



Higher Education Legislation Amendment Act (No. 3) 2002

No. 112, 2002

An Act to amend the *Higher Education Funding Act 1988*, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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No. 112, 2002

An Act to amend the *Higher Education Funding Act 1988*, and for related purposes

[Assented to 2 December 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Legislation Amendment Act (No. 3) 2002*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Higher Education Funding Act 1988

1 After section 2A

Insert:

2B Application

Chapter 5C and any regulations made for the purposes of that Chapter extend to every external Territory.

2 After Chapter 5B

Insert:

Chapter 5C—The provision of higher education in the external Territories

Part 5C.1—Preliminary

106ZL Definitions

- (1) In this Chapter, unless the contrary intention appears:

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications established by the Council:

- (a) comprised of the Ministers responsible for education, employment, training and youth affairs (howsoever called) for the Commonwealth and each State; and
- (b) known as the Ministerial Council on Education, Employment, Training and Youth Affairs;

to give effect to agreed standards in relation to the provision of education in Australia.

Note: State is defined in section 3 to include the Australian Capital Territory and the Northern Territory.

Australian Qualifications Framework Register means the Register:

- (a) that is called the Register of Authorities empowered by Government to Accredite Post-compulsory Education and Training; and
- (b) that is maintained by the advisory board to the Australian Qualifications Framework.

higher education award means:

- (a) a degree, status, title or description of bachelor, master or doctor; or
- (b) an award of graduate diploma or graduate certificate; or
- (c) another award prescribed by regulation for the purposes of this definition.

listed self-accrediting entity means a person whose name is included, or who owns or controls a business name that is included, in the list of Higher Education Institutions (Self-accrediting) contained in the Australian Qualifications Framework Register as the name of a university or other higher education institution empowered to issue its own qualifications.

National Protocols has the same meaning as in Chapter 4A.

- (2) In this Chapter, a reference to a person operating, or purporting to operate, in an external Territory:
 - (a) as a university, or part of a university, providing courses leading to higher education awards; or
 - (b) as another provider of courses leading to higher education awards;

includes a reference to a person operating, or purporting to operate, as such a university, part of a university or other provider in or from that Territory by means of any of the following telecommunication devices:

- (c) a computer adapted for communicating by way of the Internet or another communications network;
 - (d) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network;
 - (e) a telephone;
 - (f) any other electronic device.
- (3) In this Chapter, a reference to a person offering, or purporting to offer, in an external Territory, courses leading to higher education

awards, includes a reference to such a person offering, or purporting to offer, such courses in or from that Territory by means of any of the telecommunication devices referred to in subsection (2).

Part 5C.2—Limitations upon operations of certain persons in the external Territories

106ZM Persons without accreditation not to operate as universities or other higher education providers in external Territories

- (1) A person is guilty of an offence if:
- (a) the person operates, or purports to operate:
 - (i) as a university, or a part of a university, providing courses leading to higher education awards; or
 - (ii) as another provider of courses leading to higher education awards; and
 - (b) the operation or purported operation is in an external Territory; and
 - (c) the person is not:
 - (i) a listed self-accrediting entity; or
 - (ii) approved by the Minister under section 106ZQ in relation to that Territory as a self-accrediting entity; and
 - (d) any course offered by the person is not accredited by the Minister under that section in relation to that Territory.

Penalty: 40 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* provides that the maximum penalty appropriate to a body corporate is 5 times the maximum penalty provided for a natural person.

- (2) For the purposes of an offence against subsection (1), strict liability applies:
- (a) to the circumstance in subparagraph (1)(c)(ii) that the power of approval is under section 106ZQ; and
 - (b) to the circumstance in paragraph (1)(d) that the power of accreditation is under section 106ZQ.

106ZN Persons without accreditation not to offer higher education awards or courses in external Territories

- (1) A person is guilty of an offence if:
- (a) the person offers, or purports to offer, a course leading to a higher education award; and
 - (b) the offer, or purported offer, is in an external Territory; and
 - (c) the person is not:
 - (i) a listed self-accrediting entity; or
 - (ii) approved by the Minister as a self-accrediting entity under section 106ZQ in relation to that Territory; and
 - (d) the course is not accredited by the Minister under that section in relation to that Territory.

Penalty: 40 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* provides that the maximum penalty appropriate to a body corporate is 5 times the maximum penalty provided for a natural person.

- (2) A person is guilty of an offence if:
- (a) the person offers, or purports to offer, a higher education award; and
 - (b) the offer, or purported offer, is in an external Territory; and
 - (c) the person is not:
 - (i) a listed self-accrediting entity; or
 - (ii) approved by the Minister as a self-accrediting entity in relation to that Territory under section 106ZQ; and
 - (d) the offer, or purported offer, of the award is not dependent on the successful completion of a course accredited by the Minister under that section in relation to that Territory as the course leading to that award.

Penalty: 40 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* provides that the maximum penalty appropriate to a body corporate is 5 times the maximum penalty provided for a natural person.

- (3) For the purposes of an offence against subsection (1) or (2), strict liability applies:

- (a) to the circumstance in subparagraph (1)(c)(ii) or (2)(c)(ii), as the case requires, that the power of approval is under section 106ZQ; and
- (b) to the circumstance in paragraph (1)(d) or (2)(d), as the case requires, that the power of accreditation is under section 106ZQ.

