Higher Education (General Provisions) Bill 2008

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Higher Education (General Provisions) Bill 2008.

Policy Objectives of the Legislation

The primary policy objectives of the Bill are to:

- uphold the standards of education delivered by higher education institutions operating in the State; and
- uphold the standards of education delivered by higher education institutions approved to be established or recognised, authorised to operate, or registered, under the Act, when operating outside the State; and
- maintain public confidence in the higher education sector in the State.

Further policy objectives of the Bill are to amend:

- the *Education (General Provisions) Act 2006* to clarify the head of power to charge a fee in relation to non-State school students who undertake a component of a program of distance education at a State school; and
- amend the *Vocational Education, Training and Employment Act 2000* to implement a number of recommendations arising from a review of the role of Group Training Organisations.

Reasons for the Bill

Proposed *Higher Education (General Provisions) Act 2008*

The *National Protocols for Higher Education Approval Processes* (National Protocols) were originally approved by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) on 21 March 2000. These National Protocols are a key element of a national quality assurance framework for Australian higher education. They have been designed to ensure consistent criteria and standards for higher education approval processes across Australia. The National Protocols provide a common framework for regulating the establishment and recognition of new universities, the operation of overseas higher education institutions in Australia and the accreditation of courses offered by providers of higher education other than universities.

On 31 October 2007, MCEETYA approved a new edition of the National Protocols. Changes to the National Protocols were necessary to reflect experience since their adoption in 2000 and to set in place arrangements to deal with emerging challenges.

MCEETYA also agreed to the development of National Guidelines for Higher Education Approval Processes to elaborate the provisions of the National Protocols. The National Guidelines were also approved by MCEETYA on 31 October 2007.

Individual states and territories have the responsibility for implementing the National Protocols through legislation. The *Higher Education (General Provisions) Act 2003* implemented the 2000 National Protocols in Queensland. The amendments required to this Act to implement the new 2007 National Protocols would have been very extensive. Therefore, it has been decided that the best approach is to replace the *Higher Education (General Provisions) Act 2003* with a new Act.

Amendments to the *Education (General Provisions) Act 2006*

Section 52 of the *Education (General Provisions) Act 2006* (the EGPA) sets out the circumstances in which a fee is payable for the provision of distance education to a person.

In certain situations, for example to extend the range of subject offerings available to their students, some non-State schools make arrangements for their students to undertake one or more of their subjects by studying the

subject/s through State schools of distance education. Due to a drafting technicality, relating to the distinction between a "program" and a "component of a program" of distance education and the fact non-State school students are enrolled in less than a full "program" of distance education, section 52 does not currently provide the necessary head of power for fees to be charged in relation to these students. This was not the original policy intent of the section.

During the development of the EGPA, it was intended that the head of power under section 52 to charge fees for the provision of distance education would apply in respect of non-State school students who undertake one or more subjects by distance education. Broad consultation, including a Public Benefit Test, was undertaken on this proposal at this time.

The Bill will amend the EGPA to give effect to the original policy intent by clarifying the head of power to charge a fee in relation to non-State school students who undertake a component of a program of distance education at a State school.

Amendments to the *Vocational Education, Training and Employment Act 2000*

The Queensland Skills Plan, which was launched in March 2006, outlines a policy framework that will better match the supply of skilled labour to industry's needs and the economy's demands.

Action 18 of the Plan outlines the Queensland Government's commitment to reviewing the role of group training organisations (GTOs) to ensure that group training is effectively meeting its objectives.

As part of the review of GTOs, it has been decided:

(i) that an organisation which employs 25 or more apprentices and/or trainees under hosting arrangements should be subject to a set of minimum national standards. These standards will provide a similar level of protection and support to that which currently exists in relation to registered GTOs;

(ii) to remove the restrictions on the operations of GTOs to a particular industry, industry sector or geographical area; and

(iii) to remove the restriction that allows only not-for-profit GTOs to operate in Queensland.

Of these three actions outlined above, the first two require an amendment to the *Vocational Education, Training and Employment Act 2000* (VETE Act).

Achieving the Objectives

Proposed *Higher Education (General Provisions) Act 2008*

The Bill achieves the primary policy objectives by repealing the *Higher Education (General Provisions) Act 2003* and providing an updated and more comprehensive approval process for higher education institutions, including the new categories of higher education institutions provided for by the new National Protocols, as discussed below.

Non self-accrediting higher education institutions

In the past, higher education providers other than universities were required to be registered and have their courses accredited by state and territory higher education approval authorities. The previous National Protocols provided for the operation of non-university providers through a process where the provider registration and course accreditation could be either combined, or conducted as a separate process. Queensland had chosen the combined option, by prescribing a single accreditation process under the *Higher Education (General Provisions) Act 2003*.

The new National Protocols have clearly separated the registration and course accreditation processes, requiring non-university providers (to be known as non self-accrediting higher education institutions) to be registered in the jurisdiction in which they operate. This is additional to the requirement for their courses to be accredited. Although it appears to introduce a new process, this is effectively just a separation of the assessment procedures for the course and provider that already existed under the old National Protocols, because the assessment criteria will not change.

The separation of the registration and accreditation process is seen as advantageous because:

- it enables the facilitation of an approved national framework for mutual recognition of course accreditation, whereby local jurisdictions accept an accreditation decision by another authority, but still scrutinise local delivery arrangements, by reference to the registration criteria and course delivery criteria.

- it makes it possible to streamline processes by not re-visiting generic registration criteria every time a provider seeks accreditation of a new course.

Self-accrediting higher education institutions

Currently, universities are empowered to accredit their own courses, while most non-university higher education providers must have their courses accredited through a state or territory course approval process. There was no mechanism under the previous National Protocols for any other higher education entities to become self-accrediting, other than by applying for university status.

In the national higher education sector, there are a number of non-university providers that have been in operation for a considerable period of time, and attained a significant level of sophistication in their operations. Such providers are currently required to have each course they offer individually accredited or re-accredited by the relevant state or territory accrediting authority. As a consequence of its review of the National Protocols, MCEETYA decided that these types of institutions should be empowered to self-accredit their own courses.

The new National Protocols introduce a process whereby institutions other than universities can apply to be self-accrediting. The new National Protocols provide that normally, institutions will demonstrate that they meet the criteria for self-accrediting authority through their track record of re-registration and re-accreditation in at least two approval cycles. However, in exceptional circumstances, self-accrediting authority may be granted to an institution which has no track record of prior higher education provision (i.e. a "greenfield" institution), in which case the assessment will be based on a detailed plan rather than an existing institution's track record. This allows for new entrants to the sector to attain self-accrediting status.

Authority to self-accredit may be limited to the broad fields of study and Australian Qualifications Framework (AQF) higher education qualification levels in which the institution has a proven track record, or for which the institution is seeking self-accrediting authority (in the case of assessment based on a plan). This provision can be used to guard against an institution attaining self-accrediting status, then branching out into fields of study in which it has no expertise, or offering courses at a higher level than it has the capacity to deliver.

It should also be noted that the Minister will have the power to impose conditions on self-accrediting higher education institutions, as well as to cancel the approval to be a self-accrediting higher education institution where necessary. These are standard powers that currently apply to the other categories of higher education institutions (other than universities), and will therefore be applied similarly to self-accrediting higher education institutions.

The Bill also provides for a streamlined process for allowing interstate self-accrediting higher education institutions to operate in Queensland. The governing body of the institution must provide the Minister with documents or information about its self-accrediting authority held interstate, including information about the scope and term of that self-accrediting authority. The governing body must also notify the Minister of the institution's intention to operate in Queensland, and where it intends operating. The Minister is then required to give the institution a notice acknowledging the institution's intention to operate in Queensland. The institution will then hold what is to be known as a recognised self-accrediting authority and can commence operating in Queensland. However, it should be noted that the recognised self-accrediting authority can be withdrawn under certain circumstances, for instance, if the institution is not complying with the National Protocols and the National Guidelines.

Universities, specialised universities, university colleges and specialised university colleges

- Universities

As is the case under the *Higher Education (General Provisions) Act 2003*, the Bill similarly provides that an application may be made for the Minister's approval that an entity is suitable to be established or recognised in Queensland, under an Act, as a university. Likewise, the Minister may only grant such an application if satisfied that the entity will comply with the National Protocols upon its establishment or recognition under an Act. However, as is the case for each category of higher education institution, the Bill provides that the Minister must also be satisfied that the entity will comply with the new National Guidelines.

- Specialised Universities

Specialised university-level higher education institutions are extremely high quality, self-accrediting institutions which fulfil all the criteria for being a university, except for the breadth of study requirement. The new

National Protocols have recognised this by providing for the approval of a specific category of higher education institution – namely, the specialised university. The Bill therefore also provides that an application may be made for the Minister's approval that an entity is suitable to be established or recognised in Queensland, under an Act, as a specialised university.

To become a specialised university, an institution is required to deliver AQF higher education qualifications in one or two broad fields of study only, as opposed to three or more broad fields of study for a full university. An international example of a specialised university is the University of Arts, London which specialises in art, design, fashion and the performing arts.

The Bill provides that a specialised university may use a modified form of the "university" title by using the term "[Name] University of [specialisation]" as part of its title (e.g. Perth University of Agricultural Sciences). A specialised university will not be able to use the title "university" without also stating the specialisation of the institution.

There is no expectation that a specialised university will, or should, become a full university. Consequently, there is no requirement that such a specialised university must meet all the criteria to become a university within a specified period. However, a specialised university could become a university (and consequently use the title "university" without modification), if at some point it met all the criteria for establishment or recognition under an Act as a university in Queensland.

- University Colleges and Specialised University Colleges

One key criticism of the original National Protocols was that they posed too high a barrier for potential universities (i.e. "greenfield" universities), particularly in relation to the research requirement for full universities. To address this, the new National Protocols allow for a new category of institution with the title "university college". The Bill therefore also provides that an application may be made for the Minister's approval that an entity is suitable to be established or recognised in Queensland, under an Act, as a university college, or a specialised university college.

The National Protocols provide that a university college is required to deliver AQF higher education qualifications across a range of broad fields of study but not to the same qualification level as a full university or a specialised university (e.g. only including up to Research Master and PhDs or equivalent Research Doctorates in at least one broad field of study rather than three broad fields of study for a full university).

The National Protocols also require that a university college must build towards satisfying the criteria for university status within the first five years of its operation. In other words, the category of university college is an interim arrangement to allow an institution to develop its research and postgraduate training capacity. It should be noted that, although this is a requirement of the National Protocols, the Bill does not specifically provide for this. Instead, it is anticipated that this would form part of the conditions of establishment or recognition as a university college, under a separate Act.

If, after the interim period, an institution is not able to satisfy the criteria to be established or recognised under an Act, as a university, it may seek approval to operate as another type of higher education institution (i.e. a non self-accrediting higher education institution or a self-accrediting higher education institution).

A "greenfield" institution (i.e. where assessment is based on a plan, rather than on an existing educational institution) may seek to become a university college as a prelude to becoming a university or specialised university. Likewise, an existing higher education institution (e.g. a self-accrediting higher education institution) may seek to be a university college if it is not immediately able to meet all the criteria to become a university.

As is the case for specialised universities, the Bill also provides that a university college or specialised university college may use a modified form of the "university" title by using the term "university college" in its title. If it is a specialised university college it must also refer to the specialisation within its title. The intention of the use of these modified titles is to facilitate an institution's progress towards becoming a university or a specialised university at a later date, and ultimately being able to use an unmodified university title. For example, the "Sydney University College" later becomes the "Sydney University". Similarly, for a specialised university college, the "Perth University College of Agricultural Sciences" would later become the "Perth University of Agricultural Sciences.

- Interstate universities, specialised universities, university colleges and specialised university colleges

The Bill also permits interstate universities, specialised universities, university colleges and specialised university colleges to operate in Queensland under a recognised authority. These interstate institutions are

not required to apply for any kind of approval to operate in Queensland, as the recognised authority is automatic. In this regard, it should be noted that the existing requirement for an interstate university to obtain the Minister's approval if it intends to operate in Queensland under an agency arrangement has been removed.

Although the recognised authority to operate is automatic, the Minister will have power to withdraw it under certain circumstances, for instance, if the institution is not complying with the National Protocols and the National Guidelines.

Overseas higher education institutions

The previous National Protocols allowed for overseas higher education institutions to operate in Australia provided that they met criteria which melded two approaches – one that relied on the standing of the institution's accreditation status in its country of origin, and the other that required the courses to be offered in Australia to be comparable to an Australian course at the same level in a similar field. This had the effect of requiring the institution to undergo similar accreditation procedures as what was required for Australian higher education providers, even though the overseas institution was not offering an Australian qualification.

When MCEETYA reviewed the previous National Protocols, it was considered that the attraction of a course offered by an overseas institution may well be its distinctive difference from similar courses offered by Australian providers, and therefore the overarching consideration should be to ensure the comparability of standards as a means of ensuring quality. Consequently, although the requirement for comparability with an Australian qualification has been omitted, the new National Protocols ensure that the institution, and its courses to be offered in Australia, must be subject to an appropriate quality assurance process in the country of origin and that local delivery, quality assurance and financial arrangements are scrutinised. This approach is consistent, in the main, with the manner in which Australian universities are treated when they deliver their courses in other countries.

The Bill provides for this new approach by streamlining the process for overseas higher education institutions seeking approval to operate in Queensland. Rather than developing an operational plan for the Minister's approval, applicants will only be required to include details of the courses that the institution proposes to offer in Queensland, and information about the partner or agency arrangements that the institution proposes to use to

deliver the courses in Queensland (i.e. if the courses will not be delivered directly by the overseas higher education institution itself). The resulting Ministerial approval to operate will include the courses for which approval is given, and also approval of the delivery arrangements.

