

Western Australia

**Vocational Education and Training
Act 1996**

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Vocational Education and Training Act 1996

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Vocational Education and Training Act 1996

An Act to establish a vocational education and training system for the State, to constitute the State Training Board of Western Australia and the Training Accreditation Council, to provide for the establishment of colleges and other vocational education and training institutions, to repeal —

- **the *Colleges Act 1978*;**
- **the *Industrial Training Act 1975*; and**
- **the *State Employment and Skills Development Authority Act 1990*,**

to consequentially amend certain other Acts, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Vocational Education and Training Act 1996*¹.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Application to Crown

This Act binds the Crown in right of the State.

4. Objects

The main objects of this Act are —

- (a) to establish a State training system for the effective and efficient provision of vocational education and training to meet the immediate and future needs of industry and the community;
- (b) to provide for the recognition of vocational education and training, training providers, qualifications and skills;
- (c) to provide a means by which the State is able to meet its obligations under national arrangements relating to vocational education and training;
- (d) to promote equality of opportunity to undertake vocational education and training;
- (e) to provide for research and development for the purposes of vocational education and training; and
- (f) to allow for the operation of an open and competitive training market in this State.

5. Interpretation

- (1) In this Act, unless the contrary intention appears —
- accredited** means accredited by the Council;
- Board** means the State Training Board established by section 18;
- chief executive** means the chief executive officer of the department;
- college** means a college established under section 35;
- Council** means the Training Accreditation Council established by section 25(1);
- course** means a sequence of vocational education and training and includes a part or component of a course;
- department** means the department of the Public Service principally assisting the Minister in the administration of this Act;
- educational institution** means an institution providing education of any kind and includes a training provider;
- governing council** means a governing council provided for by section 39(1);
- industry training advisory body** means an association, whether incorporated or not, which is conversant with, and capable of giving advice in relation to, the vocational education and training requirements of a particular industry;
- interim governing council** means an interim governing council appointed under section 41(3);
- member** means a member of the Board, the Council, a governing council or an interim governing council as the context requires and includes, where appropriate, the chairperson or deputy chairperson of any of those bodies;
- other vocational education and training institution** means a vocational education and training institution established under section 57(2);

public training provider means a college or other vocational education and training institution;

registered training provider means a training provider registered by the Council;

Resource Agreement means an agreement between the Minister and a training provider relating to the vocational education and training to be provided by that training provider;

skills training programme means a programme of vocational education and training which may include recognition of skills or qualifications previously acquired;

State Training Profile means a comprehensive plan for the provision of vocational education and training in the State;

State training system means the vocational education and training system operating under this Act;

training provider means a person or entity who or which provides vocational education and training and includes a secondary school or university that provides a course, programme or service approved under section 6;

training scheme means a training scheme established or recognised under section 58;

vocational education and training means post-compulsory education, instruction, training or experience that encompasses the development of skills, knowledge and attitudes in any vocation, or in any academic or practical discipline relevant to a particular occupation, business, employment or trade, but, subject to section 6, does not include education, instruction, training or experience provided by a secondary school or a university.

- (2) A reference in this Act to the **training market** is a reference to the market in which the vocational education and training required by a State Training Profile may be purchased by the State from either public or private training providers.

6. Vocational education and training provided by a secondary school or university

- (1) The Minister may for the purposes of this Act, subject to subsection (2), approve a specified course, skills training programme or related service, or class of course, skills training programme or related service, provided by a specified secondary school or university; and any course, programme or service so approved is within the definition of “vocational education and training” in section 5(1).
- (2) The power conferred by subsection (1) may only be exercised with the concurrence of the Minister to whom the administration of the *School Education Act 1999* is for the time being committed by the Governor.

[Section 6 amended by No. 36 of 1999 s. 247.]

Part 2 — Coordination of the State vocational education and training system

Division 1 — The Minister

7. Minister a body corporate

- (1) The Minister is, for the purposes of this Act —
 - (a) a body corporate with a corporate name and a common seal; and
 - (b) capable of taking and defending proceedings in that corporate name.
- (2) The corporate name of the Minister is the “Minister for Training”.
- (3) All courts, judges and persons acting judicially are to take judicial notice of the common seal of the Minister affixed to any document and are to presume that it was duly affixed.
- (4) The body corporate constituted under subsection (1)(a) may, by writing under its common seal, authorise the chief executive, either generally or in respect of a specified matter or specified matters to execute deeds or other instruments on its behalf.
- (5) A deed or other instrument executed by the chief executive on behalf of the body corporate binds the body corporate and has the same effect as if it were under the common seal of the body corporate.
- (6) Nothing in subsection (4) or (5) prevents the body corporate from making or discharging a contract under its common seal.

8. Functions of the Minister

The functions of the Minister are —

- (a) to control, direct and coordinate the State training system;
- (b) to approve State Training Profiles from time to time;

other persons for purposes related to vocational education and training;

- (f) authorise, by lease, licence or other arrangement, the use for commercial, community or any other purpose of any land, buildings, equipment, facilities or services used or provided for, or in connection with, the provision of vocational education and training as long as the use for such a purpose does not detract from the provision of vocational education and training;
- (g) enter into contracts or other arrangements to provide products, consultancy or other services in the course of, or incidental to, the provision of vocational education and training;
- (h) turn to account the vocational education and training expertise of the State by means of the sale of knowledge and services and the commercial exploitation of copyright and other intellectual property, including the assignment and licensing of such property;
- (i) enter into contracts and arrangements with overseas organisations for the provision of vocational education and training and related services;
- (j) engage in applied research and development related to vocational education and training in conjunction with industry, research organisations, other educational institutions and other bodies;
- (k) assist the development of industry and commerce and the community in relation to the application of new technology related to vocational education and training and the skills and knowledge needed for that application; and
- (l) on terms and conditions approved by the Treasurer, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement.

- (3) The powers referred to in subsection (2)(d), (j), (k) and (l) are not subject to, and may be exercised despite, the *State Supply Commission Act 1991*.
- (4) In subsection (2)(l) —
business arrangement means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;
participate includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

10. Delegation by Minister

- (1) Subject to subsection (2) the Minister may, by instrument of delegation, and either generally or as otherwise provided in the instrument, delegate to —
- (a) the chief executive;
 - (b) a governing council or an interim governing council; or
 - (c) the managing director of a college or a person in charge of any other vocational education and training institution,
- the performance of any of the Minister's functions under this Act.
- (2) The Minister cannot delegate any of the Minister's powers in relation to the appointment of members of the Board or the Council.
- (3) A person to whom a power has been delegated under subsection (1) may subdelegate that power to another person with the approval of the Minister but not otherwise.

11. Minister may give directions

- (1) This section applies to the Board, the Council, colleges, and an institution established under Part 6.

- (2) Subject to subsection (4), the Minister may give directions to a body to which this section applies with respect to the performance by that body of its functions under this Act either generally or in relation to a particular matter, and the body is to give effect to those directions.
- (3) A direction may be given under subsection (2) requiring a body to have regard to a particular policy or principle.
- (4) The Minister may not give directions to —
 - (a) the Board, with respect to the performance of its functions under Division 2 of Part 4; or
 - (b) the Council, with respect to the performance of its functions under section 27(1).
- (5) The text of any direction given to —
 - (a) the Board or the Council is to be included in the annual report presented to the Minister under section 24 or 30; or
 - (b) a college or other institution is to be included in the annual report submitted by the accountable authority of the college or other institution under Part 5 of the *Financial Management Act 2006*.

[Section 11 amended by No. 77 of 2006 s. 17.]

12. Directions to secondary schools and universities providing vocational education and training

- (1) The Minister may give directions as to matters coming within subsection (2) to a secondary school or university that —
 - (a) provides vocational education and training by virtue of an approval under section 6; and
 - (b) is funded or partly funded under this Act.
- (2) The matters as to which directions may be so given are —
 - (a) the preparation, scope and form of management plans;
 - (b) the fees to be charged;

(c) the standard and general form of accounts to be kept;
and

(d) reporting requirements,

in relation to the relevant vocational education and training.

13. Minister may issue guidelines

(1) This section applies to the Board, the Council and a public training provider.

(2) The Minister may, from time to time, issue guidelines, not inconsistent with this Act, to a body to which this section applies relating to —

(a) the functioning of the State training system; and

(b) the policy to be implemented and the procedures to be followed,

under this Act.

(3) The Minister may not issue guidelines to —

(a) the Board, with respect to the performance of its functions under Division 2 of Part 4; or

(b) the Council, with respect to a particular application or matter that is to be determined by the Council.

(4) Guidelines issued under this section are to be followed by the body to which they are directed.

14. Minister to have access to information

(1) This section applies to the Board, the Council and colleges.

(2) The Minister is entitled —

(a) to have information in the possession of a body to which this section applies; and

(b) where the information is in or on a document, to have, and make and retain copies of, that document.

- (3) For the purposes of subsection (1) the Minister may —
- (a) request a body to which this section applies to furnish information to the Minister; or
 - (b) request a body to which this section applies to give the Minister access to information.
- (4) A body to which this section applies is to comply with a request under subsection (3).
- (5) In this section —
- document* includes any tape, disc or other device or medium on which information is recorded or stored;
- information* means information specified, or of a description specified, by the Minister that relates to the functions of a body to which this section applies.

Division 2 — Financial matters

15. Vocational Education and Training Trust Account

- (1) An agency special purpose account called the Vocational Education and Training Trust Account is established under section 16 of the *Financial Management Act 2006*, which is to be administered by the chief executive.
- (2) There is to be placed to the credit of the Vocational Education and Training Trust Account —
- (a) the funds generated by the performance of the Minister's function under section 8(d);
 - (b) any funds directed by the Minister under section 53 to be so credited; and
 - (c) any interest earned on the funds standing to the credit of the Vocational Education and Training Trust Account.
- (3) There is to be paid out of the Vocational Education and Training Trust Account amounts necessary for the performance of the Minister's functions under section 8.

[Section 15 amended by No. 24 of 2000 s. 45; No. 77 of 2006 s. 17.]

16. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to the Vocational Education and Training Trust Account.
- (2) The administration of the Vocational Education and Training Trust Account is for the purposes of section 52 of the *Financial Management Act 2006* to be regarded as a service of the department.
- (3) Section 20 of the *Financial Management Act 2006* does not apply to the Vocational Education and Training Trust Account.

[Section 16 amended by No. 77 of 2006 s. 17.]

17. Minister may lend money

- (1) The Minister may lend money for approved purposes to a private training provider which does not operate for the purpose of private gain by its members, provided the purposes relate to the provision of vocational education and training.
- (2) Any such loan is to be made out of moneys borrowed by the Minister under section 17A.
- (3) The terms and conditions of any such loan, including the interest to be paid —
 - (a) may be less onerous than those that might reasonably apply to such a loan made commercially; and
 - (b) are to be approved by the Treasurer.
- (4) In subsection (1) —

approved purposes means the acquisition of land, the construction, modification and renovation of buildings and the purchase or lease of plant and equipment, or any of those things.

[Section 17 inserted by No. 27 of 1998 s. 7.]

17A. Borrowing by the Minister

- (1) The Minister may borrow moneys for the purpose of lending under section 17 —
 - (a) from the Treasurer on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes; or
 - (b) with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves, from persons other than the Treasurer.
- (2) Any moneys borrowed by the Minister under subsection (1)(b) may be raised —
 - (a) as one loan or as several loans; and
 - (b) in such manner as the Treasurer approves.
- (3) The total amount of the moneys borrowed by the Minister under subsection (1)(b) in any one financial year is not to exceed such amount as the Treasurer approves.

