

# **NORTHERN TERRITORY OF AUSTRALIA**

## **HIGHER EDUCATION ACT 2004**

As in force at 27 September 2006

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 27 September 2006. Any amendments that commence after that date are not included.

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## HIGHER EDUCATION ACT 2004

### An Act about approvals and accreditations for providing higher education in the territory

#### **Part 1                      Preliminary**

##### **1                      Short title**

This Act may be cited as the *Higher Education Act 2004*.

##### **2                      Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

##### **3                      Objects of Act**

(1) The objects of this Act are:

- (a) to uphold the standards of education provided by higher education institutions operating in the Territory; and
- (b) to maintain public confidence in the higher education sector in the Territory.

(2) The objects are to be achieved mainly by:

- (a) establishing a process for the establishment or recognition of universities in the Territory;
- (b) providing for the approval of the operation of overseas higher education institutions in the Territory;
- (c) providing for the approval of the operation of interstate universities under agency arrangements in the Territory;
- (d) providing for the accreditation of higher education courses to be offered by non-university providers;

- (e) providing for the approval of higher education institutions to provide higher education courses in the Territory to overseas students; and
- (f) limiting the use of a title that consists of, or includes, the word **university**.

## 4 Definitions

In this Act, unless the contrary intention appears:

**accepted representations**, for Part 8, has the meaning in section 38(2).

**accredit** includes re-accredit.

**accredited course** means a course accredited under section 22.

**agency arrangement** means an arrangement between an interstate university and an educational institution established in the Territory under which the institution provides a higher education course in the Territory on behalf of the university.

**agent**, under an agency arrangement, means the educational institution that provides a higher education course under the arrangement.

**approved form** means a form approved under section 59.

**AQF Register** means the Register of Recognised Education Institutions and Authorised Accreditation Authorities in Australia established, under the Australian Qualifications Framework, by the Australian Qualifications Framework Advisory Board.

**Australian Qualifications Framework** means the national framework of educational qualifications:

- (a) approved by the Ministerial Council; and
- (b) stated in the implementation handbook for that framework published by the Australian Qualifications Framework Advisory Board, as in force from time to time.

**Australian Qualifications Framework Advisory Board** means the board by that name established by the Ministerial Council.

**authorised person**, for Part 7, means a person authorised under section 32.

**Chief Executive Officer** means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency administering this Act.

**Commonwealth Act** means the *Education Services for Overseas Students Act 2000* of the Commonwealth.

**contravene** includes fail to comply with.

**delivery place**, for an agency agreement, means the place at which a higher education course is provided under the agreement.

**educational institution** means an institution that provides or proposes to provide courses of study.

**executive officer**, of a body corporate, means a person who is concerned with, or takes part in, the management of the body corporate, (whether or not the person is a director or the person's position is given the name of executive officer), and includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or a State or Territory.

**higher education award** means:

- (a) a degree;
- (b) a graduate diploma or graduate certificate;
- (c) a diploma or advanced diploma; or
- (d) another award described in the Australian Qualifications Framework as a higher education award.

**higher education course** means a course of study leading to a higher education award.

**higher education institution** means an educational institution that provides or proposes to provide a higher education course.

**information notice**, for a decision of the Minister, means a written notice stating the following:

- (a) the decision;
- (b) the reasons for the decision;
- (c) the person to whom the notice is given may appeal against the decision;
- (d) how to start the appeal.

**interstate university** means a higher education institution that:

- (a) is established or recognised as a university under an Act of the Commonwealth, a State or another Territory; and
- (b) is listed in the AQF Register.

**Ministerial Council** means the Ministerial Council on Education, Employment, Training and Youth Affairs.

**National Code** means the national code, as amended from time to time, established under Part 4 of the Commonwealth Act.

**National Protocols** means the National Protocols for Higher Education Approval Processes (first endorsed by the Ministerial Council on 31 March 2000), as in force from time to time.

**non-university provider** means a person (other than a university, the Batchelor Institute of Indigenous Tertiary Education or an overseas higher education institution) providing or proposing to provide a higher education course.