Consideration of off-shore operations

Nationally, there has been debate about whether the original National Protocols applied to the off-shore operations of Australian higher education providers, with jurisdictions interpreting this differently.

The new National Protocols make it clear that the criteria and standards in the National Protocols apply to all operations of an Australian higher education provider, including their off-shore operations. Reference to offshore activities includes an institution's campuses that are located outside Australia, and any courses that it offers at those campuses. This protects the interests of students outside Australia studying for an Australian award, and assures the international reputation of Australian higher education, thereby helping to enhance an important international education market.

The Bill also provides for this by empowering the Minister to examine the proposed operations of an applicant both inside and outside the State (i.e. whether the applicant's operations are located within Queensland, in another Australian jurisdiction, or in an overseas jurisdiction). This applies to all applicants other than overseas higher education institutions, in which case, as they are not offering Australian qualifications, it is not necessary to examine their operations outside the State.

Similarly, a standard condition of approval applies to the majority of higher education institutions to empower the Minister to enter and examine the institution's operations, both within and outside the State, at any reasonable time. This condition applies to help the Minister decide whether the institution is complying with the National Protocols and the National Guidelines. In the case of overseas higher education institutions, the standard condition applies only in relation to the institution's operations in the State. The standard condition does not apply in the case of universities, specialised universities, university colleges and specialised university colleges, because these types of higher education institutions are established or recognised under separate legislation. Any conditions applying to the actual establishment or recognition of these types of higher education institution must be contained within the legislation which

establishes or recognises them (e.g. a separate Act for a particular university).

It should be noted that the power to examine an institution's off-shore operations may not authorise the Minister to take specific actions in foreign jurisdictions if those actions would be inconsistent with the law of the foreign jurisdiction. However, as long as the laws of the other jurisdiction do not prevent the Minister from examining the institution's operations in that jurisdiction, the Minister may exercise the power in that jurisdiction.

It should also be noted that the practical enforcement of the Minister's power to examine the operations of a higher education institution outside of Queensland will occur within Queensland. For instance, if the Minister is not able to sufficiently examine any extra-territorial operation of a relevant institution (because doing so would contravene the laws of the other jurisdiction), then potentially this may have an impact upon the institution's ability to satisfy the criteria necessary for the Minister to grant its application. However, this would only be the case in those situations where the laws of the foreign jurisdiction prevented the Minister from examining the institution's operations in that foreign jurisdiction.

Limitation on use of title

The *Higher Education (General Provisions) Act 2003* provided that it is an offence for a person to use the title "university" or hold out that a place is a university, unless it is a university. The Bill continues to protect the title "university" by retaining that offence and clarifying that it applies also with respect to interstate universities, specialised universities and overseas universities.

The Bill includes additional provisions to specify the way in which the new restricted titles must be used, including the titles of "specialised university", "university college", "specialised university college" and "self-accrediting higher education institution".

Conferral of higher education awards

The *Higher Education (General Provisions) Act 2003* provided that it is an offence to confer, or hold out that an institution was authorised to confer, a higher education award, unless the institution had been approved to do so in accordance with the Act.

Again, the Bill retains these offence provisions and tailors them according to the applicable approval for each type of higher education institution. For instance, in relation to self-accrediting higher education institutions, the

institution must not confer, or hold out that it is authorised to confer, a higher education award unless the course leading to the award has been accredited within the scope of the institution's self-accrediting authority.

Limitation on operation without relevant authority or approval, and offence to operate without relevant authority or approval

In a similar manner to the *Higher Education (General Provisions) Act 2003*, the Bill also limits the operation of each type of higher education institution (other than universities, specialised universities, university colleges and specialised university colleges) in accordance with the type of approval that is applicable. For instance, a self-accrediting higher education institution must not accredit a course other than in relation to a field of study or AQF qualification level for which the institution's self-accrediting authority was given.

The overarching aims of the new National Protocols and the regulatory framework for higher education are to uphold the standards of education delivered by higher education institutions operating in the country, and maintain confidence in the higher education sector. To maintain confidence in the sector, the regulatory framework must focus on providers located in Australia, conducting any academic or marketing activities in Australia, or purporting to have an association with Australia.

Therefore, to achieve this aim, the Bill also incorporates an offence that a person must not operate a higher education institution in Queensland unless the institution is one of the types of higher education institution provided for by the Bill.

It should be noted that the Bill also defines what is meant by the term "operating" a higher education institution.

Amendments to the *Education (General Provisions) Act 2006*

The Bill achieves the objective by clarifying the head of power in the EGPA to charge a fee in relation to non-State school students who undertake a component of a program of distance education at a State school.

Amendments to the *Vocational Education, Training and Employment Act 2000*

The Bill achieves the objective by amending Chapter 7, Part 2 of the VETE Act to:

- allow the Training Employment and Recognition Council (TERC) to recognise organisations which are not GTOs but which employ 25 or more apprentices and/or trainees under hosting arrangements (Principal Employer Organisations); and
- remove the restrictions on the operations of GTOs to a particular industry, industry sector or area.

Administrative costs

Implementation of the Bill is not expected to result in any additional administrative costs to the Government.

Fundamental Legislative Principles

The following aspects of the Bill raise fundamental legislative principle issues.

Reference to the National Protocols and National Guidelines

As explained above, the Bill provides for the inclusion of new categories of higher education institutions, namely, specialised universities, university colleges and self accrediting higher education institutions. The Bill provides that for each category of higher education institution (both existing and new), the Minister must be satisfied that an applicant will comply with the National Protocols. This is modeled on the current provisions of the *Higher Education (General Provisions) Act 2003*, which provide that when reaching decisions under the Act, the Minister may grant an application only if satisfied that the institution will comply with the criteria contained in the National Protocols.

In addition to the Minister considering compliance of an institution with the National Protocols, the Bill also proposes that the Minister considers whether the institution will comply with the National Guidelines. This consideration will also apply to both the existing and new categories of higher education institutions.

It is arguable that referring to the National Protocols and the National Guidelines does not have sufficient regard to the institution of Parliament in that it allows for the delegation of legislative power and does not subject the exercise of the delegated legislative power to the scrutiny of the Legislative Assembly.

The management of the National Protocols and the National Guidelines are the responsibility of MCEETYA. The Minister for Education is a member of MCEETYA and is involved in the maintenance and operation of the National Protocols and the National Guidelines.

The National Protocols and the National Guidelines are an integral part of the national framework for higher education in Australia that ensures national consistency. As such, the provisions are justifiable given the status of the national framework and the fact that all states and territories recognise the National Protocols and the National Guidelines.

Examination Power and Power of Entry

When deciding an application for approval of a higher education institution, the Bill provides that the Minister may examine the proposed operation of the institution, both inside and outside the State. However, in the case of overseas higher education institutions, the Minister may only examine the institution's operations within the State. As overseas higher education institutions are not offering Australian qualifications, they do not represent a risk to the reputation of the Australian higher education sector. Therefore, it is not necessary for the Minister to consider the operations of such institutions outside of Queensland.

The Bill also imposes a standard condition on the continuing approval for non self-accrediting higher education institutions and self-accrediting higher education institutions. This condition is to the effect that the governing body of an institution must:

- allow the Minister to enter a place at any reasonable time to examine the institution's operation within Queensland and outside Queensland; and
- comply with all reasonable requests from the Minister for information or records that the governing body is keeping, or has control of, that are appropriate.

The standard condition will be similar for the continuing approval of overseas higher education institutions and interstate universities and university colleges that are recognised to have authority to operate in Queensland, except that the Minister may only enter and examine the institution's operations in Queensland. In the case of overseas higher education institutions, given that the institution is not offering Australian higher education qualifications, its operations outside of Queensland

(whether interstate or overseas) are not relevant to its operations in Queensland.

The power of entry and post-entry can be exercised without consent or the obtaining of a warrant. Therefore, it may be argued that, while not characterised as a statutory power, the provisions still breach the fundamental legislative principle that a power to enter premises should be conferred with a requirement that the power only be exercised with a duly issued warrant.

It should be noted that by including the power of entry in the standard condition, institutions will be aware of the existence this power prior to making application for approval to operate under the Act. Therefore, by making application, an institution essentially consents to the exercise of the power of entry, if necessary, following the granting of its approval to operate.

However, the power of entry is required to enable the Minister to examine the operations or proposed operations of a higher education institution to ensure that it is complying with the legislation, and with the relevant criteria under the National Protocols and National Guidelines. The powers relate only to matters relevant to the quality of courses and the way in which they are delivered or proposed to be delivered and are not intended to be general entry or search and seizure powers for any other purpose. They will allow for a rigorous response to genuine concerns regarding the quality of a higher education institution's operation or proposed operation.

These powers are a crucial means of ensuring that providers of higher education remain accountable by being subject to examination, where necessary, to determine that they are providing appropriate delivery of their education services. The provisions will also assist in affirming the reputation of Queensland higher education providers in the international marketplace.

Guidelines

One of the provisions that the Bill retains from the *Higher Education (General Provisions) Act 2003*, is the provision which specifies that the Minister may issue guidelines for the Act. Given that the guidelines are not subordinate legislation, it may be argued that the power to make guidelines is a breach of the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament, because the guidelines will not be subject the scrutiny of the Legislative Assembly.

However, the guidelines are intended to provide assistance to applicants and higher education institutions, rather than being prescriptive in nature. They will be concerned only with matters of detail including administrative matters; guidance for the proper formulation of applications under the Act; and the type of information to be included in the annual reports. Given the administrative nature of the guidelines, it is not necessary that they be subordinate legislation.

Reversal of the onus of proof

Two other provisions that the Bill retains from the *Higher Education (General Provisions) Act 2003*, are the following:

- Clause 112, which provides that an act done or omitted to be done for a person by a representative is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

- Clause 113, which provides that if a corporation commits an offence against a provision of the Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision. However, an executive officer has a defence if it can be proven that the officer was in a position to influence the conduct of the corporation, and exercised reasonable diligence to ensure the corporation complied with the provision; or, otherwise, the officer was not in a position to influence the conduct of the corporation in relation to the offence.

It may be argued that these provisions effectively contain a reversal of the onus of proof in criminal proceedings without adequate justification, and therefore breach the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals.

However, it should also be noted that in relation to clause 113, if the corporation itself was prosecuted then fines would be paid only if the corporation was still in existence and only if it had funds available. Also, if a corporation was convicted of an offence against the Act, but its executive officers were not convicted, those officers would be free to establish a new corporation and make application for approval to operate as a higher education institution (e.g. apply for accreditation of courses, or to operate as a self-accrediting higher education or an overseas higher education institution).

Also, in each instance, the fact to be proved is clearly within the knowledge of the offenders and can therefore be easily disproved by them. By contrast, it is difficult to gather evidence to prove those facts. In addition, the provisions do provide safeguards by the inclusion of grounds upon which liability may be avoided. Therefore, the provisions are considered necessary to ensure an appropriate level of accountability; to uphold the standards of education delivered by higher education institutions; and to maintain public confidence in the higher education sector.

Immunity from civil liability

A further provision relocated from the existing Act to the proposed new Act is clause 130 which provides protection from civil liability for the Minister for an act or omission made honestly and without negligence under the Act. It is not considered appropriate for the Minister to be made personally liable in these circumstances, as a consequence of carrying out his or her responsibilities under the Act. This could be considered to have insufficient regard to individual rights and liberties by restricting an individual's ability seek legal redress. However, the potential breach of fundamental legislative principles is justifiable on the basis that the provision operates to attach the civil liability to the State instead.

Reference to VETE Act Guidelines

Under the proposed amendments to the VETE Act, an organisation's eligibility to be recognised as a principal employer organisation (a PEO) will be determined by reference to approved guidelines. Furthermore, the PEO recognition scheme will be enforced through the use of approved guidelines relating to the registration of training contracts rather than through an express provision in the VETE Act. It is arguable that this use of guidelines does not have sufficient regard to the institution of Parliament in that it allows for the delegation of legislative power and does not subject the exercise of the delegated legislative power to the scrutiny of the Legislative Assembly. This may give rise to a potential breach of fundamental legislative principles.

Although it may give rise to a potential breach of fundamental legislative principles, the use of approved guidelines rather than subordinate legislation is necessary for two reasons. Firstly, the use of approved guidelines is a key feature of the VETE Act. Existing approved guidelines currently underpin the registration and regulation of training contracts and the recognition of organisations as GTOs. As such, the use of approved guidelines is a process which stakeholders are already familiar with.

Secondly, the use of approved guidelines is required to deliver operational flexibility to the TERC and allow it to respond quickly to changes or growth in the group training market, which is by its nature very dynamic. By using approved guidelines, any changes to the relevant National Standards can be quickly adopted in Queensland without the need to wait for legislative change. This will ensure that quality systems are in place at all times to support apprentices, trainees and employers alike. It should be noted that the approved guidelines for PEOs, which will be developed in consultation with key stakeholders and will be available on the Department's website, will require Ministerial approval before they take effect.

Consultation

Proposed *Higher Education (General Provisions) Act 2008*

Key stakeholders were consulted on an exposure draft of the proposed Bill in early 2008, which at that time proposed to amend the *Higher Education (General Provisions) Act 2003*. However, subsequent to the release of the exposure draft of the Bill, it became evident that the amendments required to implement the new National Protocols were very extensive and would have resulted in an almost completely re-written version of the *Higher Education (General Provisions) Act 2003*. Therefore, a decision was later made that the best approach was to replace the *Higher Education (General Provisions) Act 2003* with a new Act. However, the essence of the provisions contained in the exposure draft of the Bill, which was released to stakeholders, did not change. The following stakeholders were consulted on the exposure draft of the Bill:

- Relevant Government agencies – i.e. the Department of the Premier and Cabinet; Queensland Treasury; the Department of Justice and Attorney-General; the Department of Tourism, Regional Development and Industry; Queensland Education and Training International; the Commission for Children and Young People and Child Guardian; and Queensland Health.
- Queensland Universities.
- Interstate Universities approved to offer higher education courses in Queensland through an agency arrangement.
- Non-university providers of higher education currently operating in Queensland.

