

Higher Education Act 2008

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Higher Education Act 2008

TABLE OF AMENDMENTS

Higher Education Act 2008 (No 24 of 2008)¹ commenced on 1 January 2010, as amended by:

Amending Legislation	Date of Commencement
Higher Education (Amendment) Act 2017 (No 19 of 2017)	3 May 2017

¹ This was promulgated as Promulgation 24 of 2008. In accordance with section 3 of the Interpretation Act 1967, the word "Promulgation" used with reference to any such Promulgation in the title or provision of any written law or in any document or legal proceeding may be replaced with the word "Act".

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AN ACT TO REGULATE THE ESTABLISHMENT, RECOGNITION, OPERATION AND STANDARD OF UNIVERSITIES AND OTHER HIGHER EDUCATION INSTITUTIONS AND FOR RELATED MATTERS

PART 1 — PRELIMINARY

[HIE 1] Short title and commencement

1 (1) This Act may be cited as the Higher Education Act 2008.

(2) This Act comes into force on the day appointed by the Minister by notice in the Gazette.

[HIE 2] Application of Act

2 This Act applies to all higher education institutions in or operating in Fiji.

[subs (2) am Act 19 of 2017 s 2, opn 3 May 2017]

[HIE 3] Act binds the State

3 This Act binds the State.

[HIE 4] Interpretation

4 In this Act, unless the context otherwise requires—

accreditation in relation to a programme of study that leads to a higher education award, means the recognition that the standard of the programme of study and the way of delivering it, are appropriate to the award;

appropriately qualified means having the relevant qualifications and experience;

Commission means the Higher Education Commission;

degree awarding institute of technology means an educational institution providing post secondary education which specialises in technical education and training and awards qualifications up to degree level;

higher education award means the following qualifications—

- (a) a degree or higher degree;
- (b) postgraduate diploma;
- (c) postgraduate certificate;
- (d) a certificate, diploma, advanced diploma, associate degree if the programme of study relating to the diploma or certificate or associate degree is classified as higher education in the Higher Education Register; or
- (e) any other award, if the programme of study relating to the award is generally understood to be higher education;

higher education institution means an educational institution in or operating in Fiji that provides award-conferring post-secondary education or provides educational support services for students of other higher education institutions including overseas institutions, including but not limited to—

- (a) technical and vocational education and training centres;
- (b) information technology centres;
- (c) secretarial schools;

- (d) language schools;
- (e) hospitality training centres;
- (f) educational agencies;
- (g) caregiving training providers;
- (h) performing arts and sports academies;
- (i) religious educational institutions;
- (j) colleges; and
- (k) universities;

[def subst Act 19 of 2017 s 3, opn 3 May 2017]

Minister means the Minister responsible for higher education;

operating for the purposes of this Act means conducting any form of activity in any medium to promote or in support of fee-paying or non-fee paying higher education and training that is sourced externally, or within Fiji or both;

[def insrt Act 19 of 2017 s 3, opn 3 May 2017]

other higher education institutions means higher education institutions that are neither universities nor degree awarding institutes of technology;

overseas institution means an overseas higher educational institution that—

- (a) is established and operates primarily in another country; and
- (b) offers a programme of study leading to an award recognised as a higher education award by the entity responsible for recognising higher education awards in that country;

recognition means the status awarded to an institution that possesses features of a higher education institution and meets the criteria prescribed in this Act; and

registration means registration of an institution by provision of a certificate of registration under section 22 or section 36, and includes renewal of registration.

[The next page is 710,401]

PART 2 — ESTABLISHMENT OF THE HIGHER EDUCATION COMMISSION

[HIE 5] Higher Education Commission

5 (1) This section establishes the Higher Education Commission which shall be a body corporate with perpetual succession and a common seal and may—

- (a) sue and be sued in its own name;
- (b) after consultation with the Minister, acquire and hold real property of any description and subject to the terms and conditions upon which the same is held, may sell, exchange, lease, mortgage, dispose of or otherwise deal with such property.

(2) The seal of the Commission shall be authenticated by the signature of the Chairperson and one other member authorised to act in that behalf by the Commission.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the chairperson or any member or officer authorised by the Commission to act in that behalf.

