

WESTERN AUSTRALIA

VOCATIONAL EDUCATION AND TRAINING ACT 1996

(No. 42 of 1996)

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VOCATIONAL EDUCATION AND TRAINING ACT 1996

No. 42 of 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.

[Assented to 16 October 1996.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

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

Commencement

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

Application to Crown

3. This Act binds the Crown in right of the State.

Objects

4. 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.

Interpretation

5. (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 recognized 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.

Vocational education and training provided by a secondary school or university

6. (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 *Education Act 1928* is for the time being committed by the Governor.

**PART 2 — COORDINATION OF THE STATE VOCATIONAL
EDUCATION AND TRAINING SYSTEM**

Division 1 — The Minister

Minister a body corporate

7. (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, authorize 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.

Functions of the Minister

8. 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;
- (c) to promote the development of a competitive training market and to facilitate commercial activities that are authorized by or under this Act; and
- (d) to enter into commercial activities both within Australia and overseas, to generate revenue for, and otherwise benefit, the State training system.

Powers of the Minister

9. (1) The Minister may do all things necessary or convenient to be done for or in connection with the performance of the functions specified in section 8 and any other functions conferred on the Minister by this Act.

(2) Without limiting subsection (1) the Minister may for the purpose of performing any function —

- (a) authorize and require public training providers to provide education and training in accordance with a State Training Profile;
- (b) determine and coordinate arrangements for —
 - (i) the curriculum;
 - (ii) student selection, admission and enrolment procedures; and
 - (iii) other administrative procedures,to be used or followed by public training providers;

- (c) acquire, hold, improve, develop and dispose of land and other property of any kind, for and on account of the State, for the purposes of this Act;
- (d) by public notice, invite expressions of interest in, and tenders for, and enter into, contracts to fund or partly fund the provision of courses, skills training programmes and services related to vocational education and training by training providers;
- (e) provide funds, by way of grants and otherwise, and make other resources available to training providers and other persons for purposes related to vocational education and training;
- (f) authorize, 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 organizations 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 organizations, 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.

Delegation by Minister

10. (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.

Minister may give directions

11. (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 section 66 of the *Financial Administration and Audit Act 1985*.

Directions to secondary schools and universities providing vocational education and training

12. (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.

Minister may issue guidelines

13. (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.

Minister to have access to information

14. (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

Vocational Education and Training Trust Fund

- 15.** (1) There is to be a trust account to be known as the Vocational Education and Training Trust Fund which is to form part of the Trust Fund referred to in section 9 of the *Financial Administration and Audit Act 1985* and 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 Fund the funds generated by the performance of the Minister’s function under section 8 (d) and any funds directed by the Minister under section 53 to be so credited.

(3) There is to be paid out of the Vocational Education and Training Trust Fund amounts necessary for the performance of the Minister's functions under section 8.

Application of *Financial Administration and Audit Act 1985*

16. (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in relation to the Vocational Education and Training Trust Fund.

(2) The administration of the Vocational Education and Training Trust Fund is for the purposes of section 52 of the *Financial Administration and Audit Act 1985* to be regarded as a service of the department.

(3) Section 14 of the *Financial Administration and Audit Act 1985* does not apply to the Vocational Education and Training Trust Fund.

Loans to not-for-profit private training providers

17. (1) The Minister may lend money for capital works to a private training provider which does not operate for the purpose of private gain by its members, provided the works are for the provision of vocational education and training.

(2) Any such loan is to be made out of moneys appropriated by Parliament for the purpose of subsection (1).

(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) —

“capital works” means the acquisition of land, the construction, modification or renovation of buildings or the purchase of plant and equipment.

PART 3 — THE STATE TRAINING BOARD

Establishment of Board

18. There is established a body called the State Training Board.

Constitution of the Board

19. (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*.

Further provisions relating to the Board

20. (1) Schedule 1 has effect with respect to the Board.

(2) Subject to this Act, the Board may determine its own procedures.

Functions of the Board

21. (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 recognize 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.

Powers of the Board

22. (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 recognized by the Board; and
- (b) the matters in relation to which the advice of a recognized industry training advisory body may be sought or given.