- Interstate agencies responsible for higher education approval processes.
- The Council of Private Higher Education.
- The Australian Council for Private Higher Education and Training.

Amendments to the *Education (General Provisions) Act 2006*

Representatives of the non-State schooling sector were informed of the proposed amendments to the EGPA under part 11 of the Bill.

Amendments to the *Vocational Education, Training and Employment Act 2000*

A consultation draft of the relevant part of the Bill was released to key stakeholders in early February 2008. The stakeholders consulted included All Trades Queensland (which at this stage appears to be the only organisation that will need to seek recognition as a PEO), the Queensland Council of Unions, the Australian Manufacturing Workers Union, the Construction, Forestry, Mining and Energy Union, Australian Industry Group and Commerce Queensland. The Group Training Association of Queensland, as well as individual GTOs operating in Queensland, were also informed of the proposed amendments.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 establishes the short title of the Act as the *Higher Education (General Provisions) Act 2008*.

Commencement

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Act binds all persons

Clause 3 provides that the Act binds all persons including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States. However, nothing in the Act makes the Commonwealth or a State liable to be prosecuted for an offence.

Definitions

Clause 4 provides that particular words used in the Act are defined in the Dictionary in Schedule 2.

Objects of Act

Clause 5 provides for the objects of the Act. The objects stated in subclause 5(1) are important for guiding the administration of the Act. These objects are:

(a) to uphold the standards of education delivered by higher education institutions operating in the State; and

(b) to uphold the standards of education delivered by higher education institutions authorised to operate, or registered, under the Act, when operating outside the State; and

(c) to maintain public confidence in the higher education sector in the State.

Clause 5 also sets out the ways in which the objects of the Act are to be mainly achieved, namely:

(i) establishing a process for the registration of non self-accrediting higher education institutions;

(ii) providing for the accreditation of higher education courses proposed to be offered by non self-accrediting higher education institutions;

(iii) establishing a process for granting self-accrediting authority to higher education institutions other than universities;

(iv) providing for the recognition of higher education institutions that have authority to operate as self-accrediting higher education institutions in another Australian jurisdiction;

(v) establishing a process for the establishment or recognition of universities, specialised universities, university colleges and specialised university colleges in the State;

(vi) providing for the approval of the operation of interstate universities, interstate specialised universities, interstate university colleges and interstate specialised university colleges in the State;

(vii) providing for the approval of the operation of overseas higher education institutions in the State;

(viii) limiting the use of a title that consists of, or includes, the word 'university'.

Part 2 Non self-accrediting higher education institutions

Division 1 Preliminary

Definition for pt 2

Clause 6 sets out the definition of ***national guidelines*** for part 2, to mean the document entitled 'National Guidelines for Higher Education Approval Processes—Guidelines for the registration of non self-accrediting higher education institutions and the accreditation of their course/s' that was approved by the Ministerial Council on 31 October 2007.

Note that the Bill's dictionary defines "Ministerial Council" as the Ministerial Council on Education, Employment, Training and Youth Affairs. This body is also known as "MCEETYA".

Limitation on operation of non self-accrediting higher education institution

Clause 7 creates an offence for a non self-accrediting higher education institution to offer a higher education course unless the course is an accredited course for the institution.

Division 2 Application for registration

Procedural requirements for application

Clause 8 specifies the procedural requirements for applying to the Minister for registration of an entity as a non self-accrediting higher education institution. Subsection 8(2) provides that an application for registration must be in writing; state the place where the entity is to operate; include the information required to be provided under the national guidelines; be accompanied by an application under section 23 for accreditation of a course proposed to be offered by the entity; and be accompanied by the prescribed fee.

The requirement for the application to also be accompanied by an application for accreditation of a course is included to ensure that an entity is not considered for registration as a non self-accrediting higher education institution unless it is also seeking accreditation of a course that it proposes to offer. It is not possible for an entity to be registered as a non self-accrediting higher education institution without also being granted accreditation of at least one course that it proposes to offer. In this regard, please also see clause 10(2)(b), which provides that the Minister may only grant an application for registration if, at the same time, the Minister grants accreditation of at least one higher education course the entity proposes to offer .

Further information or document to support application

Clause 9 provides that the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application.

Decision on application

Clause 10 requires the Minister to make a decision to either grant, or refuse to grant, the application. Subsection 10(2) provides that the Minister may only grant the application if satisfied that the entity complies with the national protocols and national guidelines; and, at the same time, grants accreditation of at least one higher education course the entity proposes to offer. As mentioned above, it is not possible for an entity to be registered as a non self-accrediting higher education institution without also being granted accreditation of at least one course that it proposes to offer.

Subsection 10(3) provides that in deciding the application, the Minister may examine the proposed operation of the entity both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the proposed operations of the institution, including its operations outside of Australia, if necessary.

Subsection 10(4) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then subsection 10(5) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then subsection 10(6) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 10(7) provides that subsection 10(6) is subject to section 11. Therefore, if the Minister and the applicant agree under section 11 to extend the day by which the decision is to be made, subsection 10(6) is subject to 11.

Further consideration of application

Clause 11 enables the Minister to extend the decision-making period beyond 18 months, if more time is needed due to the complexity of the matters that must be considered. However, the Minister and the applicant must agree in writing on a later day by which the decision must be made (the ***agreed extended day***), and this written agreement must occur before the day that is 18 months after the application was received by the Minister (the ***final consideration day***).

Subsection 11(3) provides that the decision-making period can be further extended to a later day, if necessary (the ***further extended day***). However, once again, the Minister and the applicant must agree in writing on the further extended day by which the decision must be made, and this agreement must occur before the agreed extended day.

Subsection 11(4) provides that the Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by the agreed extended day; or the further extended day, as applicable.

Term of registration

Clause 12 provides that registration as a non self-accrediting higher education institution remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 10(4). However, a registration lapses if all of the non self-accrediting higher education institution's courses are cancelled (see clause 34).

It should also be noted that the governing body of a non self-accrediting higher education institution may apply for renewal of the registration under clause 15, within the stated time before the term of registration ends.

Standard condition

Clause 13 sets out the standard condition applying to the registration of an entity as a non self-accrediting higher education institution, namely that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution both inside and outside the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

Subsection 13(2) explains that the purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines; or the institution and its governing body are complying with any other conditions of the registration.

Imposition of conditions

Clause 14 enables the Minister to impose conditions on the registration that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable.

Division 3 Renewal of registration

Procedural requirements for applying for renewal

Clause 15 provides that the governing body of a non self-accrediting higher education institution (i.e. a higher education institution registered in accordance with clause 10) may apply to the Minister for renewal of the institution's registration. However, the application must be made within the period starting 18 months and ending 9 months before the term of the registration ends. This is to ensure that there is a minimum period of at least 9 months (possibly longer, depending upon when the renewal application is submitted) before the end of the term of registration, within which the Minister can consider the application for renewal. This minimum period is considered necessary due to the complexity of the matters that must often be considered.

Subsection 15(2) sets out how the renewal application must be made, including that it be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Subsection 15(3) applies section 9 to an application for renewal. Please see clause 128, which explains how an applied provision operates. In this case, section 9 applies to the application to provide that the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application for renewal.

Decision on application

Clause 16 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 16(2) provides that the

Minister may only grant the application if satisfied that the institution is complying with the national protocols and national guidelines; and the institution and its governing body are complying with any conditions of the institution's registration.

Subsection 16(3) provides that in deciding the application, the Minister may examine the operation of the institution both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 16(4) applies sections 10(4) to (7) and 11 to the making of a decision under this section. Therefore, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then the Minister must give the applicant an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135. However, this is subject to clause 11, which provides that the Minister and the applicant may agree to extend the day by which the decision is to be made.

Term of renewed registration

Clause 17 provides that the term of registration as a non self-accrediting higher education institution, renewed under clause 16, remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 10(4) as applied by section 16(4). However, it should be noted that a registration lapses if the accreditation of all courses accredited for the institution is cancelled (see clause 34).

Conditions of a renewed registration

Clause 18 applies sections 13 and 14 to a renewed registration. Therefore, the standard condition set out in section 13 applies to the renewed registration to require that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution both inside and outside the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

The purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines; or the institution and its governing body are complying with any other conditions of the registration.

In addition, the application of section 14 provides that the Minister may impose conditions on a renewed registration that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable. Subsection 18(2) clarifies that imposing a condition on a renewed registration includes changing or confirming a condition that had been imposed on the original registration.

Registration taken to be in force while application is considered

Clause 19 provides that if an application for renewal of registration as a non self-accrediting higher education institution is made under section 15, then the registration is taken to continue in force from the day that it would have expired until either –

(a) if the Minister decides to renew the registration – the day a notice about the decision is given to the applicant under section 10(4) as applied by section 16(4); or

(b) if the Minister decides to refuse to renew the registration –

  (i) the last day to appeal against the decision; or

  (ii) if an appeal is instituted against the decision – the day the appeal is decided.

This ensures that if there is any delay in deciding the application for renewal such that the decision cannot be made prior to the day the term of the registration is due to end, then the registration can continue in force until the matter of renewal has been decided.

Subsection 19(2) confirms that the registration is not taken to be in force if it is earlier cancelled.

Division 4 Cancellation of registration

Grounds for cancellation

Clause 20 sets out the grounds for cancelling a higher education institution's registration as a non self-accrediting higher education institution, namely –

(a) the institution –

  (i) is not complying or has not complied, with the national protocols and the national guidelines; or

  (ii) has contravened a condition of the registration;

(b) the governing body of the institution -

  (i) has contravened a condition of the registration; or

  (ii) has made a major change to the institution without the Minister's approval under section 38; or

  (iii) has not given the Minister an annual report under section 40.

(c) the Minister's decision to grant or renew the registration was based on false or misleading information.

Subsection 20(2) provides that if the Minister reasonably believes a ground exists for cancelling a registration, the Minister must follow the process set out in part 9, division 1. That part requires the Minister to give the holder of the registration a show cause notice about the Minister's proposal to cancel the registration; to consider any written representations about the show cause notice; and to take action to cancel the registration. That part also requires that the Minister must end the show cause process without further action if the Minister no longer believes the ground exists to cancel the registration.

Lapse of accreditation of courses

Clause 21 provides that if a registration as a non self-accrediting higher education institution is cancelled under part 9, division 1, then the accreditation of all courses accredited for the institution lapses at the same time (i.e. the day that the cancellation of the registration takes effect).

The courses previously accredited for the institution cannot continue to exist as accredited courses if the institution is no longer registered as a non

self-accrediting higher education institution. Therefore, despite the term of accreditation granted for those courses, the accreditations must lapse if the institution's registration is cancelled.

Division 5 Changes to conditions of registration

Changing conditions of registration

Clause 22 provides that the Minister may change the conditions of a registration as a non self-accrediting higher education institution imposed by the Minister, if there is a reasonable basis to do so. However, before deciding to change the conditions, the Minister must give notice to the holder of the registration. The notice must include the particulars of the proposed change; and advise that the holder may make written submissions about the proposed change within a reasonable period of at least 21 days stated in the notice.

Subsection 22(2)(b) provides that the Minister must have regard to written submissions made by the holder of the registration before the end of the day stated in the notice.

Subsection 22(3) provides that if the Minister decides to change the conditions, then the Minister must, as soon as practicable, provide the holder of the registration with an information notice about the decision.

Subsection 22(4) states that the decision to change the conditions does not take effect until –

(a) the last day to appeal against the decision; or

(b) if an appeal is instituted against the decision – the day the appeal is decided.

Subsection 22(5) provides that the power of the Minister to change conditions includes the power to add conditions to a registration not already subject to conditions.

Division 6 Application for accreditation

Procedural requirements for application

Clause 23 specifies the procedural requirements for applying to the Minister for accreditation of a higher education course. An application may be made by either –

(a) the governing body of a non self-accrediting higher education institution that proposes to offer the course; or

(b) the governing body of an entity that is also applying under section 8 for registration of the entity as a non self-accrediting higher education institution.

The limitation on who may apply for accreditation of a course under this part is necessary to ensure that a course is only accredited for an existing non self-accrediting higher education institution; or for an entity in conjunction with its initial registration as a non self-accrediting higher education institution. It is not possible to accredit a course under this part unless it is accredited for a non self-accrediting higher education institution. It should also be noted that while the processes of registration of the institution, and accreditation of its courses, are separate, in practice they are considered and decided together. In this regard, please see clause 10(2)(b) which requires that the Minister may only grant an application for registration if at the same time, the Minister also grants accreditation of at least 1 higher education course the entity proposes to offer.

Subsection 23(2) provides that an application for accreditation of a course must be in writing; state the place where the institution or entity proposes to offer the course; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Subsection 23(3) provides that section 9 applies to an application under this section. Therefore, the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application.

Decision on application

Clause 24 requires the Minister to make a decision to either grant, or refuse to grant, the application. Subsection 24(2) provides that the Minister may only grant the application if satisfied that the course complies with the national protocols and national guidelines. In addition, if the applicant is mentioned in section 23(1)(b) (i.e. it has also made an application for registration of the entity as a non self-accrediting higher education institution), the Minister may only grant the application if at the same time the Minister grants registration of the applicant as a non self-accrediting higher education institution. As explained elsewhere in these Explanatory Notes, it is not possible for an entity to be registered as a non self-accrediting higher education institution without also being granted accreditation of at least one course that it proposes to offer.

Subsection 24(3) provides that in deciding the application, the Minister may examine the operation of the institution or entity in relation to the course both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 24(4) applies sections 10(4) to (7) and 11 to the making of a decision under this section. Therefore, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then the Minister must give the applicant an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135. However, this is subject to clause 11, which provides that the Minister and the applicant may agree to extend the day by which the decision is to be made.