[Section 17A inserted by No. 27 of 1998 s. 7.]

17B. Moneys to be credited and charged to operating account

- (1) The following moneys are to be credited to an operating account approved by the Treasurer —
 - (a) repayments of moneys loaned under section 17; and
 - (b) moneys borrowed under section 17A.
- (2) The following moneys are to be charged to the operating account —
 - (a) moneys loaned under section 17; and

(b) repayments of moneys borrowed under section 17A.

(3) In this section —

operating account means an agency special purpose account established under section 16 of the *Financial Management Act 2006*.

[Section 17B inserted by No. 27 of 1998 s. 7; amended by No. 77 of 2006 s. 17.]

17C. Guarantee by the Treasurer

(1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any moneys payable by the Minister in respect of moneys borrowed by the Minister under section 17A(1)(b).

(2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.

(3) Before a guarantee is given —

(a) the Minister is to give to the Treasurer such security as the Treasurer requires; and

(b) all instruments that are necessary for the purpose are to be executed.

(4) The Treasurer may fix charges to be paid by the Minister to the credit of the Consolidated Account in respect of a guarantee given under this section.

[Section 17C inserted by No. 27 of 1998 s. 7; amended by No. 77 of 2006 s. 4.]

17D. Payments under guarantee

(1) The due payment of moneys under a guarantee given under section 17C is to be —

(a) made by the Treasurer; and

(b) charged to, and paid out of, the Consolidated Account,

and this subsection appropriates that Account accordingly.

- (2) The Treasurer is to cause to be credited to the Consolidated Account any amounts received or recovered from the Minister or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 17C.

[Section 17D inserted by No. 27 of 1998 s. 7; amended by No. 77 of 2006 s. 4 and 5(1).]

Part 3 — The State Training Board

18. Establishment of Board

There is established a body called the State Training Board.

19. Constitution of the Board

- (1) The Board is to consist of —
 - (a) 7 persons appointed by the Minister, of whom one is to be appointed by the Minister to be the chairperson; and
 - (b) the persons appointed under subsection (2), if any.
- (2) The members appointed under subsection (1)(a) may submit to the Minister a panel of names from which the Minister may appoint 2 other persons to be members of the Board.
- (3) The members are to be appointed by the Minister for their experience and expertise in education and training, industry or community affairs and for their ability to contribute to the strategic direction of the State training system.
- (4) A member is to hold office —
 - (a) in the case of the chairperson for such period not exceeding 5 years; and
 - (b) in the case of any other member for such period not exceeding 3 years,as is specified in the instrument appointing that member, and a member is eligible for re-appointment.
- (5) The appointment of a member is to be published in the *Gazette*.

20. Further provisions relating to the Board

- (1) Schedule 1 has effect with respect to the Board.
- (2) Subject to this Act, the Board may determine its own procedures.

21. Functions of the Board

- (1) The functions of the Board are —
- (a) to prepare a State Training Profile for the approval of the Minister as and when required by the Minister;
 - (b) to recognise various industry training advisory bodies as bodies from which the Board takes advice in relation to the preparation of a State Training Profile;
 - (c) to prepare, for consideration by the Minister —
 - (i) policy which aims to improve the links between specific industry developments and vocational education and training so as to gain optimum employment opportunities for people, and ensure the availability of appropriately skilled labour, in the State;
 - (ii) policy relating to the accreditation of courses, skills training programmes and qualifications, the registration of training providers and the recognition of skills; and
 - (iii) policy relating to the prescribing of vocations for the purposes of training schemes;
 - (d) to perform the functions vested in it under Division 2 of Part 4 in relation to appeals against decisions made by the Council; and
 - (e) to provide advice to the Minister on the matters set out in subsection (2).
- (2) The Board is to provide advice to the Minister on —
- (a) the existing and anticipated supply and demand for skills in various industries, particularly expanding industries and industries which are experiencing or are expected to experience a shortage of skilled labour, and on proposed strategies to support such industries;
 - (b) strategic directions, policies and priorities for the State training system;

- (c) emerging international, national and State training issues;
- (d) the extent to which training services meet the current and future requirements of industry and the community, including the requirement for equal opportunity of access to those services; and
- (e) any other matters, as directed by the Minister.

22. Powers of the Board

- (1) The Board may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) For the purposes of section 21(1)(b) the Board may issue guidelines to industry training advisory bodies in relation to —
 - (a) the criteria to be met for an industry training advisory body to be recognised by the Board; and
 - (b) the matters in relation to which the advice of a recognised industry training advisory body may be sought or given.

23. Committees of the Board

- (1) The Board may establish committees consisting of, or including, persons who are not members of the Board, to assist it in the performance of its functions.
- (2) Subject to the directions of the Board, a committee may determine its own procedures.

24. Annual report of Board

- (1) The Board, on or before 30 September in each year, is to prepare and present to the Minister a report on the operations of the Board during the period of 12 months ending on the preceding 30 June.

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- (2) The Minister is to cause the report to be laid before both Houses of Parliament as soon as practicable after its receipt by the Minister.

Part 4 — The Training Accreditation Council

Division 1 — Establishment and functions of Council

25. Establishment of Council

- (1) There is established a council called the Training Accreditation Council.
- (2) The Council is to consist of 7 members appointed by the Minister of whom one is to be appointed by the Minister to be chairperson.
- (3) The members are to be appointed for their expertise, qualifications and experience in accreditation, curriculum, training provider registration or skills recognition.

26. Further provisions relating to Council

- (1) Schedule 1 has effect with respect to the Council.
- (2) Subject to this Act, the Council may determine its own procedures.

27. Functions of Council

- (1) The functions of the Council are to —
 - (a) register and de-register training providers;
 - (b) accredit, and vary and cancel the accreditation of, courses and skills training programmes and the qualifications gained from such courses and skills training programmes;
 - (c) recognise skills and qualifications obtained by individuals in this State or elsewhere, in industry, the workplace or educational institutions;
 - (d) determine the minimum competency to be provided by accredited courses and skills training programmes;

- (e) provide advice to the Board on matters relating to the functions specified in paragraphs (a), (b), (c) and (d); and
 - (f) recommend to the Minister the vocations it considers should be prescribed for the purposes of section 59 and advise the Minister on any conditions or requirements which should apply to those vocations.
- (2) The functions of the Council under subsection (1)(a), (b), (c) and (d) may be performed on the application of a training provider or other person or on the initiative of the Council.
- (3) A decision of the Council made in the performance of a function under subsection (1)(a), (b), (c) or (d) takes effect —
- (a) where no appeal is lodged under section 31, when the time for lodging an appeal has passed;
 - (b) where an appeal is lodged under section 31, when that appeal is determined under section 34 or is withdrawn; or
 - (c) on such later day as may be specified by the Council.

28. Delegation by the Council

The Council may by resolution delegate to a person, either generally or as otherwise provided in the resolution, any of the Council's functions under this Act other than this power of delegation.

29. Committees of the Council

- (1) The Council may establish committees, consisting of or including persons who are not members of the Council, to assist it in the performance of its functions.
- (2) Subject to the directions of the Council, a committee may determine its own procedures.

30. Annual report of Council

- (1) The Council, on or before 30 September in each year, is to prepare and present to the Minister a report on the operations of the Council during the period of 12 months ending on the preceding 30 June.
- (2) The Minister is to cause the report to be laid before both Houses of Parliament as soon as practicable after its receipt by the Minister.

Division 2 — Appeals against decisions of the Council

31. Appeals against decisions of the Council

- (1) A person who is dissatisfied with a decision of the Council made in the performance of a function under section 27(1)(a), (b), (c) or (d) on the application of that person may in writing appeal to the Board against that decision.
- (2) An appeal can only be brought on the ground that, in making the decision appealed against, the Council erred in its application of, or failed to apply criteria or procedures in, guidelines it was required to apply under section 13.
- (3) An appeal against a decision must be brought within 21 days of the day on which the appellant was notified of the decision.
- (4) The Board is to give the Council a copy of an appeal.

32. Board to establish review panels

- (1) To assist it in determining an appeal under section 31 the Board is to establish an independent review panel, of such number of persons as it considers appropriate, appointed for their expertise in the area of the subject matter of the appeal.
- (2) A review panel is to consider the decision appealed against and submit to the Board, within the time the Board allows, a written recommendation on the issues raised by the appeal.

33. Reference back to Council

- (1) If a review panel recommends that an appeal be allowed the Board is to refer the matter back to the Council for reconsideration and is to give the Council a copy of the panel's recommendation.
- (2) When a matter is referred back to it under subsection (1), the Council is to advise the Board, within the time that the Board allows, whether it considers its original decision should be confirmed or altered.

34. Determination of appeal

- (1) If a review panel recommends that an appeal be allowed and the Council considers that its original decision should be altered, the Board is to advise the appellant that the appeal is allowed.
- (2) If a review panel recommends that an appeal be allowed but the Council does not accept this recommendation and confirms its original decision the Board is to decide whether to —
 - (a) accept the recommendation of the review panel and allow the appeal; or
 - (b) accept the original decision of the Council and not allow the appeal.
- (3) The Board is to give the appellant reasons in writing for its decision under subsection (2)(a) or (b).
- (4) If a review panel recommends that an appeal not be allowed the Board is to advise the appellant that the appeal is not allowed and give the appellant a copy of the review panel's recommendation.
- (5) A decision on an appeal under this section is final.

Part 5 — Colleges

Division 1 — Establishment and functions of colleges

35. Establishment of colleges

There are to be maintained in the State such colleges as the Minister considers necessary or desirable for the provision of vocational education and training and for that purpose the Minister may, by order published in the *Gazette* —

- (a) establish a college;
- (b) amalgamate a college or part of a college with another college or close a college;
- (c) name or rename a college; and
- (d) make provision in relation to any other matters necessary for, or incidental to —
 - (i) giving effect to the order; and
 - (ii) protecting the rights, interests and welfare of persons affected by an order by which colleges are amalgamated or a college is closed.

36. Constitution of colleges

- (1) A college consists of the governing council, the staff and the enrolled students of that college.
- (2) A college is a body corporate with —
 - (a) perpetual succession and a common seal; and
 - (b) power to take and defend proceedings in its corporate name.
- (3) Regulations may be made under section 67 as to the custody and use of the common seal of a college or a facsimile of that seal, in this State or any other State or Territory.

37. Functions of a college

- (1) The functions of a college are —
- (a) to provide vocational education and training consistent with a College Training Profile referred to in section 42(2)(a);
 - (b) to provide to an employer, a group of employers or any other persons or authorities such fee-for-service training programmes as are authorised by the Minister;
 - (c) to undertake research and development related to vocational education and training which has a direct practical application to industry, commerce and the community;
 - (d) to promote equality of opportunity in the undertaking of vocational education and training;
 - (e) to provide or arrange for the provision of services to students;
 - (f) to participate in initiatives involving the whole of the State training system and to collaborate with other colleges and educational institutions to ensure the greatest effectiveness and economy in expenditure and the most beneficial relationship between the college and other colleges and educational institutions throughout the State;
 - (g) to contribute to the general development of the community in the region of the college through such activities, including the provision of adult and community education, as may be authorised by the Minister;
 - (h) subject to subsection (2), to provide on behalf of another educational authority such post-secondary education as is approved by the Minister; and
 - (i) to perform any other function conferred on it by this Act or by the Minister under subsection (4).