**operate**, an educational institution in the Territory, includes operate the institution in the Territory by electronic communication.

**original decision**, for Part 9, has the meaning in section 41.

**overseas higher education institution** means an educational institution that:

- (a) is established and operates in a foreign country; and
- (b) offers a course leading to an award recognised as a higher education award by the competent authority for the purpose in the foreign country.

**overseas student** has the same meaning as in the Commonwealth Act.

**Regulations** means the Regulations made under this Act.

**show cause notice**, for Part 8, has the meaning in section 37(1).

**show cause period**, for Part 8, has the meaning in section 37(2)(d).

**university** means a higher education institution:

- (a) that is:
  - (i) established or recognised as a university under an Act and is listed in the AQF Register; or
  - (ii) an interstate university;
- (b) that is:
  - (i) established in a foreign country;
  - (ii) recognised as a university by the competent authority for the purpose in that country; and
  - (iii) approved under section 14 to operate in the Territory; or
- (c) that is prescribed by the Regulations to be a university.

## **5 Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## **Part 2 Establishment and recognition of universities in Territory**

### **6 Application for approval of NT university**

- (1) The governing body of a higher education institution may apply for the Minister's approval that the institution is suitable to be established or recognised, under an Act, as a university in the Territory.
- (2) The application must:
  - (a) be made to the Minister in writing; and
  - (b) be accompanied by the fee prescribed by the Regulations.

### **7 Referral of application to advisory committee**

- (1) After receiving an application under section 6, the Minister must appoint an advisory committee for the application and refer it to the committee.
- (2) The committee must consist of at least 3 persons appointed by the Minister.



- (3) The Minister may appoint a person to be a member of the committee only if the Minister is satisfied the person has substantial knowledge and experience of:

- (a) academic affairs;
- (b) university management;
- (c) the design, development and provision of higher education courses; or
- (d) business management.

## **8 Consideration by advisory committee**

- (1) The advisory committee must consider whether the institution will comply with the relevant criteria in the National Protocols on its establishment or recognition as a university in the Territory.
- (2) For subsection (1), the committee must give public notice of the application and consider submissions made by the public on the application.
- (3) The committee may by written notice, require the applicant to give the committee within the reasonable time of at least 14 days stated in the notice further information or a document the committee reasonably requires.

## **9 Advisory committee to report to Minister**

- (1) After completing its consideration of the application, the advisory committee must:
  - (a) give the Minister a written report on the application; and
  - (b) give the applicant a copy of the report.
- (2) The report must contain:
  - (a) the committee's recommendation about whether the Minister should grant the application; and
  - (b) any conditions on establishment or recognition recommended by the committee.

## **10 Decision on application**

- (1) The Minister must consider the application and either grant or refuse to grant it.

- (2) In considering the application, the Minister must have regard to the advisory committee's report.
- (3) However, the Minister is not bound by any recommendation contained in the report.
- (4) The Minister may grant the application only if the Minister is satisfied the institution will comply with the relevant criteria in the National Protocols on its establishment or recognition as a university in the Territory.
- (5) If the Minister decides to grant the application, the Minister must give the applicant written notice of the decision.
- (6) If the Minister decides to refuse to grant the application, the Minister must give the applicant an information notice for the decision.

## **11 Conditions of approval**

- (1) The Minister may, in granting the application, decide to impose conditions on the approval that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the approval, the Minister must give the applicant an information notice for the decision.

## **12 Reviews of operations of university**

- (1) The Minister may, at any time after the fifth anniversary of the establishment or recognition of a university under an Act, review the university's operation.
- (2) The review must involve a consideration of whether the university is complying with the relevant criteria in the National Protocols.

# **Part 3 Overseas higher education institutions**

## **13 Application for approval to operate in Territory**

- (1) The governing body of an overseas higher education institution may apply for the Minister's approval to enable the institution to operate in the Territory.
- (2) The application must:
  - (a) be made to the Minister in writing; and

(b) be accompanied by:

- (i) sufficient documents and information to enable the Minister to decide the application; and
- (ii) the fee prescribed by the Regulations.