Term of accreditation

Clause 25 provides that accreditation of an accredited course remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 10(4) as applied by section 24(4). However, a course's accreditation lapses if the institution's registration as a non self-accrediting higher education institution is cancelled (see clause 21).

It should also be noted that the governing body of a non self-accrediting institution may apply for renewal of the accreditation under clause 28, within the stated time before the term of accreditation ends.

Standard condition

Clause 26 sets out the standard condition applying to the accreditation of a course offered by a non self-accrediting higher education institution, namely that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution in relation to the course both inside and outside the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

Subsection 26(2) explains that the purpose of the standard condition is to help the Minister decide whether the course complies with the national protocols and national guidelines; or the institution and its governing body are complying with any other conditions of the accreditation.

Imposition of conditions

Clause 27 enables the Minister to impose conditions on the accreditation that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable.

Division 7 Renewal of accreditation

Procedural requirements for applying for renewal

Clause 28 provides that the governing body of a non self-accrediting higher education institution may apply to the Minister for renewal of the accreditation of a higher education course offered by the institution. However, the application must be made within the period starting 18 months and ending 9 months before the term of the accreditation ends. This is to ensure that there is a minimum period of at least 9 months (possibly longer, depending upon when the renewal application is submitted) before

the end of the term of accreditation, within which the Minister can consider the application for renewal. This minimum period is considered necessary due to the complexity of the matters that must often be considered.

Subsection 28(2) sets out how the renewal application must be made, including that it be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Subsection 28(3) applies section 9 to an application under this section. Therefore, the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application for renewal.

Decision on application

Clause 29 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 29(2) provides that the Minister may only grant the application if satisfied that the course complies with the national protocols and national guidelines; and the institution and its governing body are complying with any conditions of the accreditation.

Subsection 29(3) provides that in deciding the application, the Minister may examine the operation of the institution in relation to the course both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 29(4) applies sections 10(4) to (7) and 11 to the making of a decision under this section. Therefore, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then the Minister must give the applicant an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135. However, this is subject

to clause 11, which provides that the Minister and the applicant may agree to extend the day by which the decision is to be made.

Term of renewed accreditation

Clause 30 provides that the term of accreditation of a course, renewed under clause 29, remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 10(4) as applied by section 29(4). However, it should be noted that a course accreditation lapses if registration of the non self-accrediting higher education institution is cancelled (see clause 21).

Conditions of a renewed accreditation

Clause 31 applies sections 26 and 27 to a renewed accreditation. Therefore, the standard condition set out in section 26 applies to the renewed accreditation to require that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution in relation to the course both inside and outside the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

The purpose of the standard condition is to help the Minister decide whether the course complies with the national protocols and national guidelines; or the institution and its governing body are complying with any other conditions of the accreditation.

In addition, the application of section 27 provides that the Minister may impose conditions on a renewed accreditation that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable. Subsection 31(2) clarifies that imposing a condition on a renewed accreditation includes changing or confirming a condition that had been imposed on the original accreditation.

Accreditation taken to be in force while application is considered

Clause 32 provides that if an application for renewal of accreditation of an accredited course is made under section 28, then the accreditation is taken to continue in force from the day that it would have expired until either –

(a) if the Minister decides to renew the accreditation – the day a notice about the decision is given to the applicant under section 10(4) as applied by section 29(4); or

(b) if the Minister decides to refuse to renew the accreditation –

  (i) the last day to appeal against the decision; or

  (ii) if an appeal is instituted against the decision – the day the appeal is decided.

This ensures that if there is any delay in deciding the application for renewal such that the decision cannot be made prior to the day the term of the accreditation is due to end, then the accreditation can continue in force until the matter of renewal has been decided.

Subsection 32(2) confirms that the accreditation is not taken to be in force if it is earlier cancelled.

Division 8 Cancellation of accreditation

Grounds for cancellation

Clause 33 sets out the grounds for cancelling the accreditation of a course accredited for a non self-accrediting higher education institution, namely –

(a) the institution –

  (i) is not complying, or has not complied, with the national protocols and the national guidelines; or

  (ii) has contravened a condition of the accreditation.

(b) the governing body of the institution -

  (i) has contravened a condition of the accreditation; or

  (ii) has made a major change to the course without the Minister's approval under section 38; or

(iii) has not given the Minister an annual report under section 40.

(c) the Minister's decision to grant or renew the accreditation was based on false or misleading information.

Subsection 33(2) provides that if the Minister reasonably believes a ground exists for cancelling the accreditation of an accredited course, the Minister must follow the process set out in part 9, division 1. That part requires the Minister to give the holder of the accreditation a show cause notice about the Minister's proposal to cancel the accreditation; to consider any written representations about the show cause notice; and to take action to cancel the accreditation. That part also requires that the Minister must end the show cause process without further action if the Minister no longer believes the ground exists to cancel the accreditation.

Lapse of registration as non self-accrediting higher education institution

Clause 34 provides that if the accreditation of all courses accredited for a non self-accrediting higher education institution is cancelled under part 9, division 1, then the registration of the institution lapses at the same time (i.e. the day that the cancellation of accreditation of all the courses takes effect).

An institution cannot continue to exist as a non self-accrediting higher education institution if it no longer has any courses accredited for it under this part. Therefore, despite the term of registration of the institution, its registration must lapse if the accreditation of all courses accredited for it is cancelled.

Division 9 Changes to conditions of accreditation

Changing conditions of accreditation

Clause 35 provides that the Minister may change the conditions of the accreditation of an accredited course, if there is a reasonable basis to do so. However, before deciding to change the conditions, the Minister must give notice to the holder of the accreditation. The notice must include the particulars of the proposed change; and advise that the holder may make

written submissions about the proposed change within a reasonable period of at least 21 days stated in the notice.

Subsection 35(2)(b) provides that the Minister must have regard to written submissions made by the holder of the accreditation before the end of the day stated in the notice.

Subsection 35(3) provides that if the Minister decides to change the conditions, then the Minister must, as soon as practicable, provide the holder of the accreditation with an information notice about the decision.

Subsection 35(4) states that the decision to change the conditions does not take effect until –

(a) the last day to appeal against the decision; or

(b) if an appeal is instituted against the decision – the day the appeal is decided.

Subsection 35(5) provides that the power of the Minister to change conditions includes the power to add conditions to an accreditation not already subject to conditions.

Division 10 Major changes to institution or course

Application for approval to make major change

Clause 36 provides that the governing body of a non self-accrediting higher education institution may apply to the Minister for approval to make a major change to the institution or to a course accredited under this part for the institution. The application must be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Meaning of *major change*

Clause 37 states that a major change, to a non self-accrediting higher education institution or to a course accredited under this part for the institution, means a change that –

(a) may affect the institution's capacity to comply with the national protocols and the national guidelines; and

(b) is described as a major change in the national guidelines.

Subsections 37(2) and (3) provide examples of what are major changes to a non self-accrediting higher education institution or to an accredited course for the institution.

A major change to the institution includes –

(a) a merger of the institution with another entity; or

(b) a change to the institution's corporate status; or

(c) a change in the ownership of, or shareholding in, the institution; or

(d) a change that may result in a significant decline in the financial position of the institution; or

(e) a change to the place or places where the institution operates.

A major change to a course accredited for the institution includes –

(a) a change to the way of providing the course, for example a change from face-to-face delivery to providing the course electronically or by distance education; or

(b) a change that may result in the course no longer being recognised by relevant professional or industry associations, for example, graduates of the course may no longer be able to obtain professional registration; or

(c) a change that involves substituting new subjects for more than 25% of the subjects in the course or deleting more than 25% of the subjects in the course; or

(d) a significant reduction in the number of student contact hours for the course.

Decision on application

Clause 38 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 38(2) provides that the Minister may only grant the application if satisfied that the institution will comply with the national protocols and national guidelines after the change is effected.

Subsection 38(3) provides that in deciding the application, the Minister may examine the operation of the institution in relation to the course both inside and outside the State; and make any other enquiries the Minister

considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 38(4) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. The notice must state the decision; and the day by which the change must be effected. If the Minister decides to refuse to grant the application, then subsection 38(5) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 6 months after its receipt, then subsection 38(6) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 38(7) applies section 11 to the making of the decision. Therefore, if necessary, the Minister and the applicant may agree under section 11 to extend the day by which the decision is to be made. It should also be noted that subsection 38(8) provides that in applying section 11, the ***final consideration day*** will be the day that is 6 months after the application to make a major change was received by the Minister.

Division 11 Other provisions

Conferring of higher education award by non self-accrediting higher education institution

Clause 39 creates an offence for a non self-accrediting higher education institution to confer, or hold out that it is authorised to confer, a higher education award unless the course leading to the award is an accredited course for the institution.

Subsection 39(2) creates an offence for a person to hold out that a non self-accrediting higher education institution is authorised to confer a higher education award unless the course leading to the award is an accredited course for the institution.

It should be noted that if a non self-accrediting higher education institution also holds a self-accrediting authority under part 3 of the Act, this offence provision does not prohibit the institution from conferring higher education

awards in relation to courses that the institution has accredited in accordance with the scope of its authority under part 3.

Annual report

Clause 40 requires the governing body of a non self-accrediting higher education institution to give the Minister an annual report on or before 31 May in each year.

Subsection 40(2) requires that the annual report must be given in the way required by the Minister; and must cover the period from the previous 1 January to 31 December. In addition, the annual report must contain information to help the Minister assess whether the institution is complying with the national protocols and national guidelines; and whether the institution and its governing body are complying with the conditions of the registration and accreditation.

A fee is also payable for the assessment of the annual report, and this fee must be submitted with the annual report. Subsection 40(4) provides that the annual report is taken not to have been given until the assessment fee has been paid.

Part 3 Self-accrediting higher education institutions

Division 1 Preliminary

Definition for pt 3

Clause 41 sets out the definition of ***national guidelines*** for part 3, to mean the document entitled 'National Guidelines for Higher Education Approval Processes—Guidelines for awarding self-accrediting authority to higher education institutions other than universities' that was approved by the Ministerial Council on 31 October 2007.

Limitation on operation of self-accrediting higher education institution

Clause 42 creates an offence for a self-accrediting higher education institution to accredit a course other than in relation to a field of study or AQF qualification level for which the institution holds a self-accrediting authority.

Division 2 Self-accrediting higher education institutions (other than interstate)

Subdivision 1 Application for self-accrediting authority

Procedural requirements for application

Clause 43 specifies the procedural requirements for applying to the Minister for authority to operate as a self-accrediting higher education institution.

Subsection 43(2) provides that an application for self-accrediting authority must be in writing; state the fields of study and the AQF qualification levels for which the governing body is seeking the self-accrediting authority; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Further information or document to support application

Clause 44 provides that the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application.

Decision on application

Clause 45 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 45(2) provides that the

Minister may only grant the application if satisfied that the entity complies with the national protocols and national guidelines.

Subsection 45(3) provides that in deciding the application, the Minister may examine the operation of the institution in relation to the course both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 45(4) provides that if the Minister decides to grant the application, the Minister must also decide the fields of study and the AQF qualification levels for which the self-accrediting authority is to be given (this is known as the ***scope*** of the self-accrediting authority).

Subsection 45(5) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then subsection 45(6) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then subsection 45(7) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 45(8) provides that subsection 45(7) is subject to section 46. Therefore, if the Minister and the applicant agree under section 46 to extend the day by which the decision is to be made, subsection 45(7) is subject to section 46.

Further consideration of application

Clause 46 enables the Minister to extend the decision-making period beyond 18 months, if more time is needed due to the complexity of the matters that must be considered. However, the Minister and the applicant must agree in writing on a later day by which the decision must be made (the ***agreed extended day***), and this written agreement must occur before the day that is 18 months after the application was received by the Minister (the ***final consideration day***).

Subsection 46(3) provides that the decision-making period can be further extended to a later day, if necessary (the ***further extended day***). However, once again, the Minister and the applicant must agree in writing on the

further extended day by which the decision must be made, and this agreement must occur before the agreed extended day.

Subsection 46(4) provides that the Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by the agreed extended day; or the further extended day, as applicable.

Term of self-accrediting authority

Clause 47 provides that a self-accrediting authority remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 45(5). It should be noted that the governing body of a self-accrediting higher education institution may apply for renewal of the institution's self-accrediting authority under clause 50, within the stated time before the term of the self-accrediting authority ends.

Standard condition

Clause 48 sets out the standard condition applying to a self-accrediting authority, namely that the governing body of the institution that holds the authority must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution both inside and outside the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

Subsection 48(2) explains that the purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines; or whether the institution and its governing body are complying with any other conditions of the authority.

Imposition of conditions

Clause 49 enables the Minister to impose conditions on the self-accrediting authority that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable.

Subdivision 2 Renewal of self-accrediting authority

Procedural requirements for applying for renewal

Clause 50 provides that the governing body of a self-accrediting higher education institution may apply to the Minister for renewal of the institution's self-accrediting authority. However, the application must be made within the period starting 18 months and ending 9 months before the term of the authority ends. This is to ensure that there is a minimum period of at least 9 months (possibly longer, depending upon when the renewal application is submitted) before the end of the term of the authority, within which the Minister can consider the application for renewal. This minimum period is considered necessary due to the complexity of the matters that must often be considered.

Subsection 50(2) sets out how the renewal application must be made, including that it be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Subsection 50(3) applies section 44 to an application for renewal under this section. Please see clause 128, which explains how an applied provision operates. In this case, section 44 applies to the application to provide that the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application for renewal.

Decision on application

Clause 51 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 51(2) provides that the Minister may only grant the application if satisfied that -

(a) the institution –

  (i) is operating within the scope of its authority; and

  (ii) is complying with the national protocols and national guidelines; and

(b) the institution and its governing body are complying with any conditions of the authority.

