



Department of Education Services

Western Australia

Performance Portfolio

(Self-review)

Prepared for the Australian Universities Quality Agency

November 2005

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Supporting Material

SM1	Annual Report
SM2	<i>Higher Education Act 2004</i>
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SM4	Standing Committee on Uniform Legislation and General Purposes – Report 11
SM5	<i>Higher Education Regulations 2005</i>
SM6	<i>Policy Guidelines (Registration of Providers of Education and Training to International Students (2001))</i>
SM7	Higher Education Guidelines (July 2005)
SM8	Interim Arrangements (August 2002)
SM9	Package of Material Sent to HEAC Members
SM10	Provider Register – Conditions of Accreditation/Authorisation
SM11	Proforma of Annual Reporting Statement
SM12	Draft Protocol 1 Guidelines
SM13	Draft Protocol 2 Guidelines
SM14	<i>Evidence Guide – Providers of Education Services to International Students</i>

Abbreviations and Acronyms

Act (the)	<i>Higher Education Act 2004</i>
AQF	Australian Qualifications Framework
AQFB	Australian Qualifications Framework Board
AUQA	Australian Universities Quality Agency
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DES	Department of Education Services
DEST	Department of Education, Science and Training
ESOS	<i>Education Services for Overseas Students Act 2000</i>
ESPPRA	<i>Education Service Providers (Full Fee Overseas Students) Registration Act 1991</i>
Guidelines (the)	<i>Higher Education Guidelines (July 2005)</i>
HED	Higher Education and Legislative Review Directorate
HEAC	Higher Education Advisory Committee
HEROs	Higher Education Recognition Officers
IED	Non-Government and International Education Directorate
JCHE	Joint Committee on Higher Education
MCEETYA	Ministerial Council for Education, Employment, Training and Youth Affairs
National Code (the)	<i>National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students</i>
National Protocols (the)	<i>National Protocols for Higher Education Approval Processes</i>
NSAI(s)	Non Self-Accrediting Institution(s)
Policy Guidelines (the)	<i>Policy Guidelines: Registration of Providers of Education Services to International Students, 2001</i>
Regulations (the)	<i>Higher Education Regulations 2005</i>
TAFE	Technical and Further Education
VET	Vocational Education and Training
WA	Western Australia

Chapter 1 Introduction

1.1 Performance portfolio and self-review

This Performance Portfolio developed by the Higher Education and Legislative Review Directorate (HED) within the Department of Education Services (DES) is the result of a self-review and is a component of the audit of the Department's higher education approval activities to be conducted by the Australian Universities Quality Agency (AUQA) in 2006.

While the development of the Portfolio is the principal output of the self-review, the fundamental objective of the process is for DES to consider its directions, progress, achievements and strengths, as well as areas for development and improvement and the means of achieving these.

In the context of higher education policies and structures in Western Australia the Portfolio describes and evaluates:

- the higher education approval processes in WA;
- the quality assurance mechanisms associated with its activities; and
- the regulatory framework for and the implementation of the National Protocols for Higher Education Approval Processes ('National Protocols') in WA.

The focus of the Portfolio is primarily on the activities of DES in relation to its higher education approval activities under the State's *Higher Education Act 2004*.

DES also has responsibilities for international students under the *State Education Service Providers (Full Fee Overseas Students) Registration Act 1991*. These activities are the responsibility of the Non-Government and International Education Directorate (IED) and are considered in the Portfolio mainly in relation to effective implementation of Protocol 5 of the National Protocols.

In the Portfolio the acronym NSAI(s) has been used for Non Self-Accrediting Institution(s), however documentation in WA generally uses the term Non-University Higher Education Institution. Neither term is really satisfactory; they are negative and define what the institutions are not rather than celebrating them for what they are! The former term is less pejorative than the latter and will be used in future documents, pending the emergence of a more satisfactory alternative.

1.2 Higher Education in WA

Universities

There are five universities in Western Australia, all based in the Perth metropolitan area: four public and one private. Each is established under its own Act.

- **The University of Western Australia**, whose main campus is in the suburb of Crawley, has a regional operation in Albany and is a partner in the Geraldton Universities Centre. The University was established in 1911 and has a total student enrolment of 15,562.
- **Curtin University of Technology** has its main campus at Bentley, and a presence in the City. Its major regional campuses are at Kalgoorlie, incorporating the Western Australian School of Mines and the former Kalgoorlie College of Vocational Education and Training and at Northam at the Muresk Institute of Agriculture. The University is a partner in the Esperance Community

College, the Geraldton Universities Centre and the Margaret River Education Precinct. The University was established in 1966 and has a total student enrolment of 31,266.

- **Murdoch University** has its main campus in the suburb of Murdoch. A second campus has been established in Rockingham and a new campus is being developed at Mandurah, which is co-located with a Challenger TAFE campus and Mandurah Senior College. The University was established in 1973 and has a total student enrolment of 11,459.
- **Edith Cowan University** has three metropolitan campuses in Churchlands, Mount Lawley and Joondalup; one country campus in Bunbury; and is a partner in the Geraldton Universities Centre and the Margaret River Education Precinct. The University was established in 1984 and has a total student enrolment of 21,050.
- **The University of Notre Dame Australia** has its main campus in Fremantle and a small campus at Broome which works closely with the Kimberley College of TAFE. The University was established in 1989 and has a total student enrolment of 3,374.

Growth of the sector

The growth of the higher education sector can be put into some perspective by considering that in 1961 there was one university in Western Australia with about 3,500 students. At that time, the population of Western Australia was about 0.75 million people. By 2003 the population had more than doubled to 1.9 million people, but the number of university students had increased some twenty three-fold to over 82,000 (including some 11,000 on-shore overseas students).

The universities contribute significantly to the economic, social and cultural well-being of the State. In 2003 their total operating revenue was over \$1.2 billion with more than half coming from sources other than the Commonwealth.

Between 1997 and 2004 the full-time equivalent (FTE) academic staff decreased from 3,511 to 3,403.

While reported overseas student numbers increased from 11,265 in 2002 to 20,245 in 2004, a majority of this increase can be attributed to an increased reporting of offshore enrolments from 2,210 in 2002 to 8,939 in 2004.

Non Self-Accrediting Higher Education Institutions (NSAIs)

There is a rapidly developing NSAI sector in WA that is increasing both in the number of institutions and also in the range and scope of its offerings.

At the time of developing the Portfolio there were 23 NSAIs on the WA Higher Education Provider Register authorised to offer 85 accredited higher education courses in WA.

Details on these NSAIs and their courses which have been accredited/authorised in WA and entered on the WA register are outlined in [Appendix 1](#).

Accredited/authorised NSAIs grouped by assessment type are outlined in **Appendix 2**.

Accredited courses by level of award and field of education are included in **Appendix 3**

Six applications are currently being assessed and the institutions and courses involved are included in **Appendix 4**.