#### **14 Decision on application**

- (1) The Minister must consider the application and either grant or refuse to grant it.
- (2) The Minister may grant the application only if the Minister is satisfied the institution complies with the relevant criteria in the National Protocols.
- (3) If the Minister decides to grant the application, the Minister must give the applicant written notice of the decision.
- (4) The notice must state the higher education courses the institution is authorised to offer under the approval.
- (5) If the Minister decides to refuse to grant the application, the Minister must give the applicant an information notice for the decision.

#### **15 Conditions of approval**

- (1) The Minister may, in granting the application, decide to impose conditions on the approval that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the approval, the Minister must give the applicant an information notice for the decision.

#### **16 Duration of approval**

The approval remains in force for the period of up to 5 years stated in the notice given to the applicant under section 14(3).

#### **17 Renewal of approval**

- (1) The holder of an approval under section 14 may apply to the Minister for its renewal.
- (2) The application must be made at least 9 months before the day the approval ends.
- (3) Sections 13 to 16 (inclusive) apply (with the necessary changes) in relation to the application as if it were an application for an approval.

- (4) In addition, for deciding the application, the Minister may examine the operation of the overseas higher education institution in the Territory.

## **Part 4                    Interstate universities**

### **18                    Application for approval to operate in Territory**

- (1) The governing body of an interstate university may apply for the Minister's approval to enable the university to operate in the Territory under an agency arrangement.
- (2) The application must:
- (a) be made to the Minister in writing; and
  - (b) be accompanied by:
    - (i) the name and address of the agent under the arrangement;
    - (ii) the address of the delivery place under the arrangement; and
    - (iii) a written undertaking by the university that it will ensure the provision of a higher education course under the arrangement complies with the relevant criteria in the National Protocols.

### **19                    Decision on application**

- (1) If the Minister is satisfied the application strictly complies with section 18(2), the Minister must:
- (a) grant the application; and
  - (b) give the applicant notice that the application is granted.
- (2) If the Minister is satisfied the application does not strictly comply with section 18(2), the Minister must:
- (a) refuse the application; and
  - (b) give the applicant an information notice for the decision.

### **20                    Conditions of approval**

- (1) The Minister may, in granting the application, decide to impose conditions on the approval that are relevant and reasonable.

- (2) If the Minister decides to impose conditions on the approval, the Minister must give the applicant an information notice for the decision.

## **Part 5                      Accreditation of higher education courses    offered by non-university providers**

### **21                      Application for accreditation**

- (1) The governing body of a non-university provider may apply for accreditation of a higher education course proposed to be offered by the provider.
- (2) The application must:
  - (a) be made to the Minister in writing; and
  - (b) be accompanied by:
    - (i) sufficient documents and information to enable the Minister to decide the application; and
    - (ii) the fee prescribed by the Regulations.

### **22                      Decision on application**

- (1) The Minister must consider the application and either grant or refuse to grant it.
- (2) The Minister may grant the application only if the Minister is satisfied, having regard to the relevant criteria in the National Protocols, the course and the way of providing it are appropriate to the type of the award to which the course leads.
- (3) In deciding the application, the Minister may examine the operation or proposed operation of the provider.
- (4) If the Minister decides to grant the application, the Minister must give the applicant written notice of the decision.
- (5) If the Minister decides to refuse to grant the application, the Minister must give the applicant an information notice for the decision.

### **23                      Conditions of accreditation**

- (1) The Minister may, in granting the application, decide to impose conditions on the accreditation that are relevant and reasonable.

- (2) If the Minister decides to impose conditions on the accreditation, the Minister must give the applicant an information notice for the decision.

## **24 Duration of accreditation**

The accreditation remains in force for the period of up to 5 years stated in the notice given to the applicant under section 22(4).

