

STATE EMPLOYMENT AND SKILLS DEVELOPMENT AUTHORITY ACT 1990

(No. 40 of 1990)

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STATE EMPLOYMENT AND SKILLS DEVELOPMENT AUTHORITY ACT

No. 40 of 1990

AN ACT to establish a State Employment and Skills Development Authority, to amend certain Acts and for incidental and other purposes.

[Assented to 26 November 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *State Employment and Skills Development Authority Act 1990*.

Commencement

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

Objects**3. The objects of this Act are—**

- (a) to provide for the co-ordination and monitoring of skills formation, policies and programmes to meet the immediate and future requirements of industry;
- (b) to provide for the accreditation and review of skills formation;
- (c) to provide for the approval of recurrent State skills formation;
- (d) to improve skills formation;
- (e) to facilitate an increase in productivity and competitiveness of industry and of the workforce in this State by improving the level of skills within the community;
- (f) to provide for skills formation policies that enhance the capacity of the workforce to adapt to industrial, organizational and technological change;
- (g) to provide for the development and promotion of equality of opportunity in access to skills formation for all persons in the community;
- (h) to increase the number of skilled persons and range of skills formation offered within all occupations to meet the immediate and future requirements of industry;
- (i) to provide for the formulation of skills formation that is based upon the analysis of future skills and productivity requirements of industry and the existing skills base of the community.

Interpretation**4. (1) In this Act, unless the contrary intention appears—**

“association” means an association of persons incorporated under the *Companies (Western Australia) Code* or the *Associations Incorporation Act 1987*;

“Authority” means the State Employment and Skills Development Authority established under section 8;

“Board” means the Skills Standards and Accreditation Board established under section 27;

“chairperson” means—

- (a) in relation to the Authority, the chairperson of the Authority;
- (b) in relation to the Board, means the chairperson of the Board;

“council” means an association registered as an industry employment and training council under section 23;

“government organization” means—

- (a) the Department of Employment and Training of the Public Service of the State;
- (b) any department of the State through which the administration of any Act relating to the provision of technical and further education is administered; and
- (c) any college established under the *Colleges Act 1978*;

“member” means—

- (a) in relation to the Authority, a member of the Authority and includes the chairperson;
- (b) in relation to the Board, a member of the Board and includes the chairperson;

“operational plan” means an operational plan referred to in section 21;

“rules” means in relation to an association the rules or memorandum and articles of association;

“strategic plan” means a strategic plan referred to in section 20.

(2) A reference in this Act to “skills formation” is a reference to a course or courses of instruction or training or both for the purposes of any occupation but does not include a course of instruction or training or both provided at—

- (a) a university;
- (b) the Western Australian College of Advanced Education established under the *Western Australian College of Advanced Education Act 1984*; or
- (c) primary or secondary education provided in a school as defined by the *Education Act 1928*,

unless approved by the Minister and the Minister charged by the Governor with the administration of the *Education Act 1928*.

Act to bind the Crown

5. (1) Subject to this section, this Act binds the Crown with respect to the provision of skills formation when provided by a government organization.

(2) A government organization shall not provide a skills formation if—

- (a) the skills formation is provided for a period beyond a calendar year regardless of the duration of the skills formation; or
- (b) the skills formation has previously been provided in that calendar year or the previous calendar year,

without the approval of the Authority.

(3) Subsection (2) does not apply to or in relation to the provision of skills formation to the extent that the skills formation is not funded from moneys appropriated by the Parliament.

Minister a body corporate**6. (1) The Minister—**

- (a) shall for the purposes of this Act be a body corporate;
- (b) shall be known by such designation as is conferred on the Minister when charged by the Governor with the administration of this Act;
- (c) shall have a common seal; and
- (d) is capable of suing and being sued in the corporate name of the Minister.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Minister affixed to any document and shall presume that it was duly affixed.

(3) An alteration to the designation of the Minister does not affect the corporate identity of the Minister and by force of this section the corporate identity of the Minister is continued under such designation as applies to the Minister from time to time.

Minister may be a member of a body corporate

7. (1) Subject to this Act the Minister may become a member of any incorporated body which—

- (a) has its principal office within the Commonwealth; and
- (b) has among its objects the objects referred to in section 3.

(2) The Minister may be represented on the body by the Minister or by any officer of the Public Service nominated by the Minister authorized in that behalf by the Minister.

(3) The Minister may—

- (a) take part in any activities of the body; and
- (b) carry out any function, investigation and research for or on behalf of the body either alone or in association with any other person appointed by the body.

Establishment

8. (1) There is hereby established a State Employment and Skills Development Authority.

(2) The Authority—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property;
- (d) may sue and be sued in its corporate name;
- (e) shall be capable of doing all such acts and things as bodies corporate may by law do or suffer;
- (f) generally, shall have all such powers, rights and privileges as may be reasonably necessary to enable it to exercise and perform its functions and to carry out the duties imposed upon it.

