

TASMANIA

---

**TASMANIAN QUALIFICATIONS  
AUTHORITY BILL 2003**

---

**CONTENTS**

**PART 1 - PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown
5. Non-application of Act to certain providers of higher education and to vocational education and training providers
6. Relationship with *Vocational Education and Training Act 1994*

**PART 2 - TASMANIAN QUALIFICATIONS AUTHORITY**

***Division 1 - Tasmanian Qualifications Authority***

7. Tasmanian Qualifications Authority
8. Membership of Authority
9. Objectives of Authority
10. Functions of Authority
11. Powers of Authority
12. Delegation
13. Ministerial directions

14. Independence of Authority

***Division 2 – Duties of members of Authority***

15. Duties of members of Authority

***Division 3 – Chief executive officer and other staff***

16. Chief executive officer

17. Role, functions and powers of chief executive officer

18. Staff

19. Authorised officers

***Division 4 – Committees***

20. Committees

21. Procedure of committees

***Division 5 – Financial affairs***

22. Authorised deposit-taking institution accounts

23. Accounting records

24. Report to Minister

**PART 3 – SENIOR SECONDARY EDUCATION**

25. Application for accreditation of senior secondary course

26. Accreditation of senior secondary course

27. Term of accreditation of accredited senior secondary course

28. Renewal of accreditation as accredited senior secondary course

29. Cancellation of accreditation as accredited senior secondary course

30. Offence of falsely claiming to provide accredited course

31. Assessment of accredited senior secondary courses

32. Conferral or issue of approved qualification

33. Standards for provision and assessment of accredited senior secondary courses

## **PART 4 – HIGHER EDUCATION**

### ***Division 1 – Preliminary***

34. When person may provide higher education course or higher education award

### ***Division 2 – Accreditation of higher education courses***

35. Application for accreditation of course
36. Accreditation of higher education course
37. Term of accreditation of accredited higher education course
38. Accredited higher education course subject to conditions
39. Renewal of accreditation as accredited higher education course
40. Cancellation of accreditation as accredited higher education course
41. Offences relating to provision of higher education course

### ***Division 3 – Registration of higher education providers***

42. Application for registration
43. Registration as registered higher education provider
44. Registration subject to conditions
45. Registration certificate
46. Term of registration
47. Registration fee
48. Amendment of registration
49. Renewal of registration
50. Registration not transferable
51. Direction to registered higher education provider
52. Cancellation or suspension of registration
53. Offences relating to registration as higher education provider
54. Offences relating to use of “university”, &c.
55. Conferral or issue of approved qualification

## **PART 5 – INVESTIGATIONS AND INSPECTIONS**

- 56. Investigations
- 57. Inspections
- 58. Documents
- 59. Use of document or information obtained

## **PART 6 – REVIEW OF DECISIONS**

- 60. Review of decisions

## **PART 7 – REGISTERS**

- 61. Registers
- 62. Manner of keeping registers
- 63. Access to registers

## **PART 8 – RULES**

- 64. Rules

## **PART 9 – MISCELLANEOUS**

- 65. Offences relating to exercise of powers by Authority or authorised officer
- 66. Offences by body corporate and director, &c.
- 67. *Land Acquisition Act 1993* does not apply
- 68. Judicial notice of certain signatures
- 69. Presumptions
- 70. Evidentiary matters
- 71. Service of documents
- 72. Regulations
- 73. Savings and transitional provisions
- 74. Administration of Act
- 75. Consequential amendments
- 76. Acts repealed
- 77. Statutory Rules rescinded

## **SCHEDULE 1 – MEMBERSHIP OF AUTHORITY**

**SCHEDULE 2 – MEETINGS OF AUTHORITY**

**SCHEDULE 3 – SAVINGS AND TRANSITIONAL PROVISIONS**

**SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS**

**SCHEDULE 5 – ACTS REPEALED**

**SCHEDULE 6 – STATUTORY RULES RESCINDED**



# **TASMANIAN QUALIFICATIONS AUTHORITY BILL 2003**

*(Brought in by the Minister for Education, the Honourable  
Paula Catherine Wriedt)*

## **A BILL FOR**

**An Act to establish the Tasmanian Qualifications Authority, to provide for the development and management of qualification processes, to abolish certain qualifications bodies, to repeal the *Universities Registration Act 1995* and related Acts, to amend certain Acts and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 - PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Tasmanian Qualifications Authority Act 2003*.

### **Commencement**

2. This Act commences on a day to be proclaimed.

**Interpretation**

**3. (1)** In this Act, unless the contrary intention appears –

**“accredited higher education course”** means a course that has been accredited under section 36;

**“accredited senior secondary course”** means a course that has been accredited under section 26;

**“accredited training course”** has the same meaning as in the *Vocational Education and Training Act 1994*;

**“amend”** includes –

- (a) omit matter; and
- (b) insert or add matter; and
- (c) omit matter and substitute other matter;

**“approved qualification”** means –

- (a) a qualification for an accredited senior secondary course determined under section 26(3)(b); or
- (b) a higher education award for an accredited higher education course determined under section 36(3);

**“Australian Accounting Standards”** means Statements of Accounting Standards issued jointly by the National Councils of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia or their successors;



**“Australian Qualifications Framework”** means the policy of that name, defining all qualifications recognised nationally in post-compulsory education and training within Australia, endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs so as to commence on 12 January 1995, as amended from time to time;

**“Australian Quality Training Framework”** means the policy of that name, that defines the criteria and standards for the registration of training organisations and the accreditation of courses in the vocational education and training sector, endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs on 8 June 2001, as amended from time to time;

**“Australian university”** has the same meaning as in the National Protocols for Higher Education Approval Processes;

**“authorised officer”** means a person appointed under section 19 to be an authorised officer;

**“Authority”** means the Tasmanian Qualifications Authority established under section 7;

**“chief executive officer”** means the chief executive officer of the Authority appointed under section 16;

**“child”** means a person who is under 16 years of age;

**“committee”** means a committee established under section 20;

**“course”** means –

- (a) a course of study normally undertaken, or intended to be undertaken, during the final 2 years of secondary education, being the years of secondary education commonly known as years 11 and 12; or
- (b) a course for the purposes of the *Vocational Education and Training Act 1994*; or
- (c) a higher education course –

which includes one or more subjects, syllabi or programs of study or training leading to the conferral or issue of a particular qualification;

**“education”** means the acquiring of knowledge, skills and understanding through the undertaking of courses;

**“exempt university”** means a university, other self-accrediting higher education provider or other person referred to in section 5;

**“functions”** includes duties;

**“higher education”** means education in relation to which a higher education award may be issued under the Australian Qualifications Framework;

**“higher education award”** means –

- (a) an award of a diploma or advanced diploma; or
- (b) an award of a graduate diploma or graduate certificate; or

- (c) an award of an associate degree, bachelor degree, masters degree or doctoral degree; or
- (d) any other award specified in the Australian Qualifications Framework as a higher education award; or
- (e) a prescribed award –

but does not include a qualification that is awarded or issued in respect of vocational education and training or by an exempt university;

**“higher education course”** means a course of study that entitles a person who satisfies the course requirements to the conferral or issue of a higher education award;

**“justice of the peace”** does not include a magistrate;

**“local registered training organisation”** has the same meaning as in the *Vocational Education and Training Act 1994*;

**“National Protocols for Higher Education Approval Processes”** means –

- (a) the set of protocols governing higher education quality assurance processes agreed to by the States and Territories at the Ministerial Council on Education, Employment, Training and Youth Affairs on 31 March 2000, as amended from time to time; or
- (b) any set of protocols agreed to in substitution for the National Protocols for Higher Education Approval

Processes, as amended from time to time;