## **25 Amending and adding conditions**

- (1) The Minister may amend the conditions of the accreditation of an accredited course imposed by the Minister if there is a reasonable basis to make the amendment.
- (2) Before deciding to amend the conditions, the Minister must:
  - (a) give written notice to the holder of the accreditation:
    - (i) of the particulars of the proposed amendment; and
    - (ii) that the holder may make written submissions to the Minister about the proposed amendment within a reasonable period of at least 21 days stated in the notice; and
  - (b) have regard to written submissions made to the Minister by the holder before the end of the stated period.
- (3) If the Minister decides to amend the conditions, the Minister must give the holder an information notice for the decision.
- (4) The decision does not take effect until:
  - (a) the end of the time for starting an appeal against the decision; or
  - (b) if an appeal against the decision is started – the decision on the appeal is confirmed or the appeal is discontinued or struck out.
- (5) The Minister's power under subsection (1) includes power to add conditions to the accreditation of an accredited course that is not subject to conditions imposed by the Minister.

**26 Annual report**

- (1) A non-university provider offering an accredited course must, on or before 31 May in each year (the **reporting day**), give the Minister a written report for the period from the 1 January to the 31 December immediately before the reporting day that complies with subsection (2).
- (2) The report must contain information about the course, and the way of providing it, that will enable the Minister to decide, having regard to the relevant criteria in the National Protocols, whether continued accreditation of the course is justified.

**Part 6 Provision of higher education courses to overseas students****27 Application for approval to provide course to overseas students**

- (1) The governing body of a higher education institution may apply for the Minister's approval to enable the institution to provide higher education courses in the Territory to overseas students.
- (2) The application must:
  - (a) be made to the Minister in writing; and
  - (b) be accompanied by:
    - (i) sufficient documents and information to enable the Minister to decide the application; and
    - (ii) the fee prescribed by the Regulations.

**28 Decision on application**

- (1) The Minister must consider the application and either grant or refuse to grant it.
- (2) The Minister may grant the application only if the Minister is satisfied the institution complies with the requirements of the National Code.
- (3) If the Minister decides to grant the application, the Minister must give the applicant written notice of the decision.
- (4) The notice must state the higher education courses the institution is authorised to provide to overseas students under the approval.

- (5) If the Minister decides to refuse to grant the application, the Minister must give the applicant an information notice for the decision.

## **29 Conditions of approval**

- (1) The Minister may, in granting the application, decide to impose conditions on the approval that are relevant and reasonable.
- (2) If the Minister decides to impose conditions on the approval, the Minister must give the applicant an information notice for the decision.

## **30 Duration of approval**

The approval remains in force for the period of up to 5 years stated in the notice given to the applicant under section 28(3).

## **31 Renewal of approval**

- (1) The holder of an approval under section 28 may apply to the Minister for its renewal.
- (2) The application must be made at least 6 months before the day the approval ends.
- (3) Sections 27 to 30 (inclusive) apply (with the necessary changes) in relation to the application as if it were an application for an approval.
- (4) In addition, for deciding the application, the Minister may examine the operation of the higher education institution in the Territory.

# **Part 7 Visits by authorised persons**

## **32 Authorisation to visit premises of educational institution**

- (1) For ensuring compliance with the relevant criteria in the National Protocols or requirements of the National Code, the Minister may authorise a person to visit premises in the Territory where an educational institution is providing or proposing to provide higher education courses.
- (2) The authorisation must be in writing and state the address of the institution's premises to be visited.



**33 Powers of authorised person**

- (1) An authorised person may enter the premises of the educational institution stated in the person's authorisation at any reasonable time on any day higher education courses are normally provided on the premises.
- (2) On entering the premises, the authorised person may exercise any of the following powers:
  - (a) observe the institution's operations;
  - (b) require any person to give information about the institution's operations;
  - (c) inspect or take copies of any documents kept on the premises;
  - (d) require any person to give the person any assistance reasonably necessary for exercising the power under paragraph (c).

**34 Production of authorisation**

An authorised person exercising a power under section 33 in relation to a person must, if asked by the person, produce the authorised person's authorisation for inspection.

**35 Obstruction etc. of authorised person**

- (1) A person must not, without reasonable excuse, obstruct an authorised person in the exercise of an authorised person's powers under section 33.

Penalty: 10 penalty units.