(4) All cheques and other negotiable instruments, and all receipts for money paid to the Commission, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Commission may from time to time determine, so however, that no fewer than 2 persons shall be authorised to sign cheques.

[HIE 6] Membership

6 (1) The Commission shall consist of members appointed by the Minister as follows—

- (a) a chairperson;
- (b) five members; and
- (c) any other member the Minister may appoint, in consultation with the Commission, as and when he or she deems necessary.

(2) The terms and conditions of the appointment for membership shall be determined by the Minister.

(3) In appointing the members of the Commission, the Minister shall consider members who have—

- (a) substantial knowledge and experience with a balanced combination of postgraduate qualification and work experience;
- (b) research and publication experience in any academic field;
- (c) knowledge and experience of higher education academic affairs;
- (d) knowledge and experience in governance and management of higher education institutions;
- (e) knowledge and experience in the design, development and delivery of higher education courses; and
- (f) independence and integrity.

(4) Subject to the provisions of this Act, the Commission shall conduct its own affairs in the appointment of its deputy-chairperson and regulation of its internal procedures.

[HIE 7] Functions

7 The functions of the Commission are to—

- (a) register and regulate higher education institutions according to the provisions of this Act;
- (b) foster and safeguard the national interest, the interests of students and parents, and also of local higher education providers;
- (c) establish national standards for different qualifications;
- (d) oversee the review process of higher education institutions;
- (e) provide assurances that the programmes developed by the institutions meet national standards;
- (f) promote the development of Fiji as a knowledge society;
- (g) allocate government funds marked for higher education annually to higher education institutions according to a transparent and well-publicised criteria for allocation;
- (h) foster cooperation among higher education institutions and linkages between higher education institutions and industry;
- (i) maintain a database of higher education information;
- (j) develop or cause to be developed an academic broadband facility for use by higher education institutions; and
- (k) make recommendations to the Minister with respect to issues consistent with its functions including special projects.

[HIE 8] Committees to assist the Commission

8 The Commission may establish committees consisting of its members and other persons it considers appropriate, to assist it in the performance of its functions.

[HIE 9] Review Committee

9 (1) The Commission shall establish a Review Committee consisting of 4 members appointed by it, who are not current members of the Commission or a committee established by it under section 8.

(2) The Review Committee shall conduct a review of the operation of existing and new higher education institutions according to the criteria and guidelines set out by the Commission.

(3) The annual reports of higher education institutions shall be submitted to the Review Committee for consideration in the review process.

(4) In exceptional cases, the Review Committee may undertake a special audit of an institution as directed by the Commission.

[HIE 10] Directions

10 (1) The Minister may give the Commission written policy directions in relation to its powers and functions if the Minister is satisfied that it is necessary to do so in the public interest.

(2) The Commission must comply with the Minister's directions given under subsection (1).

[HIE 11] Register of higher education institutions

11 The Commission shall keep and maintain a Register of higher education institutions that are established under this Act.

[HIE 12] Appointment of Director and other staff

12 (1) The Commission shall, with the approval of the Minister, appoint a director on such terms and conditions as the Commission may determine.

(2) The director shall be responsible to the Commission for the proper administration and management of the functions and affairs of the Commission in accordance with the policy laid down by the Commission.

(3) If the director is temporarily unavailable or incapacitated by reason of illness or for any other reason temporarily unable to perform his or her duties, the Commission may appoint another person to act in the place of the director during any such period of absence or disability.

(4) The Commission may, from time to time, appoint such other officers, employees, consultants, agents or other personnel as it thinks fit for the effective performance of its functions.

[The next page is 710,601]

PART 3 — ESTABLISHMENT AND RECOGNITION OF HIGHER EDUCATION INSTITUTIONS

[Pt 3 heading subst Act 19 of 2017 s 4, opn 3 May 2017]

[HIE 13] Restriction on operation

13 (1) Subject to section 54, no person shall establish or operate a university or degree awarding institute of technology unless the institution is established and registered by virtue of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000 for an individual or \$250,000 for a body corporate or to imprisonment for a term not exceeding 12 years for an individual or a director of a body corporate, or to both such fine and imprisonment.