- (2) A college is not to use funds referred to in section 48(a) in performing a function referred to in subsection (1)(h).
- (3) A college is not to hold land or any estate or interest in land, but this subsection does not apply to the holding of land or an estate or interest in land that is part of a business arrangement under section 43(2)(f).
- (4) The Minister may, from time to time, by order published in the *Gazette*, confer on colleges other functions not inconsistent with this Act.

38. Vacation periods

- (1) The Minister may, by order published in the *Gazette* determine the vacation periods for colleges in each year.
- (2) Section 43(4) and (7) to (9) of the *Interpretation Act 1984* apply to an order under this section as if it were a regulation.

Division 2 — Governing councils

39. Governing council

- (1) A college is to have a governing council.
- (2) The governing council of a college is to consist of —
 - (a) a chairperson and a deputy chairperson and not less than 6 or more than 10 other members appointed by the Minister; and
 - (b) the managing director for the time being of the college.
- (3) The members referred to in subsection (2)(a) are to be appointed for their experience and expertise in education and training, industry or community affairs and for their ability to contribute to the strategic direction of the college.
- (4) A member appointed under subsection (2)(a) is to be appointed for a period not exceeding 3 years and is eligible for re-appointment.

40. Further provisions relating to governing councils

- (1) Schedule 1 has effect with respect to governing councils.
- (2) Subject to this Act, a governing council may determine its own procedures.

41. Interim governing councils

- (1) The governing council of a college is to be constituted on the day specified in the order by which the college is established.
- (2) Until the governing council of a college is constituted the college may, if necessary, be administered by an interim governing council appointed under subsection (3).
- (3) The Minister may, by order published in the *Gazette* (whether before, with or after the order by which the college is established) —
 - (a) appoint such number of persons as he or she thinks fit to be the interim governing council of the college;
 - (b) make provision in relation to the terms of appointment of and the procedures to be followed by, an interim governing council; and
 - (c) authorise the interim governing council to exercise such of the powers of a governing council as are specified in the notice.

42. Functions of a governing council

- (1) The governing council is the governing body of a college with authority in the name of the college to perform the functions of the college and govern its operations and affairs.
- (2) In performing its functions under subsection (1) the governing council is to —
 - (a) prepare a College Training Profile for the approval of the Minister as and when required by the Minister;

- (b) develop and implement strategic and management plans for the college;
 - (c) ensure the college courses, programmes and services are responsive to, and meet, the needs of students, industry and the community; and
 - (d) ensure that the college's commitments under its Resource Agreement and any other contractual arrangements are met.
- (3) A College Training Profile referred to in subsection (2)(a) is a comprehensive plan which, when approved by the Minister, is the basis for the provision of vocational education and training by the college.

43. Powers of a governing council

- (1) A governing council of a college may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1) a governing council may, on behalf of the college —
 - (a) enter into contracts in relation to the provision of the education and training that it is authorised or required by the Minister under this Act to provide;
 - (b) confer awards and qualifications;
 - (c) with the approval of the Minister, establish and maintain branches of the college at such places in the State as the governing council thinks fit;
 - (d) provide housing for staff, and residential accommodation for students, of the college;
 - (e) provide, for a fee or otherwise, or enter into contracts to provide, products, consultancy or other services in the course of, or incidental to, the provision by the college of vocational education and training; and

- (f) with the approval of the Minister, on terms and conditions approved by the Treasurer, participate in business arrangements relating to the provision of vocational education and training for the purpose of —
 - (i) applied research and development with industry, research organisations, other educational institutions and any other bodies; and
 - (ii) assisting the development of industry, commerce and the community in relation to the application, and the knowledge and skills required for the application, of new technology.
- (3) The power conferred by subsection (2)(f) is not subject to, and may be exercised despite, the *State Supply Commission Act 1991*.
- (4) In subsection (2)(f) —
business arrangement and *participate* have the meanings given by section 9(4).
- (5) A governing council may exercise its powers in another State or Territory if that is necessary or convenient for the performance of the functions of the college.

44. By-laws

With the approval of the Minister, a governing council may make by-laws —

- (a) for the safe operation and efficient management of lands and facilities under the management or control of the college, regulating entry on to, use of and conduct on, those lands and facilities and providing disciplinary consequences and penalties not exceeding \$1 000 for breach of those by-laws; and
- (b) prescribing —
 - (i) the classes of membership and the conditions or qualifications for membership of a student association; and

- (ii) the functions of a student association and other matters that are necessary or convenient for the effective performance of those functions.

45. Delegation by governing council

- (1) Subject to subsection (2), a governing council may delegate the performance of all or any of its functions under this Act, other than its power under section 44 to make by-laws, to the managing director of the college.
- (2) The managing director of a college to whom a function is delegated under subsection (1) may subdelegate that function to a person employed by the college with the approval of the governing council but not otherwise.

46. Managing director

- (1) A chief executive officer is to be appointed under Part 3 of the *Public Sector Management Act 1994* for each college.
- (2) The chief executive officer for a college is to be called the managing director of the college.

47. College employees

A college is to employ such persons as the governing council considers necessary to enable the functions of the college and the governing council to be performed.

Division 3 — Financial provisions

48. Funds of a college

The funds of a college consist of —

- (a) monies provided by the department, and other monies properly receivable by the college for the delivery of courses forming part of a College Training Profile under section 42(3);
- (b) commercial funds being —

- (i) monies received from college fee-for-service operations;
 - (ii) monies received from commercial services including cafeterias and bookshops;
 - (iii) monies from other commercial activities conducted by the college;
 - (iv) monies received in connection with the exercise of the power conferred by section 9(2)(f) in respect of land, buildings or facilities under the control of the college;
 - (v) monies donated by way of gifts, bequests or other voluntary contributions; and
 - (vi) any other monies properly receivable for the purposes of the college;
- and
- (c) funds borrowed by the college under section 51.

49. College Trust Accounts

- (1) An account called the (*name of College*) Trust Account (referred to in this Division as a “**college Trust Account**”) is to be established for each college —
 - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
 - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,to which the monies referred to in section 48 are to be credited.
- (2) There is to be maintained within a college Trust Account —
 - (a) a general account through which the monies referred to in section 48(a) are to be accounted for; and
 - (b) a commercial account through which the monies referred to in section 48(b) and (c) are to be accounted for.

[Section 49 amended by No. 77 of 2006 s. 17.]

50. Use of funds

The funds of a college are to be applied for the purposes of this Act.

51. Power to borrow

A college may borrow money on such terms and conditions as the Treasurer approves.

52. Power to invest

If a college Trust Account is maintained at a bank, the governing council may, with the written approval of the Treasurer, invest any funds of the college that are not immediately required for the purposes of this Act in the manner that moneys in the Public Bank Account may be invested under the *Financial Management Act 2006*.

[Section 50 amended by No. 77 of 2006 s. 17.]

53. Minister may direct transfer of funds

If the Minister is satisfied that there is available in the commercial account of a college Trust Account a credit balance in excess of the amount reasonably required for the purposes of that account the Minister may direct that the whole or a part of that excess be credited to another college Trust Account or to the Vocational Education and Training Trust Account referred to in section 15.

[Section 53 amended by No. 77 of 2006 s. 17.]

54. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of a college and its operations.

- (2) The financial year of a college begins on 1 January and ends on 31 December and a reference in the *Financial Management Act 2006* to an annual report is to be construed accordingly.
- (3) The Minister, with the approval of the Treasurer, may determine that for the purposes of this section in respect of any operation of the college another period of one year may be substituted for the financial year referred to in subsection (2).
- (4) Section 20 of the *Financial Management Act 2006* does not apply to a college Trust Account.

[Section 54 amended by No. 77 of 2006 s. 17.]

Division 4 — Failure of governing council to operate efficiently etc.

55. Minister may take action where governing council fails to operate efficiently etc.

Where, in the opinion of the Minister, the governing council of a college has failed, or is failing —

- (a) to operate efficiently or effectively;
- (b) to meet the college's obligations under a Resource Agreement; or
- (c) otherwise to adequately and properly perform its functions,

the Minister is to give that governing council written notice, detailing how, in the Minister's opinion, it has failed or is failing and requiring it to remedy the failure within the time specified in the notice.

56. Order assuming functions or appointing administrator

- (1) Where in the opinion of the Minister a governing council has failed to comply with a notice under section 55 the Minister may, by order published in the *Gazette* —

- (a) remove the members of the governing council from office and appoint another governing council or appoint an administrator to perform the functions of the governing council; or
 - (b) amalgamate the college with another college or close the college.
- (2) An order under subsection (1) may make provision in relation to any other matters necessary for or incidental to —
- (a) giving effect to the order; and
 - (b) protecting the rights, interests and welfare of persons affected by the order.
- (3) An order under subsection (1) may be expressed to take effect on the day of publication, on a day specified in the order being a day not later than the day of publication or on the happening of an event specified in the order and to continue in effect until a day, or the happening of an event, so specified.

Part 6 — Other vocational education and training institutions

57. Minister may establish other vocational education and training institutions

- (1) The Minister may exercise the powers conferred by this section where in the Minister's opinion it is necessary or desirable to do so for the purposes of vocational education and training but it is not appropriate to establish a college for that purpose, or to do so at the particular time.
- (2) Where subsection (1) applies, the Minister may, by order published in the *Gazette* —
 - (a) establish any vocational education and training institution, other than a college, that he or she considers is required for the effective operation of the State training system; and
 - (b) make provision in relation to any matters necessary for, or incidental to, giving effect to the order including provision for the employment of persons by the chief executive, otherwise than under the *Public Sector Management Act 1994*.
- (3) An order under this section must vest the management and control of an institution in the chief executive, but subject to the exercise of the Minister's powers under section 14.
- (4) An institution established under subsection (2) has such functions and is to operate in such manner as the Minister specifies in the order establishing the institution.

[Part 7 has not come into operation².]

Part 8 — Miscellaneous

63. Remuneration of members of Board, Council etc.

A member of —

- (a) the Board and a committee of the Board;
- (b) the Council and a committee of the Council; and
- (c) a review panel appointed under section 32(1),

is to be paid such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management, determines from time to time.

64. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The protection given by this Act applies even if the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the Crown of any liability it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

65. Falsely claiming accreditation or registration

- (1) A person must not, in relation to a course or skills training programme, use any name, title, letters or description stating or implying, or that may reasonably be understood to imply, that the course or skills training programme is accredited, unless that course or skills training programme is so accredited.

Penalty: \$10 000.

s. 66

- (2) No person other than a registered training provider is to use a name, title, letters or description stating or implying or that may reasonably be understood to imply that the person is a registered training provider.

Penalty: \$10 000.

66. Further provision relating to closure of college

- (1) In this section —

college means a college that has been closed by an order under section 35(b) or 56(1)(b);

the closing day means the day on which an order under section 35(b) or 56(1)(b) to close a college takes effect.

