

HIGHER EDUCATION BILL 2003

EXPLANATORY MEMORANDUM

The purpose of this Bill is to implement the *National Protocols for Higher Education Approval Processes* in Western Australia.

The State is a signatory to a multilateral intergovernmental agreement to implement the *National Protocols*, which were approved by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) on 31 March 2000.

Under the agreement all States and Territories are required to develop legislation to give full effect to the *National Protocols*.

The *National Protocols* have been developed to promote consistent criteria and standards across Australia in such matters as the recognition of new universities, the operation of overseas higher education institutions in Australia, and the accreditation of higher education awards to be offered by non-university providers and overseas universities.

The main emphasis in the Bill is on accreditation, authorisation and quality assurance matters in the private non-university sector of higher education. The legislation does not apply directly to recognised Australian universities which are self-accrediting institutions established under State, Territory or Commonwealth Acts.

By national agreement, all universities and State and Territory higher education accreditation authorities will be subject to audit by the Australian Universities Quality Agency (AUQA) in relation to their quality assurance procedures and operations. It is also agreed that AUQA is to monitor State, Territory and Commonwealth legislation and procedures to ensure that the *National Protocols* have been effectively implemented.

The Higher Education Bill 2003 provides for the five key elements of the *National Protocols*:

1. Protection of the title 'university' and higher education awards.
2. Establishment and recognition of universities in Western Australia.
3. Overseas universities seeking to operate in Western Australia.
4. Accreditation and authorization of non-university higher education institutions.
5. Endorsement of higher education awards for full fee overseas students.

1. *Protection of the title 'university' and higher education awards*

Under the *National Protocols*, legislation is required to protect the standing of Australian universities nationally and internationally. The Bill is designed to protect the title 'university' and the use of higher education awards in accordance with the *National Protocols*.

2. *Establishment and recognition of universities in Western Australia*

The Bill incorporates nationally agreed criteria for establishing an Australian university and a procedure for an application for university status to be investigated. Any determination made by the Minister for Education and Training in regard to an application for university status must be laid before each House of Parliament. The establishment of a university in Western Australia will require an Act of the State Parliament.

3. *Overseas universities seeking to operate in Western Australia*

The legislation makes provision for overseas universities to gain approval to operate in Western Australia as a university and to have nominated awards accredited. To gain approval to operate in Western Australia an overseas university will need to meet national criteria. Any determination made by the Minister for Education and Training in regard to an application for overseas university status must be laid before each House of Parliament.

4. *Accreditation and authorization of non-university higher education institutions*

Australian universities are self-accrediting institutions established under Acts of Parliament. The *National Protocols* require that non-university providers wishing to offer courses of study leading to higher education awards be subject to regulation by each State and Territory. The Western Australian legislation establishes the basis by which the State will seek to maintain standards in the private sector by authorizing institutions to provide accredited higher education awards.

5. *Endorsement of higher education awards for full fee overseas students*

The *National Protocols* also deal with the protection of overseas students and the international reputation of Australian higher education awards. In Western Australia the provisions of the *National Protocols* are effectively met by the existing *State Education Service Providers (Full Fee Overseas Students) Registration Act 1991*. The proposed Higher Education Bill 2003 complements this existing Act and establishes the State higher education accreditation authority required under the existing Act to ensure that the 'educational standards of the applicant have been assessed through proper accreditation procedures by the appropriate accreditation body'.

The Bill gives effect to a multilateral intergovernmental agreement to which the Government of the State is a party. At the stage where the proposed legislation enters the Legislative Council it is required to be forwarded to the Uniform Legislative and General Purposes Committee of the Legislative Council for consideration.

Part 1 - Preliminary

This Part contains the title of the Act, the commencement provisions and definition of terms used within the Bill and the interpretations in relation to 'providing a course of study' and 'making representations'.

Clause 1: Short title and citation.

Clause 2: This clause provides that the proposed Act comes into operation on the day on which it receives the Royal Assent, which is the earliest possible commencement day.

Clause 3: This clause defines (or refers to definitions) in regard to certain words and expressions used in the proposed Act. Reference will be made to definitions as appropriate in relation to specific clauses.

Clause 4: Provides the interpretation for 'providing a course of study'.

Clause 5: Provides the interpretation for 'making representations'.

Part 2 - Establishing and maintaining standards for higher education

Clause 6: Deals with the protection of titles and awards.

Subclause (1) provides for the protection of the title 'university' and a penalty for breaches of the legislation as required by the *National Protocols* and consistent with national practice.

