

# **VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT AMENDMENT BILL 2004**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Short Title**

The short title of the bill is *Vocational Education, Training and Employment Amendment Bill 2004*.

#### **Policy Objectives**

The objective is to amend the Vocational Education Training and Employment Act 2000 to:

- improve the effectiveness of the performance of the advisory and executive functions of the Training and Employment Board (the Board) and the Training and Employment Recognition Council (the Council);
- improve the effectiveness of governance arrangements for TAFE institutes; and
- ensure that there is a clear legislative authority for certain fees.

#### **How the Policy Objectives will be achieved**

The Bill will improve the effectiveness of the performance of the advisory and executive functions of the Training and Employment Board (the Board) and the Training and Employment Recognition Council (the Council) by abolishing the Board, transferring the Board's functions to the Council, and amending the governance arrangements for the Council to reflect its expanded functions.

The Bill will improve the effectiveness of governance arrangements for TAFE institutes by modifying membership requirements for TAFE institute councils and abolishing reference in the Act to TAFE college councils.

The Bill will also ensure that there is a clear legislative authority for certain existing fees by inserting specific heads of power in the Act for payment of annual registration fees by training organisations, fees for conduct of compliance audits, and a new fee for application for recognition of vocational placement schemes. Most of these fees are already levied under Ministerial approval. The new application fee was approved by CBRC on 15 October 2004.

### **Estimated administrative costs to Government for implementation**

The abolition of the Board is anticipated to generate savings by removing the direct costs of the Board. Implementation of the other amendments to the Act are not anticipated to generate additional costs.

### **Consistency with Fundamental Legislative Principles**

The provisions of the Bill are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

Clause 32, section 335 (2) states that no compensation is payable to a member of the board because the board is dissolved. It is not considered that the section infringes the rights of the individuals concerned as they are only remunerated for attendance on a meeting by meeting basis and allowances are only paid on the basis of prior approval by the Minister. Currently under s 154(d) board members can be removed from office by signed notice of the Minister.

Clause 32 section 340 (2) states that no compensation is payable to a member of a college council because the college council has been dissolved. It is not considered that the section infringes the rights of the individuals concerned as membership of college councils is purely voluntary and attracts no remuneration or allowances for participation.

### **Consultation**

Consultation has occurred with the Department of Premier and Cabinet, Queensland Treasury, Department of Industrial Relations and Department of Justice and Attorney-General.

## **Notes on Provisions**

*Clause 1* states the short title of the Bill is the *Vocational Education, Training and Employment Amendment Act 2004*.

*Clause 2* provides for the Act to commence on a day to be fixed by proclamation.

*Clause 3* provides that the Bill will amend the *Vocational Education, Training and Employment Act 2000*.

*Clause 4* amends s 28 by providing for an annual registration fee to be set by regulation. The registration fee prescribed by the regulation is to be paid each year, or part of a year for the duration of the training organisation's term of registration. The registration fee is the training organisations contribution towards some of the costs involved in maintaining the registration system including registration audits and ongoing monitoring, evaluation, administration and reporting at the national level by the Department on behalf of training organisations

*Clause 5* amends s 32 (3) by inserting a new paragraph (c) making non payment of the annual registration fee in s 28(2) grounds for cancellation of registration by the council.

*Clause 6* amends s 37 by adding a new subsection (3) providing for the prescribing of a fee under regulation for a compliance audit of a training organisation.

*Clause 7* amends s 38 by adding a new subsection (4) providing for the prescribing of a fee under regulation for a compliance audit of a training organisation registered by another registering body.

*Clause 8* replaces the old s108 with a new s 108 providing for a registered training organisation to apply to the council for recognition of a vocational placement scheme. Currently s 108 only requires that an application be in writing the new s 108 provides that the application must be in the approved form and must be accompanied by the fee prescribed by the regulation.

*Clause 9* amends the heading of Chapter 5 from "Ombudsman, Board and Council" to "Ombudsman and Council" as the board is to be abolished.

*Clause 10* removes Chapter 5, part 2 relating to the Training and Employment Board from the Act. As part of the streamlining to improve the performance of the various advisory and executive functions with which the board and council are presently charged the Training and

*Vocational Education, Training and Employment  
Amendment Bill 2004*

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Employment Board is abolished at clause 32 and its functions and powers transferred to the Training Recognition Council as per the clauses below.