1.3 Department of Education Services

Establishment

DES was established in July 1996 under Section 35 of the Public Sector Management Act 1994 as a department of the Public Service.

The Department was formed by amalgamating the Education Policy and Coordination Bureau and the Western Australian Office of Non-Government Education, the integration of the Country High School Hostels Authority and the transfer of responsibility for administering the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*. Subsequently the Country High School Hostels Authority and several other functions were transferred to the Department of Education and Training and the Curriculum Council.

DES tends to focus on all aspects of education outside the operation of government schools and vocational education and training (VET) colleges. In recent years apart from core business areas, there has been particular involvement in cross-sectoral initiatives.

Mission, outcome and services

An important goal for Government is to enhance the quality of life and well being of all people throughout Western Australia. Among the important strategic outcomes for achievement of this goal are having a world-class education system and providing lifelong learning opportunities for all. Achievement of a world-class education system is aided by the *“regulation and development, as appropriate, of higher education, non-government education, and international education”*. This outcome has been identified as relevant to the role and functions of the DES.

Although established or sanctioned by various Acts of Parliament, many of the educational institutions and providers regulated or assisted by DES operate autonomously, or are private or commercial organisations, and they take prime responsibility for the quality of their education services. DES’s role, cast in terms of our services, is to provide the appropriate *“planning, regulatory and funding services”* to these educational institutions and providers.

Our mission therefore is to contribute to the achievement of the stated outcome.

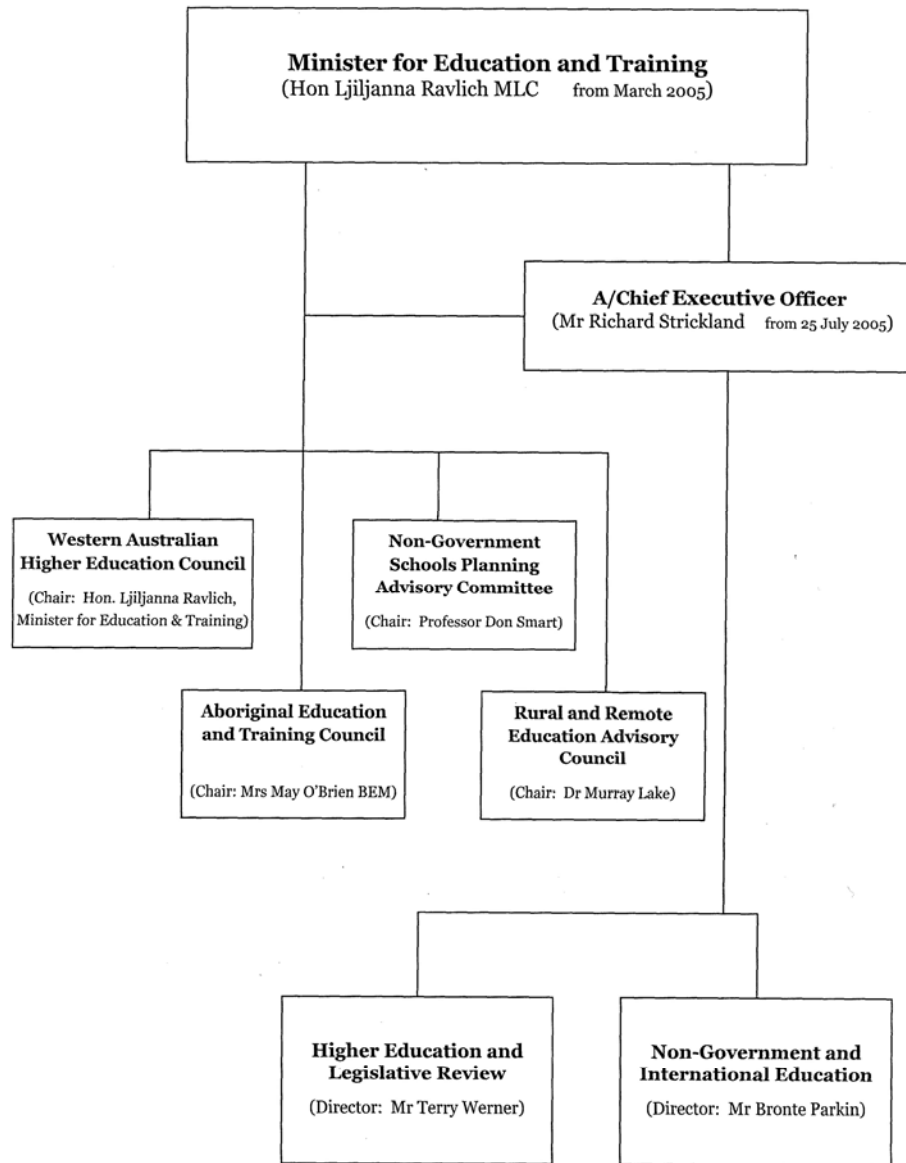
Administrative framework

DES comprises two operational directorates, each responsible to the A/Chief Executive Officer:

- Higher Education and Legislative Review; and
- Non-Government and International Education.

Two Ministerial advisory councils - the Aboriginal Education and Training Council and the Rural and Remote Education Advisory Council – operate from the Department with executive and other support provided. DES was also host to the WA College of Teaching Project until the College became an independent body on 15 September 2004.

Organisational Structure



Role and functions

The stated **role** of DES is to contribute to the development of education in Western Australia by:

- providing objective and independent advice to the Minister for Education and Training;
- planning and managing cross-sectoral initiatives aimed at improving the delivery of education; and
- delivering specific education services.

The **main functions** of the Department are to provide or manage:

- policy advisory and strategic planning services for the Minister;
- executive support and policy coordination for Ministerial councils and committees;
- cross-sectoral projects on behalf of the Minister;
- financial resources to non-government schools;
- administration of scholarships;
- regulation services for the non-government school sector;
- regulation services for institutions providing courses to overseas students; and
- regulation services for non-university higher education providers.

Legislation administered

The Minister responsible for DES is the Hon Ljiljana Ravlich MLC, Minister for Education and Training. DES administers the following Acts of Parliament on behalf of the Minister:

- *School Education Act 1999* (Part 4 – Non-Government Schools).
- *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.
- *Higher Education Act 2004*.

Additional Information on DES is included in the Annual Report (**SM1**)

1.4 **Higher Education and Legislative Review and Non-Government and International Education Directorates**

Staff directly involved in accreditation/authorisation and the percentage of their time devoted to functions under the *Higher Education Act 2004* are highlighted below. Staff in International Education are primarily responsible for registration processes under the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.

DEPARTMENT OF EDUCATION SERVICES

Minister for Education and Training
Hon Ljiljana Ravlich MLC



A/Chief Executive Officer
Richard Strickland



HIGHER EDUCATION AND LEGISLATIVE REVIEW DIRECTORATE

Director, Higher Education and Legislative Review
Terry Werner



Principal Policy Officer *
Alan Marshall (25%)

Principal Research and Statistics Officer
Laurie Money

Senior Research Officer *
Theresa King (90%)

Project Officer *
Linley Hine (80%)

Executive Assistant
Louise Rusiecki

* Staff directly involved in higher education accreditation and authorisation.