**“national standard”** means a standard relating to the provision of a course, the assessment of a person undertaking a course or the conferral or issue of a qualification in respect of a course to be followed by Commonwealth, State and Territory registering bodies and course accrediting bodies under the Australian Quality Training Framework or the National Protocols for Higher Education Approval Processes;

**“overseas higher education institution”** has the same meaning as in the National Protocols for Higher Education Approval Processes;

**“qualification”**, in relation to a course, means the recognition, by any means, that a person has successfully completed the course;

**“registered higher education provider”** means a person who is registered as a registered higher education provider under section 43, while that registration has effect;

**“registered training organisation”** has the same meaning as in the *Vocational Education and Training Act 1994*;

**“registration certificate”** means a registration certificate issued under section 45;

**“regulations”** means regulations made and in force under section 72;

**“rules”** means rules made and in force under section 64;

**“senior secondary course”** means a course of study that is normally undertaken, or intended to be undertaken, during the final 2 years of secondary education, being the years of secondary education commonly known as years 11 and 12;

**“senior secondary education”** means education that is normally undertaken during the final 2 years of secondary education, being the years of secondary education commonly known as years 11 and 12;

**“Treasurer’s Instructions”** means instructions issued under section 114 of the *Government Business Enterprises Act 1995* or section 23 of the *Financial Management and Audit Act 1990*;

**“vocational education and training”** has the same meaning as in the *Vocational Education and Training Act 1994*.

**(2)** For the purposes of this Act –

- (a) a person may provide a course in person, by mail, by means of the internet, radio or television or by any other means; and
- (b) a person who provides a course to a student who is present in Tasmania while undertaking that course is taken to provide that course in Tasmania.

### **Act binds Crown**

**4. (1)** This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

(2) Nothing in this Act renders the Crown in right of Tasmania liable to be prosecuted for an offence against this Act.

**Non-application of Act to certain providers of higher education and to vocational education and training providers**

5. This Act does not apply in relation to –

- (a) the University of Tasmania; or
- (b) a university, or other self-accrediting higher education provider, established, recognised or registered under an Act of the Commonwealth, this State, another State or a Territory; or
- (c) a prescribed person.

**Relationship with *Vocational Education and Training Act 1994***

6. (1) Except as otherwise provided by the *Vocational Education and Training Act 1994* or this Act, this Act does not apply in relation to –

- (a) the accreditation of courses under the *Vocational Education and Training Act 1994* or accredited training courses; or
- (b) the registration of providers of vocational education and training under the *Vocational Education and Training Act 1994* or registered training organisations.

(2) The *Vocational Education and Training Act 1994* makes provision in relation to –

2003

*Tasmanian Qualifications Authority*

No.

**s. 6**

- (a) the accreditation of courses in vocational education and training or accredited training courses; and
- (b) the registration of providers of vocational education and training and registered training organisations.

**PART 2 – TASMANIAN QUALIFICATIONS  
AUTHORITY**

***Division 1 – Tasmanian Qualifications Authority***

**Tasmanian Qualifications Authority**

**7. (1)** The Tasmanian Qualifications Authority is established.

**(2)** The Authority –

- (a) is a body corporate with perpetual succession;  
and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**(3)** All courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Authority.

**Membership of Authority**

**8. (1)** The Authority consists of 9 members appointed by the Minister.

**(2)** Before appointing a member, the Minister is to give notice in at least 3 daily newspapers published and circulating in the State that persons interested in being members may provide written expressions of interest to the Minister.

**(3)** In appointing the members, the Minister is to ensure that the members, collectively, have knowledge and skills in the following areas:



- (a) industry;
- (b) directorship in corporations, finance or law;
- (c) senior secondary teaching;
- (d) vocational education and training;
- (e) higher education;
- (f) policy development and strategic planning.

**(4)** In appointing the members, the Minister is to take into account –

- (a) expressions of interest provided to the Minister under subsection (2); and
- (b) that it is desirable that the membership –
  - (i) is balanced in gender; and
  - (ii) contains persons from all regions of the State; and
  - (iii) contains representatives of both employees and employers; and
  - (iv) contains representatives from both government schools and non-government schools.

**(5)** The Minister may appoint a member as chairperson of the Authority.

**(6)** Schedule 1 has effect with respect to the membership of the Authority.

**(7)** Schedule 2 has effect with respect to the meetings of the Authority.

**Objectives of Authority**

9. The objectives of the Authority are to ensure that –

- (a) relevant national standards and State standards for senior secondary education, vocational education and training and higher education are monitored and met; and
- (b) links between qualifications for senior secondary education, vocational education and training, higher education and other education are developed or improved; and
- (c) throughout a person's life as wide a range of qualifications as practicable can be obtained and recognised in senior secondary education, vocational education and training, higher education and other education.

**Functions of Authority**

10. The Authority has the following functions:

- (a) to provide a consolidated statement of the qualifications of a person at his or her request;
- (b) to accredit courses for senior secondary education and higher education;
- (c) to register providers of higher education;
- (d) to determine the manner of assessment for obtaining a qualification in an accredited course and to provide for or determine related matters;
- (e) to collect, record and distribute individual student information relating to senior

secondary education, vocational education and training and higher education;

- (f) to provide advice to the Minister on matters relating to qualifications;
- (g) to provide system-level data to such State, Territory and Commonwealth authorities as the Authority considers appropriate;
- (h) functions imposed on the Authority by –
  - (i) the *Vocational Education and Training Act 1994*, including in particular the accreditation of training courses and the registration of training providers;
  - (ii) any other Act;
- (i) other functions imposed on the Authority by this Act;
- (j) other functions imposed on the Authority by the Minister by written notice provided to the Authority.

### **Powers of Authority**

**11.** The Authority has the following powers:

- (a) authorising and directing the undertaking of investigations, inspections, examinations and reviews for the purposes of this Act;
- (b) acquiring, holding, disposing of and otherwise dealing with property;
- (c) entering into contracts, including a contract with another person for the performance or

exercise of any of its functions or powers by or jointly with that other person;

- (d) setting charges, terms and conditions relating to work done, or services, goods or information supplied, by it;
- (e) doing any other thing necessary or convenient to be done in connection with the performance or exercise of its functions and powers under this or any other Act.

### **Delegation**

**12.** The Authority may delegate any of its functions or powers under this Act, the *Vocational Education and Training Act 1994* or any other Act, other than this power of delegation.

### **Ministerial directions**

**13. (1)** The Minister may give written directions to the Authority in relation to the performance and exercise of its functions and powers, including discretionary functions and powers.

**(2)** The Authority is to comply with a direction given under subsection (1).

**(3)** The annual report submitted under section 36 of the *State Service Act 2000* by the Head of Agency, within the meaning of that Act, is to contain details of any directions given under subsection (1) during the period to which the report relates.

### **Independence of Authority**

**14.** Except as otherwise provided by or under this or any other Act, the Authority is not subject to the control or directions of the Head of Agency within the meaning of the *State Service Act 2000* or the Department in respect of the formation of any opinion, or the making of any decision, that the Authority is required to form, or make, to perform its functions.

### ***Division 2 – Duties of members of Authority***

#### **Duties of members of Authority**

**15.** A member of the Authority must act honestly, exercise reasonable care and be diligent in the performance and exercise of the functions and powers of a member.

Penalty: Fine not exceeding 50 penalty units.

### ***Division 3 – Chief executive officer and other staff***

#### **Chief executive officer**

**16. (1)** On the recommendation of the Minister, a person other than a member of the Authority may be appointed as chief executive officer of the Authority subject to and in accordance with the *State Service Act 2000*.

**(2)** Before recommending a person for appointment as chief executive officer, the Minister must consult with the Authority in relation to the recommendation.

**Role, functions and powers of chief executive officer**

**17. (1)** The chief executive officer is responsible to the Authority for the general administration and management of the Authority.

