

BILL NO. 2 OF 2016

A BILL

FOR AN ACT TO AMEND THE HIGHER EDUCATION PROMULGATION 2008

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Higher Education (Amendment) Act 2016.
- (2) This Act shall come into force on the date of its publication in the Gazette.
- (3) In this Act, the Higher Education Promulgation 2008 shall be referred to as the “Promulgation”.

Section 2 amended

2. Section 2 of the Promulgation is amended by inserting the words “or operating in” after the word “in”.

Section 4 amended

3. Section 4 of the Promulgation is amended by—
 - (a) deleting the definition of “higher education institution” and substituting the following—

““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;”;

(b) inserting the following new definition—

““operating” for the purposes of this Promulgation 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;”

Part 3 amended

4. Part 3 of the Promulgation is amended by deleting the title and substituting with a new title “PART 3—ESTABLISHMENT AND RECOGNITION OF HIGHER EDUCATION INSTITUTIONS”.

Section 13 amended

5. Section 13 of the Promulgation is amended by inserting the following new subsection after subsection (2)—

“(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 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 a body corporate, or to both such fine and imprisonment.”

Section 17 amended

6. Section 17 of the Promulgation is amended by deleting subsection (1)(a) and substituting the following—

“(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;”

Part 4 deleted

7. Part 4 of the Promulgation is deleted.

All references to “university or degree-awarding institute of technology” amended

8. All references to “university or degree-awarding institute of technology” in the Promulgation and any subsidiary laws made under it shall be deleted and substituted with the words “higher education institution” except where it appears in section 13 of the Promulgation.

HIGHER EDUCATION (AMENDMENT) BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

1.1 The Higher Education (Amendment) Bill 2016 (**'Bill'**) seeks to amend the Higher Education Promulgation 2008 (**'Promulgation'**).

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement of the new Act.

2.2 Clause 2 of the Bill amends section 2 of the Promulgation by inserting the words "or operating in" after the word "in".

2.3 Clause 3 of the Bill seeks to broaden the definition of "higher education institution". A higher education institution is 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 providers;
- (h) performing arts and sports academies;
- (i) religious educational institutions;
- (j) colleges; and
- (k) universities.

- 2.4 Previously the definition was limited to only local higher education institutions that provided post-secondary education. Furthermore, the definition only encompassed local higher education institutions.
- 2.5 The new definition of “operating” encompasses all higher education institutions conducting any activity in any medium, whether they are based locally or are from overseas. 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 higher education. This new definition 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. Such institutions may close down all of a sudden and leave students frustrated and cheated. This new provision will reduce the number of higher education institutions which only intend to make money.
- 2.6 Clause 4 of the Bill amends the title of Part 3.
- 2.7 Under clause 5 of the Bill, the new subsection (3) which follows section 13(2), allows for the prosecution of those higher education institutions that operate in contravention of section 13(1). The higher education institution must be either a university or a degree awarding institute of technology. Any other institution will not be considered as a higher education institution under the Promulgation.
- 2.8 Under clause 6 of the Bill, the new subsection (1)(a) states that every higher education institution which is either a university or degree awarding institute of technology, must be authorised by legislation and in all other cases, must be authorised 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.
- 2.9 Clause 7 of the Bill deletes Part 4.
- 2.10 Under clause 8 of the Bill, all references to “university or degree awarding institute of technology” has been deleted and replaced with the phrase “higher education institution” to encompass all types of higher education institutions.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Promulgation comes under the responsibility of the Minister responsible for Education.

A. SAYED-KHAIYUM
Attorney-General