Subclause (2) provides for exemption for the University of the Third Age and other organisations as prescribed. Exemptions will be included in regulations.

Subclause (3) provides for the protection of higher education awards which are defined in Clause 3 as those awards classified as being higher education awards in relation to the Australian Qualifications Framework. Only recognised universities and non-university institutions authorised under this Act may confer higher education awards. The penalty for breaches of the legislation is as required by the *National Protocols* and consistent with national practice.

Subclause (4) provides that only recognised universities and non-university institutions authorised under this Act may represent that an accredited course of study leads to a higher education award. The penalty for breaches of the legislation is as required by the *National Protocols* and consistent with national practice.

Clause 7: Defines 'recognised Australian universities' where 'Australian university' has the meaning as defined in Clause 3.

Clause 8: Defines 'recognised overseas university' where 'overseas university' has the meaning as defined in Clause 3. To be 'recognised' an overseas university must have a determination under 'section 10' of this Act (Clause 10) which establishes that the institution meets the criteria for recognition as an overseas university in Western Australia.

Clause 9: Provides for a process whereby education institutions can apply to the Minister to be considered as to whether the institution meets the criteria for recognition as a university. A 'section 10 determination' provides for overseas universities as well as for applicants seeking to be recognised as an Australian university. The process, criteria to apply and fees are related to the *National Protocols* and national practice. Related fees will be included in regulations.

Subclause (1) provides for an application to be made for a 'section 10 determination'.

Subclause (2) determines that an application must be accompanied by the required fee (established in regulations) and any prescribed information.

Clause 10: Provides a process and criteria for an education institution wishing to make application under Clause 9 as to whether the institution meets the criteria for recognition as a university. Overseas universities can seek a 'section 10 determination' from the Minister for recognition as an overseas university for operation in Western Australia under this Act. Applicants seeking to be recognised as an Australian university can also make application to be assessed under this Act. Any determination made by the Minister for Education and Training in regard to an overseas university or in regard to an application for Australian university status must be laid before each House of Parliament. The establishment of an Australian university in Western Australia will require a separate Act of the State Parliament.

Subsection (1) provides the broad criteria for recognition of a university in line with the *National Protocols* and national practice and as defined in Clause 3.

Subclause (2) provides, in line with the *National Protocols*, that the Minister is required to appoint a higher education advisory committee (see Clause 20) to investigate and provide advice in relation to any application from an education institution seeking to be considered as a recognised university.

Subsection (3) outlines additional elements that the Minister may have regard to in making a determination.

Subsection (4) provides additional advice in relation to the recognition of an 'overseas university' for the purposes of operation in Western Australia. Any overseas university recognised under this Act is required to have its courses of study to be offered in Western Australia accredited under this Act (see Clauses 16 and 17).

Subclause (5) provides that any Ministerial determination in regard to recognition as a university must be laid before each House of Parliament.

Clause 11: This clause deals with the suspension or revocation of a 'section 10 determination' (Clause 10) which means a determination under Clause 10 that the institution meets the criteria for recognition as a university.

Subclause (1) provides for suspension or revocation by the Minister.

Subclause (2) outlines the process to be undertaken and considerations to be given prior to suspension or revocation.

Clause 12: Ensures that a non-university institution can provide a higher education course provided the course has been accredited under Clause 18 and that a provider has been authorised by the Minister to do so (Clause 14).

Clause 13: Provides for a non-university institution to make application to be authorised in Western Australia.

Subclause (1) provides for an application to be made for a provider's authorisation.

Subclause (2) determines that an application must be accompanied by the required fee (established in regulations) and any prescribed information.

Clause 14: Provides the process and criteria for the authorisation of a non-university institution to provide a higher education course in Western Australia.

Subclause (1) provides the criteria for the authorisation of non-university institutions to provide a higher education course.

Subclause (2) provides, in line with the *National Protocols*, that the Minister is required to appoint a higher education advisory committee (see Clause 20) to investigate and provide advice in relation to any application from a non-university institution seeking to provide a higher education course.

Subclause (3) provides for additional information which the Minister might consider in determining whether to authorise a non-university institution to provide a higher education course.

Subclause (4) allows the Minister to make the authorisation subject to conditions.

Clause 15: Allows for the suspension or revocation of a provider's authorisation.

Subclause (1) provides for suspension or revocation by the Minister.

Subclause (2) outlines the process to be undertaken and considerations to be given prior to suspension or revocation of a provider's authorisation.

Clause 16: Provides the definition of 'accredited' in relation to a higher education course.