(3) The Authority may enter into or participate in any agreements or arrangements with any other person or body for the purpose of facilitating the carrying out of its functions under this or any other Act.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority affixed to any document and shall presume that it was duly affixed.

Constitution of the Authority

9. (1) The Authority shall consist of 13 members appointed by the Minister of whom—

- (a) one person shall be appointed chairperson of the Authority;
- (b) 4 persons shall be appointed from employer organizations of whom—
 - (i) 3 persons shall be appointed on the nomination of organizations which in the opinion of the Minister represent employers and one of those persons shall be a nominee of The Confederation of Western Australian Industry (Inc.); and

- (ii) one person shall be appointed on the nomination of organizations which in the opinion of the Minister represent small business employers;
- (c) 4 persons shall be appointed from employee organizations of whom 2 shall be appointed on the nomination of the body known as the Trades and Labor Council of Western Australia;
- (d) one person shall be appointed on the nomination of the Minister of the Commonwealth to whom the administration of the *Employment, Education and Training Act 1988* of the Parliament of the Commonwealth is committed by the Governor General of the Commonwealth;
- (e) one person shall be an officer of the Department of Technical and Further Education of the Public Service of the State; and
- (f) 2 persons shall be appointed at the discretion of the Minister.

(2) Where a nomination is required for the purposes of subsection (1) (b) or (c) otherwise than from a body referred to in that provision the Minister shall cause to be published in the *Government Gazette* a notice calling for nominations under subsection (1) (b) or (c), as the case requires, and a copy of such notice,

- (a) if the notice relates to organizations which represent employers shall be forwarded to the body referred to in subsection (1) (b) (i); and
- (b) if the notice relates to organizations which represent employees shall be forwarded to the body referred to in subsection (1) (c),

and the nomination shall be made to the Minister in writing within 90 days of the date of the publication of the notice.

(3) Where a nomination is required for the purposes of subsection (1) (b) or (c) from a body referred to in that provision the nomination shall be made to the Minister in writing on behalf of the nominator within 90 days after the receipt by the nominator of a notice from the Minister that such nomination is required as is specified in the notice.

(4) If a nomination has not been made in accordance with subsection (2) or (3) within the time specified under that subsection the Minister may appoint such person as the Minister thinks fit to be a member of the Authority in place of the person provided for by subsection (1) (b) or (c), as the case requires, and the person so appointed shall be deemed to have been nominated by the body requested to make the nomination.

(5) Notwithstanding anything in section 14 (2) a person appointed under subsection (4) shall hold office for a period of 30 days commencing from the date of his or her appointment.

Acting member

10. (1) Where—

- (a) a member other than the chairperson is absent or temporarily incapable of fulfilling the duties of member; or
- (b) the office of an appointed member is vacant and has not been filled in accordance with this Act,

the Minister may appoint an eligible person to act in the place of that member during that absence or incapability, or until the vacancy is filled, as the case requires, and a person so appointed has, while the appointment subsists, all the duties, powers and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

(2) The appointment of a person as an acting member may be terminated by the Minister at any time.

Terms and conditions of members

11. (1) Subject to this Act, a member other than the chairperson shall hold office for such term not exceeding 3 years as is specified in the instrument of appointment and is eligible for re-appointment.

(2) A member other than the chairperson or a person who is an officer of the Public Service of the State or the Commonwealth is entitled to such remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Commissioner.

Terms and conditions of chairperson

12. (1) The chairperson of the Authority shall hold office for such term not exceeding 5 years as is specified in the instrument of appointment and is eligible for reappointment.

(2) Subject to the *Salaries and Allowances Act 1975*, the chairperson shall be entitled to salary and allowances and such other conditions of service as the Minister determines from time to time.

(3) The chairperson may be the chief executive of the Authority.

(4) The chairperson shall not engage in any employment other than the duties of chairperson without the approval of the Minister.

(5) The chairperson is not an officer of the Public Service of the State.

Leave of absence

13. The Authority may grant leave of absence to a member other than the chairperson on such terms and conditions as the Minister determines.

Vacation of office

14. (1) The Minister may terminate the appointment of the chairperson if the chairperson engages in any employment other than the duties of his or her office as chairperson without the approval of the Minister.

(2) The Minister may terminate the appointment of a member appointed under section 9 (4) if requested to do so by the body which failed to make the nomination in accordance with section 9 (2).

(3) The Minister may terminate the appointment of a member—

- (a) if the Minister is satisfied that the member is permanently incapable of performing the duties of a member;
- (b) on the grounds of neglect of duty or his or her behaviour or incompetence;

- (c) if the member is absent without leave of the Authority from 3 consecutive meetings of the Authority; or
- (d) if the member is appointed under section 9 (1) (e) or (f), at any time.

(4) The office of a member of the Authority becomes vacant if—

- (a) the term of office 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 order or arrangement under the laws relating to bankruptcy;
- (d) being a member appointed under section 9 (1) (b), (c) or (d) the nomination of the member is revoked;
- (e) the appointment of the member is terminated under this section; or
- (f) the member dies.