- (2) On the closing day —

- (a) all assets and rights of the college become assets and rights of the Minister without the need for any transfer;
- (b) all liabilities of the college, including contingent liabilities, become liabilities of the Minister;
- (c) any agreement to which the college is a party (other than one to which the Minister was the other party) has effect as if the Minister was substituted for the college as a party to that agreement;
- (d) all proceedings commenced before the closing day by or against the college are to be taken to be proceedings pending by or against the Minister;
- (e) anything done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the closing day by, to or in respect of the college (to the extent that that thing has any force or effect) is to be taken to have been done by, to or in respect of the Minister;
- (f) the Minister becomes the owner of all the college's registers, documents, books and other records, however compiled, recorded or stored and of any tape, disc or other device or medium relating to such records; and

- (g) the status of a college as a body corporate ceases.
- (3) The Minister is to complete the winding-up of the operations and affairs of the college as soon as practicable after the closing day and for that purpose the Minister has, and may exercise, any powers that are necessary.
- (4) Despite section 55 of the *Financial Management Act 2006* an order under section 35 or 56(1) may specify the person who is to be the accountable authority for the purposes of the report required by Part 5 of that Act with respect to the period from 1 January in a year until the completion of the winding up of the operations and affairs of the college under subsection (3), and Part 5 of that Act applies to that person as the accountable authority of the college as if that period were a full financial year.

[Section 66 amended by No. 77 of 2006 s. 17.]

67. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may —
- (a) subject to Schedule 1, regulate the procedures of the Board, the Council and governing councils;
 - (b) provide for fees and charges to be paid for, or in connection with —
 - (i) the supply of vocational education and training and related services;
 - (ii) an application to the Council; or
 - (iii) an appeal against a decision of the Council;
 - (c) amend or supplement, with effect from a time which is not earlier than the commencement of this section, the transitional provisions set out in Schedule 4 for the

purpose of providing an effective and efficient transition from —

- (i) the operation of the provisions repealed by section 70 or amended by Schedule 3 to the operation of this Act; or
- (ii) from the employment circumstances of the persons employed under or for the purpose of those provisions to the employment circumstances of those persons under this Act.

68. Provisions relating to the Commonwealth Act

- (1) The Minister is to nominate the department as the State training agency for the purposes of the *Australian National Training Authority Act 1992* of the Commonwealth (*the Commonwealth Act*).
- (2) A public training provider is not to make any application or representation directly to the Australian National Training Authority established under the Commonwealth Act in respect of the allocation of funding for vocational education and training except with the approval of the chief executive.

69. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act no later than 6 months after the expiration of 3 years from its commencement and in the course of that review the Minister is to consider and have regard to —
 - (a) such matters as appear to be relevant to the operation of this Act; and
 - (b) the effectiveness of the Board and the Council.
- (2) The Minister is to prepare a report based on the review under subsection (1) and, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

70. Repeals

- (1) The *Colleges Act 1978* is repealed.
- (2) The *State Employment and Skills Development Authority Act 1990* is repealed.

[71-72. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1

[Sections 20, 26 and 40]

Provisions relating to the board, the council and governing councils

1. Vacation of office

- (1) The office of a member becomes vacant if —
 - (a) the term of the member expires;
 - (b) the member resigns by written notice addressed to the Minister;
 - (c) the member is an undischarged bankrupt or a person whose property is subject to an arrangement under the laws relating to bankruptcy;
 - (d) the member is convicted of an indictable offence; or
 - (e) the appointment of the member is terminated under subclause (2).
- (2) The Minister may at his or her discretion terminate the appointment of a member at any time.

2. Leave of absence

The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

3. Meetings

- (1) The chairperson is to preside at any meeting at which the chairperson is present.
- (2) If the chairperson, and in the case of a governing council the deputy chairperson, is not present at a meeting the members present are to elect one of their number to preside at the meeting.
- (3) A quorum for a meeting is at least one half of the number of members or if a quorum cannot be present at a meeting because of the operation of clause 5, a quorum for that meeting is such number of members as the Minister may determine.
- (4) Any question arising at a meeting is to be decided by a majority of the votes of the members present and in the event of an equality of votes

the chairperson, or the person presiding, is to have a casting as well as a deliberative vote.

4. Disclosure of interests

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the body of which he or she is a member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the body.

Penalty: \$10 000.

- (2) The circumstances in which a person has a material personal interest in a matter being considered or about to be considered by a body include a case where an entity with which the member is associated may benefit from the body's decision on the matter.
- (3) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

5. Voting by interested members

A member who has a material personal interest in a matter, within the meaning in clause 4, that is being considered by the body of which he or she is a member —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
 - (ii) on a proposed resolution under clause 6 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
- (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),
- is being considered at a meeting.

6. Clause 5 may be declared inapplicable

Clause 5 does not apply if the body has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

[Schedule 2 has not come into operation².]

[Schedules 3 and 4 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

¹ This is a compilation of the *Vocational Education and Training Act 1996* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

| Short title | Number and year | Assent | Commencement |
|--|------------------------|---------------|---|
| <i>Vocational Education and Training Act 1996</i> ^{1a} | 42 of 1996 | 16 Oct 1996 | Act other than Pt. 7 and Sch. 2: 1 Jan 1997 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301); balance to be proclaimed |
| <i>Acts Amendment (Education Loan Scheme) Act 1998</i> Pt. 3 and 5 ³ | 27 of 1998 | 30 Jun 1998 | 30 Jun 1998 (see s. 2) |
| <i>School Education Act 1999</i> s. 247 | 36 of 1999 | 2 Nov 1999 | 1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904) |
| <i>Vocational Education and Training Amendment Regulations (No. 2) 1999</i> r. 3 (see <i>Gazette</i> 5 Nov 1999 p. 5634) | | | 1 Jan 1997 (see r. 2(2) and <i>Gazette</i> 12 Nov 1996 p. 6301) |
| <i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 45 | 24 of 2000 | 4 Jul 2000 | 4 Jul 2000 (see s. 2) |
| Reprint of the Vocational Education and Training Act 1996 as at 11 Jan 2002 (includes amendments listed above) | | | |
| <i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and 17 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137) |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|---|---|-------------|---|
| <i>Vocational Education and Training Act 1996 Pt. 7 and Sch. 2</i> ² | 42 of 1996 (as amended by No. 20 of 2002 s. 184) | 16 Oct 1996 | To be proclaimed (see s. 2) |
| <i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 75</i> ⁴ | 43 of 2000 | 2 Nov 2000 | To be proclaimed (see s. 2) |
| <i>Training Legislation Amendment and Repeal Act 2008 Pt. 2</i> ⁵ | 44 of 2008 | 10 Dec 2008 | To be proclaimed (see s. 2(1)(b) and (2)) |

² On the date as at which this compilation was prepared, the *Vocational Education and Training Act 1996 Pt. 7 and Sch. 2* (as amended by the *Labour Relations Reform Act 2002 s. 184*) had not come into operation. They read:

“

Part 7 — Training schemes

58. Minister may establish training schemes

- (1) The Minister may establish and implement, or may recognise as a training scheme for the purposes of this Act, any scheme which provides vocational education and training that the Minister thinks would give persons who take part in the scheme improved employment opportunities.
- (2) A training scheme —
 - (a) is to provide for such accredited courses and skills training programmes, whether on-the-job or off-the-job or both, as the Minister may determine, in the case of a scheme established, or approve, in the case of a scheme recognised, under this section; and
 - (b) may take the form of, or include, an apprenticeship.
- (3) A training scheme may provide for training relevant to a particular occupation or to several occupations.
- (4) In this section —

apprenticeship means a training scheme involving a contract between an employer and an employee under which the employer undertakes to train the employee in a particular trade.

59. Regulations relating to training schemes

- (1) Regulations may provide for any matters necessary for or incidental to the establishment, implementation or recognition of a training scheme and in particular may —
- (a) prescribe the vocations in relation to which a training scheme may operate;
 - (b) prescribe requirements to be met by trainees and employers of trainees including requirements that —
 - (i) trainees undertake prescribed courses or skills training programmes; and
 - (ii) employers grant leave of absence from employment without deduction from wages to enable trainees to fulfil prescribed requirements;
 - (c) prescribe the amount of paid employment to be provided to a trainee;
 - (d) provide for the transfer of employment of trainees; and
 - (e) provide for the resolution of disputes arising between an employer and a trainee in relation to any agreement concerning training between that employer and trainee, and in particular, in relation to —
 - (i) the construction or operation of;
 - (ii) the rights, duties and liabilities of the employer or trainee under; or
 - (iii) the termination or threatened termination of, any such agreement.
- (2) In this section —
trainee means a person receiving vocational education and training under a training scheme.

60. Inconsistency

Where a provision of this Part or of a regulation made under section 59 (1) is inconsistent with a provision of the *Industrial Relations Act 1979* or any order, award or industrial agreement in force under that Act, the former provision prevails.

61. Repeal

The *Industrial Training Act 1975* is repealed.

62. Consequential amendments and transitional provisions relating to this Part

Schedule 2 has effect —

- (a) to amend the *Industrial Relations Act 1979* as a consequence of the repeal of the *Industrial Training Act 1975*; and
- (b) in relation to the transition from the operation of the *Industrial Training Act 1975* to the operation of this Part.

”.

“

Schedule 2

[Section 62]

Amendments and transitional provisions relating to Part 7

1. *Industrial Relations Act 1979* amended

The *Industrial Relations Act 1979* is amended in section 7 —

- (a) in the definition of “apprentice” by deleting “an apprentice under the *Industrial Training Act 1975*” and substituting the following —

“

a person who has entered an apprenticeship within the meaning of that term in section 58 of the *Vocational Education and Training Act 1996*

”;

[(b) and (c) deleted]

- (d) in paragraph (f) of the definition of “industrial matter” —
 - [(i) deleted]*
 - (ii) by deleting “*Industrial Training Act 1975*” and substituting the following —

“

relevant training scheme under the *Vocational Education and Training Act 1996*

”;

and

- (iii) by deleting “any agreement of apprenticeship or training agreement” and substituting the following —

“

an apprenticeship contract or other agreement forming part of a training scheme under that Act

”

[(e) deleted]

2. Transitional

- (1) In this clause —
repealed Act means the *Industrial Training Act 1975* repealed by section 61.
- (2) On the commencement of section 61 any apprenticeship agreement or industrial training agreement entered into and registered under the repealed Act and in force immediately before that commencement is to be taken to be an agreement entered into under a training scheme established or recognised under section 58 but with the same terms, conditions and provisions as were applicable before that commencement.
- (3) Any regulations made under the repealed Act and in operation immediately before the commencement of section 61 which were applicable to, or in respect of, an apprenticeship or industrial training agreement referred to in subclause (2) are to continue to apply to such an agreement, until regulations are made under this Act in respect of the matters covered by those regulations.
- (4) Regulations may be made, with effect from a time which is not earlier than the commencement of section 61, amending or supplementing the transitional provisions set out in subclauses (2) and (3) for the purpose of providing an effective and efficient transition from the provisions of the repealed Act to the provisions of this Act.

[Schedule 2 amended by No. 20 of 2002 s. 184.]

”

³ The *Acts Amendment (Education Loan Scheme) Act 1998* Pt. 5 reads as follows:

“

Part 5 — Transitional

9. Existing loans may be varied

Despite the repeal of sections 9A(5)(c) and 27C(3) of the *Education Act 1928*, section 17 of the *Vocational Education and Training Act 1996* and section 25A of the *University of Notre Dame Australia Act 1989*, the terms and conditions of a loan made under any of those provisions before the coming into operation of this Act may be varied in the same manner and to the same extent as if the provision had not been repealed.