Subsection 51(3) provides that in deciding the application, the Minister may examine the operation of the institution both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 51(4) applies sections 45(5) to (8) and 46 to the making of a decision under this section. Therefore, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then the Minister must give the applicant an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135. However, this is subject to clause 46, which provides that the Minister and the applicant may agree to extend the day by which the decision is to be made.

Term of renewed self-accrediting authority

Clause 52 provides that the term of a self-accrediting authority, renewed under section 51 remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 45(5) as applied by section 51(4).

Conditions of a renewed self-accrediting authority

Clause 53 applies sections 48 and 49 to a renewed self-accrediting authority. Therefore, the standard condition set out in section 48 applies to the renewed self-accrediting authority to require that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution both inside and outside the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

The purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and

national guidelines; or whether the institution and its governing body are complying with any other conditions of the authority.

In addition, the application of section 49 provides that the Minister may impose conditions on a renewed self-accrediting authority that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable. Subsection 53(2) clarifies that imposing a condition on a renewed self-accrediting authority includes changing or confirming a condition that had been imposed on the original self-accrediting authority.

Self-accrediting authority taken to be in force while application is considered

Clause 54 provides that if an application for renewal of a self-accrediting authority is made under section 50, then the authority is taken to continue in force from the day that it would have expired until either –

(a) if the Minister decides to renew the authority – the day a notice about the decision is given to the applicant under section 45(5) as applied by section 51(4); or

(b) if the Minister decides to refuse to renew the authority –

  (i) the last day to appeal against the decision; or

  (ii) if an appeal is instituted against the decision – the day the appeal is decided.

This ensures that if there is any delay in deciding the application for renewal such that the decision cannot be made prior to the day the term of the authority is due to end, then the authority can continue in force until the matter of renewal has been decided.

Subsection 54(2) confirms that the authority is not taken to be in force if it is earlier cancelled.

Subdivision 3 Cancellation of self-accrediting authority

Grounds for cancellation

Clause 55 sets out the grounds for cancelling a self-accrediting higher education institution's self-accrediting authority, namely –

(a) the institution –

  (i) is not complying, or has not complied, with the national protocols and the national guidelines; or

  (ii) has contravened a condition of the authority;

(b) the governing body of the institution -

  (i) has contravened a condition of the authority; or

  (ii) has accredited a course that was not within the scope of its authority; or

  (iii) has made a major change to the institution without the Minister's approval under section 59; or

  (iv) has not given the Minister an annual report under section 65.

(c) the Minister's decision to grant or renew the authority was based on false or misleading information.

Subsection 55(2) provides that if the Minister reasonably believes a ground exists for cancelling a self-accrediting authority, the Minister must follow the process set out in part 9, division 1. That part requires the Minister to give the holder of the authority a show cause notice about the Minister's proposal to cancel the authority; to consider any written representations about the show cause notice; and to take action to cancel the authority. That part also requires that the Minister must end the show cause process without further action if the Minister no longer believes the ground exists to cancel the authority.

Subdivision 4 Changes to conditions of self-accrediting authority

Changing conditions of self-accrediting authority

Clause 56 provides that the Minister may change the conditions of a self-accrediting authority imposed by the Minister, if there is a reasonable basis to do so. However, before deciding to change the conditions, the Minister must give notice to the holder of the authority. The notice must include the particulars of the proposed change; and advise that the holder may make written submissions about the proposed change within a reasonable period of at least 21 days stated in the notice.

Subsection 56(2)(b) provides that the Minister must have regard to written submissions made by the holder of the authority before the end of the day stated in the notice.

Subsection 56(3) provides that if the Minister decides to change the conditions, then the Minister must, as soon as practicable, provide the holder of the authority with an information notice about the decision.

Subsection 56(4) states that the decision to change the conditions does not take effect until –

(i) the last day to appeal against the decision; or

(ii) if an appeal is instituted against the decision – the day the appeal is decided.

Subsection 56(5) provides that the power of the Minister to change conditions includes the power to add conditions to a self-accrediting authority not already subject to conditions.

Subdivision 5 Major changes to self-accrediting higher education institution

Application for approval to make major change

Clause 57 provides that the governing body of a self-accrediting higher education institution may apply to the Minister for approval to make a major change to the institution. The application must be in writing; include

the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Meaning of *major change*

Clause 58 states that a major change, to a self-accrediting higher education institution means a change that –

(a) may affect the institution's capacity to comply with the national protocols and the national guidelines; and

(b) is described as a major change in the national guidelines.

Subsection 58(2) provides examples of what are major changes to a self-accrediting higher education institution. A major change to the institution includes –

(a) a merger of the institution with another entity; or

(b) a change to the institution's corporate status; or

(c) a change in the ownership of, or shareholding in, the institution; or

(d) a change that may result in a significant decline in the financial position of the institution.

It should be noted that subsection 58(3) clarifies that a change to the scope of the institution's self-accrediting authority is *not* a major change. The institution may apply for a change to the scope of its authority under clause 60.

Decision on application

Clause 59 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 59(2) provides that the Minister may only grant the application if satisfied that the institution will comply with the national protocols and national guidelines after the change is effected.

Subsection 59(3) provides that in deciding the application, the Minister may examine the operation of the institution both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 59(4) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. The notice must state the decision; and the day by which the change must be effected. If the Minister decides to refuse to grant the application, then subsection 59(5) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 6 months after its receipt, then subsection 59(6) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 59(7) applies section 46 to the making of the decision. Therefore, if necessary, the Minister and the applicant may agree under section 46 to extend the day by which the decision is to be made. It should also be noted that subsection 59(8) provides that in applying section 46, the ***final consideration day*** will be the day that is 6 months after the application to make a major change was received by the Minister.

Subdivision 6 Changes to scope of self-accrediting authority

Procedural requirements for application

Clause 60 provides that the governing body of a self-accrediting higher education institution may apply to the Minister for approval to change the scope of the institution's self-accrediting authority. As provided by clause 45, the scope of the authority is the fields of study and AQF qualification levels for which the authority has been given. The application must –

(a) be in writing; and

(b) state the proposed change to the scope of the authority; and

(c) include the information required to be provided under the national guidelines; and

(d) be accompanied by the fee prescribed under a regulation.

Subsection 60(3) applies section 44 to an application under this section. Therefore, the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably

be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application.

Decision on application

Clause 61 requires the Minister to make a decision to either grant, or refuse to grant, the application. Subsection 61(2) provides that the Minister may only grant the application if satisfied that the institution will comply with the national protocols and national guidelines after the change is effected.

Subsection 61(3) provides that in deciding the application, the Minister may examine the operation of the institution both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 61(4) provides that if the Minister decides to grant the application, the Minister must also change to the scope of the authority in the way mentioned in the application.

Subsection 61(5) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then subsection 61(6) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 12 months after its receipt, then subsection 61(7) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 61(8) applies section 46 to the making of the decision. Therefore, if necessary, the Minister and the applicant may agree under section 46 to extend the day by which the decision is to be made. It should also be noted that subsection 61(9) provides that in applying section 46, the ***final consideration day*** will be the day that is 12 months after the application to change the scope of the authority was received by the Minister.

Term of self-accrediting authority

Clause 62 specifies that the term of a self-accrediting authority is not affected by a change to the scope of the authority. Therefore, the authority

remains in force for the term of not more than 5 years stated in the notice given under section 45(5) when the authority was first granted; or the notice given under section 51(4) at the time the authority was renewed.

Imposition of conditions

Clause 63 enables the Minister to impose conditions that are relevant and reasonable on a self-accrediting authority at the time the Minister grants an application to change the scope of that authority. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable. Subsection 63(3) clarifies that imposing a condition on the authority includes changing or confirming a condition that had been imposed on the authority.

Subdivision 7 Other provisions

Conferring of higher education award by self-accrediting higher education institution

Clause 64 creates an offence for a self-accrediting higher education institution to confer, or hold out that it is authorised to confer, a higher education award unless the course leading to the award is accredited under the scope of the institution's self-accrediting authority.

Subsection 64(2) creates an offence for a person to hold out that a self-accrediting higher education institution is authorised to confer a higher education award unless the course leading to the award is accredited under the scope of the institution's self-accrediting authority.

It should be noted that if a self-accrediting higher education institution is also registered under part 2 of the Act as a non self-accrediting higher education institution, this offence provision does not prohibit the institution from conferring higher education awards in relation to courses that have been accredited for the institution under part 2.

Annual report

Clause 65 requires the governing body of a self-accrediting higher education institution to give the Minister an annual report on or before 31 May in each year.

Subsection 65(2) requires that the annual report must be given in the way required by the Minister; and must cover the period from the previous 1 January to 31 December. In addition, the annual report must contain information to help the Minister decide whether –

(i) the institution is –

(A) operating within the scope of its authority; and

(B) complying with the national protocols and national guidelines; and

(ii) the institution and its governing body are complying with the conditions of the authority.

A fee is also payable for the assessment of the annual report, and this fee must be submitted with the annual report. Subsection 65(4) provides that the annual report is taken not to have been given until the assessment fee has been paid.

Division 3 Interstate self-accrediting higher education institutions

Definitions for div 3

Clause 66 sets out the definitions for division 3.

Operating under a recognised self-accrediting authority

Clause 67 provides that if an interstate self-accrediting higher education institution intends to operate in Queensland, its governing body must advise the Minister accordingly. Subsection 67(1) provides that the governing body must give the Minister a copy of its interstate self-accrediting authority (i.e. the self-accrediting authority granted to it by the other jurisdiction), as well as any other documents or information reasonably required by the Minister, including documents or information about the interstate self-accrediting authority's scope or term. The governing body must also give the Minister notice of the institution's intention to operate in Queensland; and the place where the institution intends operating.

Subsection 67(2) requires the Minister to give the governing body a notice acknowledging the institution's intention to operate. Provision of the

Minister's notice activates the recognised self-accrediting authority so that the institution may commence operating in Queensland.

Subsection 67(3) provides that the institution's recognised self-accrediting authority applies only to a field of study or AQF qualification level for which the institution's interstate self-accrediting authority is held (i.e. the ***scope*** of its interstate self-accrediting authority).

Term of recognised self-accrediting authority

Clause 68 provides that a recognised self-accrediting authority remains in force, for an interstate self-accrediting higher education institution, while the institution's interstate self-accrediting authority remains in force (that is, the self-accrediting authority that it holds in the other jurisdiction).

Subsection 68(2) clarifies that this is subject to the withdrawal of the recognised self-accrediting authority under section 71 and part 9, division 1.

Standard condition

Clause 69 sets out the standard condition applying to a recognised self-accrediting authority, namely that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

Subsection 69(2) explains that the purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines.

Notification of change to scope of authority

Clause 70 provides that the governing body of an interstate self-accrediting higher education institution to which a recognised self-accrediting authority relates must give the Minister notice of any change to the scope of the institution's interstate self-accrediting authority. The notice must be given within 14 days after the change happens.

Grounds for withdrawal of recognised self-accrediting authority

Clause 71 sets out the grounds for withdrawing an interstate self-accrediting higher education institution's recognised self-accrediting authority, namely –

(a) the institution is not complying, or has not complied, with the national protocols and the national guidelines; or

(b) the governing body of the institution

  (i) has contravened section 69 (i.e. the standard condition of the recognised self-accrediting authority); or

  (ii) has not given the Minister notice of a change under section 70 (i.e. a change to the scope of the institution's interstate self-accrediting authority).

Subsection 71(2) provides that if the Minister reasonably believes a ground exists for withdrawing a recognised self-accrediting authority, the Minister must follow the process set out in part 9, division 1. That part requires the Minister to give the holder of the recognised self-accrediting authority a show cause notice about the Minister's proposal to withdraw the authority; to consider any written representations about the show cause notice; and to take action to withdraw the authority. That part also requires that the Minister must end the show cause process without further action if the Minister no longer believes the ground exists to withdraw the authority.

Conferring of higher education award by interstate self-accrediting higher education institution

Clause 72 creates an offence for an interstate self-accrediting higher education institution to confer, or hold out that it is authorised to confer, a higher education award in the State unless –

(a) the institution holds a recognised self-accrediting authority; and

(b) the course leading to the award is accredited under the scope of the institution's interstate self-accrediting authority.

Subsection 72(2) creates an offence for a person to hold out that an interstate self-accrediting higher education institution is authorised to confer a higher education award unless the course leading to the award is accredited under the scope of the institution's interstate self-accrediting authority.

Part 4 Universities, specialised universities, university colleges and specialised university colleges

Division 1 Preliminary

Definitions for pt 4

Clause 73 sets out the definition of ***national guidelines*** for part 4, to mean the document entitled 'National Guidelines for Higher Education Approval Processes—Guidelines for establishing Australian universities' that was approved by the Ministerial Council on 31 October 2007.

Division 2 Universities etc. (other than interstate)

Subdivision 1 Application for approval

Procedural requirements for application

Clause 74 specifies the procedural requirements for applying to the Minister for approval that an entity is suitable to be established or recognised in the State, under an Act, as –

(a) a university; or

(b) a specialised university; or

(c) a university college; or

(d) a specialised university college.

If the Minister grants the application, the institution can then either be established under its own enabling Act, or recognised via an Act, as one of these types of higher education institutions.

Subsection 74(2) provides that the application must be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Public notification

Clause 75 requires the Minister to carry out a public notification process as soon as practicable after receiving the application. The public notification process must be carried out as provided by the national guidelines.

Further information or document to support application

Clause 76 provides that the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application.

Decision on application

Clause 77 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 77(2) provides that the Minister may only grant the application if satisfied that the entity will comply with the national protocols and national guidelines on its establishment or recognition in the State, under an Act, as –

(a) a university; or

(b) a specialised university; or

(c) a university college; or

(d) a specialised university college.

Subsection 77(3) provides that in deciding the application, the Minister may examine the operation of the entity both inside and outside the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations outside of Australia, if necessary.