*Clause 11* omits ‘board’ from section 168(1)(b) and replaces it with ‘Minister’ so that the council’s function is to advise the Minister on policy and guidelines for the matters mentioned under section 168(1)(b).

The clause also amends s 168 providing for the Training and Employment Recognition Council to have additional functions. The council’s additional functions are:

- to provide up-to-date and strategic advice to the Minister on—
  - current vocational education and training issues and strategies; and
  - current employment issues and strategies as they relate to vocational education and training;
- to recognise industry training advisory bodies and group training organisations;
- to perform the functions of an approving authority under the *Industrial Relations Act 1999* and the *Workplace Relations Act 1996* (Cwlth);
- to make recommendations to the Minister about guidelines for the council about matters arising from the performance of the council’s functions;
- to perform other functions requested by the Minister.

*Clause 12* replaces the existing 169 and provides that the Training and Employment Recognition Council is subject to the Minister and must comply with a signed direction from the Minister about the exercise of a power or performance of a function. The council was previously subject to the board in the performance of certain functions.

*Clause 13* amends s 170 to provide for an additional category – that of a young adult having current or recent experience in vocational education and training – from which one member of the council may be drawn.

This clause further provides for industry to be included in those areas in which the other council members must have standing to be appointed to the council.

The clause also provides for renumbering.

*Clause 14* replaces the existing s 187, and provides that, with the Minister's prior approval, the Training and Employment Recognition Council may establish committees to assist it to perform its functions. When seeking the Minister's approval, the council must state the terms of reference for, or functions of, the committee. However, the council does not have to seek the Minister's approval to form a committee for its own members.

Appointments to a committee are to be made by the council. However, a person cannot be appointed to a committee unless they have the skills or experience appropriate to the committee's terms of reference or functions.

A member of the committee is not entitled to any remuneration other than the reimbursement of reasonable expenses and travel allowance unless the Minister has approved the remuneration in writing.

*Clause 15* amends s 188 to require the chief executive to provide the council with administrative support to help it in the performance of its functions. This help includes the nomination of a departmental officer to assist the board in the exercise of its functions and carrying out its decisions.

*Clause 16* replaces the existing s 189 and provides that a guideline determined by the Training and Employment Recognition Council becomes effective only when the Minister approves it in writing. In addition, when the Minister approves the guideline, the council must publish it in the Government Gazette. Where a guideline has been approved by the Minister, the council must comply with it when performing its functions.

*Clause 17* inserts in Chapter 5, part 3, after section 190 a new section 190A:

New section 190A prescribes that the Training and Employment Recognition Council must provide the Minister with an annual report on its operations within 4 months of the end of each financial year. If the Minister has given a signed direction to the council, a copy of the direction must be included in the annual report. The Minister is required to table a copy of this report in Parliament within 14 days of receiving it.

*Clause 18* amends s 194 by omitting s 194 (1) (b) (ii) 'the board; and'

The clause also provides for renumbering.

*Clause 19* amends s 196 to reduce the maximum number of persons a TAFE institute council may consist of from 20 persons down to 15 persons. It also removes the requirement that two appointed members must be

young adults having current or recent experience in vocational education and training. It further extends the list of categories from which other appointed members may be chosen to include young adults having current or recent experience in vocational education and training.

*Clause 20* omits chapter 6, part 3 – COLLEGE COUNCILS from the Act. Existing TAFE institute college councils are dissolved by new section 340 inserted by clause 32.

*Clause 21* amends section 218 by omitting ‘board’ and inserting ‘council’ in its place.

*Clause 22* amends section 219 by omitting ‘board’ and inserting ‘council’ in its place.

*Clause 23* amends section 220 by omitting ‘board’ and inserting ‘council’ in its place.

*Clause 24* amends section 221 by omitting ‘board’ and inserting ‘council’ in its place.

*Clause 25* amends section 223 by omitting ‘board’ and inserting ‘council’ in its place.

*Clause 26* amends section 225 by omitting ‘or board’ from section 225 (1) (b).