10. Moneys may be borrowed and paid to Treasurer

- (1) Any moneys advanced to the Education Minister or the Vocational Education and Training Minister under the authorisation of the *Treasurer’s Advance Authorization Act 1997* for the purpose of lending under the *Education Act 1928*, the *Vocational Education and Training Act 1996* or the *University of Notre Dame Australia Act 1989* and not repaid to the Treasurer before the coming into operation of this Act, are to be repaid, together with the interest accrued and due on those moneys, by the relevant Minister to the Treasurer.
- (2) The Education Minister may borrow moneys under section 9D(1) of the *Education Act 1928*, as amended by this Act, or section 25C(1) of the *University of Notre Dame Australia Act 1989*, as amended by this Act, for the purpose of meeting obligations under subsection (1).
- (3) The Vocational Education and Training Minister may borrow moneys under section 17A(1) of the *Vocational Education and Training Act 1996*, as amended by this Act, for the purpose of meeting obligations under subsection (1).
- (4) In this section —
Education Minister means the Minister in whom the administration of the *Education Act 1928* is for the time being committed by the Governor;
Vocational Education and Training Minister means the Minister in whom the administration of the *Vocational Education and Training Act 1996* is for the time being committed by the Governor.

”

⁴ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads:

“

75. Various provisions repealed

The provisions listed in the Table to this section are repealed.

Table of provisions repealed

| Act | Provision |
|--|----------------|
| | |
| <i>Vocational Education and Training</i> | Sch. 4, cl. 7A |

| Act | Provision |
|----------|-----------|
| Act 1996 | |
| | |

”.

⁵ On the date as at which this compilation was prepared, the *Training Legislation Amendment and Repeal Act 2008* Pt. 2 had not come into operation. It reads as follows:

“

**Part 2 — Vocational Education and Training Act 1996
amended**

3. Act amended

This Part amends the *Vocational Education and Training Act 1996*.

4. Long title amended

In the long title delete the passage that begins with “**to repeal**” and ends with “**other Acts,**” and insert:

**to provide for the training of people, such as apprentices,
under training contracts with employers,**

5. Section 4 amended

In section 4:

(a) delete “are — ” and insert:

are as follows —

(b) delete paragraph (b) and insert:

(b) to provide for the registration of some providers of vocational education and training and the accreditation of some vocational education and training courses;

(c) in paragraph (e) delete “training; and” and insert:

training;

(d) in paragraph (f) delete “State.” and insert:

State;

(e) after paragraph (f) insert:

(g) to provide for people, such as apprentices, to be trained for some occupations under training contracts with employers.

6. Section 5 amended

(1) In section 5(1) delete these definitions:

accredited

chief executive

course

department

public training provider

registered training provider

Resource Agreement

skills training programme

State Training Profile

training provider

training scheme

(2) In section 5(1) insert in alphabetical order:

account, of a college, means the college’s account established under section 50;

approved VET course means a VET course that —

- (a) is accredited by the Council under Part 7A; or
- (b) is accredited under a corresponding law; or
- (c) is prescribed by the regulations;

approved VET qualification means a document, other than a prescribed VET qualification, that certifies that a person has successfully completed an approved VET course or a part of an approved VET course;

chief executive means the chief executive officer of the department of the Public Service principally assisting the Minister

to administer the provision in which the term chief executive is used;

corresponding law means a law of another State or a Territory that relates to vocational education and training and that is prescribed to be a corresponding law;

prescribed VET qualification means a document that certifies that a person has a qualification of a prescribed type;

private training provider means a training provider who or which is not a public training provider;

public training provider means —

- (a) a college or other vocational education and training institution; or
- (b) a school or university that provides a VET course under an approval given under section 6;

registered training provider means a training provider registered —

- (a) by the Council under Part 7A; or
- (b) under a corresponding law;

school has the meaning given to that term in the *School Education Act 1999* section 4;

State Training Plan means a plan, approved by the Minister, that sets out for a period —

- (a) the training needs of the State's various industries in the period; and
- (b) how those needs should be met in the period by registered training providers, using funds provided under this Act; and
- (c) any other matters required in the plan by any direction given under section 11;

training provider means a person who or which provides vocational education and training;

university means a university established under a written law;

VET course means a course of study or training or both study and training in which vocational education and training is provided;

VET inspector means a person appointed under section 61A(2);

- (3) In section 5(1) in the definition of **vocational education and training** —
 - (a) delete “post-compulsory”;
 - (b) delete “secondary”.

- (4) In section 5(2) delete “Profile” and insert:

Plan

7. Section 6 replaced

Delete section 6 and insert:

6. Vocational education and training provided by a school or university

- (1) The Minister may, for the purposes of this Act, approve a specified course or programme, or class of course or programme, provided by a specified school or university.
- (2) Any course or programme so approved is within the definition of “vocational education and training” in section 5(1).
- (3) The power conferred by subsection (1) may only be exercised with the concurrence of —
- (a) in the case of a school — the Minister administering the *School Education Act 1999*;
 - (b) in the case of a university — the Minister administering the written law that establishes the university.

8. Part 2 Division 1A inserted

At the beginning of Part 2 insert:

Division 1A — VET (WA) Ministerial Corporation

7A. Body corporate continued

- (1) The body corporate called the “Minister for Training”, established previously under this Act, continues under the name “VET (WA) Ministerial Corporation”.
- (2) VET (WA) Ministerial Corporation is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against VET (WA) Ministerial Corporation in its corporate name.
- (4) VET (WA) Ministerial Corporation is to be governed by the Minister.

7B. Status and purpose

- (1) VET (WA) Ministerial Corporation (the *corporation*) is an agent of the State and has the status, immunities, and privileges of the State.
- (2) The corporation has power —
 - (a) to enter into any contract that the Minister, under this Act, has power to enter into; and
 - (b) to acquire, hold and dispose of any property that the Minister, under this Act, has power to acquire, hold and dispose of.
- (3) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the corporation, the corporation and those officers are not an organisation for the purposes of that Act.

7. Execution of documents

- (1) VET (WA) Ministerial Corporation (the *corporation*) is to have a common seal.
- (2) A document is duly executed by the corporation if —
 - (a) the corporation's common seal is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the corporation by the Minister; or
 - (c) it is signed on behalf of the corporation by the chief executive, or another person, authorised under subsection (5).
- (3) The corporation's common seal is not to be affixed to a document except as authorised by the corporation.
- (4) The corporation's common seal is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The corporation, in writing under its common seal, may authorise the chief executive or other person to sign documents on its behalf, either generally or subject to conditions or restrictions specified in the authorisation.
- (6) A document executed by the chief executive or other person under this section without the common seal of the corporation is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).

- (7) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (8) If a document bears a seal purporting to be the common seal of the corporation, it is to be presumed that the seal is the common seal of the corporation until the contrary is shown.

9. Section 7 deleted

Delete section 7.

10. Section 8 amended

- (1) In section 8:
 - (a) delete “The functions of the Minister are —” and insert:
 - (1) The main functions of the Minister are as follows —
 - (b) delete paragraph (b) and insert:
 - (b) to ensure as far as practicable that the needs set out in the State Training Plan are provided by a combination of —
 - (i) public training providers, whether or not under contracts with the Minister; and
 - (ii) private training providers under contracts with the Minister;
 - (c) in paragraph (c) delete “Act; and” and insert:
 - Act;
- (2) At the end of section 8 insert:
 - (2) The Minister from time to time must require the Board to give the Minister a draft State Training Plan for a period specified by the Minister.
 - (3) The Minister may approve any draft State Training Plan or refuse to approve it and require the Board to prepare another or an amended draft.

11. Section 9 amended

- (1) In section 9(2):
- (a) delete paragraph (a);
 - (b) delete paragraph (d) and insert:

(d) after publicly inviting tenders or expressions of interest to provide vocational education and training, enter into contracts with training providers under which the training providers provide vocational education and training or services related to vocational education and training;
 - (c) in paragraph (e) after “persons” insert:

for and
 - (d) in paragraph (h) delete “knowledge and”;
 - (e) in paragraph (h) delete “copyright and other”.
- (2) In section 9(3) after “subsection (2)(d),” insert:
- (e),

12. Section 11 amended

- In section 11(4):
- (a) in paragraph (a) delete “Division 2 of Part 4; or” and insert:

Part 7A Division 2; or
 - (b) in paragraph (b) delete “section 27(1).” and insert:

Part 7A Division 1.

13. Section 12 amended

In section 12(1) delete “secondary”.

14. Section 13 amended

In section 13(3) delete “Division 2 of Part 4; or” and insert:

Part 7A Division 2; or

15. Sections 15 and 16 deleted

Delete sections 15 and 16.

16. Section 17B amended

- (1) In section 17B(1) delete “an operating account approved by the Treasurer —” and insert:

an agency special purpose account established under the *Financial Management Act 2006* section 16 —

- (2) In section 17B(2) delete “the operating” and insert:

that

- (3) Delete section 17B(3).

17. Section 19 amended

After section 19(3) insert:

- (4A) The Board’s members must include —
- (a) at least one person experienced in employers’ interests;
and
 - (b) at least one person experienced in workers’ interests.
- (4B) For the purpose of complying with subsection (4A)(a), the Minister, in writing, may request the body called the Chamber of Commerce and Industry of Western Australia (Inc.) to give the Minister in accordance with the request the name of one or more (as is specified in the request) persons each of whom has the required experience and is willing to act as a member.
- (4C) For the purpose of complying with subsection (4A)(b), the Minister, in writing, may request the body called UnionsWA to give the Minister in accordance with the request the name of one or more (as is specified in the request) persons each of whom has the required experience and is willing to act as a member.

18. Section 21 amended

(1) In section 21(1):

- (a) delete “Board are —” and insert:

Board are as follows —

- (b) delete paragraphs (a) and (b) and insert:

- (a) to give the Minister a draft State Training Plan as and when required by the Minister;

- (b) to recognise various industry training advisory bodies as bodies from which the Board takes advice for the purpose of drafting a State Training Plan or making recommendations to the Minister under Part 7;

- (ca) to make recommendations that are required or permitted to be made by it to the Minister under Part 7;

- (c) delete paragraph (c) and insert:

- (c) to prepare, for consideration by the Minister, policy which aims to improve the links between specific industry developments and vocational education and training so as to gain optimum employment opportunities for people, and ensure the availability of appropriately skilled labour, in the State;

- (d) delete paragraph (d) and “and” after it and insert:

- (d) to perform the functions it has under Part 7A Division 2;

19. Section 23 replaced

Delete section 23 and insert:

23. Committees of the Board

- (1) The Board may appoint committees to assist it to perform its functions, and may abolish or alter any committee it has appointed.

- (2) A committee may include people who are not members of the Board but must include at least one member of the Board.

- (3) The Board may by resolution delegate to a committee, either generally or as otherwise provided in the resolution, any of the Board's functions under this Act other than this power of delegation.
- (4) A committee may determine its own procedures but they must be consistent with any directions of the Board and the terms of any delegation under which the committee is acting.

20. Part 4 Division 1 heading deleted

Delete the heading to Part 4 Division 1.

21. Section 25 amended

Delete section 25(3) and insert:

- (3) The Minister must not appoint a person as a member of the Council unless satisfied the person has expertise, qualifications or experience relevant to the Council's functions.

22. Section 26 amended

After section 26(2) insert:

- (3) The chief executive must provide staff, services and facilities to enable the Council to perform its functions.