(3) Any person who operates a higher education institution, that is neither a university nor a degree awarding institute of technology, in contravention of subsection (1), commits an offence and is liable on conviction to a fine not exceeding \$20,000 for an individual or \$100,000 for a body corporate or to imprisonment for a term not exceeding 5 years for an individual or a director with respect to a body corporate, or to both such fine and imprisonment.

[subs (3) insrt Act 19 of 2017 s 5, opn 3 May 2017]

[HIE 14] Restriction on name

14 (1) No person, other than the State, shall henceforth use “Fiji”, “National” and “State” in the naming of a higher education institution unless approved by the Minister.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000 for an individual or \$100,000 for a body corporate or to imprisonment for a term not exceeding 5 years for an individual or a director of a body corporate, or to both such fine and imprisonment.

[HIE 15] Restriction on the use of the title “university”

15 (1) No person shall—

- (a) use the title “university” in naming an educational institution unless the institution is a higher education institution approved as a university by the Commission;
- (b) use the title “university” in a business or corporation name unless approved by the Commission or unless the business is that of an approved university;
- (c) operate or purport to operate an establishment as a university or part of a university unless approved by the Commission;
- (d) operate or purport to operate as a university or part of a university from Fiji, through the internet or any other telecommunication device unless approved by the Commission;
- (e) advertise as a university, offer a course as a university, or issue an award as a university unless approved by the Commission.

(2) The Commission may grant approval to a person under subsection (1) with or without conditions.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000 for an individual or \$250,000 for a body corporate or to imprisonment for a term not exceeding 12 years for an individual or a director of a body corporate, or to both such fine and imprisonment.

[HIE 16] Application for recognition

16 (1) An application for recognition as a higher education institution shall be made in writing to the Commission and accompanied by the prescribed fee.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) The Commission shall prescribe the process for assessing applications for recognition as a higher education institution.

[subs (2) am Act 19 of 2017 s 8, opn 3 May 2017]

[HIE 17] Criteria for recognition

17 (1) A higher education institution—

- (a) is authorised by an Act in the case of a higher education institution, or authorised by the Commission in all other cases across a range of fields and to set standards for those qualifications;
- (b) incorporates teaching and learning that engage with advanced knowledge and inquiry;
- (c) demonstrates a culture of sustained scholarship extending from that which informs inquiry and basic teaching and learning, to the creation of new knowledge through research, and original creative endeavour;
- (d) commits teachers, researchers, course designers and assessors to free inquiry and the systematic advancement of knowledge;
- (e) safeguards the integrity of the institution's academic programmes through procedural rules, organisation, admission policies, financial arrangements and quality assurance processes.

[subs (1) am Act 19 of 2017 ss 6, 8, opn 3 May 2017]

(2) The Commission may prescribe more detailed and specific criteria in addition to the criteria listed in subsection (1).

[HIE 18] Application for registration

18 (1) An application for registration as a higher education institution shall be made in writing to the Commission accompanied by the prescribed fee.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) The Commission shall prescribe the process for assessing applications for registration as a higher education institution.

[subs (2) am Act 19 of 2017 s 8, opn 3 May 2017]

[HIE 19] Consideration of application for registration by Commission

19 (1) When assessing an application for registration as a higher education institution, the Commission shall consider the following—

- (a) an indication, on the basis of written material and discussion with the higher education institution, that the institution will comply with the relevant guidelines;

- (b) an assessment of senior or high-level executives, including administrative and academic staff;
- (c) an inspection of existing facilities, plans of facilities and delivery modes for programmes the institution proposes to offer to ensure that they meet national standards;
- (d) an evaluation of the financial capacity of the institution to deliver its proposed programmes and to sustain them appropriately; and
- (e) willingness of the institution or person to participate in periodic review processes, including national quality assurance processes.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) When considering an application, the Commission may take into account other information not contained in the application provided that such information is brought to the notice of the applicant.

[HIE 20] Approval for registration

20 (1) The Commission may approve the registration of a university or a degree awarding institute of technology that satisfies the requirements of section 19 or conforms with the schedule of criteria prescribed by the Commission.

(2) If the Commission approves an application for registration with conditions, the Commission shall, as soon as possible, notify the applicant about the conditions of the approval and the reasons for imposing such conditions.

(3) An applicant who is granted a conditional approval may, in writing, make representations to the Commission concerning the conditions, within 3 months after receiving notification from the Commission.

