



# **Higher Education Support Amendment (No. 1) Act 2011**

**No. 72, 2011**

**An Act to amend the *Higher Education Support Act 2003*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to amend the *Higher Education Support Act 2003*, and for related purposes**

[Assented to 29 June 2011]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Higher Education Support Amendment (No. 1) Act 2011*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2011
2. Schedule 1	The day after this Act receives the Royal Assent.	30 June 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### ***Higher Education Support Act 2003***

#### **1 Section 16-25**

Before “The Minister”, insert “(1)”.

#### **2 Paragraph 16-25(aa)**

Repeal the paragraph, substitute:

- (aa) subject to subsection (2), the body’s principal purpose is, or is taken to be, either or both of the following:
  - (i) to provide education;
  - (ii) to conduct research; and

#### **3 At the end of section 16-25**

Add:

- ; and (g) the Minister is satisfied that:
  - (i) the body; and
  - (ii) each person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the body’s affairs;  
is a fit and proper person.
- (2) For the purpose of paragraph (1)(aa), the Minister may determine that a body’s principal purpose is taken to be either or both of the following:
  - (a) to provide education;
  - (b) to conduct research;if the Minister is satisfied that any of the body’s purposes do not conflict with the body’s purpose of providing education and/or conducting research.
- (3) The Minister must, in deciding whether he or she is satisfied that a person is a fit and proper person, take into account the matters specified in an instrument under subsection (4). The Minister may take into account any other matters he or she considers relevant.

- (4) The Minister must, by legislative instrument, specify matters for the purposes of subsection (3).

**4 Subsection 16-50(2)**

Omit “paragraph 16-25(f)”, substitute “paragraph 16-25(1)(f)”.

**5 At the end of Subdivision 16-C**

Add:

**16-60 Conditions of approval**

- (1) The Minister may impose conditions on a body corporate’s approval as a higher education provider. Such conditions need not be imposed at the time notice of approval is given to the provider.
- (2) The Minister may vary a condition imposed under subsection (1).

**16-65 Minister to cause higher education provider to be notified of change in condition of approval**

The Minister must, within 30 days of his or her decision to impose or vary a condition on a higher education provider, cause the provider to be notified, in writing, of:

- (a) the decision; and  
(b) the reasons for the decision; and  
(c) the period for which the condition is imposed.

**6 Section 22-7**

Before “The Minister”, insert “(1)”.

**7 Paragraphs 22-7(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the body’s principal purpose is no longer, or is no longer taken to be, either or both of the following:
- (i) to provide education;  
(ii) to conduct research; and

**8 At the end of section 22-7**

Add:

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- (2) The Minister may also revoke a body's approval as a higher education provider if:
- (a) the Minister is satisfied that any of the body's purposes conflict with the body's principal purpose of providing education and/or conducting research; and
  - (b) the Minister complies with the requirements of section 22-20.

**9 Subparagraph 22-10(5)(a)(i)**

Omit "paragraph 16-25(a)", substitute "paragraph 16-25(1)(a)".

**10 Subparagraph 22-10(5)(a)(ii)**

Omit "paragraph 16-25(da)", substitute "paragraph 16-25(1)(da)".

**11 Paragraph 22-15(1)(a)**

Omit "either".

**12 Subparagraph 22-15(1)(a)(ii)**

Omit "; and", substitute "; or".

**13 At the end of paragraph 22-15(1)(a)**

Add:

- (iii) breached a condition imposed on the body's approval;  
and

**14 At the end of subsection 22-15(1)**

Add:

Note: Section 16-60 allows conditions to be imposed on the body's approval.

**15 At the end of Subdivision 22-B**

Add:

**22-17 Revocation of approval as a provider if provider etc. not a fit and proper person**

- (1) The Minister may revoke a body's approval as a higher education provider if the Minister:
- (a) is satisfied that:
    - (i) the body; or

- (ii) at least one person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the body's affairs;  
is not a fit and proper person; and
  - (b) complies with the requirements of section 22-20.
- (2) The Minister must, in deciding whether he or she is satisfied that a person is not a fit and proper person, take into account the matters specified in an instrument under subsection 16-25(4). The Minister may take into account any other matters he or she considers relevant.

Note: The heading to section 22-20 is altered by omitting “as a provider for loss of status or a breach”.

**16 After subsection 22-30(2)**

Insert:

- (2A) Before the Minister makes a determination under subsection (1) in respect of a body, the Minister must give the body notice in writing:
- (a) stating that the Minister is considering suspending the body's approval; and
  - (b) stating the reasons why the Minister is considering suspending the body's approval; and
  - (c) inviting the body to respond to the Minister, in writing, within 14 days of the date of the notice.
- (2B) In deciding whether or not to make a determination under subsection (1), the Minister must consider any response received from the body within the 14 day period.

**17 Subsection 22-30(3)**

Omit “48 hours”, substitute “a reasonable period of time”.

**18 Section 206-1 (before table item 1A)**

Insert:

1AA	A decision to impose a condition on the approval of a higher education provider	subsection 16-60(1)	the Minister
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1AB A decision to vary a subsection 16-60(2) the Minister  
condition imposed on  
the approval of a  
higher education  
provider

**19 Clause 6 of Schedule 1A**

Before “The Minister”, insert “(1)”.