106ZO Persons without accreditation not to describe themselves as universities in external Territories

- (1) A person is guilty of an offence if:
 - (a) the person uses the word “university”, “university college” or any like words (whether or not in combination with other words):
 - (i) to identify the person in the person’s operation or purported operation in an external Territory; or
 - (ii) to identify the person’s operation or purported operation in an external Territory; and
 - (b) the person, or the person’s operation or purported operation, as so identified, is not:
 - (i) a listed self-accrediting entity; or
 - (ii) approved by the Minister as a self-accrediting entity in relation to that Territory under section 106ZQ; and
 - (c) the Minister has not approved the use of that word or those words:
 - (i) to identify the person in the person’s operation or purported operation in that external Territory; or
 - (ii) to identify the person’s operation or purported operation in that external Territory.

Penalty: 40 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* provides that the maximum penalty appropriate to a body corporate is 5 times the maximum penalty provided for a natural person.

- (2) For the purposes of an offence against subsection (1), strict liability applies to the circumstance in subparagraph (1)(b)(ii) that the power of approval is under section 106ZQ.

Part 5C.3—Laws regulating the use of company names and business names in external Territories

106ZP Law in force in external Territory not to allow company or business names using the word “university”

Despite any provision of a law in force in an external Territory that regulates the use of company names or business names in that Territory, the registration, or authorisation of the use of, any company name or business name that uses the word “university”, “university college” or any like words is of no effect unless the Minister has given written approval for the use of that name.

Part 5C.4—Accreditation procedures for persons proposing to provide higher education in external Territories

106ZQ Minister to act as accrediting authority in relation to some persons providing higher education in external Territories

- (1) If a person:
 - (a) is not a listed self-accrediting entity; and
 - (b) wishes to operate in an external Territory as a university or other provider of courses leading to higher education awards;the person must apply in writing to the Minister either:
 - (c) for approval of the person as a self-accrediting entity in relation to that Territory; or
 - (d) for accreditation in relation to that Territory of each course it proposes to offer.
- (2) The regulations:
 - (a) may prescribe fees to be paid in respect of applications made under subsection (1); and

- (b) for that purpose may take into account such costs as are directly or indirectly incurred by, or in assisting, the Minister to make a decision on such an application; and
 - (c) may set out the manner and times of payment of such fees.
 - (3) A person making an application under subsection (1) must pay such fees as are provided for in the regulations at such times as the regulations provide.
 - (4) If the person applies for approval as a self-accrediting entity in relation to an external Territory, the Minister may determine the person to be such a self-accrediting entity in relation to that Territory if the Minister is satisfied, following an assessment made having regard to the National Protocols, that it is appropriate that the person be empowered to issue its own qualifications.
 - (5) If the person applies for accreditation in relation to an external Territory of a particular course as a course leading to a higher education award, the Minister may accredit that course in relation to that Territory if the Minister is satisfied, following an assessment made having regard to the National Protocols, that the course, and the way of delivering it, are appropriate to the award.
 - (6) An approval of a person as a self-accrediting entity by the Minister:
 - (a) remains in force for the period that the Minister determines; and
 - (b) is subject to any conditions that the Minister imposes.
 - (7) An accreditation of a particular course by the Minister:
 - (a) remains in force for the period that the Minister determines; and
 - (b) is subject to any conditions that the Minister imposes.
 - (8) The Minister may amend or revoke an approval of a person under this section as a self-accrediting entity in relation to an external Territory at any time if the Minister is satisfied:
 - (a) that the person has breached a condition to which the person's approval is subject; or
 - (b) following a reassessment of the person's approval made having regard to the National Protocols—that the circumstances of the person have so changed that if the
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person were to apply for approval as a self-accrediting entity in relation to that Territory at that time, the Minister would refuse the application.

- (9) The Minister may amend or revoke an accreditation of a course under this section in relation to an external Territory as a course leading to a higher education award at any time if the Minister is satisfied:
- (a) that the person offering the course has breached a condition to which the course accreditation is subject; or
 - (b) following a reassessment of the course accreditation made having regard to the National Protocols—that the content of, or manner of providing, the course has so changed that, if the person providing the course were to apply for accreditation of the course in relation to that Territory at that time, the Minister would refuse the application.

- (10) In this section:

person does not include natural person.

106ZR Application to Administrative Appeals Tribunal for review of decisions under section 106ZQ

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision:
- (a) to refuse, under subsection 106ZQ(4), to approve a person as a self-accrediting entity; or
 - (b) to refuse, under subsection 106ZQ(5), to accredit a course leading to a higher education award; or
 - (c) to amend or revoke, under subsection 106ZQ(8), an approval of a person as a self-accrediting entity; or
 - (d) to amend or revoke, under subsection 106ZQ(9), an accreditation of a course as a course leading to a higher education award.
- (2) The application for review of a decision must be made within 28 days after notice of the decision is given:
- (a) if the decision is a decision referred to in paragraph (1)(a)—to the person seeking approval as a self-accrediting entity; and

- (b) if the decision is a decision referred to in paragraph (1)(b)—
to the person seeking accreditation of a course as a course
leading to a higher education award; and
 - (c) if the decision is a decision referred to in paragraph (1)(c)—
to the person who had been approved as a self-accrediting
entity; and
 - (d) if the decision is a decision referred to in paragraph (1)(d)—
to the person who had offered the course to which the
decision relates.
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*[Minister's second reading speech made in—
House of Representatives on 16 October 2002
Senate on 11 November 2002]*

(218/02)