**(2)** The chief executive officer –

- (a) must perform any functions, and may exercise any powers, delegated to the chief executive officer by the Authority; and
- (b) must perform any other functions imposed on, and may exercise any other powers granted to, the chief executive officer by this or any other Act.

**(3)** The chief executive officer may delegate any of his or her functions or powers under this Act other than this power of delegation.

**Staff**

**18.** Subject to and in accordance with the *State Service Act 2000*, persons may be appointed for the purposes of this Act.

**Authorised officers**

**19. (1)** The Authority may appoint a person appointed under section 18 to be an authorised officer.

**(2)** The Authority is to ensure that each authorised officer has a current identity card that is issued by the Authority and contains a recent photograph of the officer.

### ***Division 4 – Committees***

#### **Committees**

**20. (1)** The Authority may establish one or more committees to advise and assist the Authority in the performance and exercise of its functions and powers under this Act, the *Vocational Education and Training Act 1994* or any other Act.

**(2)** A committee consists of such persons as the Authority appoints.

**(3)** A member of the Authority may be a member of a committee.

**(4)** Subject to subsection (5), a member of a committee is entitled to be paid such remuneration and allowances as the Authority determines.

**(5)** A member of a committee who is a State Service employee or State Service officer is not entitled to remuneration under subsection (4) except with the approval of the Minister administering the *State Service Act 2000*.

**(6)** A member of a committee holds office on such conditions in relation to matters not provided for by this Act as are specified in the instrument of appointment.

**(7)** At any time, the Authority may abolish a committee.

#### **Procedure of committees**

**21. (1)** A committee must keep accurate minutes of its meetings.

(2) Except as otherwise provided in this Act, a committee may regulate its own proceedings.

### ***Division 5 - Financial affairs***

#### **Authorised deposit-taking institution accounts**

22. The Authority may open and maintain such authorised deposit-taking institution accounts as it considers necessary.

#### **Accounting records**

23. (1) The Authority is to –

- (a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) keep those records in a manner that –
  - (i) allows true and fair accounts of the Authority to be prepared from time to time; and
  - (ii) allows its accounts to be conveniently and properly audited or reviewed; and
  - (iii) subject to any contrary written direction given by the Treasurer to the Authority under subsection (2), complies with Australian Accounting Standards; and
  - (iv) complies with any written directions given by the Minister or Treasurer to the Authority under subsection (2).



**(2)** The Treasurer or Minister may give written directions to the Authority for the purposes of subsection (1).

**(3)** A direction under subsection (2) may adopt, either wholly or partly, with or without modification and either specifically or by reference, any Treasurer's Instructions, whenever issued.

### **Report to Minister**

**24.** By 31 January each year, the Authority is to provide to the Minister an annual report on its activities for the year ending on the immediately preceding 31 December.

**PART 3 – SENIOR SECONDARY EDUCATION****Application for accreditation of senior secondary course**

**25. (1)** A person who provides, or proposes to provide, a senior secondary course in Tasmania or elsewhere may apply to the Authority for accreditation of that course.

**(2)** An application is to be –

- (a) in a form approved by the Authority; and
- (b) accompanied by any prescribed fee.

**(3)** The Authority may require the applicant to provide any further information it considers relevant to the application.

**Accreditation of senior secondary course**

**26. (1)** The Authority may accredit a senior secondary course –

- (a) at its own instigation; or
- (b) on receipt of an application under section 25.

**(2)** The Authority may only accredit a senior secondary course if satisfied –

- (a) that each of the following matters is adequately provided for and of sufficient standard to allow the granting of a qualification to a person successfully completing the course:
  - (i) the aims and learning outcomes of the course;

- (ii) the scope of the studies involved in the course;
  - (iii) the assessment processes used, or to be used, to determine whether a student has achieved the learning outcomes of the course; and
- (b) that the course and the methods of delivering the course are likely to achieve the purposes, aims and learning outcomes of the course; and
- (c) that the contents and standards of the course, and the methods of delivering the course, are consistent with any relevant national standards in relation to the principles, process or other matters to be applied in accrediting courses.

**(3)** When accrediting a senior secondary course, the Authority may determine –

- (a) that the course is an accredited course of a particular class or level; and
- (b) the qualification that will be conferred on the successful completion of the course.

**(4)** If on considering an application under section 25 the Authority accredits, or refuses to accredit, a senior secondary course, the Authority is to provide written notice of that decision to the applicant.

### **Term of accreditation of accredited senior secondary course**

**27.** An accredited senior secondary course is accredited for the period, not exceeding 5 years, determined by the Authority.

**Renewal of accreditation as accredited senior secondary course**

**28. (1)** A person who applied for the accreditation of an accredited senior secondary course may apply for the renewal of the accreditation of that course not less than 6 calendar months before the accreditation ceases to have effect.

**(2)** The Authority may renew the accreditation of an accredited senior secondary course –

- (a) at its own instigation; or
- (b) on receipt of an application under subsection (1).

**(3)** This Part applies in respect of –

- (a) an application for renewal of the accreditation of an accredited senior secondary course as if the application were an application for a first accreditation as an accredited senior secondary course; and
- (b) the renewal of an accredited senior secondary course as if the renewal were a first accreditation as an accredited senior secondary course.

**Cancellation of accreditation as accredited senior secondary course**

**29. (1)** The Authority may at any time cancel the accreditation of an accredited senior secondary course if the Authority is no longer satisfied of the matters specified in section 26(2).

**(2)** A cancellation takes effect on the day specified in it.

**Offence of falsely claiming to provide accredited course**

**30.** A person who provides a course must not claim, or otherwise represent in any manner, that it is an accredited senior secondary course unless the course is an accredited senior secondary course.

Penalty: Fine not exceeding 200 penalty units.

**Assessment of accredited senior secondary courses**

**31.** The Authority may determine procedures and arrangements for the assessment of persons undertaking accredited senior secondary courses.

**Conferral or issue of approved qualification**

**32.** Subject to section 33(4), the Authority, by written statement or otherwise, is to recognise the successful completion of an accredited senior secondary course by the conferral or issue of the approved qualification for that course.

**Standards for provision and assessment of accredited senior secondary courses**

**33. (1)** The Authority may set or adopt standards for the provision and assessment of accredited senior secondary courses.

**(2)** For the purpose of ensuring that the provision and assessment of an accredited senior secondary course meets standards set under subsection (1), the Authority may give to a person providing or proposing to provide that

course a written direction to do anything the Authority considers appropriate.

**(3)** A person must comply with a direction given under subsection (2).

**(4)** If an accredited senior secondary course provided by any person fails to meet standards set or adopted for the provision or assessment of that course, the Authority may refuse to confer or issue an approved qualification to a student completing that course.

**PART 4 – HIGHER EDUCATION*****Division 1 – Preliminary*****When person may provide higher education course or higher education award**

**34. (1)** A person may provide a higher education course if –

- (a) the course is an accredited higher education course; and
- (b) the person is a registered higher education provider.

**(2)** A person may confer or issue a higher education award if –

- (a) the course for which the award is to be conferred or issued is an accredited higher education course; and
- (b) the award is an approved qualification; and
- (c) the person conferring the award is a registered higher education provider.

***Division 2 – Accreditation of higher education courses*****Application for accreditation of course**

**35. (1)** A person who proposes to provide a higher education course in Tasmania or elsewhere may apply to the Authority for accreditation of that course.

**(2)** An application is to be –

- (a) in a form approved by the Authority; and
- (b) accompanied by any prescribed fee.

**(3)** The Authority may require the applicant to provide any further information it considers relevant to the application.

### **Accreditation of higher education course**

**36. (1)** On receipt of an application under section 35, the Authority may –

- (a) accredit the higher education course; or
- (b) refuse to accredit the higher education course.