Committees of the Board

23. (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.

Annual report of Board

24. (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.

(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

Establishment of Council

25. (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.

Further provisions relating to Council

26. (1) Schedule 1 has effect with respect to the Council.

(2) Subject to this Act, the Council may determine its own procedures.

Functions of Council

27. (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) recognize 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.

Delegation by the Council

28. 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.

Committees of the Council

29. (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.

Annual report of Council

30. (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

Appeals against decisions of the Council

31. (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.

Board to establish review panels

32. (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.

Reference back to Council

33. (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.

Determination of appeal

34. (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

Establishment of colleges

35. 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.

Constitution of colleges

36. (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.

Functions of a college

- 37.** (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 authorized 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 authorized 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.

Vacation periods

38. (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

Governing council

39. (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.

Further provisions relating to governing councils

40. (1) Schedule 1 has effect with respect to governing councils.

(2) Subject to this Act, a governing council may determine its own procedures.

Interim governing councils

41. (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) authorize the interim governing council to exercise such of the powers of a governing council as are specified in the notice.

Functions of a governing council

42. (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.

Powers of a governing council

43. (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 authorized 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 organizations, 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.

By-laws

44. 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.

Delegation by governing council

45. (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.

Managing director

46. (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.

College employees

47. 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

Funds of a college

48. 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.

College Trust Funds

49. (1) The monies referred to in section 48 are to be placed to the credit of an account to be known as the “*Name of College Trust Fund*” (referred to in this Division as a “**college Trust Fund**”) which is to be maintained at —

- (a) the Treasury and form part of the Trust Fund referred to in section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank.

(2) There is to be maintained within a college Trust Fund —

- (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.

Use of funds

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

Power to borrow

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

Power to invest

52. Where, under section 49(1)(b), a college Trust Fund 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 Administration and Audit Act 1985*.

Minister may direct transfer of funds

53. If the Minister is satisfied that there is available in the commercial account of a college Trust Fund 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 Fund or to the Vocational Education and Training Trust Fund referred to in section 15.

Application of *Financial Administration and Audit Act 1985*

54. (1) The provisions of the *Financial Administration and Audit Act 1985* 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 Administration and Audit Act 1985* 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 14 of the *Financial Administration and Audit Act 1985* does not apply to a college Trust Fund.

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

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

55. 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.

Order assuming functions or appointing administrator

56. (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**

**Minister may establish other vocational education and
training institutions**

57. (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 — TRAINING SCHEMES

Minister may establish training schemes

58. (1) The Minister may establish and implement, or may recognize 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 recognized, 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.

Regulations relating to training schemes

59. (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.

Inconsistency

60. 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.

Repeal

61. The *Industrial Training Act 1975* is repealed.

**Consequential amendments and transitional provisions
relating to this Part**

62. 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.

PART 8 — MISCELLANEOUS

Remuneration of members of Board, Council etc.

63. 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.

Protection from liability

64. (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.

Falsely claiming accreditation or registration

65. (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.

(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.

Further provision relating to closure of college

66. (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 54 of the *Financial Administration and Audit Act 1985* 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 section 66 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 Division 14 of Part II of that Act applies to that person as the accountable authority of the college as if that period were a full financial year.

Regulations

67. (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.

Provisions relating to the Commonwealth Act

68. (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.

Review of Act

69. (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.

Repeals

70. (1) The *Colleges Act 1978* is repealed.

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

Consequential amendments — Schedule 3

71. (1) Subject to subsection (2), Schedule 3 has effect.

(2) Division 3 of Schedule 3 has effect only if Part 7 is not in operation when this section comes into operation.

Transitional provisions — Schedule 4

72. Schedule 4 has effect in relation to the transition to the operation of this Act from the operation of the provisions of the Acts repealed by section 70 or amended under Schedule 3.

SCHEDULE 1

[Sections 20, 26 and 40]

**PROVISIONS RELATING TO THE BOARD, THE COUNCIL AND
GOVERNING COUNCILS**

Vacation of office

1. (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.

Leave of absence

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

Meetings

3. (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.

Disclosure of interests

4. (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.

