



Higher Education (Amendment) Bill – Bill No. 2 of 2016

Introduction

The Higher Education (Amendment) Bill amends the Higher Education Promulgation Act 2008¹.

The 2008 Promulgation established the **Fiji Higher Education Commission**, which regulates the establishment, recognition, operation and standards of universities and other higher education institutions.

The Higher Education Regulations 2009 (which came into force in 2010) contain additional specifications related to the applications for recognition and registration of higher education institutions.

Objectives, scope and intent of the Bill

The purpose of the Bill is to **broaden the definition of ‘higher education institution’**. This will bring all higher education institutions under the jurisdiction of the Promulgation, regardless of their address and the span of time in which they provide education.

According to the Bill’s Explanatory Note, “this will help reduce the number of higher education institutions who intend to operate only for a short period of time or those that do not allow students to complete their programmes of study.”

Summary of provisions

Clause 1 provides the short title (‘Higher Education (Amendment) Act 2016) and commencement of the new Act.

¹ http://www.paclii.org/fj/promu/promu_dec/hep2008281/



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Clause 2 amends section 2 of the Promulgation so that it reads “This Promulgation applies to all higher education institutions in **or operating in Fiji**” (the words in bold are added to the Promulgation by this Bill.)

This new definition encompasses all higher education institutions conducting any activity, in any medium, whether they are based locally or overseas.

Clause 3 broadens the definition of ‘higher education institution’. Previously the definition was limited to only local higher education institutions that provided post-secondary education, and also only encompassed **local** higher education institutions.

Section 2 of the Promulgation **currently** defines ‘higher education institution’ as:

“higher education institution” means an educational institution in Fiji that provides award-conferring post-secondary education including, but not restricted to, Technical and Vocational Education and Training centres, information technology centres, secretariat schools, language schools, hospitality training centres, care-giving training providers, performing arts and sports academies, religious educational institutions, colleges and universities.

The **clause in the Bill** deletes this definition of ‘higher education institution’ and substitutes it with:

“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:

- (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 centres;
- (h) performing arts and sports academies;
- (i) religious educational institutions;
- (j) colleges; and
- (k) universities.

Clause 4 of the Bill changes the title of Part 3 of the Promulgation from ‘Establishment and recognition of universities including degree-awarding institutes of technology’ to ‘Establishment and recognition of higher education institutions’.

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Clause 5 inserts a new subsection into section 13 of the Promulgation, which allows for the prosecution of those higher education institutions that operates in contravention of section 13(1)².

This means that the institutions **must be either a university or degree awarding institute of technology**. Any other institution will not be considered as a higher education institution under the Promulgation.

The **current** section 13 states:

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 Promulgation.

(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 term not exceeding 12 years for an individual or a director of a body corporate, or to both such fine and imprisonment

The **new** subsection adds a **new** subsection after (2), which states:

Subject to section 54, any person operating 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 shall be 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 the body corporate, or to both such fine an imprisonment.

Clause 6 inserts a new subsection into section 17 of the Promulgation, which states that every higher education institution that is either a university or degree awarding institute of technology, must be authorised be legislation and in all other cases, must be authorized by the Fiji Higher Education Commission. Previously a higher education institution could only be authorised by legislation but now the Commission also has powers to authorise a higher education institution.

The deleted and added subsections of section 17 are highlighted in bold below:

Criteria for recognition

17. (1) A university or a degree-awarding institute of technology in Fiji is a higher education institution that—

(a) is authorized by an Act to award higher education qualifications across a range of fields and to set standards for those qualifications;-[deleted by the Bill]

² Section 13(1) states that 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 Promulgation.

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17. (1) A higher education institution –

(a) is authorised by an Act in the case of a university or degree-awarding institute of technology, or authorised by the Commission in all other cases across a range of fields and to set standards for those qualifications; [new subsection added by the Bill]

(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, organization, admission policies, financial arrangements and quality assurance processes.

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

Clause 7 of the Bill deletes Part 4 of the Promulgation, which deals with establishment and recognition of ‘other’ higher education institutions. The part of the Promulgation to be deleted by this Bill is outlined in **annex A of this paper**.

Clause 8 deletes all references to ‘university or degree awarding institute of technology’ and replaces them with ‘higher education institution’ to encompass all types of higher education institution.

Further information

- Higher Education Promulgation Act 2008: http://www.paclii.org/fj/promu/promu_dec/hep2008281/
- Higher Education Regulations 2009: http://www.paclii.org/cgi-bin/sinodisp/fj/legis/sub_leg/hep2008her2009543/hep2008her2009543.html?stem=&ynonyms=&query=higher%20education



Annex A – Part 4 of the 2008 Promulgation (to be deleted by this Bill)

PART 4 - ESTABLISHMENT AND RECOGNITION OF OTHER HIGHER EDUCATION INSTITUTIONS

Restriction on operation

28.-(1) Subject to section 54, no person shall operate a higher education institution that is neither a university nor a degree-awarding institute of technology unless the institution is established and registered by virtue of this Promulgation.

(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 with respect to a body corporate, or to both such fine and imprisonment.

Restriction on name

29.-(1) No person, other than the State, shall henceforth use "Fiji", "National" and "State" in the naming of Other Higher Education institutions unless approved by the Minister.

(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 an 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.

Application for recognition

30.-(1) An application for recognition as an Other Higher Education Institution shall be made in writing to the Commission accompanied by the prescribed fee.

(2) The Commission shall prescribe the process for assessing applications for recognition of Other Higher Education institutions.

Criteria for recognition

31.-(1) A higher education institution that is neither a university nor a degree-awarding institute of technology is one that -

(a) is authorized by the Commission to award higher education qualifications in one or more fields and to set standards for those qualifications;

(b) incorporates teaching, learning and training that engage with knowledge and skills;

(c) safeguards the integrity of the institution's education and training programmes through procedural rules, organization, admission policies, financial arrangements and quality assurance processes.

(d) has appropriately qualified staff.

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

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Application for Registration

32.-(1) An application for registration as an Other Higher Education Institution shall be made in writing to the Commission accompanied by the prescribed fee.

(2) The Commission shall prescribe the process for assessing applications for registration as an Other Higher Education Institution.

Consideration of application for registration by Commission

33.-(1) When assessing an application for registration of a higher education institution that is neither a university nor a degree-awarding institute of technology, the Commission shall consider the following -

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

(b) an assessment of management and staff, including administrative and academic staff;

(c) an inspection of existing facilities and or 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 applying organization or institution or person to participate in periodic review processes, including national quality assurance processes.

(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.

Approval for registration

34.-(1) The Commission may approve the registration of an Other Higher Education Institution that satisfies the requirements of section 33 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.

Certificate of Registration

35.-(1) The Commission shall issue a certificate of registration to an Other Higher Education Institution that has been granted an approval for, or renewal of, registration.

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

Duration of registration

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

Registration Fee

37. The Commission shall determine the fees relating to the registration of Other Higher Education Institutions.

Revocation of recognition and registration

38.-(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 an Other Higher Education Institution.

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

Application for Accreditation

39.-(1) An application for accreditation as an Other Higher Education Institution shall be made in writing to the Commission accompanied by the prescribed fee.

(2) The Commission shall prescribe the process for assessing applications for accreditation of courses and programmes in Other Higher Education Institutions.

Authorization to confer an award

40.-(1) No Other Higher Education Institution shall confer an award unless the institution is registered or recognized by the Commission under this Promulgation.

(2) An award conferred by an Other Higher Education Institution shall not be recognized as a higher education award unless the institution conferring the award is recognised and registered by the Commission' under this Part.

(3) 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.

Disclaimer

This briefing was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.