**(2)** In determining whether to accredit a higher education course, the Authority may have regard to –

- (a) any relevant national standards in relation to the principles, process or other matters to be applied in accrediting higher education courses; and
- (b) whether each of the following matters is adequately provided for and of sufficient standard to allow the granting of a higher education award to a person successfully completing the course:
  - (i) the aims and learning outcomes of the course;
  - (ii) the scope of the studies involved in the course;
  - (iii) the assessment processes to be used to determine whether a student has



achieved the learning outcomes of the course; and

- (c) whether the contents and standards of the course, and the methods of delivering the course, are consistent with any relevant national standards in relation to the principles, process or other matters to be applied in accrediting courses; and
- (d) the views of relevant industrial or professional bodies submitted to the Authority; and
- (e) any other matter the Authority considers relevant.

**(3)** On accrediting a higher education course, the Authority is to determine the higher education award that will be conferred on the successful completion of the course.

**(4)** The Authority is to provide written notice of whether it has accredited or refused to accredit a higher education course to the applicant.

### **Term of accreditation of accredited higher education course**

**37.** An accredited higher education course is accredited for the period, not exceeding 5 years, determined by the Authority.

### **Accredited higher education course subject to conditions**

**38. (1)** The accreditation of a higher education course is subject to any condition determined by the Authority and notified in writing to the provider of the course.

(2) The Authority may at any time impose a condition on the accreditation of a higher education course or amend the conditions to which an accredited higher education course is subject by notifying the provider of the course in writing.

### **Renewal of accreditation as accredited higher education course**

**39. (1)** A person who applied for the accreditation of an accredited higher education course may apply for the renewal of the accreditation of that course not less than 6 calendar months before the accreditation ceases to have effect.

(2) This Part applies in respect of an application for renewal of the accreditation of an accredited higher education course, and that renewal, as if the application were an application for a first accreditation as an accredited higher education course.

### **Cancellation of accreditation as accredited higher education course**

**40. (1)** The Authority, at any time by written notice provided to the registered higher education provider providing an accredited higher education course, may cancel the accreditation of the accredited higher education course if the Authority is satisfied that it is no longer appropriate for the course to be accredited.

(2) A cancellation takes effect on the day specified in it.

**Offences relating to provision of higher education course**

**41.** A person must not provide a higher education course, or confer or issue a higher education award in respect of a higher education course, unless the course is an accredited higher education course.

Penalty: Fine not exceeding 200 penalty units.

***Division 3 – Registration of higher education providers*****Application for registration**

**42. (1)** A person who proposes to provide, in Tasmania or elsewhere, an accredited higher education course may apply to the Authority for registration as a registered higher education provider.

**(2)** An application is to be –

- (a) in a form approved by the Authority; and
- (b) made not less than 9 calendar months before the accredited higher education course that the person is proposing to provide is due to commence; and
- (c) accompanied by any prescribed fee.

**(3)** The Authority may require the applicant to provide any further information it considers relevant to the application.

**Registration as registered higher education provider**

**43. (1)** On receipt of an application under section 42, the Authority may –

- (a) register a person as a registered higher education provider for a period not exceeding 5 years; or
- (b) refuse to so register the person.

**(2)** In determining whether or not to register a person, the Authority may have regard to –

- (a) any national standards relating to the recognition of providers of higher education courses; and
- (b) the processes proposed to be provided by the applicant in respect of quality assurance; and
- (c) the delivery and assessment methods proposed to be used in respect of the accredited higher education course to be provided by the applicant; and
- (d) the premises, equipment, materials, staff and resources proposed to be used in respect of the accredited higher education course to be provided by the applicant; and
- (e) the applicant's compliance with, or ability to comply with, the rules; and
- (f) the financial viability of the applicant; and
- (g) any other matter the Authority considers relevant.

**(3)** On refusing to register a person, the Authority is to notify the applicant in writing of that decision.

**Registration subject to conditions**

**44. (1)** On registering a person as a registered higher education provider and at any other time, the Authority may –

- (a) impose conditions to which the registration as a registered higher education provider is subject; and
- (b) amend any such conditions.

**(2)** A condition imposed under this section, or the amendment under this section of such a condition, takes effect on the day on which the registered higher education provider receives written notice of the condition, or amendment, or on a later day specified in that notice.

**Registration certificate**

**45. (1)** On registering a higher education provider, the Authority is to issue a registration certificate to the registered higher education provider.

**(2)** A registration certificate is to specify –

- (a) which accredited higher education courses, or the classes of accredited higher education courses, the registered higher education provider is authorised to provide; and
- (b) which higher education awards the registered higher education provider is authorised to confer or issue; and
- (c) any conditions imposed in respect of the registration under section 44; and
- (d) the period for which the higher education provider is registered.

(3) If the Authority under section 44 imposes conditions on the registration of a registered higher education provider otherwise than on the grant of that registration, or amends any such conditions, the Authority is to amend the registration certificate or issue a replacement registration certificate.

(4) Conditions to which the registration of a registered higher education provider is subject may be specified in a registration certificate by –

- (a) specifying those conditions in or on the certificate; or
- (b) attaching those conditions to the certificate; or
- (c) providing to the registered higher education provider a written notice containing those conditions.

### **Term of registration**

**46. (1)** The registration of a registered higher education provider has effect for the period not exceeding 5 years specified in the registration certificate unless sooner cancelled.

(2) Registration of a person as a registered higher education provider takes effect on the day the registration certificate is issued or on a later day specified in the registration certificate.

### **Registration fee**

**47.** A registered higher education provider must pay any prescribed registration fee.

**Amendment of registration**

**48. (1)** On the request of a registered higher education provider or at its own discretion, the Authority may amend the registration of a registered higher education provider.

**(2)** If the Authority amends a registration under subsection (1), the Authority is to –

- (a) notify the registered higher education provider of that amendment; and
- (b) either endorse that amendment on the registration certificate or provide the registered higher education provider with a replacement registration certificate.

**(3)** The amendment of the registration of a registered higher education provider takes effect on the day specified in the notice provided to that provider under subsection (2)(a).

**Renewal of registration**

**49. (1)** A registered higher education provider may apply for the renewal of the registration not less than 6 calendar months before the registration ceases to have effect.

**(2)** This Division applies in respect of an application for renewal of registration as a registered higher education provider, and that renewal, as if the application were an application for a first registration as a registered higher education provider.

**(3)** A registered higher education provider must comply with the written requirement of the Authority that the registration certificate be surrendered to the Authority for the purpose of amending it or replacing it as the

Authority determines appropriate on the renewal of the registration.

### **Registration not transferable**

**50.** The registration of a person as a registered higher education provider may not be transferred to any other person.

### **Direction to registered higher education provider**

**51. (1)** The Authority may direct a registered higher education provider to take any action the Authority considers appropriate or refrain from doing any act if the Authority is of the opinion that –

- (a) the registered higher education provider has contravened this Act; or
- (b) the registered higher education provider has contravened a condition to which the registration is subject; or
- (c) it is appropriate to give the direction having taken into account the matters specified in section 43(2); or
- (d) the standards relating to the provision and assessment of an accredited higher education course by the registered higher education provider fail to meet any relevant national standards or the standards proposed by that provider in his, her or its application for accreditation of the course.

**(2)** A direction is to be in writing provided to the registered higher education provider.



**(3)** A registered higher education provider must comply with a direction provided under this section.

### **Cancellation or suspension of registration**

**52. (1)** The Authority may cancel or suspend the registration of a registered higher education provider if, after allowing the registered higher education provider an opportunity to make submissions in respect of the matter, the Authority is satisfied that –

- (a) the registered higher education provider has contravened this Act; or
- (b) the registered higher education provider has contravened a condition to which the registration is subject; or
- (c) it is appropriate to so cancel or suspend the registration having taken into account the matters specified in section 43(2); or
- (d) the registered higher education provider has not complied with a direction under section 51 within the time specified in the direction.