23. Section 27 replaced

Delete section 27 and insert:

27. Functions of the Council

- (1) The functions of the Council are set out in this Part and Part 7A.
- (2) The Council may do all things necessary or convenient to be done for or in connection with the performance of its functions.

24. Section 28 amended

In section 28 after "person," insert:

including a committee appointed under section 29,

25. Section 29 replaced

Delete section 29 and insert:

29. Committees of the Council

- (1) The Council may appoint committees to assist it to perform its functions, and may abolish or alter any committee it has appointed.
- (2) A committee may include people who are not members of the Council but must include at least one member of the Council.
- (3) A committee may determine its own procedures but they must be consistent with any directions of the Council and the terms of any delegation under which the committee is acting.

26. Part 4 Division 2 replaced

Delete Part 4 Division 2 and insert:

31. Council may provide information to others

- (1) The Council may provide information received by it in the course of performing its functions to any person it thinks fit.
- (2) Information provided under this section may be provided subject to any conditions the Council decides.

27. Section 37 amended

- (1) At the beginning of section 37 insert:

(1A) In this section —
business arrangement has the meaning given in section 9(4);
participate has the meaning given in section 9(4).

- (2) In section 37(1):
 - (a) delete “college are —” and insert:

college are as follows —

- (b) delete paragraphs (a) and (b) and insert:

- (a) to provide vocational education and training;

- (ba) to tender for and enter into contracts for the provision by it of vocational education and training;
- (bb) to provide vocational education and training on a fee for service basis;
- (b) to confer awards and, if it is a registered training provider and, under the terms of its registration as such, authorised to do so —
 - (i) approved VET qualifications; and
 - (ii) prescribed VET qualifications;
- (ca) to provide, for a fee or otherwise, or enter into contracts to provide, products, consultancy or other services in the course of, or incidental to, the provision by the college of vocational education and training;
- (c) after paragraph (c) insert:
- (da) to turn to account the vocational education and training expertise of the college by means of the sale of services and the commercial exploitation of intellectual property, including the assignment and licensing of such property;
- (d) after paragraph (d) insert:
- (ea) to provide adult and community education;
- (e) in paragraph (e) after “services to” insert:

its
- (f) delete paragraph (f) and insert:
 - (fa) to provide housing for its staff, and residential accommodation for its students;
 - (fb) with the approval of the Minister, to establish and maintain branches of the college at such places in the State as its governing council thinks fit;
 - (f) with the approval of the Minister, on terms and conditions approved by the Treasurer, to participate in business arrangements relating to the provision of vocational education and training;

- (g) in paragraph (g) delete “activities, including the provision of adult and community education,” and insert:

activities
 - (h) delete paragraph (h) and “and” after it and insert:

(h) to provide education on behalf of another educational institution;
 - (i) delete paragraph (i) and insert:

(i) to perform any function prescribed.
- (3) Delete section 37(2) and insert:

(2) A college must perform its functions in accordance with its strategic plan last approved under section 43 and its business plan last approved under section 44A.
 - (4) In section 37(3) delete “under section 43(2)(f).” and insert:

in which the college participates under subsection (1)(f).
 - (5) Delete section 37(4) and insert:

(4) The power conferred by subsection (1)(f) is not subject to, and may be exercised despite, the *State Supply Commission Act 1991*.
- 28. Section 42 amended**
- Delete section 42(2) and (3) and insert:
- (2) A governing council of a college may do all things necessary or convenient to be done for or in connection with the performance of its functions.

- (3) A governing council may perform its functions in another State or a Territory if that is necessary or convenient for the performance of the functions of the college.
- (4) In performing its functions the governing council of a college must ensure the college's courses, programmes and services are responsive to, and meet, the needs of students, industry and the community.

29. Section 43 replaced

Delete section 43 and insert:

43. Strategic plans

- (1) Before 1 September in each year, or before some other date notified to the college by the Minister in writing, a college must give the Minister a draft strategic plan for the college for such period, beginning on the following 1 January, as is prescribed.
- (2) A college's strategic plan must set out —
 - (a) the college's medium to long term objectives (including economic and financial objectives) and operational targets and how those objectives and targets will be achieved; and
 - (b) any other matters that are prescribed.
- (3) A college's strategic plan must be consistent with the State Training Plan.
- (4) The Minister may approve a draft plan received from a college under this section or refuse to approve it and require the college to prepare another or an amended draft.
- (5) A college may change a plan approved by the Minister under this section with the approval of the Minister.

30. Section 44A inserted

After section 43 insert:

44A. Annual business plans

- (1) Before 1 September in each year, or before some other date notified to the college by the Minister in writing, a college must give the Minister a draft business plan for the college for the year that begins on the following 1 January.

- (2) A college's business plan for a year must set out —
 - (a) the vocational education and training that the college plans to provide in the year; and
 - (b) the other functions of the college that it plans to perform in the year; and
 - (c) any other matters that are prescribed.
- (3) A college's business plan for a year must be consistent with the State Training Plan, and the college's strategic plan (if any) approved under section 43, that apply to the year.
- (4) The Minister may approve a draft plan received from a college under this section or refuse to approve it and require the college to prepare another or an amended draft.
- (5) A college may change a plan approved by the Minister under this section with the approval of the Minister.

31. Sections 48, 49 and 50 replaced

Delete sections 48, 49 and 50 and insert:

48. Funds of a college

A college's funds consist of the following —

- (a) monies appropriated by Parliament;
- (b) monies received from commercial activities conducted by the college;
- (c) monies borrowed by it under section 51;
- (d) any other monies lawfully received by it.

49. Use of a college's funds

A college's funds are to be applied to meet the following —

- (a) the college's expenses in performing its functions;
- (b) the remuneration and allowances payable under section 63 to the members of the college's governing council;
- (c) the salaries and wages of, and the other expenses associated with the employment of —
 - (i) the college's managing director; and
 - (ii) the college's staff.

50. College accounts

- (1) An account called the (name of college) Account is to be established for each college —

- (a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or
 - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.
- (2) Any funds of a college referred to in section 48 must be credited to the college's account.
- (3) Any funds of a college applied under section 49 must be debited to the college's account.

32. Section 52 amended

In section 52 delete "college Trust Account" and insert:

college's account

33. Section 53 replaced

Delete section 53 and insert:

53. Minister may direct transfer of college's funds

If the Minister is satisfied that there is available in a college's account a credit balance in excess of the amount reasonably required by the college, the Minister may direct that the whole or a part of that excess be credited to —

- (a) another college's account; or
- (b) an account to which the *Financial Management Act 2006* applies that is operated for or in connection with the purposes of this Act.

34. Section 54 amended

Delete section 54(4).

35. Section 55 amended

In section 55:

- (a) delete paragraph (b) and "or" after it and insert:
- (b) to perform its functions in accordance with the college's strategic plan last approved under section 43 or its business plan last approved under section 44A; or

(b) after paragraph (a) insert:

or

36. Part 5 Division 5 inserted

At the end of Part 5 insert:

Division 5 — Miscellaneous matters

57A. Closure of college, consequences of

- (1) In this section —
closing day of a college, means the day on which an order that closes the college, published under section 35(b) or 56(1)(b), takes effect.
- (2) The Minister must notify the Treasurer as soon as practicable after publishing an order under section 35(b) or 56(1)(b) that closes a college.
- (3) On the closing day of a college the following provisions apply —
 - (a) all assets and rights of the college become assets and rights of the Minister without the need for any transfer;
 - (b) all liabilities of the college, including contingent liabilities, become liabilities of the Minister;
 - (c) any agreement to which the college is a party (other than one to which the Minister was the other party) has effect as if the Minister was substituted for the college as a party to that agreement;
 - (d) all proceedings commenced before the closing day by or against the college are to be taken to be proceedings pending by or against the Minister;
 - (e) anything done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the closing day by, to or in respect of the college (to the extent that that thing has any force or effect) is to be taken to have been done by, to or in respect of the Minister;
 - (f) the Minister becomes the owner of all the college's registers, documents, books and other records, however compiled, recorded or stored and of any tape, disk or other device or medium relating to such records;
 - (g) the status of a college as a body corporate ceases.

- (4) The Minister is to complete the winding-up of the operations and affairs of the college as soon as practicable after the closing day and for that purpose the Minister has, and may exercise, any powers that are necessary.
- (5) On the closure of a college, the *Financial Management Act 2006* Part 5 Division 3 applies to and in respect of the college.

37. Section 57 amended

- (1) Delete section 57(3).
- (2) After section 57(4) insert:
 - (5) An institution established under subsection (2) is to be regarded as a service under the control of the department of the Public Service that principally assists the Minister to administer this Part.

38. Part 7A inserted

Before Part 7 insert:

**Part 7A — Regulation of the provision of some
vocational education and training**

Division 1 — General matters

58A. Offences

- (1) A person must not claim or purport to provide an approved VET course if —
 - (a) the person is not a registered training provider; or
 - (b) the person is a registered training provider but is not permitted to provide the course by —
 - (i) any condition of the person's registration as a registered training provider; or
 - (ii) any condition of the course's accreditation; or
 - (iii) any order of the Council;or
 - (c) the course is not an approved VET course.
- (2) Subsection (1)(a) does not apply to a person who, under an arrangement with a registered training provider, provides an approved VET course on behalf of the provider while being monitored by the provider.

- (3) A person must not confer, or claim or purport to confer, an approved VET qualification or a prescribed VET qualification if —
- (a) the person is not a registered training provider; or
 - (b) the person is a registered training provider but is not permitted to confer the qualification by —
 - (i) any condition of the person's registration as a registered training provider; or
 - (ii) any order of the Council.
- (4) A person must not claim or purport to confer an approved VET qualification, or a prescribed VET qualification, if the qualification is not an approved VET qualification or a prescribed VET qualification.
- (5) A person must not claim or purport to be a registered training provider if —
- (a) the person is not a registered training provider; or
 - (b) the person is a registered training provider but the Council has ordered the person not to operate in this State.

Penalty: a fine of \$10 000.

58B. Council may register training providers

Subject to the regulations, the Council, on an application by a person or on its own initiative —

- (a) may register a training provider, either unconditionally or subject to conditions decided by the Council; and
- (b) if a registered training provider's registration was granted by the Council, may vary, suspend or cancel the registration; and
- (c) if a registered training provider's registration was not granted by the Council, may —
 - (i) order the provider not to operate in this State; or
 - (ii) by order, impose conditions restricting the provider's operations in this State.

58C. Council may accredit courses

Subject to the regulations, the Council, on an application by a person or on its own initiative —

- (a) may accredit a VET course, either unconditionally or subject to conditions decided by the Council; and
- (b) if an approved VET course is accredited by the Council, may vary, suspend or cancel the accreditation.

58D. Council may inquire into training providers and courses

For the purpose of ensuring this Act is complied with and the quality of training providers and VET courses, the Council may inquire into —

- (a) a training provider that is, or that has applied to be, registered by the Council under this Part; and
- (b) a VET course that is, or that is the subject of an application to be, accredited by the Council under this Part; and
- (c) at the request of, or after consulting, a body with functions similar to the Council's under a corresponding law —
 - (i) a training provider that is, or that has applied to be, registered by that body; and
 - (ii) a VET course that is, or that is the subject of an application to be, accredited by that body.