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### NON-GOVERNMENT AND INTERNATIONAL EDUCATION DIRECTORATE



**Director, Non-Government and International Education**  
Bronte Parkin

#### NON-GOVERNMENT EDUCATION

↑  
**Senior Planning Officer**  
Ron Grimley

**Registration Officer**  
Gill Jenkins

**Manager Financial Services**  
Elda Iaschi

**Finance Officers**  
Krys Coppard, Steve Page

#### INTERNATIONAL EDUCATION

↑  
**Senior Executive Officer**  
Brad Viney

**Registration and Policy Officer**  
Gavin Agacy

**Conciliator**  
Anne Duncan

**Administrative Assistant**  
Yoshiko Okamoto

### ***Role and Responsibilities of Higher Education Staff***

Alan Marshall – Principal Policy Officer, Higher Education

- Overview of the higher education approval processes under the National Protocols in WA.
- Development of legislation, contribution to policy and procedures and support for Higher Education Advisory Committees (HEACs).
- Represents the Government on committees and policy forums at national and state level in higher education.

Theresa King – Senior Research Officer

- Manages the higher education approval processes under the National Protocols and supports the HEACs. Develops policy and procedures to implement the *Higher Education Act 2004* and the National Protocols. Contributes to the development of legislation.
- Provides advice to potential higher education providers. Monitors the progress of registered providers. Monitors unaccredited providers. Liaises with relevant Government and industry bodies.
- Represents the Government on committees and policy forums, at national and state level.

Linley Hine – Project Officer

- Provides assistance to senior officers in the higher education approval processes.
- Maintains the document and information management systems.

### ***Role and Responsibilities of International Education Staff***

Brad Viney – Senior Executive Officer

- Manages the development of the review of policies and procedures for the registration of providers of education services for overseas students and ensures the monitoring of registered providers.
- Represents the Government on committees and policy forums, at national and state level, and other key industry policy groups.

Gavin Agacy – Registration and Policy Officer

- Monitors, evaluates, and recommends the registration of providers and courses for overseas students.
- Reviews accreditation requirements and liaises with relevant authorities to ensure that quality assurance mechanisms are consistent with industry trends.

Anne Duncan – Independent Conciliator

- Mediates and conciliates with students, institutions and other bodies on grievances, student support services, and other relevant matters.

## Chapter 2 Legislative and Regulatory Framework

### 2.1 General

In Western Australia there are two separate pieces of legislation that apply to higher education approval processes and the National Protocols. The *Higher Education Act 2004 (SM2)* and the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (SM3)* are both administered by DES.

### 2.2 Higher Education Act 2004

WA is a signatory to a multilateral intergovernmental agreement to implement the National Protocols which were approved by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) on 31 March 2000.

All States and Territories agreed to implement the National Protocols as soon as possible and no later than 30 June 2001. In the event this proved to be a somewhat ambitious time frame considering that some States had little or no higher education accreditation legislation and little experience of providing regulation services to NSAs.

On 17 September 2001 the Western Australian Cabinet approved the drafting of legislation to implement the National Protocols in WA.

The Higher Education Bill 2003 was introduced in the Legislative Assembly on 6 May 2003 and passed the House on 17 June 2003. In the Legislative Council the Bill was second read and referred to the *Standing Committee on Uniform Legislation and General Purposes* on 24 June 2003 for review as required by parliamentary procedures. The 11<sup>th</sup> Report of the Committee is attached (SM4).

The Bill, as amended, passed all stages on 26 November 2004 and the State *Higher Education Act 2004* ('the Act') came into operation on **8 December 2004**.

The four key elements of the Act are:

1. Protection of the title 'university'.
2. Establishment and recognition of universities in WA.
3. Approval of overseas universities seeking to operate in WA.
4. Accreditation and authorisation of non-university higher education courses/institutions.

The legislation does not apply directly to recognised Australian universities that are self-accrediting institutions established under State, Territory or Commonwealth Acts.

Until the Act was passed, there was no legal requirement for NSAs to be accredited/authorised in WA and limited provision to enforce breaches of the National Protocols.

## 2.3 **Higher Education Regulations 2005**

The *Higher Education Regulations 2005* ('the Regulations') (**SM5**) came into effect on **26 July 2005**. The matters prescribed in the Regulations that are permitted or required under the Act include:

- fees payable for services provided under the Act: services being provider authorisation, course accreditation and determination for recognition as a university;
- information to be included in applications;
- the waiver, rebate or refund of fees payable under the Act; and
- penalties not exceeding \$5000 for an offence against the regulations.

Until the Regulations came into effect DES could not charge fees for accreditation/authorisation or other approval services.

## 2.4 **Education Service Providers (Full Fee Overseas Students) Registration Act 1991**

DES administers the *State Education Service Providers (Full Fee Overseas Students) Registration Act 1991* ('ESPRA'). The State Government introduced the ESPRA after the financial failure of two WA institutions in the late 1980s.

The purpose of the legislation is two-fold. Firstly, it serves to protect the interests of overseas students by ensuring that providers are financially viable and have systems in place to safeguard students' pre-paid fees. Secondly, it also provides a quality assurance mechanism to ensure that providers are registered and meet basic standards in relation to student welfare, contractual material, resources and course accreditation.

DES also has delegated responsibility for ensuring that institutions meet the requirements of the Commonwealth *Education Services for Overseas Students 2000 Act* ('ESOS') and the associated *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* ('the National Code').

There is some overlap between the ESPRA and ESOS and where this occurs, the provider must comply with the more stringent requirement. DES's application material and policy and procedures require a provider to lodge one application that encompasses both the State and Commonwealth requirements.

Providers of courses to international students must meet the requirements outlined in the document *Policy Guidelines: Registration of Providers of Education Services to International Students, 2001* ('Policy Guidelines') (**SM6**). These guidelines complement the ESPRA / ESOS legislation and are designed to assist providers in preparing applications for registration on the Commonwealth Register of Institutions and Courses for Overseas Students ('CRICOS').

## Chapter 3 Higher Education Approval Processes

### 3.1 *Quality objectives and strategies*

The prime objective over the past three years has been to develop the legislative framework for efficient and effective implementation of the National Protocols in WA. In the associated Higher Education Guidelines ('the Guidelines') (**SM7**), the purpose of State accreditation of higher education courses and authorisation to provide higher education courses is stated as follows:

- protect the standing of higher education awards in Western Australia;
- assure students, the general public, the education community, government, and other agencies that the courses accredited are appropriate to the awards conferred; and
- ensure comparability of awards in higher education and facilitate national recognition of awards.