*Clause 27* amends section 227 by omitting ‘or board’ from section 227 (1).

*Clause 28* amends section 228 by omitting references to the board from 228(1)(d) and 228 (2).

*Clause 29* amends section 277 by omitting s 277(2) (a) ‘the board’ and renumbering the paragraphs (b) to (e) as paragraphs (a) to (d).

*Clause 30* amends section 282 (4) by omitting the old definition of “**disclosure body**” and inserting a new definition removing (a) ‘the board’ and (d) ‘a TAFE college council’.

*Clause 31* amends s 289 by removing references to the board.

*Clause 32* amends s 290 by removing references to the board and TAFE college councils from the definition of “**indemnified person**” under subsection (3).

*Clause 33* inserts a new Chapter 10, part 4 heading: ‘Transitional provisions for Vocational Education, Training and Employment Amendment Act 2004’.

New section 334 provides definitions for Division 1.

**board** means the Training and Employment Board as established immediately prior to the commencement. Commencement means the commencement of this division

New section 335 provides that the board is dissolved and its members go out of office on commencement. It further provides that no compensation is payable to members as a result of the dissolution of the board.

New section 336 provides that a reference to the board in an Act or document may if the context permits, be taken as a reference to the council.

New section 337 provides that any decision of the board prior to commencement that has not had full effect at the time of the commencement, continues in force and is taken to be a decision of the council.

This section also provides that if the decision is one in relation to which a person had a right to appeal against a decision of the board that had not ended immediately before the commencement of the amending Act, the person may appeal against the decision as if it were made by the council.

New section 338 provides that recognition of industry training advisory bodies and group training organisations by the board immediately before commencement are taken to be recognition by the council on commencement.

New section 339 provides that where an application for recognition as a group training organisation or an industry training advisory group has been made to the board but has not been decided before commencement the application is taken to have been made to the council on commencement.

New section 340 provides that if before commencement a matter had been remitted by a magistrates court under section 228(1)(d) to the board and the board had not finished acting in relation to the matter at commencement the matter is taken as having been remitted to the council.

New section 341 provides that where a TAFE institute council has more than 15 members at the time the Act commences, then any person who is a member of such a council remains a member until the person's term of appointment expires or their membership terminates for some other reason.

New section 342 provides for college councils established under chapter 6, part 3 to be dissolved and their members to go out of office on commencement. It further provides that no compensation is payable to

members of college councils as a result of the dissolution of TAFE institute college councils.

New section 343 provides that if an application for recognition of a vocational placement scheme has been made but not decided before commencement the application fee mentioned in section 108(2)(b) is not payable in relation to the application.

*Clause 34* provides for a number of technical amendments that amend definitions in schedule 3 (Dictionary) by removing references to the board and/or replacing them by references to the council where relevant.

The clause also omits the old definition of ‘**approved guideline**’ and inserts a new definition whereby ‘approved guideline’ means a guideline approved by the Minister under section 189(1). This amendment reflects the new responsibility of the council to recommend guidelines for the council to the Minister about matters arising from the performance of the council’s functions.

*Clause 35* states that Part 3 amends the *Industrial Relations Act 1999*

*Clause 36* inserts a new Chapter 20, part 1 heading in chapter 20, before section 733 of ‘Part 1, Transitional provision for Industrial Relations Amendment Act 2002’.

*Clause 37* inserts a new Chapter 20, part 2 after section 733. the new Chapter 20 part 2 is headed ‘Part 2, Transitional provision for Vocational Education, Training and Employment Amendment Act 2004’. This clause also inserts a new section 734.

New section 734 provides that any decision made by the Training and Employment Board as the approving authority that is in force immediately before commencement is taken, on commencement, to be a decision by the Training and Employment Recognition Council as the approving authority.

*Clause 38* amends the *Industrial Relations Act 1999* by omitting the old definition of ‘**approving authority**’ in schedule 5 (Dictionary) and insets a new definition where ‘approving authority’ means the Training and Employment Recognition Council under the *Vocational Education, Training and Employment Act 2000*, section 167.

This clause further amends definitions in schedule 5 by omitting ‘Training and Employment Board’ under the definition of *group training scheme* and replacing it with ‘Training and Employment Recognition Council’.



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