**(2)** The Authority is to cancel the registration of a registered higher education provider if the provider has surrendered the registration certificate and requested that the registration be cancelled.

### **Offences relating to registration as higher education provider**

**53. (1)** A person who is not a registered higher education provider must not claim, or otherwise represent in any manner, that he, she or it is a registered higher education provider.

Penalty: Fine not exceeding 200 penalty units.

(2) A person who is not a registered higher education provider, or who is not acting for a registered higher education provider, must not –

- (a) confer or issue a higher education award; or
- (b) claim, or otherwise represent in any manner, that he, she or it is authorised or able to confer or issue a higher education award; or
- (c) provide or offer to provide, or claim or otherwise represent in any manner that he, she or it is authorised or able to provide, a course the successful completion of which leads to the conferral or issue of a higher education award by the registered higher education provider.

Penalty: Fine not exceeding 200 penalty units.

(3) A person must not claim, or otherwise represent in any manner, that he, she or it is authorised or able to provide a course of study the successful completion of which leads to the conferral or issue of a higher education award by another person knowing that the other person is not lawfully able to confer or issue that higher education award.

Penalty: Fine not exceeding 200 penalty units.

**Offences relating to use of “university”, &c.**

**54. (1)** In this section, “**overseas university**” means a provider of higher education that –

- (a) was originally established in a country other than Australia; and

- (b) is established, recognised or accredited as a university by the appropriate authority of that country; and
- (c) is declared by the Authority to be an overseas university for the purposes of this definition.

**(2)** A person who provides education must not use the word “university” or “universities” in its title or description, or in any other way represent that the person is a university or part of a university, unless the person is –

- (a) an Australian university or part of an Australian university; or
- (b) an overseas university or part of an overseas university; or
- (c) the organisation known as “U3A” or the University of the Third Age; or
- (d) a prescribed person.

Penalty: Fine not exceeding 200 penalty units.

### **Conferral or issue of approved qualification**

**55.** If a person successfully completes an accredited higher education course provided by a registered higher education provider, that provider, by written statement or otherwise, must recognise that completion by the conferral or issue of the approved qualification for that course.

**PART 5 – INVESTIGATIONS AND INSPECTIONS****Investigations**

**56. (1)** The Authority may conduct an investigation –

- (a) to determine whether or not –
  - (i) a course should be accredited, or the accreditation of that course renewed, under section 26 or 36 or under section 32U of the *Vocational Education and Training Act 1994*; or
  - (ii) the accreditation of an accredited senior secondary course, accredited higher education course or accredited training program should be cancelled under section 29 or 40 or section 32ZA of the *Vocational Education and Training Act 1994*; or
- (b) to determine –
  - (i) under section 43, an application by a person to be registered as a registered higher education provider or for the renewal of such registration; or
  - (ii) under section 31 of the *Vocational Education and Training Act 1994*, an application by a person to be registered as a registered training organisation or for the renewal of such registration; or
- (c) to determine whether or not –
  - (i) conditions should be imposed on the accreditation of a higher education course, the registration of a registered

- higher education provider or the registration of a registered training organisation; or
- (ii) any conditions so imposed should be amended; or
- (d) to determine whether or not to amend the registration of a registered higher education provider or a registered training organisation; or
  - (e) to determine whether or not a registered higher education provider or registered training organisation is complying with –
    - (i) any conditions to which the registration is subject; or
    - (ii) any conditions to which an accredited higher education course provided by the registered higher education provider is subject; or
  - (f) to monitor the standard of any accredited senior secondary course, accredited higher education course or accredited training course being provided by any person; or
  - (g) to monitor the appropriateness of –
    - (i) any approved qualification conferred or issued, or proposed to be conferred or issued, in respect of an accredited senior secondary course or accredited higher education course; or
    - (ii) any qualification conferred or issued, or proposed to be conferred or issued, in respect of an accredited training course; or

- (h) to determine whether this Act, or those provisions of the *Vocational Education and Training Act 1994* that apply with respect to accredited training courses and registered training organisations, are being contravened; or
- (i) for any prescribed purpose.

(2) In an investigation, the Authority may make such inquiries, and may carry out such inspections, as it considers appropriate.

(3) The Authority, by written notice provided to a registered higher education provider or a registered training organisation, may require the accredited higher education provider or registered training organisation to pay a fee in respect of an investigation under this section, other than an investigation relating to –

- (a) an application for registration as a registered higher education provider or for the renewal of that registration; or
- (b) an application for registration as a registered training organisation or for the renewal of that registration.

(4) A fee under subsection (3) must not exceed the reasonable costs of conducting the investigation.

(5) A registered higher education provider or registered training organisation must pay any fee it is required to pay under subsection (3).

### **Inspections**

**57. (1)** If the Authority is carrying out an investigation referred to in section 56, an authorised officer may do any

or all of the following for the purposes of that investigation subject to any written direction of the Authority:

- (a) at any reasonable time, enter any place which the authorised officer knows or reasonably believes is used, or is to be used, by a person in relation to –
  - (i) the provision of an accredited senior secondary course or higher education course, or an accredited training course provided by a local registered training organisation; or
  - (ii) the conferral or issue of an approved qualification or a qualification in respect of an accredited training course provided by a local registered training organisation;
- (b) in any place lawfully entered, search for, examine, take possession of, make copies of or take extracts from any documents relating or relevant to –
  - (i) the provision of accredited senior secondary courses, accredited higher education courses, accredited training courses and other higher education courses; or
  - (ii) the conferral or issue of approved qualifications or qualifications in respect of accredited training courses; or
  - (iii) an application under this Act or Part 5 or 5A of the *Vocational Education and Training Act 1994*; or
  - (iv) a contravention of this Act or those provisions of the *Vocational Education*

*and Training Act 1994* that relate to accredited training courses or registered training organisations;

- (c) in any place lawfully entered, require any person who is in charge of or employed in that place to open any container or answer any question.

**(2)** An authorised officer is to produce his or her identity card for inspection –

- (a) by a person apparently in charge of a place referred to in subsection (1)(a) before exercising a power under this section in respect of that place; and
- (b) by a person in a place in which the officer is exercising powers under subsection (1) if the person requests it.

**(3)** In the exercise of powers under this section, an authorised officer may be accompanied and assisted by such assistants as he or she considers appropriate.

**(4)** An authorised officer who has not obtained a warrant under subsection (7) must not forcibly enter any place referred to in subsection (1).

Penalty: Fine not exceeding 20 penalty units.

**(5)** An authorised officer is not entitled to use force to enter a place referred to in subsection (1)(a) unless a warrant has been issued under subsection (7) authorising an authorised officer to enter that place.

Penalty: Fine not exceeding 20 penalty units.

**(6)** An authorised officer who does not have the authority of a warrant under subsection (7) or does not have the permission of the occupier to enter any premises



which are, or any part of premises which is, used as a dwelling must not enter those premises or that part of premises.

Penalty: Fine not exceeding 20 penalty units.

**(7)** If a justice of the peace is satisfied by the evidence on oath of an authorised officer that there is reasonable cause to permit entry to any place referred to in subsection (1) for a purpose specified in section 56(1), the justice may issue a warrant authorising an authorised officer to enter the place specified in the warrant for the purpose of exercising in that place the powers conferred on the authorised officer by this Act.

**(8)** A warrant issued under this section is sufficient authority, for a period of one month from its issue –

- (a) to an authorised officer, and to all persons acting in aid of the authorised officer, to enter the place specified in the warrant using such force as is necessary; and
- (b) to an authorised officer to exercise in respect of the place specified in the warrant all the powers conferred on an authorised officer by this Act.

### **Documents**

**58. (1)** If the Authority or an authorised officer has reason to believe that a person has possession of any information or document which is relevant to an investigation under this Act, the Authority or authorised officer may require that person to provide the information or document, or a copy of the document, as specified in the requirement.