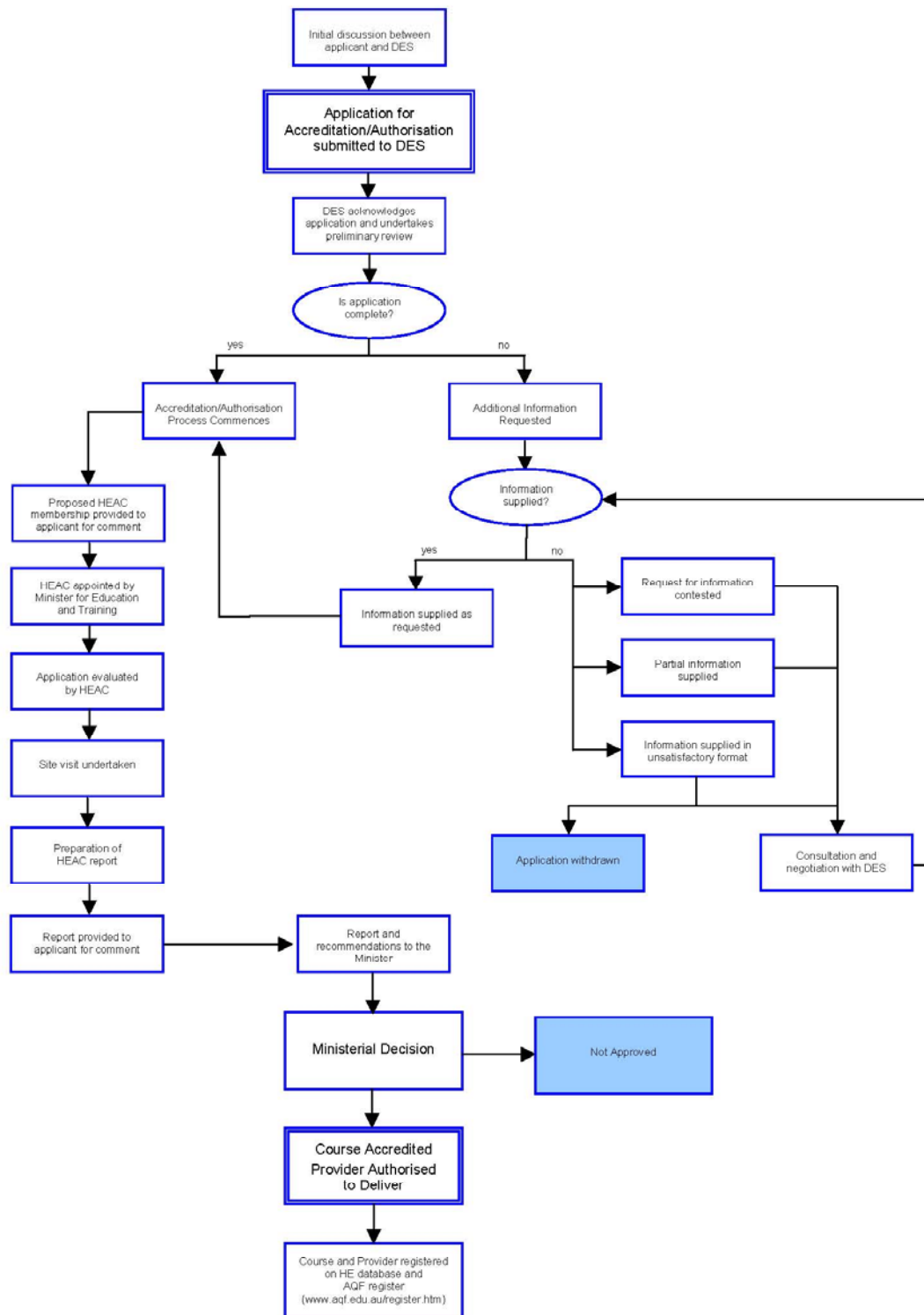
Objectives achieved to date are as follows:

- The development of Interim Arrangements (**SM8**) approved by the Minister for Education in August 2002 and effective higher education approval processes in WA.
- Promoting effective linkages and operations between higher education accreditation and authorisation processes under the National Protocols and ESPRA and associated Policy Guidelines.
- Use of the strategies of concurrent accreditation and mutual recognition to support WA's developing higher education approval processes.
- The passage of the Act and of the Regulations. Courses/institutions approved by the Minister under the Interim Arrangements are deemed to be accredited/authorised under the new Act.
- The development and implementation of revised Guidelines and efficient and effective procedures based on the new Act and Regulations.

### 3.2 *Accreditation and authorisation processes under the Higher Education Guidelines*

The following flow chart, which outlines the accreditation and authorisation processes in regard to NSAs (Protocol 3) is incorporated in the Guidelines which provides the details of the accreditation/authorisation processes in WA. The main elements of the approval processes are summarised in **Appendix 5**. Information on document and information management by the HED is outlined in **Appendix 6**.

## Accreditation and Authorisation Processes Flow Chart



### 3.3 **Quality in accreditation and authorisation processes in WA**

The key features of the HED approval processes in relation to NSAs are as follows:

#### **Communication with Clients**

- Seminar presentations on the National Protocols and the requirements of higher education approval process in WA have been given to the Western Australian Private Education and Training Industry Association (WAPETIA), the Australian Council for Private Education and Training (ACPET) and the professional organisation Association for Tertiary Education Management (ATEM).
- Meetings and advice are given to key client groups such as the VET sector and TAFE colleges who are contemplating offering higher education courses in niche areas.
- Client focus is promoted by the ready provision of advice to applicants and existing providers and the organisation of preliminary meetings to discuss provider requirements. Client satisfaction surveys indicate a high level of satisfaction with the processes (**Appendix 7**).
- Dealing with diversity in the client base, considering and giving advice on innovative and non-traditional approaches to higher education delivery in general.

#### **Higher Education Advisory Committees**

- A high level of support is given to the HEACs in terms of the logistics of meetings and the site visit; procedural advice, both during and outside meetings; and timely provision of assessment material, agenda, and meeting reports including the final report. DES supports the accreditation process, but the accreditation decisions or recommendations to the Minister are made by the HEAC.
- Chairs of HEACs have been sought from individuals with specific experience in quality assurance matters in higher education within their institutions and at a national level.
- A broad pool from which to draw HEAC members has been formed by writing to all universities seeking expressions of interest to participate in State quality processes. This is in addition to seeking advice from Chairs of HEACs on potential members and directly contacting academics and individuals with specific backgrounds. Applicants are given the opportunity to discuss the composition of a HEAC and their views on potential members including the Chair are given consideration. A recommended committee is decided by DES in conjunction with the Chair and put to the Minister for approval. (Details of HEAC members are included in **Appendix 8**).
- HEAC membership is developed giving consideration to gender balance, specific discipline expertise, university balance and representatives with key expertise such as from professional bodies. (HEAC members are not selected to represent their universities or any sectional interest). Members from other States and Territories are considered where there is specific expertise or independence of views required.
- A package of information on the accreditation and authorisation processes including the duties of the Chair and committee members and a checklist of questions is provided to HEAC members (**SM9**). Further advice is given to committee members in initial discussions with HED staff and in preliminary meetings of the HEACs.