Casual vacancies

15. Where the office of member other than chairperson becomes vacant otherwise than under section 14 (4) (a) the Minister may appoint an eligible person to the vacant office and the person so appointed shall hold office only for the balance of the term of the person whose vacancy he or she fills.

Meetings of the Authority

16. (1) The chairperson may at any time, and shall at the request of the Minister or by not less than 3 members of the Authority, convene a meeting of the Authority to be held at a time and place to be determined by the chairperson.

(2) The chairperson shall preside at any meeting of the Authority at which the chairperson is present.

(3) If the chairperson is not present at a meeting of the Authority the members present shall elect one of their number to preside at the meeting.

(4) At a meeting of the Authority a quorum shall be constituted if and only if at least—

- (a) 2 members appointed under section 9 (1) (b);
- (b) 2 members appointed under section 9 (1) (c); and
- (c) 2 members appointed under section 9 (1) (d), (e) or (f),

are present.

(5) At a meeting of the Authority and for the purposes of subsections (7) and (8) where any question requiring a vote arises the question shall be resolved by a majority of the votes of the members present if and only if such majority is constituted by the prescribed majority but before proceeding to vote on any question the members shall make every effort to reach a consensus.

(6) For the purposes of subsection (5) “the prescribed majority” means a majority consisting of all of the members present from each of the following separate groups of members, namely—

- (a) the group appointed under section 9 (1) (b);
- (b) the group appointed under section 9 (1) (c); and
- (c) the group appointed under section 9 (1) (d), (e) or (f).

(7) Where the prescribed majority of the members of the Authority sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly constituted meeting of the Authority held on the day on which the document was signed, or, if the members sign the document on different days, on the last of those days.

(8) For the purposes of subsection (7), 2 or more separate documents containing statements in identical terms each of which is signed by one or more members shall together be deemed to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

(9) A member of the Authority who has a pecuniary interest whether direct or indirect in any matter to be considered by the Authority shall declare the nature of that interest at every meeting of the Authority at which the matter is considered.

(10) Except to the extent that they are prescribed the Authority shall determine its own procedures.

(11) The Authority shall keep records of its meetings.

Functions of the Authority

17. (1) Subject to this Act, in addition to any other function conferred on the Authority under this or any other Act the functions of the Authority are to—

- (a) develop, co-ordinate and monitor skills formation to meet the immediate and future requirements of industry in the State and in the various regions of the State;
- (b) promote the co-ordination of State and Commonwealth skills formation services, policies and programmes;
- (c) develop and promote policies directed at achieving equality of opportunity in access to skills formation services for all persons in the community;
- (d) promote the partnership of employers, employees, employer organizations, employee organizations, skills formation providers and government in the provision of skills formation and the development of skills formation policies;
- (e) in conjunction with relevant councils, develop policies to ensure skills formation provides a basis for adaptation and flexibility in the context of industrial, organizational and technological change;
- (f) in conjunction with relevant councils, develop policies and liaise with educational authorities to facilitate the effective transition of young persons from school to employment;
- (g) accredit skills formation as a pre-requisite for recurrent funding;

- (h) register and approve skills formation agencies delivering programmes accredited by the Authority;
 - (i) facilitate the recognition of skills formation qualifications and when required accredit and certify individuals' skills and qualifications whether obtained in this State or elsewhere, in industry, the workplace or in educational institutions;
 - (j) establish and implement accreditation and certification standards for skills formation;
 - (k) promote the articulation of skills formation across and within industry sectors;
 - (l) ensure that the criteria for selection for skills formation do not include characteristics that discriminate against any persons in the community;
 - (m) initiate, conduct and promote research into skills formation, either alone or jointly with others, and publish reports and provide information thereon;
- and
- (n) promote the concept of quality training, examine the quality of courses offered and where necessary publish reports on those courses.

(2) The Authority may and shall, whenever directed by the Minister, inquire into and provide information and advice to the Minister with respect to—

- (a) any matter relating to skills formation policies and programmes, including all matters referred to in this section and other Acts relevant to skills formation in force from time to time;
- (b) the appropriate allocation of resources for skills formation policies and programmes in the State and in the various regions of the State;
- (c) the effectiveness of skills formation policies and programmes in the public and private sectors;
- (d) such other matters as the Minister considers relevant.

(3) Subject to subsection (5), the Minister may from time to time either generally or with respect to a particular matter give directions to the Authority by notice in writing addressed to the chairperson with respect to the exercise and performance of its functions under this or any other Act and shall whenever giving a direction state the reasons for the direction.

(4) The Authority shall—

- (a) give effect to any direction given under subsection (3); and
- (b) incorporate any directions given and the stated reasons for each direction given under subsection (3) in its annual report given under section 35 and shall report on the effect of any such directions.

(5) The Minister shall not give a direction to the Authority with respect to any function referred to in the following provisions namely—

- (a) subsection (1) (g), (h), (i) or (j); or
- (b) section 5 (2), 22, 23, 28, 31 or 32.