(2) If an authorised officer has taken possession of a document for the purposes of this Act, the Authority has taken possession of that document.

(3) If the Authority has taken possession of a document for the purposes of this Act, the Authority may retain the document for so long as is necessary for those purposes.

(4) A person otherwise entitled to possession of a document retained by the Authority under this Act is entitled to be provided at his or her request with a copy of that document certified by the chief executive officer to be a true copy.

(5) A certified copy of a document referred to in subsection (4) is to be received in all courts and elsewhere as if it were the original document.

### **Use of document or information obtained**

**59.** If a document or information is obtained by the Authority or an authorised officer under this Part, evidence of that document or information or the obtaining of that document or information is not admissible against any person in any civil or criminal proceedings other than proceedings against that person for an offence under this Act.

## PART 6 – REVIEW OF DECISIONS

### Review of decisions

**60.** A person aggrieved by any of the following decisions of the Authority may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision:

- (a) a refusal under section 26 to accredit a course as an accredited senior secondary course or to renew the accreditation of such a course;
- (b) a refusal under section 36 to accredit a course as an accredited higher education course or to renew the accreditation of such a course;
- (c) a refusal under section 32U of the *Vocational Education and Training Act 1994* to accredit a course as an accredited training course or to renew the accreditation of such a course;
- (d) a refusal under section 43 to register a person as a registered higher education provider or to renew the registration of a registered higher education provider;
- (e) a refusal under section 31 of the *Vocational Education and Training Act 1994* to register a person as a registered training organisation or to renew the registration of a registered training organisation;
- (f) the cancellation or suspension under section 52 of the registration of a registered higher education provider;
- (g) the cancellation or suspension under section 32F of the *Vocational Education and Training*

**s. 60**

No.

*Tasmanian Qualifications Authority*

2003

*Act 1994* of the registration of a registered training organisation;

- (h) a decision of the Authority under this Act, the *Vocational Education and Training Act 1994* or any other Act that is prescribed by the regulations to be a decision which may be reviewed.

## **PART 7 – REGISTERS**

### **Registers**

**61. (1)** The Authority must establish and maintain one or more registers as it considers appropriate to record details in respect of the following matters:

- (a) accredited senior secondary courses and accredited higher education courses and the approved qualifications for those courses;
- (b) registered higher education providers;
- (c) any other matter the Authority considers appropriate.

**(2)** In establishing and maintaining a register under this Part, the Authority is to comply, where appropriate, with –

- (a) the National Training Information Service, for vocational education and training, kept under the Australian Quality Training Framework by the Australian National Training Authority or any other service kept under the Australian Quality Training Framework in substitution for that National Training Information Service; and
- (b) the National Protocols for Higher Education Approval Processes.

### **Manner of keeping registers**

**62. (1)** The Authority may establish and maintain a register under this Part in any form it considers appropriate.

**(2)** The Authority may combine any register established and maintained under this Part with any other such register.

### **Access to registers**

**63. (1)** The Authority is to make a register established and maintained under this Part available for inspection by any person during office hours at the office of the Authority.

**(2)** On payment of any prescribed fee, a person may obtain a copy of, or extract from, a register established and maintained under this Part.

## PART 8 – RULES

### Rules

**64. (1)** The Authority may make rules for the purposes of the performance and exercise of its functions and powers.

**(2)** Without limiting the generality of subsection (1), the rules may make provision in relation to –

- (a) the assessment procedures for an accredited senior secondary course, accredited higher education course, accredited training course or other course of study; and
- (b) the eligibility of a person to take assessment in an accredited senior secondary course, accredited higher education course, accredited training course or other course of study; and
- (c) the conduct of a person during an assessment in an accredited senior secondary course, accredited higher education course, accredited training course or other course of study; and
- (d) the conferral or issue of an approved qualification or a qualification for an accredited training course; and
- (e) any matter relating to the functions and powers of the Authority under the *Vocational Education and Training Act 1994* or any other Act; and
- (f) the action to be taken if a person contravenes a rule; and
- (g) the review of decisions of the Authority or any other person made under the rules.

**(3)** The rules may be made so as to apply differently according to such factors as are specified in the rules.

**(4)** The rules may not provide that a contravention of the rules is an offence.

**(5)** The rules may authorise any matter to be from time to time determined, applied or regulated by the Authority or chief executive officer.

**(6)** The Authority –

- (a) is to make the rules available for inspection by any person during its normal business hours; and
- (b) on the request of any person and payment of any prescribed fee, is to provide a copy of the rules or a part of rules to the person.

**(7)** The rules –

- (a) are not a statutory rule for the purposes of the *Rules Publication Act 1953*; and
- (b) are not subject to section 47(3)(c) or (11) of the *Acts Interpretation Act 1931*; and
- (c) may not be declared under section 3(2) of the *Subordinate Legislation Act 1992* to be subordinate legislation for the purposes of that Act.

**(8)** A court or person acting judicially must –

- (a) take judicial notice of the rules, as amended from time to time; and
- (b) admit as evidence a copy of the rules, as amended from time to time, if the copy is certified as a true copy by the chief executive officer.



**PART 9 – MISCELLANEOUS****Offences relating to exercise of powers by Authority or authorised officer**

**65. (1)** A person must not –

- (a) assault, resist, impede or obstruct an authorised officer exercising powers under this Act or attempt to do so; or
- (b) use threatening, abusive or insulting language to an authorised officer exercising powers under this Act; or
- (c) fail to open a container when required to do so under this Act by an authorised officer; or
- (d) fail to answer a question or to provide a document or other information when required to do so under this Act by the Authority or an authorised officer; or
- (e) provide a document or other information that is false or misleading in a material particular to the Authority or an authorised officer; or
- (f) impersonate an authorised officer.

Penalty: Fine not exceeding 50 penalty units.

**(2)** If a person is convicted of an offence under subsection (1)(c), the court may order the person to open the container which was the subject of the offence in the presence of, and for the inspection of, an authorised officer.

**(3)** If a person is convicted of an offence under subsection (1)(d) or (e), the court may order the person to provide the document or information which was the

subject of the offence to the Authority or an authorised officer.

**Offences by body corporate and director, &c.**

**66. (1)** If a body corporate commits an offence against this Act, a director or other person concerned in the management of the body corporate is taken to have committed that offence also.

**(2)** It is a defence in proceedings under subsection (1) for the director or person to show that –

- (a) the body corporate contravened the provision without the knowledge of the director or person; or
- (b) the director or person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or
- (c) the director or person, if in that position, used all due diligence to prevent the contravention by the body corporate.

**(3)** A director or person may be proceeded against and convicted in relation to an offence against this Act by reason of this section whether or not the body corporate has been proceeded against or convicted.

***Land Acquisition Act 1993 does not apply***

**67.** The Authority is not a public authority for the purposes of the *Land Acquisition Act 1993*.

**Judicial notice of certain signatures**

**68.** All courts and persons acting judicially must take judicial notice of –

- (a) the official signature of a person who is or has been the chairperson of the Authority, a member of the Authority or the chief executive officer; and
- (b) the fact that the person holds or has held the office concerned.

**Presumptions**

**69.** In any proceedings by or against the Authority, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Authority; or
- (b) any resolution of the Authority; or
- (c) the appointment of any member of the Authority; or
- (d) the presence of a quorum at any meeting of the Authority; or
- (e) the appointment of the chief executive officer, a member of a committee or an authorised officer.

**Evidentiary matters**

**70. (1)** In any proceedings under this Act, a certificate signed or purporting to be signed by the chief executive officer and relating to one or more of the following matters is evidence of the matters specified in it:

- (a) whether or not a course was an accredited senior secondary course or accredited higher education course at the specified time;
- (b) whether or not a person was a registered higher education provider at the specified time;
- (c) whether or not a person was authorised or able under this Act to confer or issue an approved qualification at the specified time;
- (d) whether or not the registration of a person as a registered higher education provider was subject to a specified condition at the specified time;
- (e) whether or not a qualification was an approved qualification at the specified time.