- HEAC members sign a statement in relation to conflict of interest and independence of operation prior to receiving any documentation. Members are appointed to advise the Minister in the approval process and are paid on a sessional basis for their contribution.
- At least one HEAC meeting is held at the premises of the applicant and the whole committee is involved in the interaction with the applicant and the site visit. The site visit allows the committee to inspect the applicant's operations and gives valuable feedback to the applicant about operations, facilities and systems.
- Authorisation to conduct operations and accreditation of courses can be separate operations in Western Australia. Where a course is deemed to be accredited under either mutual recognition or concurrent accreditation, WA undertakes an authorisation to conduct (registration) process and a site visit by a HEAC.

## Procedures

- A financial viability review is undertaken on a confidential basis to demonstrate that an applicants' fiscal resources are adequate to protect student's investment in their education and to engender confidence that it will be possible to maintain an appropriate standard of delivery for the period of accreditation/registration. If the applicant is currently registered on CRICOS, or intends to seek registration, the financial assessment of the applicant will be undertaken to meet both the ESOS/CRICOS and higher education accreditation requirements.
- Accreditation/authorisation with conditions involves a review of identified elements (usually) after one year's operation. In the Act the period of accreditation/registration is 5 years. It would have been preferable to have up to 5 years to allow some flexibility and the Act should be amended accordingly. In any case, aspects of a new NSAI's operations should be reviewed within the accreditation period and accreditation with conditions allows for such reviews. The Act allows the Minister to make accreditation subject to conditions and to revoke accreditation for non-compliance. Ideally, reaccreditation should be simply one more developmental stage involving an emphasis on outputs and a review of performance. The accreditation/authorisation conditions imposed are contained on a providers register in the database and are monitored (**SM10**).
- Annual Reporting is a standing condition of all higher education accreditation/authorisation processes. DES requests all registered providers to submit an annual return (November/December) providing information on their higher education offerings including student enrolment and load, fields of study and some staff statistics. This is in accordance with Protocol 3.20. A proforma for the annual return is provided by DES (**SM11**)

## Enhancement of quality

- Unaccredited providers and other breaches of the Act are monitored and followed up. Particulars of these and the actions taken are maintained on the higher education database. Information on these processes is included (**Appendix 9**). A spreadsheet is maintained by the HED listing provider/courses offered/claims made by provider/contact details and action taken by DES. This additional material can be made available to AUQA on request and discussed during the Audit.
- Value is added to the accreditation process by undertaking a preliminary investigation of applications to ensure that the required information is available to allow formal consideration by a HEAC. An application is normally referred to a HEAC Chair for preliminary academic advice. This process is designed to

save time and cost and to help streamline the accreditation processes. **Appendix 10** shows applications accepted, accepted following modification or supply of additional information and those rejected.

- The advice of HEACs, accreditation approval with conditions, and annual reporting all promote quality enhancement. Specific examples of quality enhancement include:
  - A HEAC commissioning additional subject evaluations where specific expertise or input was required.
  - Seeking independent input in course evaluation from experts outside the State.
  - Arranging for a HEAC member to undertake site visits of an applicant's campuses in other states.
  - Site visits which have provided significant advice on clinical facilities and practical elements of the course.
  - Seeking input from library experts (UNILINK in NSW) with a view to improving guidelines for library facilities and arrangements for private providers.
  - Making conditions regarding enhanced library facilities, linkages to universities, access and reviews of staffing, library and general facilities.
  - Making conditions on implementation of a specific staffing policy on appointments and professional development activities.
  - Requiring student progression and graduation rates to be monitored and reviewed.

### **Operational and policy linkages**

DES staff have a range of operational and policy linkages including:

- Information exchange with other States/Territories to review and compare practices and performance in accreditation/registration.
- Membership of the Higher Education Recognition Officers (HEROs) group.
- Membership of the Joint Committee on Higher Education (JCHE) which reports to MCEETYA.
- Contributing to national policy in the development of the National Protocols and the *ESOS*, the National Guidelines and CRICOS.
- Membership of the Steering Committee of the Guthrie Review; Mutual Recognition Review; Foundations Studies Working Group; Transnational Education Government Round Table.
- Working Parties of the Australian Qualifications Framework Advisory Board (AQFAB) and the development of the AQF.
- Policy and operational linkages with the Australian Universities Quality Agency (AUQA).
- Policy and operational linkages with the Commonwealth Department of Education, Science and Training (DEST).

### **3.4 Improvements**

It has taken some time to finalise the Act and Regulations, but DES has managed to implement the National Protocols effectively and met client needs to date. However, demand is on the increase and in taking stock through this internal review we have concluded:

- The developing accreditation processes will require increased academic input into assessing applications. Consideration is being given to establishing a standing HEAC or appointing a senior academic as a part-time standing Chair to provide advice on applications and the formation of individual HEACs.
- Improving process capacity will require enhanced website facilities and information access, enhanced database facilities, integrated and expanded filing capacity and additional focus on the security of accreditation documentation.
- Increasing demand from NSAs for services means that a wider expert pool of HEAC Chairs and panel members needs to be developed. Universities will be approached again to seek additional input and to maintain currency of interest. Other avenues to be developed include involving more practitioners and representatives of professional bodies.
- The professional development of HEACs will require formal seminars and training sessions in addition to current advice and material which is given to HEACs.
- A review of process timelines has indicated a need for stipulating cut-off points for applications where processes are unduly extended by the applicant.
- Regular presentations to targeted client groups on the requirements of higher education approval processes are required in a climate characterised by change and development.
- Annual Reporting and data collection needs to be extended with a greater emphasis on outputs and evaluation. One of the criteria for Commonwealth Higher Education Provider (HEP) status is the mandatory collection of statistical data. DES recognises that a large proportion of NSAs in WA will be seeking HEP status and as such will be submitting statistical information to DEST on an annual basis. It is DES's intention to seek the support of providers in submitting a copy of the statistical data that they forward to DEST. This will save duplication of effort and provide data that can be compared on a State and national level. Those providers who do not seek Commonwealth HEP status will be required by the DES to provide similar data.

# Chapter 4 Implementation of the National Protocols in WA

## 4.1 Establishment of, or recognition as, a university (Protocol 1)

### Protection of 'University' in Business Names

In Western Australia the word 'university' is protected under the *Business Names Act 1962*. Under that Act the Commissioner of Fair Trading shall not, except with the consent of the Minister administering the Act, accept for registration any business names 'containing the following words or phrases or abbreviations of like meaning': including 'College of Advanced Education', 'Institute of Advanced Education' and 'University'.

Under a protocol with the Department of Consumer and Employment Protection, consistent with the National Protocols, applications for Ministerial consent for the use of the word 'university' in a business name where the nature of business is associated with education, require written approval from the HED to use the word 'university'. Applicants for business names are advised accordingly.