58E. Council may cancel certain qualifications

- (1) The Council may cancel an approved VET qualification or a prescribed VET qualification conferred by a registered training provider if the Council is satisfied that it was conferred —
 - (a) by mistake or on the basis of false or misleading information; or
 - (b) in contravention of this Act.
- (2) The Council must not cancel an approved VET qualification or a prescribed VET qualification unless the Council —
 - (a) has given the person who conferred the qualification and the person who received it written notice of —
 - (i) the Council's intention to cancel it; and
 - (ii) their entitlement to make representations to the Council about the matter;
 - and
 - (b) has afforded those persons a reasonable opportunity to make representations to the Council about the matter; and
 - (c) has considered any representations made to the Council by those persons within the time allowed by the Council for doing so.
- (3) To cancel an approved VET qualification or a prescribed VET qualification, the Council must give written notice of the cancellation to the person who conferred the qualification and the person who received it.

58F. When Council's decisions have effect

A decision of the Council made under section 58B, 58C or 58E takes effect —

- (a) if no appeal is commenced under section 58G, when the time for commencing an appeal has passed; or
- (b) if an appeal is commenced under section 58G, when that appeal is determined under section 58J or is withdrawn; or
- (c) on any later day the Council may specify.

Division 2 — Appeals against the Council's decisions

58G. Appeals against the Council's decisions

- (1) A person who is dissatisfied with a decision of the Council made under section 58B, 58C or 58E may appeal against it to the Board.
- (2) An appeal can be only on the ground that, in making the decision appealed against, the Council erred in its application of, or failed to apply criteria or procedures in, guidelines it was required to apply under section 13 or by the regulations.
- (3) An appeal against a decision of the Council must —
 - (a) be commenced by giving the Board a written notice stating the decision and the grounds of the appeal; and
 - (b) be commenced within 21 days after the date on which the appellant was notified of the decision; and
 - (c) be conducted in accordance with the regulations.
- (4) The Board must give the Council a copy of any appeal notice.

58H. Board to establish review panels

- (1) To assist it in determining an appeal commenced under section 58G, the Board must establish an independent review panel comprised of as many persons with expertise in the area of the subject matter of the appeal as it considers appropriate.
- (2) The review panel must consider the decision appealed against and submit to the Board, within the time the Board allows, a written recommendation on the issues raised by the appeal.

58I. Reference back to Council

- (1) If a review panel recommends an appeal be allowed, the Board must give the Council a copy of the panel's recommendation and ask the Council to reconsider the decision appealed against.
- (2) If the Council receives a request made under subsection (1), it must advise the Board, within the time the Board allows, whether

it considers the decision appealed against should be altered or confirmed.

58J. Determination of appeal

- (1) If a review panel recommends an appeal not be allowed, the Board must disallow the appeal.
- (2) If a review panel recommends an appeal be allowed and under section 58I(2) the Council advises that the decision appealed against should be altered, the Board must allow the appeal.
- (3) If a review panel recommends an appeal be allowed and under section 58I(2) the Council advises that the decision appealed against should be confirmed, the Board must decide whether to —
 - (a) accept the panel's recommendation and allow the appeal; or
 - (b) accept the decision appealed against and disallow the appeal.
- (4) If under subsection (2) or (3)(a) the Board allows an appeal, it must set aside the decision appealed against and substitute a decision that accords with the review panel's recommendation.
- (5) The Board must give the appellant —
 - (a) written notice of any decision it makes under this section and of the reasons for it; and
 - (b) a copy of the review panel's recommendation.
- (6) A decision made by the Board under this section on an appeal is final.

Division 3 — Miscellaneous matters

58. Regulations for this Part

Without limiting the generality of section 67(1), regulations made under section 67 for the purposes of this Part may do any of the following —

- (a) provide for who may apply to the Council;
- (b) provide for how applications to the Council must be made;
- (c) prescribe criteria (including standards and guidelines) that the Council must or may take into account when deciding an application made to it;
- (d) prescribe the conditions that the Council may impose when registering a training provider, including but not limited to conditions that limit —

- (i) the approved VET courses that the provider can provide;
 - (ii) who the provider can assess for approved VET qualifications or prescribed VET qualifications;
 - (iii) the approved VET qualifications or prescribed VET qualifications that the provider can confer;
- (e) provide for the conditions that the Council may impose when accrediting a VET course;
- (f) provide for the period of any registration of a training provider or any accreditation of a VET course;
- (g) provide for any matter of a savings nature that may be needed when the accreditation of a VET course expires;
- (h) provide for a register of decisions by the Council;
- (i) prescribe the circumstances that justify the Council deciding to —
 - (i) vary, suspend or cancel the registration of a training provider or the accreditation of a VET course;
 - (ii) make an order against a registered training provider whose registration was not granted by the Council;
- (j) confer a discretion on the Council;
- (k) require registered training providers and persons who hold an accreditation of a VET course to give the Council information, including when a registration or accreditation is suspended;
- (l) provide for registered training providers to keep records relevant to vocational education and training;
- (m) require persons who cease to be registered training providers to provide the Council with records of —
 - (i) the courses they provided, in whole or part, and the persons to whom such courses were provided; and
 - (ii) the qualifications they conferred and the persons on whom the qualifications were conferred, before ceasing to be registered;
- (n) prescribe fees to be paid by —
 - (i) persons applying to the Council;
 - (ii) registered training providers and persons who hold an accreditation of a VET course, including

- when a registration or accreditation is suspended;
- (iii) registered training providers and persons who hold an accreditation of a VET course for any inquiry the Council makes under section 58D;
 - (iv) persons applying to the Council for a copy of any record about the person held by the Council.

39. Part 7 replaced

Delete Part 7 and insert:

Part 7 — Obtaining prescribed VET qualifications and approved VET qualifications

Division 1 — Preliminary matters

60A. Terms used in this Part

In this Part —

apprentice means the person who is named in a training contract as the person who will be trained under the contract, whether the person is termed an apprentice, a trainee, a cadet, an intern or some other term;

class, in relation to a qualification, means the class into which a prescribed VET qualification is classified under section 60C;

training contract means a contract that complies with section 60E.

60B. Inconsistency with industrial relations laws, awards etc.

If a provision of this Part or of regulations made under section 60 is inconsistent with a provision of the *Industrial Relations Act 1979* or any order, award or industrial agreement in force under that Act, the former provision prevails.

60C. Classification of prescribed VET qualifications

- (1) The Minister must not act under this section without having received and considered the Board's advice and recommendation given after it has consulted in accordance with the regulations.
- (2) Any act done by the Minister under this section must be done in writing and be published in the *Gazette*.
- (3) The Minister must classify each prescribed VET qualification that it is possible to confer in respect of occupations, businesses, employments or trades into one of these 3 classes —

- (a) class A qualifications, being qualifications that a person cannot obtain except by fulfilling the obligations of an apprentice under a training contract;
 - (b) class B qualifications, being qualifications that a person may, but need not, obtain by fulfilling the obligations of an apprentice under a training contract;
 - (c) class C qualifications, being qualifications that a person cannot obtain by fulfilling the obligations of an apprentice under a training contract.
- (4) The classification of a prescribed VET qualification does not limit the operation of Division 3.
- (5) The Minister may —
 - (a) classify a prescribed VET qualification on any condition the Minister decides; and
 - (b) in relation to a class A or class B qualification, impose any requirement for training contracts for the qualification the Minister decides, including but not limited to —
 - (i) pre-conditions to be satisfied before training contracts for the qualification can be entered into; and
 - (ii) the period and terms of the contracts.
- (6) The Minister may vary the classification of a prescribed VET qualification and vary or cancel any condition or requirement imposed under subsection (5).
- (7) The chief executive must keep and make available to the public a register of this information —
 - (a) class A and class B qualifications;
 - (b) any conditions applicable to those qualifications;
 - (c) any requirements applicable to training contracts for those qualifications.

60D. Offences

- (1) A registered training provider must not confer, or offer or purport to confer, a class A qualification on a person unless —
 - (a) the person has fulfilled the obligations of an apprentice under a training contract that was registered under Division 2; or
 - (b) the person has satisfied the registered training provider under Division 3.

- (2) An employer must not enter into a training contract with an employee under which the employee is to be trained in order to obtain a prescribed VET qualification unless the qualification is a class A or class B qualification.
- (3) An employer must not agree to train an employee for the purpose of the employee obtaining a class A or class B qualification except under a training contract.
Penalty: a fine of \$10 000.

Division 2 — Qualifying by doing an apprenticeship

60E. Training contracts

- (1) A training contract is a contract under which —
 - (a) a person who is or will be an employer agrees the following —
 - (i) that a person who is or will be an employee will be employed while he or she fulfils the requirements of the contract in order to obtain a class A or class B qualification;
 - (ii) to train the employee in accordance with the contract;
 - (iii) to permit the employee to fulfil his or her obligations under the contract and to be trained and assessed in accordance with the contract;
 - (iv) that any time spent by the employee in performing his or her obligations under the contract and in being trained and assessed under the contract, whether at the employer's workplace or not, is to be taken for all purposes (including the payment of remuneration) to be time spent working for the employer;
 - and
 - (b) the employee agrees to fulfil his or her obligations under the contract and to be trained and assessed in accordance with the contract.
- (2) With the approval of the chief executive, 2 or more employers may enter into a training contract with one apprentice.
- (3) A training contract must do the following —
 - (a) state the class A or class B qualification to which the contract relates;
 - (b) comply with the regulations and with any requirements imposed under the regulations.

- (4) Subject to the regulations, a training contract —
 - (a) may be varied by the parties; and
 - (b) may be suspended by a party; and
 - (c) may be assigned by the employer to another person who employs the apprentice.

60F. Registration of training contracts

- (1) A training contract does not commence until it is registered by the chief executive under this section.
- (2) An employer who enters into a training contract must lodge it with the chief executive in accordance with the regulations for registration.
Penalty: a fine of \$3 000.
- (3) The chief executive may refuse to register a training contract —
 - (a) if the contract was not lodged in accordance with the regulations; or
 - (b) if a requirement for the contract imposed under section 60C(5) has not been complied with; or
 - (c) if the content or form of the contract does not comply with the regulations; or
 - (d) if the chief executive is satisfied the employer is not able to train the apprentice adequately or is not a fit and proper person to enter into the contract; or
 - (e) if the apprentice is ineligible under the regulations to enter into the contract; or
 - (f) for any reason prescribed in the regulations.
- (4) Subsections (2) and (3), with any necessary changes, apply to a variation of a training contract.
- (5) The chief executive may cancel the registration of a training contract for any reason prescribed in the regulations.
- (6) If the chief executive cancels the registration of a training contract, the contract ceases to have effect.
- (7) The chief executive must keep a register of registered training contracts.
- (8) A person who is dissatisfied by a decision made by the chief executive under this section may appeal against it to the Western Australian Industrial Relations Commission.
- (9) On an appeal made under subsection (8) against a decision, the Commission must rehear the matter and may confirm the decision

or set it aside and either substitute a decision the chief executive could make or order the chief executive to decide the matter again.