Voting by interested members

5. 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.

Clause 5 may be declared inapplicable

6. 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

[Section 62]

**AMENDMENTS AND TRANSITIONAL PROVISIONS RELATING
TO PART 7**

***Industrial Relations Act 1979* amended**

1. 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) in paragraph (a) of the definition of “employee” by deleting “industrial”;

- (c) by deleting the definition of “industrial trainee”;

- (d) in paragraph (f) of the definition of “industrial matter” —

- (i) by deleting “industrial”;
- (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 industrial training agreement” and substituting the following —

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

and

- (e) by inserting after the definition of “teacher” the following definition —

“**“trainee”** means a trainee under a training scheme established under the *Vocational Education and Training Act 1996*;
”.

[* Reprinted as at 11 May 1994.
For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 102 and Acts Nos. 83 and 103 of 1994 and 1, 11, 30 and 79 of 1995.]

Transitional

2. (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 recognized 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 3

[Section 71]

CONSEQUENTIAL AMENDMENTS

Division 1 — Amendments to the Education Act 1928

Principal Act

1. In this Division the *Education Act 1928** is referred to as the principal Act.

[* *Reprinted as at 11 August 1992.*
For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 63-4 and Act No. 1 of 1995.]

Section 3 amended

2. Section 3 of the principal Act is amended —
- (a) by deleting the definition of “Department of Training”;
 - (b) in the definition of “Government school” by deleting “secondary school, technical college, or technical school” and substituting the following —
“ or secondary school ”; and
 - (c) by repealing subsection (2).

Section 7 amended

3. Section 7 (5) of the principal Act is repealed.

Section 8 amended

4. Section 8 (2), (3) and (4) of the principal Act are repealed.

Section 9 amended

5. Section 9 of the principal Act is amended by deleting “, secondary, and technical” and substituting the following —

“ and secondary ”.

Section 21C amended

6. Section 21C of the principal Act is amended in the definition of “school” by deleting “other than a technical college or technical school”.

Section 28 amended

7. Section 28 (1) (g) of the principal Act is amended by deleting “, technical”.

***Division 2 — Amendments to the Building and Construction
Industry Training Fund and Levy Collection Act 1990***

Principal Act

8. In this Division the *Building and Construction Industry Training Fund and Levy Collection Act 1990** is referred to as the principal Act.

[* *Act No. 76 of 1990.*
*For subsequent amendments see 1994 Index to Legislation of
Western Australia, Table 1, p. 22.*]

Section 3 amended

9. Section 3 of the principal Act is amended by —

- (a) deleting the definition of “building and construction industry” and substituting the following —

“
 “building and construction industry” has
 the same meaning as the term
 “construction industry” in the
 *Construction Industry Portable Paid Long
 Service Leave Act 1985*;
”;

- (b) in the definition of “project owner” by deleting the final semicolon and substituting a full stop; and
(c) deleting the definition of “SESDA Act”.

Section 8 amended

10. Section 8 of the principal Act is amended —

- (a) in subsection (1), by deleting “and the council shall together” and substituting the following —

“ shall ”;

- (b) in subsection (3) (b), by deleting subparagraph (i) and substituting the following subparagraph —

“
 (i) courses or skills training programmes accredited in respect of the building and construction industry under the *Vocational Education and Training Act 1996*; or
”;

- (c) by repealing subsection (4) and substituting the following subsection —

“
 (4) The Board shall submit an operational plan, together with such other submissions (if any) that it considers appropriate, to the Minister for approval.
”;

and

- (d) in subsection (9) —

(i) by deleting the definitions of “Authority”, “council” and “skills formation”; and

(ii) by deleting the semicolon at the end of the definition of “sectors” and substituting a full stop.

Division 3 — Amendments to the Industrial Training Act 1975

Principal Act

11. In this Division the *Industrial Training Act 1975** is referred to as the principal Act.

[* *Act No. 95 of 1975.*

For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 103.]

Section 4 amended

12. Section 4 (1) of the principal Act is amended by deleting the definition of “Authority”.

Section 17A amended

13. Section 17A (1) of the principal Act is amended by inserting after “section 17 (1)” the following —

“ or to any other person ”.

