c) the applicant has requested a review of the
12 report and that review has been completed.
13

14 **35. Part 3A heading inserted**

15 After section 21 insert:
16

17 **Part 3A — Reviews and investigation**
18

19 **36. Section 22 amended**

20 In section 22:

- 21 (a) in paragraph (b) delete “higher education provider; or”
22 and insert:
23
24 non-university institution; or
25
- 26 (b) delete paragraph (c) and insert:
27
- 28 (c) the provision and standard of an accredited
29 course provided by an authorised
30 non-university institution.
31

1 (c) after paragraph (a) insert:

2

3

or

4

5 **37. Sections 23A to 23C inserted**

6 After section 22 insert:

7

8 **23A. Inspectors, appointment of**

9 (1) In this section —

10 *certificate* means a certificate given under
11 subsection (3).

12 (2) The Minister, in writing, may appoint persons to
13 investigate —

14 (a) compliance with any condition to which a
15 provider's authorisation or a self-accrediting
16 authorisation is subject; or

17 (b) compliance with any condition to which
18 ministerial accreditation of a higher education
19 course is subject; or

20 (c) suspected contraventions of this Act; or

21 (d) any matters relevant to carrying out a review
22 under section 22,

23 on any terms the Minister decides and specifies in the
24 appointment.

25 (3) The Minister must give each inspector a certificate of
26 his or her appointment.

27 (4) A person who ceases to be an inspector must return his
28 or her certificate to the Minister within 21 days.

29 Penalty: a fine of \$400.

- 1 (5) A certificate that purports to be signed by the Minister
2 is, in the absence of evidence to the contrary, evidence
3 of its contents.
- 4 (6) If requested to do so and if practicable, an inspector
5 must produce his or her certificate for inspection when
6 exercising a function of an inspector.

7 **23B. Inspectors' powers**

- 8 (1) For the purpose of investigating any matter that he or
9 she is authorised to investigate, an inspector may do
10 any or all of the following —
- 11 (a) at any reasonable time, enter, inspect and
12 search any place, other than a dwelling, that the
13 inspector suspects on reasonable grounds is a
14 place where a higher education course is
15 provided;
- 16 (b) give a person a written direction to produce to
17 the inspector the records that are specified or
18 described in the direction and that are in the
19 person's possession;
- 20 (c) read and seize or copy any record the inspector
21 suspects on reasonable grounds is or may be
22 relevant to the matter being investigated;
- 23 (d) direct a person to answer any question that is
24 relevant to the matter being investigated.
- 25 (2) A person who is given a written direction under
26 subsection (1)(b) must obey it.
27 Penalty: a fine of \$10 000.
- 28 (3) A person who is directed under subsection (1)(d) to
29 answer a question must not refuse to answer unless the
30 answer would tend to incriminate the person or make
31 the person liable to a penalty.
32 Penalty: a fine of \$10 000.

1 (4) A person must not give an inspector information that
2 the person knows is false or misleading.

3 Penalty: a fine of \$10 000.

4 **23C. Consequences of investigations**

5 (1) An inspector may give the Minister any information
6 that the Minister may need in relation to performing his
7 or her functions under this Act.

8 (2) A prosecution for an offence under this Act cannot be
9 commenced except by or with the approval of the
10 Minister.

11

12 **38. Section 23 amended**

13 (1) After section 23(2) insert:

14

15 (3A) If the Minister grants a self-accrediting authorisation
16 for a non-university institution, the Minister must
17 arrange for the authorisation to be registered by
18 entering in the register —

19 (a) the name of the institution; and

20 (b) a description of the higher education courses
21 that the institution is authorised under
22 section 13B(4) to accredit; and

23 (c) any other relevant particulars.

24

25 (2) In section 23(4) delete “at reasonable times.” and insert:

26

27 during normal office hours.

28

1 **39. Section 24A inserted**

2 After section 23 insert:

3

4 **24A. Minister to make National Protocols available for**
5 **inspection**

6 The Minister must ensure that a copy of the National
7 Protocols is available for public inspection during
8 normal office hours.

9

10 **40. Section 26A inserted**

11 After section 25 insert:

12

13 **26A. Protection from liability**

- 14 (1) An action in tort does not lie against a person for
15 anything that the person has, in good faith, done in the
16 performance or purported performance of a function
17 under this Act.
- 18 (2) The protection given by this Act applies even if the
19 thing done in the performance or purported
20 performance of a function under this Act may have
21 been capable of being done whether or not this Act had
22 been enacted.
- 23 (3) This section does not relieve the State of any liability it
24 might have for the doing of anything by a person
25 against whom this section provides that an action does
26 not lie.
- 27 (4) In this section a reference to the doing of anything
28 includes a reference to the omission to do anything.

29

1 **41. Section 27A inserted**

2 After section 26 insert:

3

4 **27A. Evidentiary matters**

5 A certificate that purports to be issued by the Minister
6 stating —

- 7 (a) that at a specified time, a non-university
8 institution did or did not have a provider's
9 authorisation; or
- 10 (b) a condition to which a provider's authorisation
11 was subject at the time specified in the
12 certificate; or
- 13 (c) that at a specified time, a non-university
14 institution did or did not have a self-accrediting
15 authorisation; or
- 16 (d) a condition to which a self-accrediting
17 authorisation was subject at the time specified
18 in the certificate; or
- 19 (e) that at a specified time, a higher education
20 course was or was not accredited; or
- 21 (f) a condition to which a ministerial accreditation
22 of a higher education course was subject at the
23 time specified in the certificate,

24 is, in the absence of evidence to the contrary, evidence
25 of its contents.

26

1 **42. Section 28 replaced**

2 Delete section 28 and insert:

3

4 **28. Agreement to pay costs of considering application**
5 **or request**

6 (1) The Minister may enter into a written arrangement with
7 a person who intends to make a request under section 7
8 or an application under section 9 or 13A for the person
9 to pay —

10 (a) the reasonable costs and expenses incurred by
11 the Minister in considering the request or
12 application; and

13 (b) the reasonable costs and expenses incurred by,
14 or by the Minister on behalf of, a higher
15 education advisory committee appointed to
16 consider and report to the Minister on the
17 request or application.

18 (2) Regulations may make provision for and in relation to
19 an agreement referred to in subsection (1) including in
20 connection with —

21 (a) the ambit of the agreement;

22 (b) the making of the agreement;

23 (c) the costs and expenses to be paid under the
24 agreement, including as to the method of
25 calculating the costs and expenses;

26 (d) the methods for resolving any dispute about the
27 costs and expenses that are to be paid under the
28 agreement.
29

1 **43. Section 29 amended**

2 In section 29 delete “jurisdiction.” and insert:

3

4 jurisdiction as a debt due to the Crown.

5

6 **44. Section 30 amended**

7 (1) In section 30(2)(d) after “determination,” insert:

8

9 self-accrediting authorisation,

10

11 (2) After section 30(2) insert:

12

13 (3) The regulations may provide for a method of
14 calculating a fee referred to in subsection (2)(e),
15 including calculation according to the costs and
16 expenses incurred in providing the service.

17

18