- (2) In this section:

**obstruct** includes hinder and resist.

**Part 8 Cancellation of approvals and accreditations****36 Grounds for cancellation of approval or accreditation**

- (1) Each of the following is a ground for cancelling an approval under section 14 for an overseas higher education institution to operate in the Territory:
  - (a) the holder of the approval has contravened a condition of the approval;

- (b) the holder of the approval is not complying, or has not complied, with the relevant criteria in the National Protocols.
- (2) Each of the following is a ground for cancelling an approval under section 19 for an interstate university to operate under an agency arrangement in the Territory:
  - (a) the holder of the approval has contravened a condition of the approval;
  - (b) the provision of a higher education course under the agency arrangement is not complying, or has not complied, with the relevant criteria in the National Protocols.
- (3) Each of the following is a ground for cancelling an accreditation of an accredited course:
  - (a) the holder of the accreditation has contravened a condition of the accreditation;
  - (b) having regard to the relevant criteria in the National Protocols, the course and the way of providing it are no longer appropriate to the type of the award to which the course leads;
  - (c) the holder of the accreditation does not provide an annual report for the course under section 26.
- (4) Each of the following is a ground for cancelling an approval under section 28 for a higher education institution to provide higher education courses in the Territory to overseas students:
  - (a) the holder of the approval has contravened a condition of the approval;
  - (b) the holder of the approval is not complying, or has not complied, with the requirements of the National Code.

### **37 Show cause notice**

- (1) If the Minister reasonably believes a ground exists to cancel an approval or accreditation, the Minister must give the holder of the approval or accreditation written notice under this section (a ***show cause notice***).
- (2) The show cause notice must state the following:
  - (a) the action (the ***proposed action***) the Minister proposes taking;
  - (b) the ground for the proposed action;

- (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) an invitation to the holder to show within a stated period (the **show cause period**) why the proposed action should not be taken.
- (3) The show cause period must end at least 30 days after the show cause notice is given to the holder.

### **38 Representations about show cause notice**

- (1) The holder of the approval or accreditation may make written representations about the show cause notice to the Minister in the show cause period.
- (2) The Minister must consider all written representations (the **accepted representations**) made under subsection (1).

### **39 Ending show cause process without further action**

If, after considering the accepted representations for the show cause notice, the Minister no longer believes the ground exists to cancel the approval or accreditation, the Minister:

- (a) must not take further action about the show cause notice; and
- (b) must give notice to the holder of the approval or accreditation that no further action will be taken about the show cause notice.

### **40 Cancellation**

- (1) This section applies if:
- (a) after considering the accepted representations for the show cause notice, the Minister:
    - (i) still believes the ground exists to cancel the approval or accreditation; and
    - (ii) believes cancellation of the approval or accreditation is warranted; or
  - (b) there are no accepted representations for the show cause notice.
- (2) The Minister may decide to cancel the approval or accreditation.
- (3) The Minister must give an information notice for the decision to the holder of the approval or accreditation.

- (4) The decision does not take effect until:
  - (a) the end of the time for starting an appeal against the decision;  
or
  - (b) if an appeal against the decision is started – the decision on the appeal is confirmed or the appeal is discontinued or struck out.

## **Part 9                      Appeals**

### **41                      Appeals against certain decisions**

- (1) A person who is given, or is entitled to be given, an information notice for a decision (the ***original decision***) may appeal against the decision to the Supreme Court.
- (2) The appeal is an appeal in the strict sense.

### **42                      How to start appeal**

- (1) The appeal is started by filing notice of appeal with the Registrar of the Supreme Court.
- (2) The notice must be filed within 28 days after:
  - (a) if the person receives an information notice for the original decision – the day the person receives the notice; or
  - (b) if paragraph (a) does not apply – the day the person becomes aware of the original decision.

### **43                      Decision on appeal**

- (1) In deciding the appeal, the Supreme Court may:
  - (a) confirm or vary the original decision;
  - (b) set aside the original decision and substitute its own decision;  
or
  - (c) set aside the original decision and remit the matter to the Minister with the directions it considers appropriate.
- (2) For subsection (1), the Court may make the orders and give the directions it considers appropriate.