Section 22 amended

14. Section 22 of the principal Act is amended by deleting “Subject to the *State Employment and Skills Development Authority Act 1990*, the” and substituting the following —

“ The ”.

Section 28 amended

15. Section 28 (2) of the principal Act is amended by deleting “Subject to the *State Employment and Skills Development Authority Act 1990*, where a” and substituting the following —

“ Where a ”.

Section 33 amended

16. Section 33 of the principal Act is amended —

(a) in subsection (1) (b) by deleting “training as is approved by the Authority” and substituting the following —

“
courses or skills training programmes as are
accredited by the Training Accreditation
Council under the *Vocational Education and
Training Act 1996*
”;

and

(b) in subsection (3), by deleting “syllabus approved by the Authority” and substituting the following —

“
course or skills training programme accredited
by the Training Accreditation Council under the
Vocational Education and Training Act 1996
”.

Section 37D amended

17. Section 37D (3) of the principal Act is amended by deleting “, but shall not provide for training in an apprenticeship trade or an industrial training trade”.

Section 37E amended

18. Section 37E of the principal Act is amended in subsections (1) and (2) by deleting “, the Authority or any other body established under the *State Employment and Skills Development Authority Act 1990*”.

***Division 4 — Amendments to the Secondary Education
Authority Act 1984***

Principal Act

19. In this Division the *Secondary Education Authority Act 1984** is referred to as the principal Act.

[* *Act No. 118 of 1984.*
*For subsequent amendments see 1994 Index to Legislation of
Western Australia, Table 1, pp. 192-3.*]

Section 3 amended

20. Section 3 of the principal Act is amended —

- (a) by deleting the definition of “post-secondary education” and substituting the following definition —

“

“post-secondary education” means instruction or training or both but does not include —

- (a) the instruction or training of persons who have not attained school leaving age or of persons attending secondary education institutions; or
- (b) instruction or training provided by a training provider, or under a training scheme, under the *Vocational Education and Training Act 1996*.

”;

- (b) in the definition of “sub-committee” by deleting the semicolon and substituting a full stop; and
- (c) by deleting the definition of “technical college or school”.

Section 6 amended

21. Section 6 (2) of the principal Act is amended by deleting paragraph (d) and substituting the following paragraph —

“
(d) 2 shall be persons nominated by the chief executive under the *Vocational Education and Training Act 1996*;
”.

Section 25 amended

22. Section 25 (3) of the principal Act is amended by deleting paragraph (h) and substituting the following paragraph —

“
(h) 2 shall be persons nominated by the chief executive under the *Vocational Education and Training Act 1996*.
”.

Division 5 — Other amendments

***Constitution Acts Amendment Act 1899* amended**

23. Schedule V to the *Constitution Acts Amendment Act 1899** is amended in Part 3 —

- (a) by deleting “State Employment and Skills Development Authority and the Skills Standards and Accreditation Board established under the *State Employment and Skills Development Authority Act 1990*.”; and
- (b) by inserting in the appropriate alphabetical positions the following —

“
The State Training Board of Western Australia established under the *Vocational Education and Training Act 1996*.
”;

and

“
The Training Accreditation Council established
under the *Vocational Education and Training
Act 1996*.
”.

[* *Reprinted as at 17 May 1995.
For subsequent amendments see 1994 Index to Legislation of
Western Australia, Table 1, pp. 43-6 and Acts Nos. 11, 14
and 73 of 1995.*]

Equal Opportunity Act 1984 amended

24. Section 4 of the *Equal Opportunity Act 1984** is amended in the definition of “private educational authority” by deleting “*Colleges Act 1978*” and substituting the following —

“ *Vocational Education and Training Act 1996* ”.

[* *Act No. .
For subsequent amendments see 1994 Index to Legislation of
Western Australia, Table 1, p. 68.*]

Financial Administration and Audit Act 1985 amended

25. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended —

- (a) by deleting “College of Customised Training”, “Hedland College”, “Kalgoorlie College”, “Karratha College”, “Pundulmurra College” and “State Employment and Skills Development Authority”; and
- (b) by inserting after “Coal Mines Accident Relief Trust Fund” the following —

“
Colleges established or continued under the
Vocational Education and Training Act 1996
”.