60G. Terminating training contracts

- (1) Subject to the regulations, a party to a training contract may terminate it.
- (2) An employer who is a party to a training contract the probation period of which (if any) has expired must not terminate the contract unless —
 - (a) the apprentice has consented to the termination; or
 - (b) the chief executive has approved the termination.Penalty: a fine of \$10 000.
- (3) The chief executive must approve the termination of a training contract under subsection (2) if satisfied —
 - (a) the employer has ceased or is about to cease business; or
 - (b) the employer is unable to fulfil the employer's obligations under the contract due to a substantial change of circumstances that has occurred since the contract was entered into; or
 - (c) the apprentice has engaged in serious misconduct; or
 - (d) as to any matter prescribed,but otherwise may refuse to approve the termination.
- (4) A person who is dissatisfied by a decision made by the chief executive under this section may appeal against it to the Western Australian Industrial Relations Commission.
- (5) On an appeal made under subsection (4) against a decision, the Commission must rehear the matter and may confirm the decision or set it aside and either substitute a decision the chief executive could make or order the chief executive to decide the matter again.

60H. Consequences of training contracts ceasing to have effect

- (1) If a training contract ceases to have effect, whether under section 60F(6) or because it is terminated or expires or for any other reason, the employment of the apprentice by the employer under the contract ceases.
- (2) Subsection (1) does not prevent the parties entering into another employment agreement or arrangement.

Division 3 — Qualifying by demonstrating competence

60I. Conferring prescribed VET qualifications to competent persons

- (1) Subject to the regulations, a registered training provider may confer a class A qualification on a person who —
 - (a) has not entered into a training contract under Division 2 in respect of the qualification; or
 - (b) has entered into such a contract as an apprentice but has only partly fulfilled the apprentice's obligations under it,if, after assessing the person, the provider is satisfied the person nevertheless has, as a result of training received from an employer and other learning, the skills and competency required for the qualification.
- (2) Subject to the regulations, a registered training provider may confer a class B qualification on a person who —
 - (a) has not entered into a training contract under Division 2 in respect of the qualification; or
 - (b) has entered into such a contract as an apprentice but has only partly fulfilled the apprentice's obligations under it; or
 - (c) has not undertaken or successfully completed an approved VET course in respect of the qualification,if, after assessing the person, the provider is satisfied the person nevertheless has the skills and competency required for the qualification.
- (3) Subject to the regulations, a registered training provider may confer a class C qualification on a person who has not undertaken or successfully completed an approved VET course in respect of the qualification if, after assessing the person, the provider is satisfied the person nevertheless has the skills and competency required for the qualification.
- (4) Subject to the regulations, a registered training provider may confer an approved VET qualification on a person who has not undertaken or successfully completed an approved VET course in respect of the qualification if, after assessing the person, the provider is satisfied the person nevertheless has the skills and competency required for the qualification.

Division 4 — Miscellaneous matters

60. Regulations for this Part

Without limiting the generality of section 67(1), regulations made under section 67 for the purposes of this Part may do any of the following —

- (a) provide pre-conditions to be satisfied before persons enter into training contracts;
- (b) provide for the content or form or both of training contracts, either generally or in relation to specific prescribed VET qualifications;
- (c) give persons under 18 years of age the capacity to enter into training contracts;
- (d) provide for criteria (including standards and guidelines) that the chief executive must or may take into account when deciding whether to register or to cancel the registration of training contracts;
- (e) provide for the registration of contracts, including for backdating registration;
- (f) in relation to disputes arising under training contracts between the parties to them —
 - (i) provide for their resolution, including by the chief executive or a person appointed by the chief executive;
 - (ii) confer on any such party aggrieved by a decision made by a person referred to in subparagraph (i) in respect of such a dispute a right of appeal to the Western Australian Industrial Relations Commission;
- (g) require parties to, and registered training providers named in, training contracts to give the chief executive information relevant to and to the carrying out of the contracts;
- (h) impose functions on registered training providers that are named in training contracts;
- (i) confer on persons refused approved VET qualifications or prescribed VET qualifications a right of appeal against the refusal;
- (j) prescribe the content and form of approved VET qualifications and prescribed VET qualifications;
- (k) confer a discretionary authority on the Minister.

40. Part 8A inserted

Before Part 8 insert:

Part 8A — Enforcement matters

61A. VET inspectors, appointment of

- (1) In this section —
certificate means a certificate given under subsection (3).
- (2) The Minister, in writing, may appoint persons to investigate —
 - (a) registered training providers, including but not limited to the matters that may be inquired into under section 58D;
 - (b) suspected breaches of training contracts;
 - (c) suspected contraventions of this Act,on any terms the Minister decides and specifies in the appointment.
- (3) The Minister must give each VET inspector a certificate of his or her appointment.
- (4) A person who ceases to be a VET inspector must return his or her certificate to the Minister within 21 days.
Penalty: a fine of \$400.
- (5) A certificate that purports to be signed by the Minister is, in the absence of evidence to the contrary, evidence of its contents.
- (6) If requested to do so and if practicable, a VET inspector must produce his or her certificate for inspection when exercising a function of a VET inspector.

61B. VET inspectors' powers

- (1) For the purpose of investigating any matter that he or she is authorised to investigate, a VET inspector may do any of the following —
 - (a) with the occupier's consent, enter, inspect and search any place, other than a dwelling, that the inspector suspects on reasonable grounds is a place where vocational education and training is provided;
 - (b) give a person a written direction to produce to the inspector the records that are specified or described in the direction and that are in the person's possession;
 - (c) with the consent of the person in possession of the record, read and seize or copy any record the inspector

suspects on reasonable grounds is or may be relevant to the matter being investigated.

- (2) A person who is given a written direction under subsection (1)(b) must obey it.
Penalty: a fine of \$5 000.
- (3) A person must not give a VET inspector information that the person knows is false or misleading.
Penalty: a fine of \$5 000.

61C. Entry warrant for a place

- (1) A VET inspector may apply to a JP for an entry warrant authorising the entry of a place, including a dwelling, for the purpose of investigating any matter the inspector is authorised to investigate.
- (2) A VET inspector may apply for an entry warrant for a place even if the inspector has not asked the occupier for consent to enter the place.
- (3) The application must be made in accordance with the *Criminal Investigation Act 2006* section 13.
- (4) The application must —
 - (a) describe with reasonable particularity the place to be entered; and
 - (b) state —
 - (i) that the VET inspector suspects the place is a place where vocational education and training is provided and the grounds for the suspicion; or
 - (ii) that the VET inspector suspects there are records at the place that relate to the provision of vocational education and training and the grounds for the suspicion;
 - and
 - (c) state the purposes for which entry to the place is wanted; and
 - (d) state for how long the inspector believes the warrant should remain in force.
- (5) On such an application, a JP may issue an entry warrant authorising the entry of a place for the purpose of investigating any matter the inspector is authorised to investigate if satisfied that, in respect of the matters in subsection (4) on which the applicant is required to have a suspicion, there are reasonable grounds for the applicant to have that suspicion.

- (6) An entry warrant must contain this information —
 - (a) a reasonably particular description of the place to which it relates;
 - (b) the period, not exceeding 7 days, in which it may be executed;
 - (c) the date and time when it was issued.
- (7) Under an entry warrant issued to a VET inspector, the inspector, with any assistance that is reasonably necessary in the circumstances, may do any or all of the following —
 - (a) using any force that is reasonably necessary, enter, inspect and search the place described in the warrant for the purpose of investigating any matter the inspector is authorised to investigate;
 - (b) read and seize or copy any record the inspector suspects on reasonable grounds is or may be relevant to the matter being investigated;
 - (c) for the purposes of paragraph (b) —
 - (i) make reasonable use of any equipment, facilities or services in the place that are needed; and
 - (ii) direct an occupier of the place to do anything that is reasonable and necessary to facilitate that use.
- (8) A person who is given a direction under subsection (7)(c)(ii) must obey it.

Penalty: a fine of \$5 000.

61D. Consequences of investigations

- (1) A VET inspector may give the Council any information that the Council may need in relation to performing its functions under Part 7A.
- (2) A prosecution for an offence against this Act cannot be commenced except by or with the approval of the chief executive officer of the department of the Public Service principally assisting the Minister to administer the provision that creates the offence.

61. Evidentiary matters

- (1) A certificate that purports to be issued by the Council stating —
 - (a) that a person was or was not a registered training provider at a time specified in the certificate;
 - (b) the conditions of a registered training provider's registration at a time specified in the certificate;

- (c) that a VET course was or was not an approved VET course at a time specified in the certificate;
- (d) the conditions of an approved VET course's accreditation at a time specified in the certificate,

is, in the absence of evidence to the contrary, evidence of its contents.

- (2) A certificate that purports to be signed by the chief executive officer of the department of the Public Service principally assisting the Minister to administer Part 7 stating —
 - (a) the classification of a prescribed VET qualification under section 60C at a time specified in the certificate;
 - (b) the requirements, if any, imposed under section 60C by the Minister for a training contract for a prescribed VET qualification at a time specified in the certificate,

is, in the absence of evidence to the contrary, evidence of its contents.

41. Section 63 amended

In section 63 delete paragraph (a), paragraph (b) and “and” after it and paragraph (c) and insert:

- (a) the Board or a committee of the Board; or
- (b) the Council or a committee of the Council; or
- (c) a review panel appointed under section 58H(1); or
- (d) the governing council of a college (other than the managing director or any member of staff of the college),

42. Sections 65 and 66 deleted

Delete sections 65 and 66.

43. Section 67 amended

In section 67(2) delete paragraph (c) and insert:

- (c) create offences punishable by a fine of not more than \$5 000.

44. Section 68 replaced

Delete section 68 and insert:

68. Transitional provisions (Sch. 2)

- (1) Schedule 2 sets out transitional provisions.
- (2) Schedule 2 does not affect the operation of the *Interpretation Act 1984* Part V.

45. Section 69 replaced

Delete section 69 and insert:

69. Transitional regulations

- (1) This section does not affect the operation of the *Interpretation Act 1984* Part V.
- (2) Without limiting section 67 regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with any issue or matter of a savings or transitional nature —
 - (a) that arises as a result of the enactment of the *Training Legislation Amendment and Repeal Act 2008*; and
 - (b) for which there is no sufficient provision in Schedule 2.
- (3) Regulations made under this section must be made within 12 months after the day on which this section comes into operation.
- (4) Regulations made under this section may provide that specific provisions of this Act do not apply, or apply with modifications specified in the regulations, to or in relation to any matter.
- (5) Regulations made under this section may provide that a state of affairs specified in the regulations is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations come into operation but not earlier than the commencement of this section.
- (6) If regulations contain a provision referred to in subsection (5), the provision has effect according to its terms but it does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the regulations commenced; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations commenced.

46. Sections 70, 71 and 72 replaced

Delete sections 70, 71 and 72 and insert:

70. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every fifth anniversary of the commencement of this section.
- (2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

47. Schedule 1 amended

After Schedule 1 clause 3(4) insert:

- (5) The presence of a person at a meeting need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

48. Schedule 2 replaced

Delete Schedule 2 and insert:

Schedule 2 — Transitional provisions

[s. 68]

1. Provisions relating to repeal of *Industrial Training Act 1975*

- (1) In this clause —
repealed Act means the *Industrial Training Act 1975* repealed by the *Training Legislation Amendment and Repeal Act 2008* section 50.
- (2) If immediately before the repeal of the repealed Act an apprenticeship agreement or industrial training agreement entered into and registered under the repealed Act is in force, then on that repeal —
 - (a) the agreement is to be taken to be a training contract entered into on the same terms and conditions and registered under Part 7 Division 2; and

(b) Part 7 Division 2 applies to the agreement accordingly.

49. Schedules 3 and 4 deleted

Delete Schedules 3 and 4.

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