- (3) If the Court varies the original decision or substitutes its own decision for the original decision, the varied or substituted decision is, for this Act (other than this Part), taken to be the Minister's decision.

## **Part 10            Offences and legal proceedings**

### **Division 1        Offences**

#### **44            Operating university**

- (1) A person must not operate, or purport to operate, in the Territory as a university or part of a university unless the person is a university.

Penalty:        If the offender is a natural person – 500 penalty units.

                    If the offender is a body corporate – 2 500 penalty units.

- (2) A person must not hold out an educational institution, educational facility, school, college or other place that provides a course of education as being a university unless it is a university.

Penalty:        If the offender is a natural person – 500 penalty units.

                    If the offender is a body corporate – 2 500 penalty units.

#### **45            Use of *university***

- (1) A person must not, by use of a title consisting of, or including, the word ***university***, claim the person is a university or part of a university unless the person is a university or part of a university.

Penalty:        If the offender is a natural person – 500 penalty units.

                    If the offender is a body corporate – 2 500 penalty units.

- (2) For subsection (1), a person claims to be a university or part of a university if the person:

(a) makes the claim; or

(b) says or does anything likely to induce someone else to believe the person is a university or part of a university.

- (3) This section does not apply to an educational institution prescribed by the Regulations.

**46 Overseas higher education institution to be approved**

A person must not operate an overseas higher education institution in the Territory unless the person has an approval under section 14.

Penalty:        If the offender is a natural person – 500 penalty units.  
                      If the offender is a body corporate – 2 500 penalty units.

**47 Offering accredited course**

A non-university provider must not offer a higher education course in the Territory unless the course is an accredited course.

Penalty:        If the offender is a natural person – 200 penalty units.  
                      If the offender is a body corporate – 1 000 penalty units.

**48 Conferring of higher education award by overseas higher education institution etc.**

- (1) An overseas higher education institution must not confer, or hold out that the institution is authorised to confer, a higher education award unless:

- (a) the institution is the subject of an approval under section 14; and
- (b) under the approval, the institution may offer the course leading to the award.

Penalty:        If the offender is a natural person – 200 penalty units.  
                      If the offender is a body corporate – 1 000 penalty units.

- (2) A person must not hold out that an overseas higher education institution is authorised to confer a higher education award unless:

- (a) the institution is the subject of an approval under section 14; and
- (b) under the approval, the institution may offer the course leading to the award.

Penalty:        If the offender is a natural person – 200 penalty units.  
                      If the offender is a body corporate – 1 000 penalty units.

**49           Conferring of higher education award without course being undertaken**

A person, other than a university or the Batchelor Institute of Indigenous Tertiary Education, must not confer a higher education award on another person unless the other person has undertaken a course leading to the award.

Penalty:       If the offender is a natural person – 200 penalty units.  
  
                  If the offender is a body corporate – 1 000 penalty units.

**50           Conferring of higher education award by non-university provider etc.**

- (1) A non-university provider must not confer, or hold out that the provider is authorised to confer, a higher education award unless the course leading to the award is an accredited course for the provider.

Penalty:       If the offender is a natural person – 200 penalty units.  
  
                  If the offender is a body corporate – 1 000 penalty units.

- (2) A person must not hold out that a non-university provider is authorised to confer a higher education award unless the course leading to the award is an accredited course for the provider.

Penalty:       If the offender is a natural person – 200 penalty units.  
  
                  If the offender is a body corporate – 1 000 penalty units.

**51           Conferring of higher education award by interstate university etc.**

- (1) An interstate university operating in the Territory under an agency arrangement must not confer, or hold out that the university is authorised to confer, a higher education award unless it is authorised under an approval under section 19 to offer the course leading to the award.

Penalty:       If the offender is a natural person – 200 penalty units.  
  
                  If the offender is a body corporate – 1 000 penalty units.

- (2) A person must not hold out that an interstate university operating in the Territory under an agency arrangement is authorised to confer a higher education award unless it is authorised under an approval under section 19 to offer the course leading to the award.