[* *Reprinted as at 1 July 1991.
For subsequent amendments see 1994 Index to Legislation of
Western Australia, Table 1, pp. 74-5 and Acts Nos. 2, 11, 14,
24 and 73 of 1995 and Gazettes 18 August 1995,
19 September 1995 and 9 January 1996.*]

Government Employees Superannuation Act 1987 amended

26. Schedule 1 to the *Government Employees Superannuation Act 1987** is amended —

- (a) in Part A by inserting as a separate paragraph after the paragraph relating to Hospital Boards the following —

“
Colleges established or continued under the
Vocational Education and Training Act 1996.”;

and

- (b) in Part B, by deleting “Hedland College”, “Kalgoorlie College”, “Karratha College” and “State Employment and Skills Development Authority (on and from 19 March 1991)”.

[* Reprinted as at 3 October 1994.
For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 89-90 and Acts Nos. 103 of 1994 and 11, 60, 62 and 73 of 1995 and Gazettes 15 September 1995 and 22 March 1996.]

Industrial Relations Act 1979 amended

27. Section 7 (1) of the *Industrial Relations Act 1979** is amended in the definition of “post-secondary education institution” by deleting “*Colleges Act 1978*” and substituting the following —

“ *Vocational Education and Training Act 1996* ”.

[* Reprinted as at 11 May 1994.
For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 102 and Acts Nos. 83 and 103 of 1994 and 1, 11, 30 and 79 of 1995.]

Parliamentary Commissioner Act 1971 amended

28. The Schedule to the *Parliamentary Commissioner Act 1971** is amended —

- (a) by deleting “State Employment and Skills Development Authority and the Skills Standards and Accreditation Board and any industry employment and training council

established under the *State Employment and Skills Development Authority Act 1990.*” and substituting the following —

“
State Training Board and the Training Accreditation Council established under the *Vocational Education and Training Act 1996.*”;

and

- (b) by inserting after the item relating to the University of Western Australia the following item —

“
Colleges established or continued in operation under the *Vocational Education and Training Act 1996*”.

[* Reprinted as at 25 May 1995.
For subsequent amendments see Acts Nos. 1, 11, 30 and 73 of 1995.]

***Public Sector Management Act 1994* amended**

29. Schedule 2 to the *Public Sector Management Act 1995** is amended —

- (a) by deleting items 18, 20, 21 and 38; and
(b) by inserting after item 3A the following item —

“
3B Colleges established or continued in existence under the *Vocational Education and Training Act 1996*”.

[* Reprinted as at 16 May 1995.
For subsequent amendments see Acts Nos. 1 and 73 of 1995 and Gazettes 23 June 1995, 3 November 1995 and 30 May 1995.]

**SCHEDULE 4
TRANSITIONAL**

[Section 72]

Interpretation

1. In this Schedule —

“**asset**” means real or personal property of any kind including a chose in action and a present, future or contingent right, privilege, interest or power;

“**the College**” means the College of Customised Training established under the *Colleges Act 1978*;

“**document**” includes any disc, tape, or other device or medium in which information is stored.

Continuation of accreditation and registration

2. (1) On the commencement of this clause any course of instruction or training which, immediately before that commencement was —

(a) provided by a college under the *Colleges Act 1978* or a technical school or technical college under the *Education Act 1928*; or

(b) an accredited skills formation under the *State Employment and Skills Development Authority Act 1990*,

is to be taken to be accredited under this Act.

(2) Subject to clause 5, on the commencement of this clause a college or a technical school or technical college which, immediately before that commencement was operating under the *Colleges Act 1978* or the *Education Act 1928* is to be taken to be a registered training provider under this Act.

Property to become vested in Minister

3. (1) On the commencement of this clause all land and all other assets which were, immediately before that commencement —

(a) vested in the State Employment and Skills Development Authority established under the *State Employment and Skills Development Authority Act 1990*;

- (b) vested in the Minister for Education under the *Education Act 1928* solely for the purposes of a technical school or technical college under that Act; or
- (c) vested in a college established, or preserved and continued in existence, under the *Colleges Act 1978*,

become vested in the Minister to be used for the purposes of the State training system.