Any applicant for a business name including the word 'university' will be investigated in compliance with the National Protocols and the Act.

### Protection of 'University' in the *Higher Education Act 2004*

The Act provides for the protection of the title 'university' and a penalty for breaches of the legislation as required by the National Protocols and consistent with national practice. This protection is in addition to protection under the *Business Names Act 1962*.

Under section 6 'Protection of titles and awards' of the Act an education institution or an agent of an education institution must not, by use of the title 'university' or in any other way, represent that the education institution is a university or part of a university unless it is –

- a) a recognised university; or
- b) a recognised overseas university.

Exception can be made for certain prescribed organisations such as the University of the Third Age.

Breaches of the Act are monitored and followed up by the HED.

### Establishment of an Australian university in Western Australia

#### **Background**

The Act incorporates nationally agreed criteria for establishing an Australian university and a procedure for an application for Australian university status to be investigated. A new university can be investigated but cannot be established under the Act. The establishment of a new university in Western Australia requires an additional stage that would include being established under either an individual or generic Act of the State Parliament. A determination made by the Minister for Education and Training in regard to an application for Australian university status, following an investigation by an expert national panel, simply indicates that an

applicant meets or may meet the criteria for university status. Any such determination must be laid before each House of Parliament.

Western Australia has had no formal applications from organisations seeking to become universities under Protocol 1 but has established draft Guidelines (**SM12**) based on experience in other jurisdictions.

### ***Evaluation***

The Act, Regulations and draft Guidelines for Protocol 1 meet the requirements and intent of Protocol 1.

### ***A national perspective***

The Act may need to be amended in the light of national developments and changes to the National Protocols emerging from the Guthrie Review and the MCEETYA discussions (scheduled for 17 November 2005) of the future of the National Protocols.

In the national arena DES argues that the National Protocols need to be amended to promote greater national consistency in relation to Protocol 1. In a national system involving mutual recognition it would be preferable that the States/Territories and the Commonwealth establish Australian universities against agreed national criteria. It would also be preferable that panels formed to investigate the establishment of new universities should have a core of experienced panel members, perhaps drawn from a national pool trained by AUQA.

## **4.2 *Approval of overseas higher education institutions to operate in Western Australia (Protocol 2)***

### ***Background***

To gain approval to operate in Western Australia an overseas university will need to be recognized as an overseas university and its proposed awards must be accredited. Any determination made by the Minister for Education and Training in regard to an application for overseas university status, following an investigation by an expert committee, must be laid before each House of Parliament.

The Act and the Regulations make provision for an overseas university to gain approval to operate in Western Australia as a university and to have nominated awards accredited. In accordance with section 10 of the Act and the National Protocols, to gain approval to operate, an overseas university would need to be recognised as a university by the appropriate authority in its country of origin, and meet the criteria for recognition of university standards.

Consistent with the Act, the Minister must appoint an independent HEAC with appropriate expertise to consider the application for recognition of university standards and approval to operate as an overseas university in Western Australia. If the Minister makes a determination, a copy of the determination must be laid before each house of Parliament. This is for information only and is not disallowable.

Western Australia has had no formal applications from overseas universities seeking to operate as a recognised overseas university under Protocol 2 but is considering draft Guidelines (**SM13**) based on guidelines in other jurisdictions.

## ***Evaluation***

The Act, Regulations and draft Guidelines for Protocol 2 meet the requirements and intent of Protocol 2.

### ***A national perspective***

There are issues related to overseas universities seeking to operate in Australia which are not fully covered by the current National Protocol:

- An overseas university may wish to operate in Australia and offer Australian awards. In this instance it would seem appropriate to consider them under Protocol 1.
- An overseas university wishing to operate and to use its title and to offer its own country of origin awards. This could be handled under Protocol 2 and be dependent on the accreditation status and standing in its country of origin and local delivery arrangements. The courses should not need to be 'accredited' or necessarily be comparable with AQF courses, but should be offered and marketed as overseas qualifications by the university.
- Where the standing of an overseas 'university' is questionable, or where an overseas university wishes to operate as an NSAI then courses should be accredited under Protocol 3 and the 'university' title would not be used.

Western Australia favours Protocol 2 applying to an overseas university wishing to operate in Australia, either in its own right or through an agent, using its title and offering its own country of origin awards.

The Act may need to be amended in the light of national developments and changes to the National Protocols emerging from the Guthrie Review and the MCEETYA discussions of the future of the National Protocols.

Inquiries have been received from overseas universities wishing to operate in WA and to use the title 'university', generally in association with a local agent. To promote greater national consistency, legal interpretation is required in regard to the concept 'to operate' and for the purposes of 'mutual recognition' common national definitions and procedures are essential.

## **4.3 *Accreditation of higher education courses offered by non self-accrediting institutions (Protocol 3)***

### ***Background***

Prior to the passage of the Act and associated Regulations, Western Australia has operated under Interim Arrangements (August 2002 to July 2005) in relation to Protocol 3. Revised guidelines backed by the legislation, were introduced from July 2005.

Prior to the passage of the Act there was no legislation to implement the Protocols in WA, apart from the requirements of the ESPRA in relation to the provision of courses to international students.

The National Protocols and national linkages, growing pressures from higher education providers for accreditation, particularly so that students could access benefits through Centrelink, and the ESPRA requirements for higher education accreditation were all issues which Western Australia considered in developing and

operating on Interim Arrangements prior to the passage of the legislation to implement the National Protocols.

The limitations of the Interim Arrangements were that fees could not be charged, with consequent funding implications for DES and the higher education accreditation processes; penalties could not apply or prosecutions be brought against doubtful providers or providers in breach of the requirements of the National Protocols. Accreditation/authorisation could not be mandatory, however standards were protected to a considerable extent in WA by the ESPRA and its associated guidelines and procedures.

In the interim period considerable use was made of concurrent accreditation and mutual recognition processes.

### ***Concurrent accreditation***

Prior to the passage of the Act, Western Australia was involved in a number of concurrent accreditation processes. The advantage is that the concurrent accreditation process is undertaken under the legislation and procedures established in another State/Territory. WA used this process to learn from other jurisdictions by participating with them in joint accreditation panels. WA agreed to be bound by the collective view of a joint accreditation panel in regard to accepting the accreditation of specific courses offered by NSAs. While the courses would be deemed to be accredited in WA by the concurrent process, the providers concerned were still subject to a separate registration (authorisation to conduct) process including a site visit and a report to the Minister.

Concurrent accreditation processes are now planned to be replaced by mutual recognition because it has been argued that concurrent processes are too slow and costly. WA supports mutual recognition but points out that concurrent accreditation has advantages in certain circumstances, and that mutual recognition is not a simple panacea.