Subsection 77(4) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the

decision. If the Minister decides to refuse to grant the application, then subsection 77(5) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then subsection 77(6) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 77(7) provides that subsection 77(6) is subject to section 78. Therefore, if the Minister and the applicant agree under section 78 to extend the day by which the decision is to be made, subsection 77(6) is subject to section 78.

It should be noted that, if the Minister grants the application, the Minister's decision is only to approve the establishment or recognition of a higher education institution as a university, specialised university, university college or specialised university college. Legislation must be subsequently enacted to establish or recognise the institution accordingly.

Further consideration of application

Clause 78 enables the Minister to extend the decision-making period beyond 18 months, if more time is needed due to the complexity of the matters that must be considered. However, the Minister and the applicant must agree in writing on a later day by which the decision must be made (the ***agreed extended day***), and this written agreement must occur before the day that is 18 months after the application was received by the Minister (the ***final consideration day***).

Subsection 78(3) provides that the decision-making period can be further extended to a later day, if necessary (the ***further extended day***). However, once again, the Minister and the applicant must agree in writing on the further extended day by which the decision must be made, and this agreement must occur before the agreed extended day.

Subsection 78(4) provides that the Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by the agreed extended day; or the further extended day, as applicable.

Imposition of conditions

Clause 79 enables the Minister to impose conditions on the approval that are relevant and reasonable. If the Minister decides to impose conditions,

the Minister must provide an information notice to the applicant as soon as practicable.

Subdivision 2 Review of operation of university or specialised university

Review

Clause 80 provides that the Minister may review the operations of a university or specialised university after the fifth anniversary of its establishment or recognition under an Act. If a review is undertaken, subsection 80(2) provides that the review must involve a consideration of whether the university or specialised university is complying with the national protocols and national guidelines. Subsection 80(3) provides that, in conducting the review, the Minister has the power to examine the operation of the university or specialised university both inside and outside the State.

Division 3 Interstate universities etc.

Recognised authority for interstate higher education institutions

Clause 81 states that each of the following higher education institutions is taken to hold an authority to operate the institution in Queensland (this is a ***recognised authority***) –

(a) an interstate university; or

(b) an interstate specialised university; or

(c) an interstate university college; or

(d) an interstate specialised university college.

A recognised authority is automatic and does not require any other approval or notification process. However, subsection 81(2) provides that this is subject to the withdrawal of the recognised authority under section 83 and part 9, division 1.

Standard condition

Clause 82 sets out the standard condition applying to a recognised authority, namely that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

Subsection 82(2) explains that the purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines.

Grounds for withdrawal of recognised authority

Clause 83 sets out the grounds for withdrawing a recognised authority, namely –

(a) the institution is not complying, or has not complied, with the national protocols and the national guidelines; or

(b) the governing body of the institution has contravened section 82 (i.e. the standard condition of the recognised authority).

Subsection 83(2) provides that if the Minister reasonably believes a ground exists for withdrawing a recognised authority, the Minister must follow the process set out in part 9, division 1. That part requires the Minister to give the holder of the recognised authority a show cause notice about the Minister's proposal to withdraw the authority; to consider any written representations about the show cause notice; and to take action to withdraw the authority. That part also requires that the Minister must end the show cause process without further action if the Minister no longer believes the ground exists to withdraw the authority.

Part 5 Overseas higher education institutions

Division 1 Preliminary

Clause 84 sets out the definition of ***national guidelines*** for part 5, to mean the document entitled 'National Guidelines for Higher Education Approval Processes—Guidelines for overseas higher education institutions seeking to operate in Australia' that was approved by the Ministerial Council on 31 October 2007.

Limitation on operation of overseas higher education institution

Clause 85 creates an offence for an overseas higher education institution to offer a higher education course in Queensland unless the course is offered under an approval under this part (i.e. as part of the institution's approval to operate in Queensland).

Division 2 Application for approval

Procedural requirements for application

Clause 86 specifies the procedural requirements for applying to the Minister for approval for an overseas higher education institution to operate in Queensland.

Subsection 86(2) provides that the application must be in writing; state the courses the institution proposes to offer in the State; if a course is to be offered under an arrangement with a partner or agent of the institution – state the name of the partner or agent and details of the arrangement; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Further information or document to support application

Clause 87 provides that the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may

reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application.

Decision on application

Clause 88 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 88(2) provides that the Minister may only grant the application if satisfied that the entity complies with the national protocols and national guidelines.

Subsection 88(3) provides that in deciding the application, the Minister may examine the proposed operation of the entity in the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the proposed operations of the institution within Queensland, if necessary.

Subsection 88(4) provides that if the Minister decides to grant the application, the Minister must also decide the courses for which the approval is to be given. In addition, if the institution is going to offer a course under an arrangement with a partner or agent, the Minister must approve the partner or agent and details of the arrangement.

Subsection 88(5) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then subsection 88(6) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then subsection 88(7) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 88(8) provides that subsection 88(7) is subject to section 89. Therefore, if the Minister and the applicant agree under section 89 to extend the day by which the decision is to be made, subsection 88(7) is subject to section 89.

Further consideration of application

Clause 89 enables the Minister to extend the decision-making period beyond 18 months, if more time is needed due to the complexity of the

matters that must be considered. However, the Minister and the applicant must agree in writing on a later day by which the decision must be made (the ***agreed extended day***), and this written agreement must occur before the day that is 18 months after the application was received by the Minister (the ***final consideration day***).

Subsection 89(3) provides that the decision-making period can be further extended to a later day, if necessary (the ***further extended day***). However, once again, the Minister and the applicant must agree in writing on the further extended day by which the decision must be made, and this agreement must occur before the agreed extended day.

Subsection 89(4) provides that the Minister is taken to have decided to refuse to grant the application if the Minister fails to make the decision by the agreed extended day; or the further extended day, as applicable.

Term of approval

Clause 90 provides that an approval under section 88 (i.e. an approval for an overseas higher education institution to operate in Queensland) remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 88(5).

Standard condition

Clause 91 sets out the standard condition applying to an approval, namely that the governing body of the overseas higher education institution that holds the approval must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

Subsection 91(2) explains that the purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines; or whether the institution and its governing body are complying with any other conditions of the approval.

Imposition of conditions

Clause 92 enables the Minister to impose conditions on the approval that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable.

Division 3 Renewal of approval

Procedural requirements for applying for renewal

Clause 93 provides that the governing body of an overseas higher education institution that holds an approval under section 88 may apply to the Minister for renewal of the approval. However, the application must be made within the period starting 18 months and ending 9 months before the term of the approval ends. This is to ensure that there is a minimum period of at least 9 months (possibly longer, depending upon when the renewal application is submitted) before the end of the term of the approval, within which the Minister can consider the application for renewal. This minimum period is considered necessary due to the complexity of the matters that must often be considered.

Subsection 93(2) sets out how the renewal application must be made, including that it be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Subsection 93(3) applies section 87 to an application under this section. Please see clause 128, which explains how an applied provision operates. In this case, section 87 applies to the application to provide the Minister may, by notice given to the applicant, require the applicant to give further information or a document which may reasonably be required for the Minister to decide the application. If the applicant fails to provide the requested information or document within the time stated in the notice, then the applicant is taken to have withdrawn the application for renewal.

Decision on application

Clause 94 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 94(2) provides that the Minister may only grant the application if satisfied that the institution is

complying with the national protocols and national guidelines; and the institution and its governing body are complying with any conditions of the approval.

Subsection 94(3) provides that in deciding the application, the Minister may examine the operation of the institution in the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution in Queensland, if necessary.

Subsection 94(4) applies sections 88(5) to (8) and 89 to the making of a decision under this section. Therefore, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. If the Minister decides to refuse to grant the application, then the Minister must give the applicant an information notice.

If the Minister fails to decide the application within 18 months after its receipt, then the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135. However, this is subject to clause 89, which provides that the Minister and the applicant may agree to extend the day by which the decision is to be made.

Term of renewed approval

Clause 95 provides that the term of an approval, renewed under section 94, remains in force for the term of not more than 5 years stated in the notice given to the applicant under section 88(5) as applied by section 94(4).

Conditions of a renewed approval

Clause 96 applies sections 91 and 92 to a renewed approval to operate an overseas higher education institution in the State. Therefore, the standard condition set out in section 91 applies to the renewed approval to require that the governing body of the institution must –

(a) allow the Minister to enter a place at any reasonable time to examine the operation of the institution in the State; and

(b) comply with all reasonable requests by the Minister to give the Minister information or records, or a copy of records, the governing body is keeping, or has control of, that are appropriate.

The purpose of the standard condition is to help the Minister decide whether the institution is complying with the national protocols and national guidelines; or the institution and its governing body are complying with any other conditions of the approval.

In addition, the application of section 92 provides that the Minister may impose conditions on a renewed approval that are relevant and reasonable. If the Minister decides to impose conditions, the Minister must provide an information notice to the applicant as soon as practicable. Subsection 96(2) clarifies that imposing a condition on a renewed approval includes changing or confirming a condition that had been imposed on the original approval.

Approval taken to be in force while application is considered

Clause 97 provides that if an application for renewal of an approval is made under section 93, then the approval is taken to continue in force from the day that it would have expired until either –

(a) if the Minister decides to renew the approval – the day a notice about the decision is given to the applicant under section 88(5) as applied by section 94(4); or

(b) if the Minister decides to refuse to renew the approval –

  (i) the last day to appeal against the decision; or

  (ii) if an appeal is instituted against the decision – the day the appeal is decided.

This ensures that if there is any delay in deciding the application for renewal such that the decision cannot be made prior to the day the term of the approval is due to end, then the approval can continue in force until the matter of renewal has been decided.

Subsection 97(2) confirms that the approval is not taken to be in force if it is earlier cancelled.

Division 4 Cancellation of approval

Grounds for cancellation

Clause 98 sets out the grounds for cancelling an overseas higher education institution's approval to operate in the State, namely –

(a) the institution –

  (i) is not complying, or has not complied, with the national protocols and the national guidelines; or

  (ii) has contravened a condition of the approval;

(b) the governing body of the institution, or the institution

  (i) has contravened a condition of the approval; or

  (ii) has made a major change to the operation of the institution in the State without the Minister's approval under section 102; or

  (iii) has not given the Minister notice of a change under section 103; or

  (iv) has not given the Minister an annual report under section 105;

(c) the Minister's decision to grant or renew the approval was based on false or misleading information.

Subsection 98(2) provides that if the Minister reasonably believes a ground exists for cancelling an approval, the Minister must follow the process set out in part 9, division 1. That part requires the Minister to give the holder of the approval a show cause notice about the Minister's proposal to cancel the approval; to consider any written representations about the show cause notice; and to take action to cancel the approval. That part also requires that the Minister must end the show cause process without further action if the Minister no longer believes the ground exists to cancel the approval.

Division 5 Changes to conditions of approval

Changing conditions of approval

Clause 99 provides that the Minister may change the conditions of an approval to operate an overseas higher education institution in Queensland,

imposed by the Minister, if there is a reasonable basis to do so. However, before deciding to change the conditions, the Minister must give notice to the holder of the approval. The notice must include the particulars of the proposed change; and advise that the holder may make written submissions about the proposed change within a reasonable period of at least 21 days stated in the notice.

Subsection 99(2)(b) provides that the Minister must have regard to written submissions made by the holder of the approval before the end of the day stated in the notice.

Subsection 99(3) provides that if the Minister decides to change the conditions, then the Minister must, as soon as practicable, provide the holder of the approval with an information notice about the decision.

Subsection 99(4) states that the decision to change the conditions does not take effect until –

(a) the last day to appeal against the decision; or

(b) if an appeal is instituted against the decision – the day the appeal is decided.

Subsection 99(5) provides that the power of the Minister to change conditions includes the power to add conditions to an approval not already subject to conditions.

Division 6 Major changes to overseas higher education institutions

Application for approval to make major change

Clause 100 provides that the governing body of an overseas higher education institution that holds an approval to operate in Queensland may apply to the Minister for approval to make a major change to the operation of the institution in the State. The application must be in writing; include the information required to be provided under the national guidelines; and be accompanied by the prescribed fee.

Meaning of *major change*

Clause 101 states that a major change, to the operation of an overseas higher education institution in the State, means a change that –

(a) may affect the institution's capacity to comply with the national protocols and the national guidelines; and

(b) is described as a major change in the national guidelines.

Subsection 101(2) provides examples of what are major changes to the operation of an overseas higher education in the State. A major change includes –

(a) a merger of the institution, in the State, with another entity; or

(b) a change to offer a course other than a course approved under this part; or

(c) a change in the arrangement under which a course is approved to be offered, including the addition of a new partner or agent; or

(d) a change that may result in a significant decline in the financial position of the institution.

Decision on application

Clause 102 requires the Minister to consider the application and either grant, or refuse to grant, the application. Subsection 102(2) provides that the Minister may only grant the application if satisfied that the institution will comply with the national protocols and national guidelines after the change is effected.

Subsection 102(3) provides that in deciding the application, the Minister may examine the operation of the institution in the State; and make any other enquiries the Minister considers appropriate. This provision empowers the Minister to examine the operations of the institution, including its operations in Queensland, if necessary.

Subsection 102(4) requires that, if the Minister grants the application, the Minister must as soon as practicable give the applicant a notice of the decision. The notice must state the decision; and the day by which the change must be effected. If the Minister decides to refuse to grant the application, then subsection 102(5) requires that the applicant be given an information notice.

If the Minister fails to decide the application within 6 months after its receipt, then subsection 102(6) provides that the Minister is taken to have decided to refuse to grant the application. The Minister must, as soon as practicable, give the applicant an information notice in accordance with clause 135.