Delegation, committees and consultation

18. (1) The Authority may, either generally or as otherwise provided by the instrument of delegation, by writing delegate to any person or body of persons, any of the functions of the Authority under this or any other Act, other than this power of delegation.

(2) For the purposes of giving effect to the objects of this Act and carrying out its functions under this or any other Act the Authority may establish committees, groups or panels consisting of members of the Authority or other persons or both either alone or in conjunction with any person or body—

- (a) carrying out any function relating to skills formation under a law of the Commonwealth or any State or Territory of the Commonwealth;
- (b) providing skills formation; or
- (c) assisting with skills formation.

(3) A member of a committee, group or panel appointed under subsection (2) other than a person who is a member of the Authority, is entitled to such remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Commissioner.

(4) The terms and conditions, other than those fixed under subsection (3), applicable in relation to a person appointed under this section shall be as determined by the Authority from time to time either generally or with respect to a particular appointment.

(5) In order to contribute to the co-ordination in the provision and the standards of skills formation the Authority shall consult and liaise with—

- (a) the Secondary Education Authority established under the *Secondary Education Authority Act 1984*;
- (b) the National Board of Employment, Education and Training established under the *Employment, Education and Training Act 1988* of the Parliament of the Commonwealth;
- (c) the body known as the National Training Board; and
- (d) the body known as the Western Australian Higher Education Council,

and any other body having objects or functions similar to the objects and functions referred to in sections 3 and 17 respectively.

(6) Where the Authority delegates any of its functions under subsection (1), it shall provide the delegate at the time of delegation with written reasons for the delegation and both the delegation and the reasons for delegation shall be incorporated in its annual report given under section 35.

(7) Where any committee, group or panel is established under subsection (2), the Authority shall incorporate the date of and reasons for its establishment, its objects and its achievements in its annual report given under section 35.

Staff of the Authority

19. (1) The Authority may from time to time appoint such persons as are necessary for the purposes of the administration of this Act.

(2) Subject to any relevant award or agreement under the *Industrial Relations Act 1979* the terms and conditions of persons employed by the Authority are such as the Authority determines.

(3) The Authority may engage under contract for services such professional, technical or other assistance as the Authority considers necessary to assist it in the effective administration of this Act and any other Act administered by the Authority.

(4) The *Public Service Act 1978* does not apply to or in relation to the members of the staff of the Authority.

Strategic plan

20. (1) The Authority shall develop and prepare in writing for each successive triennial period commencing from the appointed day a strategic plan setting out the manner in which it is proposed that its functions will be performed.

(2) For the purposes of assisting in the development and preparation of a strategic plan under subsection (1) the Authority shall by notice in writing invite submissions from the Commissioner of Equal Opportunity appointed under the *Equal Opportunity Act 1984* and government organizations as to the special needs for skills formation among any group or groups within the community as are identified by the Commissioner and those government organizations.

(3) The Authority shall have regard to the submissions made under subsection (2) and may consider any other relevant labour market research for the purposes of developing and preparing a strategic plan.

(4) A strategic plan prepared for the purposes of subsection (1) shall be submitted to the Minister for approval not less than 90 days, or such lesser period as the Minister allows, before the day of the commencement of the period to which the strategic plan relates.

(5) The Authority may, with the approval of the Minister, vary a strategic plan and the strategic plan as so varied has effect accordingly.

(6) The Strategic Plan and any variation thereof shall be published in such manner as is approved by the Minister.

(7) In subsection (1)—

“appointed day” means the day fixed by the Minister in writing to the Authority after consultation with the Authority.

Operational plan

21. (1) The Authority shall formulate and prepare in writing, in respect of each financial year occurring during the period of the strategic plan formulated under section 20, an annual operational plan setting out—

- (a) the programmes it proposes to carry out; and
- (b) the priorities for the allocation of resources to each such programme,

during that year.

(2) The Authority shall cause an operational plan together with such other submissions (if any) the Authority considers appropriate to be submitted to the Minister for approval.

(3) The Minister may request that an operational plan be amended or revised prior to approval.

(4) If the Minister approves an operational plan the Minister shall give notice in writing of the approval to the Authority.

(5) An operational plan shall have effect from the dates specified in the notice of approval.

(6) The Authority may with the approval of the Minister vary an operational plan and the operational plan as so varied has effect accordingly.

(7) The Authority shall incorporate the operational plan and any variations to the operational plan in its annual report given under section 35.

Declaration of industry by Authority

22. (1) The Authority may for the purposes of this Act group any skills and declare any such grouping to be an industry for the purposes of this Act.

(2) A declaration by the Authority under subsection (1)—

- (a) shall be published in the *Government Gazette*;
- (b) shall contain a brief description of the industry; and
- (c) may contain a list of the skills formation grouped in the industry.

(3) Notwithstanding anything in subsections (1) and (2) or sections 23 and 24 where the Authority does not include any skills formation in any group as an industry for the purposes of this Act the Authority may exercise any function conferred on the Authority by this Act in relation to any such skills formation.