(2) On the commencement of this clause all obligations and liabilities of the Authority, the Minister or a school or college referred to in subsection (1) become obligations and liabilities of the Minister.

(3) Where immediately before the commencement of this clause the *Land Act 1933* applied to and in relation to land that vests in the Minister under this clause, that Act continues to apply to the land after the commencement as if the vesting had occurred under section 33 (2) of that Act.

Colleges and technical colleges

4. (1) On the commencement of this clause —
- (a) subject to clause 5, all colleges which were established, or continued in existence under the *Colleges Act 1978*; and
 - (b) all technical schools and technical colleges which were established or deemed to have been established under the *Education Act 1928*,

and which were operating immediately before that commencement, are to be taken to be colleges established under this Act.

(2) Until a governing council or interim governing council of a college referred to in subclause (1) (a) is established under this Act, the Council of that college immediately before the commencement of this clause is to be taken to be an interim governing council.

(3) Until a notice is published under section 41 (3), the powers exercisable by the Council of a college referred to in subclause (1) (a) immediately before the commencement of this clause are to be taken to be powers specified in a notice under that subsection.

(4) Until a governing council or interim governing council of a college referred to in subclause (1) (b) is established under this Act, the Minister is to be taken to be the interim governing council of that college and may exercise all or any of the powers of a governing council in relation to that college.

College of Customised Training

5. On the commencement of this clause —

- (a) the College is not to be taken to be a college or a training provider under this Act and ceases, for all purposes, to exist;
- (b) the members of the Interim Council of the College cease to hold office;
- (c) all assets that were, immediately before that commencement vested in, under the control of, or standing to the credit of, the College together with all claims, rights and remedies that the College then had in respect of those assets, become vested in the Minister;
- (d) all obligations and liabilities of the College that existed immediately before that commencement, become obligations and liabilities of the Minister;
- (e) any agreement to which the College was a party (other than one to which the Minister was the other party) has effect as though the Minister was substituted for the college as a party to the agreement; and
- (f) the Minister becomes the owner of all the documents which, immediately before that commencement, belonged to the College.

Managing directors

6. (1) The person who, immediately before the commencement of this clause was employed as the director of a college referred to in clause 4 (1) (a) becomes the managing director of that college on the same terms and conditions under which he or she was so employed.

(2) On the commencement of this clause the managing director of a technical college referred to in clause 4 (1) (b) becomes the managing director of the relevant college under this Act and is to be taken to have been appointed in the manner referred to in section 46, on the day he or she was appointed managing director of the college referred to in that clause.

Other staff

7. On the commencement of this clause all persons who immediately before that commencement were members of the staff of a college under the *Colleges Act 1978* or a technical college under the

Education Act 1928 become employees of the relevant college under this Act and —

- (a) all such persons retain all their existing and accruing rights in relation to that employment and in particular in relation to sick leave, long service leave, retirement and superannuation; and
- (b) any period of employment under either of those Acts is to be regarded as a period of employment by the relevant college under this Act.

Student associations

8. (1) On the commencement of this clause, a student association established under section 44 of the *Colleges Act 1978* in a college and existing immediately before that commencement is dissolved and —

- (a) all assets and rights of the association become assets and rights of the college without the need for any transfer;
- (b) all liabilities of the association, including contingent liabilities, become liabilities of the college;
- (c) any agreement or instrument to which the association was a party or which contains a reference to the association has effect as if the college were substituted for the association;
- (d) all proceedings commenced by or against the association are to be taken to be proceedings by or against the college;
- (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 dissolution by, to or in respect of the association (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 college; and
- (f) the college becomes the owner of all the association'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.

(2) The governing council of the college is to wind up the operations and affairs of the dissolved association as soon as is practicable after the dissolution and for that purpose the governing council may exercise any powers that are necessary.

(3) The college is to use the proceeds of the winding up for the benefit of students of the college in such manner as it determines.