WA has been involved in the following concurrent accreditations:

Australian College of Ministries - Sydney College of Divinity  
Australian College of Natural Medicine  
Baptist Theological College - Australian College of Theology  
Chartered Secretaries Australia  
Institute of Chartered Accountants in Australia  
Royal Australian College of General Practitioners  
Securities Institute Education  
Trinity Theological College - Australian College of Theology

### ***Mutual recognition***

The Joint Committee on Higher Education (JCHE) has agreed to a protocol on mutual recognition which has been circulated for Ministerial consideration out-of-session. The intention is that the protocol on mutual recognition will replace concurrent accreditation.

Under mutual recognition, where a course has been accredited in any State or Territory in accordance with the National Protocols, other States/Territories would normally be expected to recognise the accreditation of those courses. However, a local registration process including a site visit would always be conducted.

The intention is to streamline the accreditation processes for applicants and to lower the time and cost involved for all participants.

Western Australia is supportive of mutual recognition and has incorporated the concept in its Higher Education Guidelines (page 14) as a Modified Assessment Process. Mutual recognition does not mean that the agent can automatically offer the same range of courses as the parent organisation.

Western Australia has used mutual recognition in the following accreditation/authorisation processes:

Harvest Bible College  
The College of Law  
Tabor College

### ***Protocol 3***

NSAIs registered under Protocol 3 in WA are listed in **Appendix 2**.

### ***Regulation of offshore delivery***

Offshore delivery of courses by Australian universities, either in their own right or via an agent are considered to be the responsibility of the university and are subject to audit by AUQA. WA universities operating offshore are outside the WA Act and the ESPRA.

Offshore delivery of courses by NSAIs is considered a State role under the Act. Authorisation to conduct a course is approved for a specific campus and a separate authorisation under the Guidelines is required if the provider wishes to offer the course at an offshore location. Authorisation would involve a consideration of the contractual arrangements and a site visit to consider equivalence and the suitability of local arrangements. Advice would be obtained from AUQA on the standing of the local agent and country specific issues. WA has not yet had an application for the offshore delivery of a course and is developing guidelines.

### ***Evaluation***

The regulatory framework, policies, procedures and management system employed by DES has enabled Protocol 3 to be implemented effectively in WA.

### ***A national perspective***

- Promoting greater national consistency requires a national approach to the definitions of 'to operate' and 'offering higher education courses'. It is suggested that model clauses might be developed for incorporation in the legislation of all jurisdictions. Clarity on these definitions is essential to enable the prosecution of doubtful or fraudulent entities seeking to circumvent the National Protocols.
- Developing national standards for authorisation to conduct a course (registration) is an issue when dealing with NSAIs who are new to higher education. National moves to mutual recognition of course accreditation will increase the focus on delivery arrangements in individual States/Territories and the registration of NSAIs. With a diverse range of institutions seeking accreditation and registration, and particularly with institutions seeking Commonwealth funding for FEE-HELP and perhaps priority student places, it is essential that consideration be given to more consistent national guidelines in relation to library provision, governance, staffing, scholarship and staff

development and institutional quality assurance mechanisms. These issues are currently being considered by HEROs.

#### **4.4 Delivery arrangements for higher education institutions involving other organisations (Protocol 4)**

##### **Background**

Western Australia places no restrictions under the Act in relation to recognised Australian universities operating in the State. Where the university is operating through an agent and the contractual arrangement makes clear that the award to be offered is the university's award the relationship will be considered as one of principal and agent in line with the requirements of Protocol 4. The university will be audited by AUQA and is not directly subject to the Act. If the agent wishes to offer courses in its own right an accreditation/authorisation process will be undertaken under Protocol 3.

The approach taken to Protocol 4 in WA has been partially determined by the requirements of the ESPRA. Most contractual arrangements between a university and an agent involve the provision of courses to international students and hence the parties are subject to the ESPRA and to registration on CRICOS.

Where a principal and agent agreement is in place in WA, a HEAC will be formed to consider the contractual arrangements and to ensure that local delivery arrangements meet required standards under the Guidelines and ESPRA.

The HEAC submits a report to the Minister and the arrangement is registered. A letter is then sent to the university and agent in regard to their responsibilities in operating in WA.

Where there are serious concerns about quality standards the provisions of the ESPRA apply and the university or other principal entity could be removed from CRICOS.

##### **Protocol 4 arrangements**

La Trobe University and Australian Campus Network  
(Approved 15/4/03 - operation ceased and they were taken off the register 12/7/05)

Monash University and Australian Institute for University Studies  
(Approved 20/1/04 - operation ceased and taken off the register 21/7/05)

Monash College and Australian Institute for University Studies  
(Approved 20/1/04 – operation ceased and taken off the register 21/7/05)

Southern Cross University and Australian School of Tourism and Hotel Management  
(Approved 25/10/04 and registered until 30/6/09)

University of Southern Queensland and Swan TAFE  
(Approved 30/10/03 – operation ceased and taken off the register on 1/07/05)

##### **Evaluation**

Protocol 4 is effectively handled by Western Australia under the Guidelines and ESPRA with close collaboration between HED and IED. Details of the authorisation process are the same as under Protocol 3.

## ***A national perspective***

Where a HEAC has made a report on a university/agent arrangement under Protocol 4, a copy of that report could be made available to AUQA. Equally, where significant concerns are raised by students or other parties such that the State requires the university/agent to take specific action, a report on the matter should be sent to AUQA for consideration when the university is audited. Where AUQA is auditing a university and considering an arrangement under Protocol 4, advice on the arrangements could be sought from the State/Territory concerned.

## **4.5 Endorsement of course for overseas students (Protocol 5)**

### **ESPRA/CRICOS**

Protocol 5 uses the term ‘endorsement’ rather than accreditation or registration which is somewhat confusing. Western Australia has a separate Act, the ESPRA, which deals with the protection of the interests of overseas students in addition to the ESOS, ESOS Regulations and the National Code and involves providers and ‘accredited’ courses being ‘registered’ on CRICOS. (Details of higher education institutions on CRICOS are outlined in **Appendix 11**).

The ESPRA deals with all sectors seeking to register on CRICOS to offer courses to overseas students including: statutory authorities (Government schools, Universities and TAFE Colleges); NSAs; ELICOS institutions; and Non-government schools.

In relation to higher education providers, under the ESPRA, if a provider, either a university or a NSA wishes to register a higher education course on CRICOS the registration process will be undertaken by DES under the ESPRA.

An NSA must be accredited under the Act to be registered on CRICOS. Recognised Australian universities are self-accrediting institutions for the purposes of ESPRA and CRICOS registration.

As part of the registration process, DES must ensure that the course is full-time, not delivered by distance education or on-line, that principal/agent arrangements (where they exist) are approved and that there is full compliance with the requirements of CRICOS registration.