Subclause (1) determines that a higher education course provided by a recognised Australian university (as defined in relation to Clause 7 and Clause 3) is accredited for the purposes of this Act.

Subclause (2) provides that a higher education course to be offered by a non-university institution or a recognised overseas university must be accredited under this Act (Clause 18).

Clause 17: Deals with applications for ministerial accreditation.

Subclause (1) provides for an application to be made for accreditation of a higher education course of study.

Subclause (2) determines that an application must be accompanied by the required fee (established in regulations) and any prescribed information.

Clause 18: Outlines the process and broad criteria for ministerial accreditation of a higher education course.

Subclause (1) provides the broad criteria for accreditation.

Subclause (2) provides for advice from a higher education advisory committee.

Subclause (3) provides for additional information which the Minister might consider in determining whether to accredit a higher education course.

Subclause (4) deals with the requirement of a course provider to provide adequate information and access to premises to ensure that the standards of the course and any conditions related to accreditation of the course are met.

Subsection (5) allows the Minister to make the accreditation of a higher education course subject to conditions.

Clause 19: Deals with the duration of accreditation and provides for suspension or revocation of the ministerial accreditation of a higher education course.

Subclause (1) provides for a five year accreditation period unless revoked.

Subclause (2) provides for suspension or revocation by the Minister.

Subclause (3) outlines the process to be undertaken and considerations to be given prior to suspension or revocation.

Clause 20: Deals with the appointment and nature of higher education advisory committees in line with the requirements with the *National Protocols*.

Subclause (1) provides for appropriate expertise on a higher education advisory committee to consider and report to the Minister on applications made in relation to 'overseas university status' and potential Australian university status (Clause 9), providers' authorisations for non-university institutions (Clause 13) and accreditation of a higher education course (Clause 17).

Subclause (2) provides that the Minister may appoint a higher education advisory committee to give advice on any matters related to this Act and have regard to the advice given.

Clause 21: Provides for remuneration and allowances.

Subclause (1) provides that the Minister determine the remuneration and allowances of higher education committee members.

Subclause (2) provides that Subclause (1) has effect subject to the *Salaries and Allowances Act 1975*.

Clause 22: Provides for a review, if required, of any operations approved under this Act.

Part 3 - Other Matters

Clause 23: Provides for a register to be kept of operations in relation to this Act as required by the *National Protocols*.

Subclause (1) provides that a register be established and maintained.

Subclause (2) provides that the register may be kept electronically or by other means. The *National Protocols* require a web-based register linked with the national Australian Qualifications Framework register and with registers in other States and Territories and the Commonwealth.

Subclause (3) provides for the details of operations under the Act to be registered.

Subclause (4) provides for public access to any register.

Clause 24: Provides for delegation by the Minister analogous to the State *Education Service Providers (Full Fee Overseas Students) Registration Act 1991* to which this Act is in part related under the requirements of the *National Protocols* and in terms of administrative procedures.

Subclause (1) provides for delegation to the Chief Executive Officer.

Subclause (2) provides for delegation to be in writing.

Subclause (3) provides for the terms of the delegation.

Subclause (4) provides that the previous Subsections do not limit the ability of the Minister to delegate.

- Clause 25: Provides that the Act binds the Crown.
- Clause 26: Provides for the non-disclosure of information in relation to the operations under this Act apart from the normal and expected performance of functions under the Act.
- Subclause (1) provides for inappropriate disclosure in relation to operations under the Act.
- Subclause (2) allows that Subsection (1) does not prohibit the required and expected performance of functions under the Act.
- Clause 27: Provides for immunity from tortious liability.
- Subclause (1) provides a standard clause providing for honest mistakes and intended to limit frivolous complaints and is consistent with provisions in the *State Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.
- Subclause (2) extends the protection given in Subclause (1).
- Clause 28: Provides for vicarious liability and is consistent with provisions in the *State Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.
- Subclause (1) provides for individuals to be liable as well as the body corporate in relation to offences against this Act.
- Subclause (2) provides a standard subclause in relation to Subclause (1).
- Clause 29: Provides for approval of the Minister in regard to proceedings for an offence against this Act.
- Clause 30: Provides for the recovery of fees payable under this Act.
- Clause 31: Provides for regulations on matters as required in relation to the Act and operations under the Act. This is consistent with provisions in the *State Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.
- Subclause (1) provides that the Governor may make regulations in relation to this Act.
- Subclause (2) provides an indication of where regulations will or may be required in relation to the Act and its operations such as in relation to fees for services under the Act or information required by education institutions to which the Act applies or procedures generally under the Act.