However, subsection 102(7) applies section 89 to the making of the decision. Therefore, if necessary, the Minister and the applicant may agree under section 89 to extend the day by which the decision is to be made. It should also be noted that subsection 102(8) provides that in applying section 89, the ***final consideration day*** will be the day that is 6 months after the application to make a major change was received by the Minister.

Division 7 Other changes to overseas higher education institutions

Notification of other changes to overseas higher education institutions

Clause 103 requires that the governing body of an overseas higher education institution that holds an approval under this part to operate in Queensland must give the Minister notice about certain other changes, namely –

(a) a change to -

  (i) the status or approval of the institution in its country of origin; or

  (ii) the basis on which the institution is established or operates in its country of origin;

(b) a change to -

  (i) the status or approval of a course offered by the institution in its country of origin; or

  (ii) the basis on which the institution offers a course in its country of origin;

  if the course is also offered in the State;

(c) a merger of the institution with another entity in the institution's country of origin.

The governing body must give the notice within 14 days after the change or merger happens.

Division 8 Other provisions

Conferring of higher education award by overseas higher education institution

Clause 104 creates an offence for an overseas higher education institution to confer, or hold out that it is authorised to confer, a higher education award unless the institution is approved, under this part, to offer the course leading to the award.

Subsection 104(2) creates an offence for a person to hold out that an overseas higher education institution is authorised to confer a higher education award unless the institution is approved, under this part, to offer the course leading to the award.

Annual report

Clause 105 requires the governing body of an overseas higher education institution to give the Minister an annual report on or before 31 May in each year.

Subsection 105(2) requires that the annual report must be given in the way required by the Minister; and must cover the period from the previous 1 January to 31 December. In addition, the annual report must contain information to help the Minister assess whether -

(i) the institution is -

  (A) operating within its approval; and

  (B) complying with the national protocols and national guidelines; and

(ii) the institution and its governing body are complying with the conditions of the approval.

A fee is also payable for the assessment of the annual report, and this fee must be submitted with the annual report. Subsection 105(4) provides that the annual report is taken not to have been given until the assessment fee has been paid.

Part 6 Appeals

Who may appeal

Clause 106 states that a person who is given, or is entitled to be given, an information notice for a decision of the Minister (i.e. the ***original decision***) may appeal against the decision to the District Court. Further details about the appeals process are contained within part 6 (see below). However, it should be noted that the provisions must be read in conjunction with the *Uniform Civil Procedure Rules 1999*, which deal with appeals to the District Court.

Starting appeals

Clause 107 states that an appeal may be started at the District Court at the place where the appellant resides or carries on business; or at the District Court at Brisbane. Subsection 107(2) specifies the timeframes for filing the notice of appeal. However, subsection 107(3) provides that the court has power to extend the timeframes for filing the notice.

Hearing procedures

Clause 108 specifies the powers that the District Court has in deciding an appeal, that is that the court –

(a) has the same powers as the Minister; and

(b) is not bound by the rules of evidence; and

(c) must comply with natural justice.

Subsection 108(2) provides that an appeal is by way of rehearing, unaffected by the original decision, on the material before the Minister and any further evidence allowed by the court.

Powers of court on appeal

Clause 109 sets out the powers the court has when deciding the appeal. The court may confirm the original decision; or amend the original decision; or substitute another decision for the original decision; or set aside the original decision and return the issue to the Minister with directions the court considers appropriate.

Subsection 109(2) states that if the court decides to substitute another decision for the original decision, the court has the same powers as the Minister. For example, when hearing an appeal from a decision of the Minister to refuse to register an entity as a non self-accrediting higher education institution, the court may decide to register the entity. Likewise, when hearing an appeal from a decision of the Minister to refuse to accredit a course proposed to be offered by a non self-accrediting higher education institution, the court may decide to accredit the course and may decide to accredit it on particular conditions.

Subsection 109(3) clarifies that if the court amends the original decision or substitutes another decision for it, the amended or substituted decision is taken to be the decision of the Minister.

Part 7 Evidence and legal proceedings

Division 1 Evidence

Evidentiary aids

Clause 110 specifies those matters which do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Division 2 Proceedings

Summary proceedings for offences

Clause 111 provides that proceedings for offences against the Act must be dealt with as summary offences under the *Justices Act 1886*. Subsection 111(2) specifies that a proceeding must start within whichever is the longer of the following:

(a) 1 year after the commission of the offence; or

(b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Responsibility for acts or omissions of representatives

Clause 112 sets out the responsibility of representatives in relation to acts or omissions associated with a proceeding for an offence against the Act.

Subsection 112(2) provides that, if it is relevant to prove a person's state of mind about an act or omission, it is enough to show that the act was done or omitted to be done by the person's representative, if the representative was acting within the scope of the representative's authority; and the representative had the state of mind.

Subsection 112(3) states that an act done or omitted to be done for a person by a representative is taken to have been done or omitted to be done also by the person. However, the person has a defence if the person proves that they could not, by the exercise of reasonable diligence, have prevented the act or omission.

Executive officers must ensure corporation complies with Act

Clause 113 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the Act. Therefore, if a corporation commits an offence against the Act, an offence is also committed by each of the corporation's executive officers. The offence committed by the executive officers is the offence of failing to ensure the corporation complies with the relevant provision of the Act.

However, subsection 113(4) provides that it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure that the corporation complied with the relevant provision of the Act; or that they were not in a position to influence the conduct of the corporation in relation to the offence.

Part 8 Offences

Definitions for pt 8

Clause 114 sets out the definition of the terms ***relevant educational institution*** and ***type of specialisation*** for part 8.

Self-accrediting higher education institution

Clause 115 creates an offence for a person, in relation to a relevant educational institution, to use a title that consists of, or includes, the words "self-accrediting higher education institution" to promote the institution's operations in the State unless it is –

(a) a self-accrediting higher education institution; or

(b) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority.

Subsection 115(2) provides that it is an offence for a person to hold out a relevant educational institution as being a self-accrediting higher education institution operating in the State unless it is –

(a) a self-accrediting higher education institution; or

(b) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority.

Subsection 115(3) creates an offence for a person to hold out that a self-accrediting higher education institution is authorised to operate in a way that is outside the scope of its self-accrediting authority.

Subsection 115(4) creates an offence for a person to hold out that an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority is authorised to operate in a way that is outside the scope of its recognised self-accrediting authority.

University title

Clause 116 creates an offence for a person to use a title that consists of, or includes, the word "university" in relation to a relevant educational institution, unless the institution is a university; or an interstate university; or an overseas university. For example, an educational college that is not a university would commit an offence if it calls its premises a "university". However, the provision does not prevent the term "university" from being used for the purposes of naming a particular place if the place is not an educational institution (e.g. "University Avenue").

However, subsection 116(2) provides that this offence does not apply where the word "university" is used in the following circumstances:

(a) in relation to a specialised university, or an interstate specialised university, a title that includes the type of specialisation; or

(b) in relation to a university college, or an interstate university college, a title that includes the words "university college"; or

(c) in relation to a specialised university college, or an interstate specialised university college, a title that includes its type of specialisation and the words "university college".

Subsection 116(3) creates an offence for a person to hold out a relevant educational institution as being a university unless it is a university; or an interstate university; or an overseas university.

However, subsection 116(4) provides that the offence in subsection 116(3) does not apply by holding out a specialised university, or an interstate specialised university, as a university for the field of study that is its type of specialisation. Nor does the offence apply to the holding out of a university college, or an interstate university college, as a university college. Also, the offence does not apply to the holding out of a specialised university college, or an interstate specialised university college, as a university college for the field of study that is its type of specialisation.

Subsection 116(5) specifically states that the offences in this clause do not apply to the educational institution known as "University of the Third Age".

Specialised university title

Clause 117 creates an offence for a person, in relation to a specialised university or an interstate specialised university, to use a title to identify the specialised university or interstate specialised university, unless the title includes its type of specialisation (for example "The Brisbane University of the Performing Arts").

University college title

Clause 118 creates an offence for a person, in relation to a university college or an interstate university college, to use a title to identify the university college or interstate university college, unless the title includes the words "university college".

Specialised university college title

Clause 119 creates an offence for a person, in relation to a specialised university college or an interstate specialised university college, to use a

title to identify the specialised university college or the interstate specialised university college, unless the title includes its type of specialisation and the words "university college" (for example "The Townsville University College of Marine Biology").

Restriction on operating a higher education institution

Clause 120 creates an offence for a person to operate, or hold out that the person operates, a higher education institution in the State unless the institution is –

(a) a non self-accrediting higher education institution; or

(b) a self-accrediting higher education institution; or

(c) an interstate self-accrediting higher education institution that holds a recognised self-accrediting authority; or

(d) a university, specialised university, university college or specialised university college; or

(e) an interstate university, interstate specialised university, interstate university college or interstate specialised university college that holds a recognised authority; or

(f) an overseas higher education institution that holds an approval under part 5.

Please note that the Act's dictionary in schedule 2 defines what ***operating*** means in relation to a higher education institution.

Conferring of higher education award without course being undertaken

Clause 121 creates an offence for a person, other than a relevant entity, to confer a higher education award on another person unless the other person has undertaken a course leading to the award.

Subsection 121(2) defines the term ***relevant entity*** to mean –

(a) a university; or

(b) a specialised university; or

(c) an interstate university that holds a recognised authority; or

(d) an interstate specialised university that holds a recognised authority; or

(e) an overseas university that holds an approval under part 5.

This offence should be read in context with the offence provisions in clause 39 (Conferring of higher education award by non self-accrediting higher education institution), clause 64 (Conferring of higher education award by self-accrediting higher education institution), clause 72 (Conferring of higher education award by interstate self-accrediting higher education institution) and clause 104 (Conferring of higher education award by overseas higher education institution).

Part 9 Miscellaneous provisions

Division 1 Show cause process

Definitions for div 1

Clause 122 sets out the definitions for division 1.

Application of div 1

Clause 123 provides that division 1 applies if the Minister reasonably believes a ground exists for cancelling a relevant authority.

Show cause notice

Clause 124 requires the Minister to give the holder of the relevant authority a show cause notice. The show cause notice must state the following –

(a) that the Minister proposes to cancel the relevant authority (the ***proposed action***);

(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 of time (the ***show cause period)***, why the Minister should not take the proposed action.

To provide the holder of the relevant authority with sufficient time to respond to the show cause notice, the show cause period must be at least 30 days after the show cause notice is given to the holder of the relevant authority (subsection 124(3)).

Representations about show cause notice

Clause 125 provides that the holder of the relevant authority may make written representations about the show cause notice, within the show cause period. Subsection 125(2) provides that the Minister must consider all written representations (the ***accepted representations***). This ensures that the Minister gives consideration to any, and all, documented submissions made by the holder about the show cause notice.

Ending show cause process without further action

Clause 126 sets out the circumstances in which a show cause process must be ended without further action. If, after considering the accepted representations, the Minister no longer believes the ground exists to cancel the relevant authority, the Minister must not take further action about the show cause notice; and must, as soon as practicable, give notice to the holder of the relevant authority that no further action will be taken about the show cause notice.

Cancellation of relevant authority

Clause 127 provides that the Minister may decide to cancel the relevant authority if, after considering any accepted representations, the Minister still believes the ground exists to cancel the relevant authority; and believes that cancellation of the relevant authority is warranted. Subsection 127(2) provides that this also applies if there were no accepted representations about the show cause notice.

Subsection 127(4) provides that the Minister must, as soon as practicable, give the holder of the relevant authority an information notice about the decision to cancel the relevant authority.

Subsection 127(5) provides that the decision to cancel the relevant authority does not take effect until –

(a) the last day to appeal against the decision; or

(b) if an appeal is instituted against the decision – the day the appeal is decided.

Division 2 Other provisions

Applied provisions

Clause 128 provides that if a provision of the Act (an ***applied provision***) applies under another provision, the applied provision must be read with the changes necessary or convenient for the other provision to have effect.

For example, section 15 applies section 9 (an applied provision) to an application under section 15. Section 9 applies as if a reference in section 9 to an application were a reference to an application under section 15.

Protection from liability

Clause 129 provides for protection from civil liability for the Minister for acts done, or omissions made, honestly and without negligence under the Act. The liability attaches instead to the State.

Disclosure of information to relevent entities

Clause 130 provides that the Minister may disclose information obtained in the course of administering the Act, or the repealed Act, to the entities listed in subsection 130(2). However, the Minister may only disclose the information if the Minister considers that doing so is necessary for the relevent entity to perform its functions.

Information may be disclosed to the following entities -

(a) an entity listed as a government accreditation authority on the AQF Register;

(b) a designated authority under the *Education Services for Overseas Students Act 2000* (Cwlth);

(c) a person involved in the administration of the *Education Services for Overseas Students Act 2000* (Cwlth);

(d) a person involved in the administration of the *Higher Education Support Act 2003* (Cwlth).

Committees and other sources of advice

Clause 131 provides that the Minister may establish committees to advise the Minister on deciding applications under the Act; and any other matter under the Act referred to the committee by the Minister.

Subsection 131(2) also clarifies that the Minister may seek advice on any matter under the Act from any other person the Minister considers has appropriate knowledge or experience of the matter.

Guidelines

Clause 132 states that the Minister may make guidelines for the Act. Subsection 132(2) sets out matters about which guidelines may be made. However, guidelines are not limited to those matters.

Subsection 132(3) provides that a guideline may be replaced or varied by a later guideline.

Subsections 132(4) and (5) require the chief executive to keep a copy of a guideline available for inspection at the head office of the department, and at any other place the chief executive considers appropriate; and permit a person to inspect the guideline and take extracts from it without fee.

Subsection 132(6) provides that the chief executive must keep a copy of the guideline available for supply and permit a person to obtain a copy of the guideline (or part of it) without fee.

Subsection 132(7) provides that the chief executive must also keep a copy of the guideline posted on the department's web site, which is www.deta.qld.gov.au.