In cases where the provider is a NSA, DES will initiate a joint higher education accreditation/authorisation process under the Guidelines. If the provider is a self-accrediting university, Paragraphs 13.8 and 13.9 of the National Code will apply and,

*“an assessment for approval by the Authority must include at least one inspection of the premises in which the provider delivers its courses, or the Authority must hold clear evidence that the facilities meet the requirements of this Code, based on reports from persons to whom the authority has delegated responsibility.*

*By way of exception from the previous paragraph, the Authority may accept from a university a statement that provision made by it satisfies all of the requirements of the National Code without an inspection, so long as the provision in question is made solely by that university and is delivered in its principal State of operation”.*

Other State and Territory regulatory authorities that have responsibility for ESOS compliance essentially rely on the universities to ensure compliance with overseas student regulatory frameworks. However, as a commitment to improving quality assurance, DES has commenced a program of audits aimed to improve ESOS compliance, particularly with respect to the monitoring of academic performance and participation.

Edith Cowan University, Curtin University of Technology, Murdoch University and The University of Western Australia have been audited and DES intends to audit The University of Notre Dame Australia by 30 April 2006.

## **NSAI's and Protocol 5**

The vast majority of providers wishing to apply for accreditation/authorisation under the Act also wish to provide courses to international students and hence also must meet the requirements of the ESPRA. The provisions of Protocol 5 in relation to NSAI's are covered by the higher education approval processes outlined in relation to Protocol 3 and additional protections to international students are provided under ESPRA.

The HED and IED collaborate with respect to applications received from higher education providers. Essentially, providers may apply concurrently for approval under the Act and ESPRA, with an assurance that any areas of overlap will be identified and addressed by officers at the Department level.

DES has identified the areas of partial overlap in the Acts and associated guidelines and developed procedures to ensure that there are streamlined processes between the Directorates so that clients wishing to have their courses accredited and to be registered on CRICOS are not subject to unnecessary duplication in procedures. A review was undertaken in April 2004 by Mr Gavin Agacy, Registration and Policy Officer, IED.

Following this review, the main features of the collaborative model between the two Directorates are as follows:

### ***Communication***

Officers of the respective directorates exchange information through e-mail, memo and meetings to discuss applications received. Joint meetings are held with provider applicants to provide general advice on how to apply.

The A/Chief Executive Officer acts as a single reference point for formal communication with providers, with both Directorates involved in the drafting of correspondence.

### ***Participation in Higher Education Advisory Committees***

Either the Senior Executive Officer or Registration & Policy Officer, IED, participate on HEACs. The role of these officers is to examine proposed higher education courses in terms of compliance under the ESPRA, ESOS and the National Code.

Accordingly, the officers identify matters and/or seek further information from the provider in relation to the mode of study, whether a course meets the current definition of full time, marketing and promotion, whether there is a work or industry placement component, suitability of the premises, English language entry requirements, RPL and where there is a principal/agent agreement, the contract between the parties.

The effect of the delivery of the course on the provider's viability, the viability of the course itself and financial safeguards in place in the event of the course ceasing to be offered, are also examined.

The level and extent to which these matters are examined will depend on whether the provider is already registered on CRICOS and is simply adding to its suite of courses or, is applying for registration for the first time. In the latter scenario, a more detailed examination by the IED, using the Department's *Evidence Guide – Providers of Education Services to International Students (SM14)*, would be standard practice.

Specific matters for discussion or clarification with the provider would be raised at the Departmental level or at preliminary HEAC meetings prior to a visit.

The following comments relate to the relevant sub-sections of Protocol 5.

#### **Protocol 5.1 - 5.4**

Applicants must apply for registration under the ESPRA. DES also has delegated responsibility for ensuring compliance with the ESOS and the National Code. Providers and courses are placed on CRICOS by the IED after confirmation of accreditation/authorisation under the Act and the provider has been assessed under ESPRA, ESOS and the National Code.

In relation to NSAs, only those courses accredited under the Act are registered on CRICOS.

#### **Protocol 5.5 – Special circumstances**

As indicated in relation to Protocol 4, Australian universities are not subject directly to accreditation/authorisation processes under the Act but are subject to ESPRA.

Where there is a principal/agent agreement it is standard procedure for DES to examine the contractual arrangements. The IED examines promotional, marketing and contractual material to ensure that it is clear and unambiguous and identifies the provider legally responsible under the ESOS as distinct from the delivery agent. The principal must clearly identify the use of an agent in marketing and promotional material. The HED considers the contractual arrangement to see whether or not it falls under the Act and whether it needs to be considered for accreditation/authorisation under Protocol 3.

In WA a HEAC would undertake a site visit to examine facilities and services in relation to any principal/agent arrangement.

As previously indicated the HEAC would examine the agent's:

- facilities and services to ensure consistency with similar courses offered at universities and other higher education institutions. The ESPRA/ESOS representative on the committee would ensure that the facilities and services are in accordance with the requirements of the National Code;
- teaching staff, quality assurance and protection of students, and
- ensure that endorsement of a course is not transferable to another provider.

#### **Protocol 5.6**

In relation to NSAs, only courses accredited and registered under the Act are placed on CRICOS. In relation to protocol 3.22 and 3.23, detailed requirements are set out in the Guidelines.

## ***Evaluation***

In Western Australia the provisions and intent of Protocol 5 are effectively met by the processes under the Act and ESPRA and the associated policies and guidelines. The Act establishes the State higher education accreditation authority required under the ESPRA (in relation to NSAI's) to ensure that the *'educational standards of the applicant have been assessed through proper accreditation procedures by the appropriate accreditation body'*.

### ***A national perspective***

Quality, consumer protection and integrity issues relate, in some part, to the lack of specificity and completeness of the Australian Government's National Code.

In particular, matters such as what determines a full-time course, exemption from a full-time course, place and mode of study, marketing monitoring and recording of participation and performance, student support services and student grievances, are all identified as matters of concern in the Australian Government's *Evaluation of the ESOS Act 2000* prepared by Phillips KPA Consulting, 2005.

In response, in August 2005 Dr Brendan Nelson, the Federal Minister for Education, Science and Training, through the Australian Education Systems Officials Committee (AESOC), appointed a National Code Action Group (NCAG) to oversee the development and implementation of auditable standards that will underpin a new National Code.

## Chapter 5 Conclusion

The processes up to the approval of the *Higher Education Regulations 2005* (July 2005) can be regarded as the first stage of implementing effective higher education approval processes in WA.

Stage 2 will involve the following strategies and quality objectives:

- Reviewing and amending higher education approval processes based on the self review and the AUQA audit of DES.
- Reviewing international education approval processes based on the outcomes of ESOS reforms and the new National Code.
- Developing formal links between accreditation and registration processes under the *Higher Education Act 2004*, the *Vocational Education and Training Act 1996* and the *Education Service Providers (Full Fee Overseas Students) Registration Act 1991*.
- Planning and implementing improvements in staffing, database, more effective and integrated filing systems, website development and procedures.
- Developing a more structured and formalised quality management system in higher education approval processes.
- Continuing to promote greater national consistency in the National Protocols, and efficiently and effectively implementing agreed changes to the National Protocols.