Registration of industry employment and training councils

23. (1) Subject to this Act, where the Authority has made a declaration under section 22 the Authority may for the purposes of this Act register an association as an industry employment and training council in relation to the industry so declared.

(2) The Authority shall not register an association as an industry employment and training council unless the Authority is satisfied that—

- (a) the objects of the association are consistent with the objects of this Act;
- (b) the rules of the association require that—
 - (i) membership of the association and any executive body of the association is comprised of employer organizations, employee organizations and persons representing State and Commonwealth governments;
 - (ii) the person who presides at any general meeting of the association or any meeting of the executive body of the association shall be a person who is nominated by an employer or employee organization;

- (iii) at any general meeting of the association or any meeting of the executive body of the association a quorum shall not be constituted unless the quorum is constituted in accordance with the manner approved by the Authority; and
- (iv) any question arising at a general meeting of the association or at any meeting of the executive body of the association shall be resolved by a majority of the votes if and only if that majority consists of a majority within each of such of the groups of employer organizations, employee organizations or representatives of the Minister or the Commonwealth Minister as may be present at the meeting but before proceeding to vote on any question the members shall make every effort to reach a consensus; and
- (c) the association conforms with such other criteria as are specified by the Authority by notice published in the *Government Gazette*.

(3) Notwithstanding anything in subsection (2), where the Authority—

- (a) receives an application in relation to a particular industry made by an association of which an organization of the kind referred to in subsection (2) (b) (i) is a member;
- (b) is satisfied that the objects of the association are consistent with the objects of this Act; and
- (c) is satisfied that though the rules of the association do not conform with the requirements of subsection (2) (b) and (c) the association would nevertheless perform the functions of a council in relation to the industry in question in a satisfactory manner;

the Authority may, subject to the approval of the Minister in writing, register the association as a council in relation to the industry.

(4) Where the Authority registers an association as a council under subsection (3) the Authority shall incorporate that fact in its Annual Report and shall set out in the Annual Report its reasons for such registration.

(5) A notice under subsection (1) shall specify the industry defined under section 22 in relation to which the association may be registered ("the relevant industry").

(6) An association may make application to the Authority in writing for registration as an industry employment and training council in relation to the relevant industry for the purposes of this Act.

(7) Where the Authority is satisfied that the applicant meets the criteria specified under subsection (2) in relation to the relevant industry, the Authority may register the association as the industry employment and training council in relation to the relevant industry.

Functions conferred on a council by this Act

24. (1) Subject to this Act, in addition to the objects and powers set out in the rules of a council the council has upon registration under this Act with respect to the industry in relation to which it is registered the following functions—

- (a) to identify current and future employment and skills formation requirements for the industry or group of industries in the State;
- (b) to co-ordinate skills formation within the industry;
- (c) to inquire into and advise the Authority on labour market requirements of the industry including the allocation of resources for skills formation;
- (d) to provide advice to the Minister or Authority on skills formation in the industry;
- (e) to develop and promote skills formation services in the industry;
- (f) to initiate and facilitate the development and delivery of skills formation services to meet the requirements of the industry;
- (g) to consider, develop and promote policies within the industry directed at achieving equality of opportunity in skills formation for all persons in the community;

- (h) to formulate and submit for accreditation skills formation for the industry; and
- (i) to promote the partnership of employers, employees, employer organizations, employee organizations, skills formation providers and government within the industry on investment in skills formation.

(2) Nothing in subsection (1) prevents the Authority from performing in relation to an industry any function conferred on a council under that subsection.

Cancellation of registration

25. (1) Subject to subsection (2), the Authority may cancel the registration of an association as a council with effect from such date as is specified by the Authority.

(2) Where the Authority has decided to cancel the registration of an association as a council under subsection (1) it shall—

- (a) give the Minister and the relevant association written notice of its decision to cancel the registration of the association and its reasons for the decision not less than 60 days prior to the date specified by it for the cancellation to have effect; and
- (b) cause its decision to cancel the registration of an association as a council and its reasons for the decision to be published in the *Government Gazette* not less than 60 days prior to the date specified by it for the cancellation to have effect.

(3) Where the Authority cancels the registration of an association as a council under subsection (1) the Authority may give such directions as the Authority considers necessary in order to give effect to the cancellation.

(4) Notwithstanding anything in any written law a direction given under subsection (3) has effect on and from the date specified in the direction.

(5) Notwithstanding anything in subsections (1), (2), (3) or (4) the Authority may and shall, whenever directed by the Minister, rescind any decision to cancel the registration of an association as a council under subsection (1) and any direction under subsection (3).

(6) Where the Authority cancels the registration of an association as a council under subsection (1) it shall incorporate the cancellation in its annual report given under section 35.

Authority may act as a council

26. Where the Authority—

- (a) makes a declaration under section 22 and does not register an association as a council in relation to the industry; or
- (b) cancels the registration of an association as a council under section 25 and does not give any direction under section 25 (2),

the Authority is deemed to be the council in relation to the industry and may carry out any function conferred on a council under this Act in relation to the industry in question.