(2) In subsection (1), “**specified**” means specified in the certificate referred to in that subsection.

### **Service of documents**

**71. (1)** A document may be served on or provided to the Authority by –

- (a) leaving it at, or sending it by post to, the address of the Authority; or
- (b) faxing it or emailing it to the Authority’s fax number or email address.

(2) The Authority may serve on or provide to a person a document required to be provided or given under this Act –

- (a) in the case of a natural person, by –

- (i) giving it to the person; or
  - (ii) leaving it at, or sending it by post to, the person's postal or residential address, or place or address of business or employment, last known to the Authority; or
  - (iii) faxing it to the person's fax number; or
  - (iv) emailing it to the person's email address; and
- (b) in the case of any other person, by –
- (i) leaving it at, or sending it by post to, the person's principal or registered office or principal place of business; or
  - (ii) faxing it to the person's fax number; or
  - (iii) emailing it to the person's email address.

## Regulations

**72. (1)** The Governor may make regulations –

- (a) for the purposes of this Act; and
- (b) in relation to the performance and exercise of the functions and powers of the Authority under the *Vocational Education and Training Act 1994* or any other Act.

**(2)** Without limiting the generality of subsection (1), the regulations may provide for fees payable under this Act.

**(3)** Regulations may be made so as to apply differently according to such factors as are specified in the regulations.

**(4)** The regulations may –

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

**(5)** The regulations may authorise any matter to be from time to time determined, applied or regulated by the Authority or chief executive officer.

**(6)** The regulations may contain provisions of a savings or transitional nature consequent on any of the following:

- (a) the enactment of this Act;
- (b) the amendments to the *Education Act 1994* effected by this Act;
- (c) the amendments to the *Vocational Education and Training Act 1994* effected by the *Vocational Education and Training Amendment Act 2003*;
- (d) the repeal of the *Universities Registration Act 1995*;
- (e) the amendment of this Act.

(7) A provision referred to in subsection (6)(a), (b), (c) or (d) may take effect on and from the day on which this Act commences or a later day.

(8) A provision referred to in subsection (6)(e) may take effect on and from the day on which the amendment to this Act takes effect or a later day.

### **Savings and transitional provisions**

**73.** The savings and transitional provisions set out in Schedule 3 have effect.

### **Administration of Act**

**74.** Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Education; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Education.

### **Consequential amendments**

**75.** The legislation specified in Schedule 4 is amended as specified in that Schedule.

### **Acts repealed**

**76.** The Acts specified in Schedule 5 are repealed.

**s. 77**

No.

*Tasmanian Qualifications Authority*

2003

**Statutory Rules rescinded**

**77.** The Statutory Rules specified in Schedule 6 are rescinded.



**SCHEDULE 1 – MEMBERSHIP OF AUTHORITY**

Section 8(6)

**Interpretation**

1. In this Schedule, “**member**” means a member of the Authority.

**Term of office**

2. A member is appointed for such period, not exceeding 3 years, as is specified in the member’s instrument of appointment and, if eligible, may be reappointed.

**Holding other office**

3. The holder of an office who is required under the terms of his or her appointment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

***State Service Act 2000***

4. (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.

(2) A person may hold the office of member in conjunction with State Service employment.

**Remuneration and conditions of appointment**

**5. (1)** A member is entitled to be paid such remuneration and allowances as the Minister determines.

**(2)** A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

**(3)** A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the instrument of appointment.

**Vacation of office**

**6. (1)** A member vacates office if he or she –

- (a) dies; or
- (b) resigns by written notice given to the Minister; or
- (c) is removed from office under subclause (2) or (3).

**(2)** The Minister may remove a member from office if the member –

- (a) is absent from 3 consecutive meetings of the Authority without the permission of the other members of the Authority; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer; or
- (d) is convicted of an offence under this Act; or
- (e) fails to disclose a pecuniary interest as required under clause 8 of Schedule 2; or
- (f) has had his or her registration as a registered training organisation or registered higher education provider suspended or cancelled, or was a member of the governing body of a registered training organisation or registered higher education provider that has had its registration suspended or cancelled.

**(3)** The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

**(4)** A member must not be removed from office otherwise than in accordance with this clause.

### **Filling of vacancies**

**7.** If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

### **Acting members**

**8. (1)** In this clause, a member is absent if he or she –

- (a) is absent from duty; or

(b) is otherwise unable to perform the functions of the office of a member.

(2) If a member is absent, the Minister may appoint a person to act as a member.

(3) A person appointed to act as a member is taken to be a member.

(4) The appointment of a person to act as a member in the absence of a member ends when the absent member resumes his or her duties as member.

### **Validation of proceedings, &c.**

9. (1) An act or proceeding of the Authority or of a person acting under any direction of the Authority is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.

(2) All acts and proceedings of the Authority or of a person acting under a direction of the Authority are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Authority had been fully constituted.

**SCHEDULE 2 – MEETINGS OF AUTHORITY**

Section 8(7)

**Interpretation**

1. In this Schedule –

“**chairperson**” means the chairperson of the Authority;

“**member**” means a member of the Authority.

**Convening of meetings**

2. (1) The chairperson, after giving each member reasonable notice of a meeting –

- (a) may convene a meeting at any time; and
- (b) must convene a meeting when requested to do so by 2 or more other members.

(2) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of the meeting, by –

- (a) two or more other members; or
- (b) a person authorised by the Authority to do so.

(3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Authority.

**Presiding at meetings**

**3. (1)** The chairperson is to preside at all meetings of the Authority at which he or she is present.

**(2)** If the chairperson is not present at a meeting of the Authority, a member elected by the members present at the meeting is to preside.

**Quorum and voting at meetings**

**4. (1)** At a meeting of the Authority, a quorum is constituted by a majority of the total number of members appointed.

**(2)** A meeting of the Authority at which a quorum is present is competent to transact any business of the Authority.

**(3)** At a meeting of the Authority –

- (a) the member presiding has a deliberative vote only; and
- (b) a question is decided –
  - (i) by a majority of votes of the members present and voting; or
  - (ii) in the negative if there is an equality of votes of the members present and voting.

**(4)** At a meeting of the Authority where a member is excluded from being present and taking part in the consideration and decision of the Authority in relation to the matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of members specified as constituting a

quorum in subclause (1) less the number of members so excluded.

### **Conduct of meetings**

**5. (1)** Subject to this Act, the Authority may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

**(2)** The Authority may permit members to participate in a particular meeting or all meetings by –

- (a) telephone; or
- (b) video conference; or
- (c) any other means of communication approved by the Authority.

**(3)** A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

**(4)** Without limiting subclause (1), the Authority may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

### **Resolutions without meetings**

**6. (1)** If all members appointed sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Authority held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

**(2)** If a resolution is taken to have been passed under subclause (1), each member is to be –

- (a) advised immediately of the matter; and
- (b) given a copy of the terms of the resolution.

**(3)** For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

### **Minutes**

**7.** The Authority is to keep accurate minutes of its meetings.

### **Disclosure of interests**

**8. (1)** If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Authority, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Authority.

Penalty: Fine not exceeding 50 penalty units.

**(2)** Unless the Authority otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –

- (a) be present during any deliberation of the Authority in relation to the matter; or
- (b) take part in any decision of the Authority in relation to the matter.



**(3)** For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –

- (a) be present during any deliberation of the Authority for the purpose of making the determination; or
- (b) take part in making the determination.