(4) The Commission shall, as soon as possible, notify an applicant of the outcome of its representation.

[HIE 21] Enactment of a university Act

21 (1) If the Commission grants approval for registration as a university, the Commission shall cause a Bill for an Act to establish that university to be submitted to the Minister who is to table it in Parliament for enactment.

(2) The Commission may, while the enactment of an Act under subsection (1) is pending, allow a university to begin operations as soon as it is notified of the Commission's approval for registration and related fees have been paid.

[HIE 22] Certificate of registration

22 (1) The Commission shall issue a certificate of registration to a higher education institution that has been granted an approval for, or renewal of, registration.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) If a certificate of registration is lost or destroyed, the Commission may, upon receipt of the prescribed fee, issue a replacement certificate.

[HIE 23] Duration of registration

23 A registration remains in force for a period of 5 years after which it has to be renewed.

[HIE 24] Registration fee

24 The Commission shall determine the fees relating to the registration of higher education institutions.

[HIE 25] Revocation of recognition and registration

25 (1) The Commission may—

- (a) after receiving a report from the Review Committee, invite and consider submissions from a higher education institution or person; and
- (b) revoke or suspend the registration or impose any condition on the registration of a higher education institution.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) A person may appeal the decision of the Commission made pursuant to this section to the Higher Education Appeals Tribunal.

[HIE 26] Application for accreditation

26 (1) An application for accreditation as a higher education institution shall be made in writing to the Commission accompanied by the prescribed fee.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) The Commission shall prescribe the process for assessing applications for accreditation of courses and programmes in universities or degree awarding institutes of technology.

[HIE 27] Authorisation to confer an award

27 (1) No higher education institution shall confer a higher education award unless the institution is recognised and registered by the Commission under the provisions of this Act.

[subs (1) am Act 19 of 2017 s 8, opn 3 May 2017]

(2) An award shall not be recognised as a higher education award unless the institution conferring the award is a recognised and registered higher education institution under this Part.

[subs (2) am Act 19 of 2017 s 8, opn 3 May 2017]

(3) No higher education award, other than an honorary award, shall be conferred on a person unless the person has successfully completed a programme of study relating to the award.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000 for an individual or \$100,000 for a body corporate or to imprisonment for a term not exceeding 5 years for an individual or a director with respect to a body corporate, or to both such fine and imprisonment.

[The next page is 710,801]

PART 4 — ESTABLISHMENT AND RECOGNITION OF OTHER HIGHER
EDUCATION INSTITUTIONS

[Repealed]

[Pt 4 rep Act 19 of 2017 s 7, opn 3 May 2017]

[The next page is 711,001]

PART 5 — APPEALS

[HIE 41] Higher Education Appeals Tribunal

41 (1) This section establishes the Higher Education Appeals Tribunal consisting of—

- (a) a chairperson, who must be a person qualified to be appointed as a Judge or is a retired Judge; and
- (b) two members who are of standing in the community.

(2) The members of the Higher Education Appeals Tribunal shall be appointed by the Minister for a term of 3 years, either on a full-time or part-time basis and are eligible for reappointment.

[HIE 42] Review of decisions

42 (1) Subject to subsection (2), a higher education institution that is aggrieved by a decision of the Commission and has exhausted the means prescribed under this Act for review by the Commission of its decision, may apply to the Higher Education Appeals Tribunal for a review of the decision.

(2) The Higher Education Appeals Tribunal shall have jurisdiction to review only the Commission's decisions relating to—

- (a) a refusal of an institution's application for registration or recognition, or for accreditation of a programme or course of study;
- (b) the imposing of conditions on an institution's registration or recognition, or accreditation of a programme or course of study; and
- (c) the suspension or cancellation of an institution's registration or recognition, or accreditation of a programme or course of study.

[HIE 43] Determination of appeals

43 (1) In determining an appeal, the Higher Education Appeals Tribunal may—

- (a) confirm the original decision;
- (b) amend the original decision;
- (c) substitute another decision for the original decision; or
- (d) set aside the original decision and return the matter to the Commission with any directions it considers appropriate.

(2) The Higher Education Appeals Tribunal shall determine an appeal in accordance with the procedures set out in the regulations.