Skills Standards and Accreditation Board

27. (1) There is hereby established a Skills Standards and Accreditation Board.

(2) The Board shall consist of 10 persons having knowledge of skills formation appointed by the Minister of whom—

- (a) one person shall be appointed on the nomination of the Authority to be chairperson;
- (b) 3 shall be persons who in the opinion of the Minister represent employer organizations;
- (c) 3 shall be persons who in the opinion of the Minister represent employee organizations of whom 2 shall be appointed on the nomination of the body known as the Trades and Labor Council of Western Australia; and
- (d) 3 persons shall be appointed at the discretion of the Minister.

(3) Where a nomination is required for the purposes of subsection (2) (b) or (c) otherwise than on the nomination of the body referred to in subsection (2) (c), the Minister shall cause to be published in the *Government Gazette* a notice calling for nominations under subsection (2) (b) or (c) otherwise than on the nomination of the body referred to in subsection (2) (c) as the case requires and the nomination shall be made to the Minister in writing within 30 days of the date of the publication of a notice from the Minister that such nomination is required as specified in the notice.

(4) Where an appointment is proposed to be made under subsection (2) (c) otherwise than on the nomination of the body referred to in that provision a copy of the notice calling for nominations in relation to the appointment shall be forwarded to that body.

(5) If a nomination has not been made in accordance with subsection (3) within the time specified under that subsection the Minister may appoint such person as the Minister thinks fit to be a member of the Board in place of the person provided for by subsection (2) (b) or (c) as the case requires.

(6) A person appointed under subsection (5) shall hold office for a period of 30 days commencing from the date of his or her appointment.

(7) The Minister shall not make an appointment under subsection (2) (b) unless the Minister has consulted with employer organizations.

(8) Subject to this section, the provisions of sections 9 (2) and (4), 10, 11, 14 (2), (3) and (4) and 15 apply to and in relation to the Board as though a reference in those provisions to—

(a) “the Authority” were a reference to the Board; and

(b) “a member” or “a member of the Authority” were a reference to a member of the Board.

(9) A member of the Board including the chairperson shall hold office for such term not exceeding 3 years as is specified in the instrument of appointment.

Functions of the Board

28. (1) Subject to this Act, the functions of the Board are—

- (a) to accredit any skills formation submitted to the Board and the qualifications gained from such accredited skills formation;
- (b) to determine and monitor the standards of competence required for accredited skills formation;
- (c) to facilitate the recognition of skills formation and qualifications, whether provided or acquired in this State or elsewhere, in industry or within educational institutions;
- (d) to accredit and certify when required, individuals' skills and qualifications whether obtained interstate, overseas or in the workplace;
- (e) to liaise with and promote co-ordination between educational and professional accrediting agencies;
- (f) to advise the Authority on skills formation provided under the *Industrial Training Act 1975* and any other Act relevant to skills formation; and
- (g) to carry out such other functions as are prescribed.

(2) The Authority may from time to time either generally or with respect to a particular matter give directions to the Board by notice in writing addressed to the chairperson with respect to the exercise and performance of its functions under this Act.

(3) The Board shall—

- (a) give effect to any direction given under subsection (2); and
- (b) incorporate any direction given under subsection (2) in its annual report and shall report on the effect of any such direction.

Board may establish committees etc.

29. For the purposes of carrying out any of its functions the Board may with the approval of the Authority—

- (a) establish committees, groups or panels consisting of members of the Board or other persons or both; and

- (b) co-opt the services of any person who in the opinion of the Board has qualifications relevant to any matter being considered by the Board.

Proceedings of the Board

30. (1) The chairperson shall preside at any meeting of the Board at which the chairperson is present and where the chairperson is not present, the members present shall elect one of their number to preside at that meeting.

(2) At any meeting of the Board where any question requiring a vote arises the question shall be resolved by a majority of the votes cast but the chairperson is not entitled to cast a deliberative vote unless the votes cast on the question are equal in which case the chairperson has a casting vote but before proceeding to a vote on any question, the members shall make every effort to reach consensus.

(3) At any meeting of the Board 4 members constitute a quorum if and only if there are among those members at least—

- (a) one member appointed under section 27 (2) (b);
- (b) one member appointed under section 27 (2) (c); and
- (c) one member appointed under section 27 (2) (d).

(4) Except to the extent that they are not prescribed or not directed by the Authority, the Board may determine its own procedures.

Accreditation and content of skills formation

31. (1) The Board may, with the approval of the Authority, by order published in such manner as is approved by the Authority in relation to skills formation do any one or more of the following—

- (a) determine the minimum requirements for the accredited skills formation;
- (b) accredit skills formation, vary or cancel any accredited skills formation;
- (c) specify the pre-requisites for entry to accredited skills formation;

- (d) determine the training, procedures for assessment and eligibility for certification to be provided under accredited skills formation;
- (e) determine the minimum competency to be provided under accredited skills formation; and
- (f) if accreditation of a particular workplace for the purpose of providing skills formation is required by any other written law, or such accreditation is sought from or has been approved by the Board, require that any such place at which the accredited skills formation is to be provided or is provided be approved by the person or body of persons specified by the Board.