**(4)** Subclause (1) does not apply –

- (a) in respect of a contract for goods or services supplied by the Authority if those goods or services are ordinarily supplied by the Authority and are supplied on the same terms as they are ordinarily supplied to other persons in the same situation; or
- (b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

### **General procedure**

**9.** Except as provided by this Act, the Authority may regulate its own proceedings.

**SCHEDULE 3 – SAVINGS AND TRANSITIONAL PROVISIONS**

Section 73

**PART 1 – PRELIMINARY****Interpretation**

1. In this Schedule –

“**Assessment Board**” means the Tasmanian Secondary Assessment Board established under section 73 of the Education Act;

“**commencement day**” means the day on which this Act commences;

“**Council**” means the Universities Registration Council established under section 5 of the repealed Act;

“**Education Act**” means the *Education Act 1994* as in force immediately before the commencement day;

“**repealed Act**” means the *Universities Registration Act 1995* as in force immediately before the commencement day.

**PART 2 – PROVISIONS RELATING TO EDUCATION ACT****Abolition of Assessment Board**

2. The Assessment Board is abolished.

**Syllabuses, assessments and attainments**

**3.** If, immediately before the commencement day, a determination by the Assessment Board under section 74(1)(a) of the Education Act relating to a syllabus for provision to students has effect –

- (a) that syllabus is to be taken to be accredited as an accredited course under this Act for the period ending on the day on which the determination of that syllabus would have ceased to have effect if this Act had not commenced; and
- (b) any certificate or other qualification that the Assessment Board determined would be issued or awarded on the successful completion of the syllabus is taken to be the approved qualification for the accredited course that the syllabus is taken to be by reason of paragraph (a).

**Rules of Assessment Board**

**4.** Rules made by the Assessment Board under section 74(2) of the Education Act and in force immediately before the commencement day continue and are taken to be rules made under section 64.

**Committees of Assessment Board**

**5.** All committees established by the Assessment Board under section 76 of the Education Act are abolished.

**Documents**

**6. (1)** If appropriate, a document issued or made by the Assessment Board under the Education Act is taken to have been issued or made by the Authority under this Act.

**(2)** If appropriate, a reference in a document to the Assessment Board in an Act or other document is taken to be, or to include, a reference to the Authority.

**(3)** If appropriate, a document served on or by, or provided to or by, the Assessment Board is taken to have been served on or by, or provided to or by, the Authority.

**PART 3 - PROVISIONS RELATING TO *UNIVERSITIES*  
*REGISTRATION ACT 1995***

**Abolition of Council**

7. The Council is abolished.

**Registered university or registered institution**

**8.** A person that, immediately before the commencement day, was a registered university or registered institution, within the meaning of the repealed Act, is taken to be a registered higher education provider under this Act –

- (a) subject to the same conditions as the registration was subject to under the repealed Act; and
- (b) until the earlier of the following occurs:
  - (i) the period specified in the certificate of registration issued under the repealed Act ends; or

- (ii) if the registration is cancelled under this Act, that cancellation takes effect.

### **Certificate of registration**

**9.** A certificate of registration issued under section 15 of the repealed Act and in force immediately before the commencement day is taken to be a registration certificate issued under section 45 of this Act.

### **Applications**

**10. (1)** An application under section 13, 18A or 18D of the repealed Act for registration as a registered university or registered institution, or for the renewal or variation of such registration, made to the Council and accompanied by any required fee before the commencement day but not determined before that day is taken to be an application under section 42, 49 or 48 of this Act for registration as a registered higher education provider or for the renewal or amendment of such registration made to the Authority and accompanied by any appropriate prescribed fee.

**(2)** Any thing done by the Council in relation to an application referred to in subclause (1) is taken to have been done by the Authority.

### **Inspections, examinations and reviews**

**11. (1)** If immediately before the commencement day an inspection, examination or review has been authorised under section 9 of the repealed Act but not completed before that day, that inspection, examination or review is taken to be an investigation under section 56 of this Act.

**(2)** Any thing done by a person authorised under section 9 of the repealed Act in relation to an inspection, examination or review referred to in subclause (1) is taken to have been done by the Authority or an authorised officer under this Act.

**(3)** The Authority may charge a person a fee in respect of both that part of an inspection or examination referred to in subclause (1) conducted before the commencement day and the completion of the inspection or examination as an investigation under this Act.

**(4)** The fee under subclause (3) may not exceed the amount that could have been charged under section 12 of the repealed Act if this Act had not been enacted.

**(5)** If a fee is due and payable immediately before the commencement day under section 12 of the repealed Act in relation to an inspection or examination completed under section 9 of the repealed Act, that fee is due and payable on and after that day to the Authority.

### **Reviews of decisions**

**12. (1)** If, immediately before the commencement day, a person could have applied to the Magistrates Court (Administrative Appeals Division) for a review of a decision of the Council under section 18H of the repealed Act, that person can apply to that Court for a review of that decision as if the decision were a decision of the Authority, and the Authority is bound by the determination of that Court.

**(2)** If, immediately before the commencement day, a application for a review of a decision of the Council under section 18H has been made but not determined –

- (a) that review may be continued; and

- (b) the decision being reviewed is taken to be a decision of the Authority; and
- (c) the Authority is bound by the determination of the Magistrates Court (Administrative Appeals Division).

### **Documents**

**13. (1)** If appropriate, a certificate or other document issued or made by the Council under the repealed Act is taken to have been issued or made by the Authority.

**(2)** If appropriate, a reference to the Council in an Act, certificate or other document is taken to be, or to include, a reference to the Authority.

**(3)** If appropriate, a document served on or by, or provided to or by, the Council is taken to have been served on or by, or provided to or by, the Authority.

## **PART 4 - MISCELLANEOUS**

### **Ministers actions before enactment valid**

**14. (1)** In this clause, “**notice**” means notice, in at least 3 daily newspapers published and circulating in the State, that persons interested in being members of the Authority may provide written expressions of interest to the Minister.

**(2)** Notice given by the Minister before this Act has received the Royal Assent is taken to have been given under section 8(2) and any thing done by the Minister in relation to, or in connection with, such notice is taken to have been done under this Act.

**SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS**

Section 75

***Education Act 1994*****1.** Section 3 is amended as follows:

- (a) by omitting the definition of “Assessment Board”;
- (b) by omitting “education;” from paragraph (b) of the definition of “student” and substituting “education.”;
- (c) by omitting the definition of “upper secondary education”.

**2.** Part 6 is repealed.**3.** Section 86 is amended by omitting “Board, the Assessment”.**4.** Section 89 is amended as follows:

- (a) by omitting “and the Assessment Board are” and substituting “is”;
- (b) by omitting from paragraph (a) “their” and substituting “its”;
- (c) by omitting from paragraph (b) “their” and substituting “its”.

**5.** Section 90 is amended as follows:

- (a) by omitting from paragraph (c) “Part 5;” and substituting “Part 5.”;
- (b) by omitting paragraphs (d) and (e).



6. Section 94 is repealed.
7. Schedule 2 is repealed.

### ***Ombudsman Act 1978***

1. Schedule 1 is amended as follows:

- (a) by omitting paragraph (a) from item 16;
- (b) by inserting the following item after item 70B:

**70BA.** Tasmanian Qualifications Authority.

### ***Proclamation under the Duties Act 2001***

1. Paragraph (a) of the proclamation under the *Duties Act 2001* (being S.R. 2001, No. 76) is amended by omitting subparagraph (vii) and substituting the following subparagraph:

(vii) Tasmanian Qualifications Authority;

**sch. 5**      No.      *Tasmanian Qualifications Authority*      2003

**SCHEDULE 5 – ACTS REPEALED**

Section 76

*Universities Registration Act 1995* (No. 92 of 1995)

*Universities Registration Amendment Act 2001* (No. 24 of  
2001)

**SCHEDULE 6 – STATUTORY RULES RESCINDED**

Section 77

*Universities Registration Regulations 1996* (No. 12 of 1996)