Penalty:        If the offender is a natural person – 200 penalty units.

                    If the offender is a body corporate – 1 000 penalty units.

## **52            False or misleading information**

- (1) A person must not, in relation to an application under this Act, make a statement that the person knows to be false or misleading in a material particular.

Penalty:        If the offender is a natural person – 200 penalty units.

                    If the offender is a body corporate – 1 000 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement was, without specifying which, **false or misleading** to the person's knowledge.

- (3) In this section:

**false or misleading** includes false or misleading because of the omission of a statement.

## **Division 2            Legal proceedings**

### **53            Evidentiary provisions**

- (1) This section applies to a legal proceeding under this Act.
- (2) A signature purporting to be the signature of the Chief Executive Officer is evidence of the signature it purports to be.
- (3) A certificate purporting to be signed by the Chief Executive Officer stating any of the following matters is evidence of the matter:
- (a) a document is, or is a copy of, an approval, accreditation or notice given under this Act;
  - (b) an approval or accreditation given under this Act:
    - (i) was or was not given for a term;
    - (ii) was or was not in force on a day or during a period;



- (iii) was or was not subject to conditions; or
    - (iv) was cancelled on a day;
  - (c) a person was given a notice on a day;
  - (d) a matter prescribed by the Regulations.
- (4) In subsection (3), a reference to a person or thing is a reference to a person or thing stated in the certificate.

## **54 Conduct of representatives**

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish a person's state of mind in relation to particular conduct, it is sufficient to show:
- (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had that state of mind.
- (2) For a proceeding for an offence against this Act, conduct engaged in on behalf of a person by a representative within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person.
- (3) However, a natural person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) or (2) had not been enacted.
- (4) In this section:

***engaging in conduct*** includes failing or refusing to engage in conduct.

***representative*** means:

- (a) of a body corporate – an executive officer, employee or agent of the body corporate; or
- (b) of a natural person – an employee or agent of the person.

***state of mind of a person*** includes:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and

- (b) the person's reasons for the intention, opinion, belief or purpose.

## **55 Liability of executive officers of body corporate**

- (1) If a body corporate commits an offence against this Act, each of the executive officers of the body corporate is taken to have committed the same offence.
- (2) However, it is a defence for an executive officer to establish:
  - (a) the body corporate would not have been found guilty of the offence because it would have been able to establish a defence;
  - (b) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed; or
  - (c) the defendant exercised due diligence to prevent the commission of the offence.
- (3) A proceeding for an offence against this Act may be brought against an executive officer of a body corporate whether or not a proceeding for the offence is brought against the body corporate.
- (4) A person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) had not been enacted.

## **Part 11 Miscellaneous provisions**

### **56 When notice to be given**

If under this Act the Minister is required to give notice about a decision, the Minister must give the notice as soon as practicable after making the decision.

### **57 Register of approvals and accreditations**

- (1) The Chief Executive Officer must keep a register of:
  - (a) approvals under sections 14, 19 and 28; and
  - (b) accredited courses.
- (2) The register may be kept in the way the Chief Executive Officer considers appropriate, including for example, in an electronic form.

- (3) The register must contain the following details for each approval under section 14 for an overseas higher education institution to operate in the Territory:
- (a) the name of the institution;
  - (b) the name and address of the holder of the approval;
  - (c) the address of the premises at which the institution is approved to operate in the Territory;
  - (d) the title of each course the institution is authorised to offer in the Territory under the approval;
  - (e) if the course is to be provided by an agent of the institution – the name and address of the agent;
  - (f) the last day of the term of the approval;
  - (g) details prescribed by the Regulations.
- (4) The register must contain the following details for each approval under section 19 for an interstate university to operate under an agency arrangement in the Territory:
- (a) the name of the university;
  - (b) the name and address of the holder of the approval;
  - (c) the name and address of the agent under the agency arrangement;
  - (d) the address of the delivery place under the arrangement;
  - (e) the title of the higher education course the agent provides in the Territory on behalf of the university under the arrangement;
  - (f) details prescribed by the Regulations.
- (5) The register must contain the following details for each accredited course:
- (a) the name of the course;
  - (b) the last day of the term of accreditation of the course;
  - (c) the name and address of the holder of the accreditation;
  - (d) details prescribed by the Regulations.