[The next page is 711,201]

PART 6 — FINANCIAL PROVISIONS

[HIE 44] Financial year

44 The financial year of the Commission shall be from 1 January to 31 December of each year.

[HIE 45] Annual estimates

45 (1) The Commission shall, in each financial year, prepare or cause to be prepared and shall adopt annual estimates of income and expenditure of the Commission for the ensuing financial year.

(2) Supplementary estimates may be adopted by the Commission at any of its meetings.

(3) A copy of all annual and supplementary estimates shall, upon their adoption by the Commission, be sent immediately to the Minister.

[HIE 46] Funds of the Commission

46 (1) The funds of the Commission shall consist of—

- (a) moneys received by the Commission by way of grants or subsidies;
- (b) gifts, donations and contributions to the Commission;
- (c) fees, charges, rents, interests, dividends and other income accruing to the Commission;
- (d) moneys recovered or collected by the Commission or any officer or employee thereof (including sums collected for the composition of offences) under this Act or any other written law administered by the Commission; and
- (e) other moneys lawfully received by the Commission for the purposes of the Commission.

(2) The funds of the Commission shall be subjected to the financial management and procedures of the Ministry of Economy.

[HIE 47] Grants

47 (1) For the purpose of enabling the commission to carry out its functions under this Act, the Minister shall allocate annual grants to the Commission of such sums as the Minister may determine out of moneys to be provided by Parliament.

(2) The Commission shall account annually to Government through the Minister all revenues it collects under section 46.

(3) The accounts of the Commission shall be audited by the Auditor-General.

[The next page is 711,401]

PART 7 — MISCELLANEOUS

[HIE 48] Annual reports of higher education institutions

48 (1) A higher education institution shall, on or before 30 June each year, provide the Commission with an annual report for the period from 1 January to 31 December of the previous year, containing the matters relating to annual reports set out by the Commission, including, whenever required, audited financial reports.

(2) The annual report of a higher education institution shall be available for public examination, free of charge, at locations where the institution operates.

[HIE 49] Annual report for Parliament

49 At the end of each financial year, the Commission shall submit an annual report, which must include an audited financial report, to the Minister on or before 30 September the following year and the Minister shall cause a copy of the report to be tabled in Parliament.

[HIE 50] Power of the Commission to access information

50 (1) The Commission may require a higher education institution to provide such information as may be needed relating to any aspect of the institution's operation.

(2) In gathering the requisite information under subsection (1), the Commission may utilise such means as it considers necessary to acquire the information.

[HIE 51] Winding up of institutions

51 (1) A higher education institution intending to wind up its operations shall inform the Commission in writing at least 12 months before the intended date of closure.

(2) For the purposes of subsection (1), an institution shall ensure that the future of the education and training of its students is not jeopardised.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000 for an individual or \$250,000 for a body corporate or to imprisonment for a term not exceeding 12 years for an individual or a director with respect to a body corporate, or to both such fine and imprisonment.

[HIE 52] Power to make regulations

52 (1) The Minister may make regulations to give effect to the provisions of this Act, and in particular to regulate—

- (a) procedures and requirements for an application for recognition, registration and accreditation;
- (b) fees, charges and other costs;
- (c) guidelines for the conduct of appeals and hearings;
- (d) other procedures, rules and forms for use under this Act;
- (e) inspection or entry in the register; and
- (f) other services provided by the Commission.

(2) The regulations may prescribe penalties of a fine not exceeding \$12,000 or imprisonment not exceeding 2 years, for offences committed under it.

[HIE 53] Allowances for Commissioners etc

53 The members of the Commission, Higher Education Appeals Tribunal and Review Committee shall receive allowances in accordance with the conditions determined by the Minister.

[HIE 54] Transitional provisions

54 (1) At the commencement of this Act, all existing higher education institutions, including overseas higher education institutions established and operating in Fiji either under agency arrangements with local institutions or as a Fiji campus of its overseas institution, are deemed to have been granted provisional registration for one year under this Act.

(2) A provisional registration under subsection (1) may be extended with the approval of the Minister.

(3) An institution which is the holder of a provisional registration under subsection (1) must, within 6 months from the date of notification in the Gazette of the appointment of the Commission, apply for full registration to the Commission.

[The next page is 716,401]