(2) The Authority shall incorporate any determination, accreditation or specification under subsection (1) in its annual report given under section 35.

Skills formation agencies

32. (1) The Authority may formulate criteria to be met by bodies wishing to be registered under this section and shall cause the criteria so formulated to be made available to any person on request and to be published in the *Government Gazette* and in such other manner as the Authority considers appropriate.

(2) A body of persons, whether corporate or unincorporate, may make an application to the Authority in writing for registration as a skills formation agency for the purpose of providing accredited skills formation courses or programmes specified in the application.

(3) Where the Authority is satisfied that the applicant meets the criteria specified in subsection (1), the Authority may register the body as a skills formation agency and specify the skills formation that the applicant is qualified to provide and shall give to the applicant a notice in writing of the result of its application.

(4) The Authority may, after giving reasonable notice of its intention to do so, vary or cancel the registration of the body under this section.

(5) A notice under subsection (4) shall include the reasons for a variation or cancellation, as a case requires, of the registration of the body in question.

(6) If the Authority refuses an application by a body to register as a skills formation agency under this section, the Authority shall give written notice to the body setting out the reasons for its refusal.

(7) The Authority may impose such fees as the Authority considers proper for the registration of a skills formation agency under this section.

Authority may require information

33. (1) The Authority may require any skills formation agency registered under section 32 or any government organization to provide the Authority within such time as is specified by the Authority with such information in relation to skills formation provided by the skills formation agency or the government organization, as the case requires.

(2) A skills formation agency that fails to comply with a request made under subsection (1) within the time specified by the Authority commits an offence.

(3) Where a government organization fails to comply with a request made by the Authority under subsection (1) within the time specified by the Authority, the Authority may report the matter to the Minister.

Funds of the Authority

34. (1) The funds of the Authority consist of—

- (a) moneys from time to time appropriated by Parliament;
- (b) any moneys other than moneys referred to in paragraph (a), lawfully received by, made available to or payable to the Authority.

(2) The funds referred to in subsection (1) shall be paid into and placed to the credit of an account at the Treasury to be called the "State Employment and Skills Development Authority Account".

(3) There shall be paid from the moneys from time to time in the account referred to in subsection (2)—

- (a) the costs and expenses incurred in the administration of this Act;
- (b) any moneys granted by the Authority to any person or body for any purpose specified by the Authority in writing.

(4) The Authority may impose such terms, conditions and restrictions as it thinks appropriate with respect to any grant made under subsection (3) (b) and the person or body to whom or which any moneys are granted under this section shall comply with any such term, condition or restriction.

Application of Financial Administration and Audit Act 1985

35. (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 the Authority.

(2) Without affecting the generality of subsection (1) the report referred to in subsection (1) shall contain—

- (a) a report as to the attainment of the objects of this Act with specific mention of the provision of skills formation to any group or groups in the community as are identified under the strategic plan;
- (b) a report on the exercise by each council of the functions conferred by this Act on the council;
- (c) a report of the cancellation of the registration of a council under section 25; and
- (d) any dissenting views that a member of the Authority requires to be entered in the report.

Holding out prohibited

36. (1) A person shall not falsely represent that—

- (a) he or she is registered under this Act as a skills formation agency; or

- (b) any skills formation provided by that person is a skills formation accredited under this Act.

(2) A person who contravenes subsection (1) commits an offence.

Facilitation of proof

37. In any legal proceedings—

- (a) evidence is not required of—
 - (i) the constitution of the Authority or the Board;
 - (ii) any resolution of the Authority or the Board;
 - (iii) the appointment of any member of the Authority or the Board;
- (b) production of a copy of the *Government Gazette* containing a copy of a notice under this Act—
 - (i) is evidence of the matters contained in the notice; and
 - (ii) is evidence that all steps necessary to be taken prior to the publication of the notice were duly taken;
- (c) a certificate signed or purporting to be signed by the chief executive of the Authority that a body is or is not registered or was or was not during the period specified in the certificate registered as a skills formation agency is, without proof of the signature of that person, until the contrary is proved evidence of the matters set out in the certificate; and
- (d) a certificate signed or purporting to be signed by the chief executive of the Authority that a skills formation is or is not approved or accredited under this Act is without proof of the signature of that person evidence of the matters set out in the certificate.

Indemnity

38. The Authority, the Board, a council and any person who is or was a member of the Authority, the Board or council, or committee, group or panel under this Act is not personally liable for any act done or omitted to be done in good faith by the Authority, the Board, or by him or her acting as a member of the Authority, the Board, committee, group or panel under this Act.

Relationship with other laws

39. Where a provision of—

- (a) this Act; or
- (b) any subsidiary legislation under this Act,

relating to skills formation is inconsistent with the provisions of the *Industrial Training Act 1975* or any other Act or any subsidiary legislation under that Act or any other Act relating to skills formation, this Act or the subsidiary legislation made under this Act, as the case requires, prevails to the extent of the inconsistency.