- (6) The register must contain the following details for each approval under section 28 for a higher education institution to provide higher education courses in the Territory to overseas students:
- (a) the name of the institution;
  - (b) the name and address of the holder of the approval;
  - (c) the address of the premises at which the institution is approved to provide each course in the Territory;
  - (d) the title of each course the institution is authorised to provide in the Territory under the approval;
  - (e) the last day of the term of the approval;
  - (f) details prescribed by the Regulations.
- (7) The Chief Executive Officer must:
- (a) keep the register open for inspection, on payment of the fee prescribed by the Regulations, at the head office of the Agency administering this Act by members of the public during ordinary office hours; and
  - (b) give a person a copy of the register, or a part of it, on payment of the fee prescribed by the Regulations.

## **58 Protection from liability**

- (1) This section applies to a person who is or has been:
- (a) the Minister; or
  - (b) an authorised person under Part 7.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

## **59 Approved forms**

The Chief Executive Officer may approve forms for use under this Act.

**60 Delegation**

- (1) The Minister may, in writing, delegate to a person any of the Minister's powers or functions under this Act.
- (2) However, the Minister may delegate a power or function only to a person the Minister is satisfied has the appropriate qualifications or experience to exercise the power or perform the function.

**61 Guidelines**

- (1) The Minister may issue guidelines for the administration of this Act.
- (2) Without limiting subsection (1), a guideline may give guidance about administrative matters relevant to applications under this Act.
- (3) Guidelines may apply, adopt or incorporate (wholly or partly and with or without modification) a document as in force at a particular time or from time to time.
- (4) The Minister must publish notice in the Gazette of the issue of guidelines.
- (5) The notice must state where copies of issued guidelines may be inspected during normal business hours.
- (6) The Minister must ensure copies of issued guidelines are available for inspection, free of charge, at the place stated in the notice.

**62 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide for any of the following:
  - (a) fees payable, and the refund (wholly or partly) of fees paid, under this Act;
  - (b) the exemption of an entity from the operation of this Act, or any stated provision of this Act, either unconditionally or subject to conditions;
  - (c) penalties for offences against the Regulations not exceeding 10 penalty units for a natural person and 50 penalty units for a body corporate.

- (3) The Regulations may apply, adopt or incorporate (wholly or partly and with or without modification) a document as in force at a particular time or from time to time.

## **Part 12                      Transitional provisions and consequential amendment**

### **63                      Transitional provisions for applications for approval under section 73A of *Education Act***

- (1) An application for an approval made under section 73A(2)(e) of the *Education Act* and not decided immediately before the commencement of this section must be decided under this Act.
- (2) If the applicant is a non-university provider, the application is taken to be an application for accreditation of the courses the subject of the application.
- (3) If the applicant is an overseas higher education institution, the application is taken to be an application for an approval under section 14.

### **64                      Transitional provisions for approvals under section 73A of *Education Act***

- (1) This section applies if, immediately before the commencement of this section, an educational institution held an approval under section 73A(2)(e) of the *Education Act* (the **section 73A approval**).
- (2) If the holder of the section 73A approval is a non-university provider, the courses the subject of the section 73A approval are taken to be accredited courses for the institution.
- (3) If the holder of the section 73A approval is an overseas higher education institution, the section 73A approval is taken to be an approval under section 14 (the **new approval**).
- (4) If the section 73A approval was subject to a condition, the accreditation of the courses or new approval is taken to be subject to the condition.
- (5) The accreditation or new approval continues until the day that is 18 months after the commencement of this section.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2 LIST OF LEGISLATION

***Higher Education Act 2004* (Act No. 31, 2004)**

Assent date	6 June 2004
Commenced	27 September 2006 ( <i>Gaz</i> G39, 27 September 2006, p 5)

### 3 LIST OF AMENDMENTS

s 65                      exp No. 31, 2004, s 65