Delegation by Minister

Clause 133 empowers the Minister to delegate the Minister's functions under the Act to an appropriately qualified public service employee.

Subsection 133(2) states that the term ***appropriately qualified***, for a public service employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function. Subsection 133(2) also states that ***functions*** includes powers.

Annual report

Clause 134 requires the Minister to prepare an annual report about the operation of the Act as soon as practicable after the end of each financial year. The Minister must also lay a copy of the annual report before the Legislative Assembly.

Failure to decide application

Clause 135 clarifies that if the Minister is taken to have decided to refuse to grant an application under the Act, then, to remove any doubt, the Minister is required to give the applicant an information notice about that decision as soon as practicable.

Approval of forms

Clause 136 provides that the Minister may approve forms for use under the Act.

Regulation-making power

Clause 137 provides that the Governor in Council may make regulations under the Act.

Subsection 137(2) provides that without limiting subsection (1), a regulation may be made about the following –

(a) the fees payable under the Act and the matters for which fees are to be paid, including fees for the Minister to do either of the following in deciding an application –

  (i) examine the operation or proposed operation of a higher education institution;

  (ii) make any other enquiries the Minister considers appropriate;

(b) the recovery, waiving or refunding of fees;

(c) imposing a penalty of not more than 20 penalty units for contravention of a regulation.

Part 10 Repeal and transitional provisions

Division 1 Repeal

Repeal

Clause 138 repeals the *Higher Education (General Provisions) Act 2003*.

Division 2 Transitional provisions

Definitions for div 2

Clause 139 sets out the definitions for division 2.

References to repealed Act

Clause 140 states that if an Act or a document refers to the repealed Act (i.e. the *Higher Education (General Provisions) Act 2003*), it may, if the context permits, be taken to be a reference to the new Act (i.e. the *Higher Education (General Provisions) Act 2008*).

Application for approval to be established or recognised as a university

Clause 141 provides that if an application under part 2 of the repealed Act (i.e. an application for approval that an institution is suitable to be established or recognised, under an Act, as a university) is not finally decided before the commencement, it is taken to be an application under part 4 of the new Act and must be decided under the new Act.

Approval to operate overseas higher education institution

Clause 142 provides that an overseas higher education institution that held an approval to operate under part 3 of the repealed Act is taken to hold an approval under part 5 of the new Act (i.e. it has a ***continuing approval*** to operate). The continuing approval is subject to any conditions applying under the repealed Act. It remains in force until it would have expired

under the repealed Act, or is earlier cancelled or renewed under the new Act.

Application for approval to operate overseas higher education institution

Clause 143 provides that if an application under part 3 of the repealed Act (i.e. an application for approval to operate as an overseas higher education institution) is not finally decided before the commencement, it is taken to be an application under part 5 of the new Act and must be decided under the new Act.

Cancellation of approval to operate overseas higher education institution

Clause 144 provides that if, before the commencement, a show cause process had started in relation to an approval to operate an overseas higher education institution and the show cause process had not been completed, it can be completed under part 9, division 1 of the new Act.

However, subsection 144(3) provides that if the show cause process had started because there had been a change, without the Minister's approval, to a key detail mentioned in the institution's operational plan, then the show cause process lapses on the commencement. This is because the new Act does not contain a requirement for an overseas higher education institution to have its operational plan approved by the Minister.

References to non-university provider

Clause 145 states that if an Act or a document refers to a non-university provider, it may, if the context permits, be taken to be a reference to a non self-accrediting higher education institution.

Non-university provider taken to be non self-accrediting higher education institution

Clause 146 provides that if a non-university provider held an accreditation for 1 or more higher education courses under part 4 of the repealed Act, then, on the commencement –

(a) the provider is taken to hold registration under part 2 of the new Act as a non self-accrediting higher education institution (a ***deemed registration***); and

(b) each existing accreditation is taken to be an accreditation under part 2 of the new Act for the institution (a ***continuing accreditation***).

Subsection 146(3) provides that if an accreditation was subject to conditions under the repealed Act, then the continuing accreditation is subject to the same conditions under the new Act.

Subsection 146(4) provides that a deemed registration expires when the term of all continuing accreditations has ended (i.e. the day all the continuing accreditations would have expired under the repealed Act). However, this only applies unless the deemed registration is earlier cancelled or renewed under the new Act.

Subsection 146(6) provides that a continuing accreditation expires when it would have expired under the repealed Act, unless it is earlier cancelled or renewed under the new Act.

Application for accreditation of higher education course

Clause 147 provides that if an application made under part 4 of the repealed Act (i.e. an application for accreditation of a higher education course proposed to be offered by a non-university provider) is not finally decided before the commencement, it must be decided under the repealed Act. Given that the application would have been prepared in accordance with the previous National Protocols, it is considered that it would be a difficult process to assess the application with regard to the new National Protocols. Therefore, it has been decided that the application should be assessed and decided under the provisions of the repealed Act.

Subsection 147(3) provides that if the Minister decides to grant the application for accreditation of the course, then –

(a) if section 146(1) does not apply (i.e. the non-university provider did not also hold any existing accreditations) then the provider is taken to hold registration under part 2 of the new Act as a non self-accrediting higher education institution (a ***deemed registration***); and

(b) the accreditation granted is taken to be an accreditation under part 2 of the new Act for the non self-accrediting higher education institution.

Subsection 147(4) provides that a deemed registration under this section expires when the term of the accreditation granted under subsection (3)(b) ends. However, this only applies unless the deemed registration is earlier cancelled or renewed under the new Act.

Subsection 147(6) states that if the Minister refuses to grant the application for accreditation of the course, then the applicant has the right of appeal that applied under the repealed Act.

Subsection 147(7) provides that, if, on appeal, the court amends the original decision, or substitutes another decision for the original decision, that decision is, for this section, taken to be the decision of the Minister.

Cancellation of accreditation of an accredited course

Clause 148 provides that if, before the commencement, a show cause process had started in relation to an existing accreditation and the show cause process had not been completed, it can be completed under part 9, division 1 of the new Act.

Approval to operate interstate university

Clause 149 provides that if, before the commencement, the governing body of an interstate university held an approval under part 5 of the repealed Act (i.e. an ***existing approval to operate*** the university in Queensland under an agency arrangement), then that existing approval to operate is taken to be a recognised authority under part 4 of the new Act. This enables the university to continue to operate in Queensland.

It should be noted that it is no longer necessary for an interstate university to obtain specific approval to operate in Queensland under an agency arrangement. Consequently, the recognised authority under part 4 of the new Act applies irrespective of whether the university is operating in Queensland under an agency arrangement.

Application for approval to operate interstate university

Clause 150 provides that an application made under part 5 of the repealed Act (i.e. an application for approval to operate an interstate university in Queensland under an agency arrangement) lapses on the commencement. The application lapses because it is no longer a requirement that an interstate university, intending to operate in Queensland under an agency arrangement, obtain the Minister's approval to do so. The interstate

university will be able to operate in Queensland automatically under a recognised authority under part 4 of the new Act.

Cancellation of approval to operate interstate university

Clause 151 provides that if, before the commencement, a show cause process had started in relation to an existing approval to operate an interstate university in Queensland under an agency arrangement, and the show cause process had not been completed, it can be completed under part 9, division 1 of the new Act.

Appeals

Clause 152 provides for the continuation or commencement of appeals to the District Court under the repealed Act.

Offences

Clause 153 provides for the continuation or commencement of proceedings for an offence against the repealed Act, as if the new Act had not commenced.

Part 11 Amendment of Education (General Provisions) Act 2006

Act amended in Pt 11

Clause 154 provides that part 11 amends the *Education (General Provisions) Act 2006*.

Amendment of s 52 (Fee for distance education provided by a State school)

Section 52 of the *Education (General Provisions) Act 2006* (the EGPA) provides that a fee may be charged for the provision of distance education by a State school.

Clause 155 amends section 52(1)(b) of the EGPA to give effect to the original policy intention of the section by clarifying the head of power to

charge a fee in relation to non-State school students who undertake a component of a program of distance education at a State school.

Following commencement of the amendments, section 52(1)(b) will capture all persons, other than State school students, who undertake a component of a program of distance education at a State school.

A "component of a program" of distance education, which is less than a full "program", could be a single subject or a number of subjects.

The reference to "a person, other than a State school student" in section 52(1)(b) of the EGPA ensures that in addition to applying to non-State school students, the section continues to apply to any other person, other than a State school student, who is undertaking a "component of a program" by distance education, for example an adult learner undertaking a course in French by distance education.

State school students are expressly excluded from section 52(1)(b) of the EGPA.

Clause 155 omits the definition of "non-State school student" in section 52(3) of the EGPA, which is no longer required following the amendment to section 52(1)(b).

Amendment of s 54 (Waiver of fee for distance education)

Clause 156 amends sections 54(1)(b), 54(2)(a) and 54(2)(b) of the EGPA to make consequential amendments required as a result of the amendments to section 52(1)(b) of the EGPA.

The amendments ensure that any person to whom section 52(1)(b) of the EGPA applies, including a non-State school student who undertakes a component of a program of distance education at a State school, can apply for a waiver under section 54(1)(b) of the EGPA.

Part 12 Amendment of Vocational Education, Training and Employment Act 2000

Act amended in Pt 12

Clause 157 provides that part 12 amends the *Vocational Education, Training and Employment Act 2000*.

Amendment of s 168 (Council's functions)

Section 168 of the *Vocational Education, Training and Employment Act 2000* (the VETE Act) outlines the functions of the Training Employment and Recognition Council, a council established under section 167 of VETE Act.

Clause 158 amends section 168 of the VETE Act to ensure that the functions of the Training Employment and Recognition Council extend to principal employer organisations.

Amendment of s 221 (Recognition of group training organisation)

Under section 221(1) of the VETE Act, the Training Employment and Recognition Council may, by signed notice to a corporation, recognise the corporation as a group training organisation (a GTO) for an industry, an industry sector or an area.

Clause 159 amends section 221(1) of the VETE Act to ensure that recognition of a corporation as a GTO is no longer restricted to an industry, an industry sector or an area.

Insertion of new ch 7A

Clause 160 inserts a new Chapter 7A into the VETE Act. The purpose of the new Chapter 7A is to facilitate recognition of a new group of organisations known as principal employer organisations.

Under the new section 223A of the VETE Act, in order to be recognised as a principal employer organisation, an entity must:

- conform with the requirements of the approved guidelines for a principal employer organisation (a copy of which will be available on the Department of Education, Training and the Arts' website);
- employ, or intend to employ, 25 or more apprentices or trainees for placing under a hosting agreement; and
- not already be recognised as a GTO.

It should be noted that there is no requirement for a PEO to be a corporation. As such, unlike a GTO, a PEO can be a sole trader or a partnership.

Where an entity which is not recognised as a GTO or a PEO employs 25 or more apprentices and/or trainees, the approved guidelines relating to the registration of training contracts (refer to section 54 of the VETE Act) will restrict the entity from registering any further training contracts until the entity is recognised as either a GTO or PEO.

The terms "apprentice", "trainee" and "training plan" are already defined in sections 9, 10 and 13 of the VETE Act respectively.

Under new section 223B of the VETE Act, a function of a principal employer organisation is, by agreement between the organisation and another entity, to arrange for the other entity to train, under a training plan, an apprentice or trainee employed by the principal employer organisation.

New section 223C(1) of the VETE Act allows the Training Employment and Recognition Council to withdraw recognition of an entity as a principal employer organisation. Any withdrawal of recognition must be in accordance with fair procedures prescribed under regulation.

If the Training Employment and Recognition Council withdraws the recognition of an entity as a principal employer organisation, the new section 223C(2) of the VETE Act provides that it must promptly provide the entity with an information notice. The term "information notice", which is used throughout the VETE Act, is already defined in Schedule 3 of the VETE Act.

Amendment of s 224 (Appeal to Magistrates Court)

Clause 161 amends section 224 of the VETE Act to ensure that a person aggrieved by a decision about the recognition of a principal employer organisation may appeal to the Magistrates Court.

Insertion of new ch 10, pt 5

Clause 162 inserts a new Chapter 10 into the VETE Act, which includes a transitional provision to cater for the amendments to section 221 of the VETE Act.

The new section 344 of the VETE Act ensures that organisations which, at the time of the commencement of this Bill are already recognised as GTOs, are no longer limited to a particular industry, industry sector or area.

It should be noted that despite the fact existing GTOs are no longer restricted to an industry, an industry sector or an area, GTOs which already receive funding from the Queensland Government will not automatically be entitled to receive funding for a new industry, industry sector or area.

Amendment of sch 3 (Dictionary)

Clause 163 inserts new definitions into schedule 3 of the VETE Act, which are required in relation to the new section 223A of the VETE Act.

The term ***hosting arrangement*** is defined to mean an arrangement under which a GTO or a principal employer organisation (each an organisation) agrees in writing with another entity for –

(a) the organisation, for a fee, to hire out an apprentice or trainee employed by the organisation to perform work for another entity; and

(b) the other entity to train the apprentice or trainee under a training plan.

The term ***principal employer organisation*** is defined by reference to the new section 223A of the VETE Act.

Part 13 Amendment of other Acts

Acts amended in sch 1

Clause 164 provides that schedule 1 amends the Acts mentioned in it.

Schedule 1 Consequential and minor amendments of other Acts

Schedule 1 provides for consequential amendments to be made to a number of Acts to omit references to the *Higher Education (General Provisions) Act 2003* and to insert references to the *Higher Education (General Provisions) Act 2008*.

Schedule 1 also provides for consequential amendments to be made to a number of Acts to update definitions of terms such as ***education provider***, ***higher education entity*** and ***higher education institution***, to capture the new categories of higher education institutions that are permitted under the new *Higher Education (General Provisions) Act 2008*.

Schedule 2 Dictionary

Schedule 2 sets out the dictionary terms used in the Act.