Offences

40. A person who commits an offence against this Act or the regulations is liable to a penalty not exceeding \$20 000.

Minister to have access to documents

41. (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Authority and to have and retain copies of documents.

(2) For the purposes of subsection (1) the Minister may—

- (a) request the Authority to furnish information to the Minister;
- (b) request the Authority to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the Authority to obtain the information and furnish it to the Minister.

(3) The Authority shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section—

“document” includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

“information” means documents or other information relating to the functions of the Authority being information, as so defined, specified, or of a description specified, by the Minister;

“parliamentary purposes” means the purpose of—

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

Regulations

42. (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 the generality of subsection (1) regulations may be made—

- (a) prescribing the manner in which applications may be made for registration of an association as a council under this Act;

- (b) prescribing the manner in which applications may be made for registration as a registered skills formation agency and the fees payable in relation to such an application; and
- (c) providing that any breach of the regulations constitutes an offence.

Review

43. (1) The Minister shall carry out a review of the operation of this Act—

- (a) on the second anniversary of the commencement of this Act; and
- (b) on every third year after the second anniversary of the commencement of this Act,

and in the course of such review the Minister shall consider and have regard to—

- (c) the attainment of the objects of this Act;
- (d) the administration of the provision of the facilities under this Act providing for skills formation;
- (e) the effectiveness of the Authority, the Board and any committee or other body established under this Act;
- (f) the need for the continuation of the Authority, the Board and any committee or other body established under this Act; and
- (g) such other matters as appear to the Minister to be relevant.

(2) The Minister shall prepare a report based on the review conducted under subsection (1) and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

(3) Where pursuant to subsection (2) the Minister causes a report to be laid before each House of Parliament the Minister shall cause a copy of the report so laid to be forwarded to the Authority.

Savings and transitional

44. (1) Without derogating from sections 36, 37 and 38 of the *Interpretation Act 1984* and notwithstanding anything in this Act the Authority may give directions providing for incidental, supplementary, savings and transitional matters with respect to any—

- (a) apprenticeships and traineeships commenced under the *Industrial Training Act 1975* that have not been completed as at the commencement date;
- (b) course of study or training or both that is a skills formation under this Act that was commenced under the provisions of any Act other than the *Industrial Training Act 1975* before the commencement date and which is not completed as at that date.

(2) Notwithstanding anything in the relevant apprenticeship or traineeship agreement if immediately before the commencement date an apprentice or trainee was indentured to an industrial training advisory board (the “former board”) by virtue of section 26 of the *Industrial Training Act 1975* as in force before that date the apprentice or trainee, as the case requires, shall, with effect from the commencement date, by force of this subsection and without further assignment be deemed to be indentured to the person who is the employer from time to time of the apprentice or trainee, as the case requires and anything required to be done by the former board under the provisions of the apprenticeship or traineeship agreement may be done by that employer.

(3) Words and expressions used in this section that are used in the *Industrial Training Act 1975* have the same meaning in this section as they have in the *Industrial Training Act 1975*.

(4) In this section—

“commencement date” means the date on which this section comes into operation.

“ Authority ”;

- (i) in section 37E, by inserting in each case after “Department” where occurring in subsections (1) and (2) the following—

“ , the Authority or any other body established under the *State Employment and Skills Development Act 1990* ”;

and

- (j) by repealing section 41.

[*Act No. 95 of 1975 amended by Acts Nos. 86 of 1980 and 103 of 1985.]

Constitution Acts Amendment Act 1899 amended

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

- (a) by deleting “The Industrial Training Advisory Council established under the *Industrial Training Act 1975*”;

and

- (b) by inserting in the appropriate alphabetical position the following—

“ State Employment and Skills Development Authority” and the Skills Standards and Accreditation Board established under the *State Employment and Skills Development Act 1990*. ”.

[*Reprinted as approved 16 March 1989 and amended by Act No. 75 of 1988.]

Financial Administration and Audit Act 1985 amended

47. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by inserting in the appropriate alphabetical position the following—

“ State Employment and Skills Development Authority. ”.

[*Reprinted as approved 4 March 1987 and amended by Acts Nos. 94 of 1986, 9, 32, 65, 88, 89, 91, 99 and 113 of 1987, 4, 19, 21 and 52 of 1988 and 5 of 1989 and Gazettes of 30 June 1987, 25 September 1987, 4 December 1987, 8 April 1988, 16 December 1988, 9 June 1989 and 30 June 1989.]

Parliamentary Commissioner Act 1971 amended

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

- (a) by deleting “Industrial Training Advisory Council and any industrial training advisory board established under the *Industrial Training Act 1975*”; and
- (b) by inserting in the appropriate alphabetical position the following—

“ 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 Act 1990*. ”.

[*Reprinted as approved 31 March 1989 and amended by Act No. 75 of 1988.]