**20 Paragraph 6(b) of Schedule 1A**

Repeal the paragraph, substitute:

- (b) subject to subsection (2), providing education is, or is taken to be, the body’s principal purpose; and

**21 At the end of clause 6 of Schedule 1A**

Add:

; and (h) the Minister is satisfied that:

(i) the body; and

(ii) each person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the body’s affairs;

is a fit and proper person.

(2) For the purpose of paragraph (1)(b), the Minister may determine that providing education is taken to be a body’s principal purpose if the Minister is satisfied that any of the body’s purposes do not conflict with the body’s purpose of providing education.

(3) The Minister must, in deciding whether he or she is satisfied that a person is a fit and proper person, take into account the matters specified in an instrument under subclause (4). The Minister may take into account any other matters he or she considers relevant.

(4) The Minister must, by legislative instrument, specify matters for the purposes of subclause (3).

**22 Subclauses 11(2) and (2A) of Schedule 1A**

Omit “paragraph 6(f)”, substitute “paragraph 6(1)(f)”.

**23 At the end of Subdivision 3-B of Schedule 1A**

Add:

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## **12A Conditions of approval**

- (1) The Minister may impose conditions on a body corporate's approval as a \*VET provider. Such conditions need not be imposed at the time notice of approval is given to the provider.
- (2) The Minister may vary a condition imposed under subsection (1).

## **12B Minister to cause VET provider to be notified of change in condition of approval**

The Minister must, within 30 days of his or her decision to impose or vary a condition on a \*VET provider, cause the provider to be notified, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the period for which the condition is imposed.

## **24 Paragraph 30A(a) of Schedule 1A**

Omit "paragraph 6(a)", substitute "paragraph 6(1)(a)".

## **25 Paragraph 31(a) of Schedule 1A**

Repeal the paragraph, substitute:

- (a) either:
  - (i) providing education is no longer, or is no longer taken to be, the body's principal purpose; or
  - (ii) the Minister is satisfied that any of the body's purposes conflict with the body's principal purpose of providing education; and

## **26 Paragraph 33(1)(a) of Schedule 1A**

Repeal the paragraph, substitute:

- (a) is satisfied that the body has either:
  - (i) breached a \*VET quality and accountability requirement; or
  - (ii) breached a condition imposed on the body's approval; and

Note: The heading to clause 33 of Schedule 1A is altered by adding at the end "**or of conditions**".

**27 At the end of subclause 33(1) of Schedule 1A**

Add:

Note: Clause 12A allows conditions to be imposed on the body's approval.

**28 At the end of Subdivision 5-B of Schedule 1A**

Add:

**33A Revocation of approval as a provider if provider etc. not a fit and proper person**

- (1) The Minister may revoke a body's approval as a \*VET provider if the Minister:
  - (a) is satisfied that:
    - (i) the body; or
    - (ii) at least one person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the body's affairs;is not a fit and proper person; and
  - (b) complies with the requirements of clause 34.
- (2) The Minister must, in deciding whether he or she is satisfied that a person is not a fit and proper person, take into account the matters specified in an instrument under subclause 6(4). The Minister may take into account any other matters he or she considers relevant.

Note: The heading to clause 34 of Schedule 1A is altered by omitting "as a provider for loss of status or a breach".

**29 After subclause 36(2) of Schedule 1A**

Insert:

- (2A) Before making a determination under subclause (1) in respect of a body, the Minister must give the body notice in writing:
  - (a) stating that the Minister is considering suspending the body's approval; and
  - (b) stating the reasons why the Minister is considering suspending the body's approval; and
  - (c) inviting the body to respond to the Minister, in writing, within 14 days of the date of the notice.

- (2B) In deciding whether or not to make a determination under subclause (1), the Minister must consider any response received from the body within the 14 day period.

### 30 Subclause 36(3) of Schedule 1A

Omit “48 hours”, substitute “a reasonable period of time”.

### 31 Clause 91 of Schedule 1A (before table item 1)

Insert:

1A	A decision to impose a condition on the approval of a *VET provider	subclause 12A(1)	the Minister
1B	A decision to vary a condition imposed on the approval of a *VET provider	subclause 12A(2)	the Minister

### 32 Application

- (1) Paragraphs 16-25(1)(aa) and (g) and subsections 16-25(2), (3) and (4) of the *Higher Education Support Act 2003* (as inserted by this Act) apply in relation to an application for approval made on or after this item commences.
- (2) The amendments made by items 5, 11, 12, 13 and 14 apply in relation to a body approved as a higher education provider before, on or after this item commences.
- (3) The amendments made by items 7, 8, 15, 25 and 28 apply in relation to an approval given before, on or after this item commences.
- (4) The amendments made by items 16 and 17 apply in relation to a notice given under subsection 22-30(2A) of the *Higher Education Support Act 2003* (as inserted by this Act) after this item commences.
- (5) Paragraph 6(1)(b) and subclause 6(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) apply in relation to an application for approval made before, on or after this item commences.

- (6) Paragraph 6(1)(h) and subclauses 6(3) and (4) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) apply in relation to an application for approval made on or after this item commences.
  - (7) The amendments made by items 23, 26 and 27 apply in relation to a body approved as a VET provider before, on or after this item commences.
  - (8) The amendments made by items 29 and 30 apply in relation to a notice given under subclause 36(2A) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) after this item commences.
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*[Minister's second reading speech made in—  
Senate on 10 February 2011  
House of Representatives on 22 June 2011]*

(1/11)

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