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Education and Training Reform Amendment (Skills) Act 2010†
No. 71 of 2010
[Assented to 19 October 2010]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

(a) to amend the Education and Training Reform Act 2006—

(i) to facilitate the implementation of the AQTF in relation to the provision of vocational education and training; and
(ii) to include a guarantee in that Act of vocational education and training for students in certain circumstances; and

(iii) to widen the functions of the Victorian Registration and Qualifications Authority; and

(iv) to strengthen the regulatory system for training organisations; and

(v) to require registered training organisations to have a single purpose of providing education and training; and

(vi) to require registered training organisations to have appropriate complaint handling processes and to establish a register of complaints; and

(vii) to provide that standard contract terms must be included in contracts for the provision of services by registered training organisations; and

(viii) to enable the Victorian Registration and Qualifications Authority to apply to the Supreme Court for an order that a registered training organisation be placed under judicial administration;

(ix) to provide for additional offences relating to registered training organisations and the issue of infringement notices in relation to offences committed by those organisations; and

(x) to strengthen enforcement powers in relation to registered training organisations; and
(xi) to make various amendments relating to the Victorian Skills Commission, TAFE institute boards and the Adult, Community and Further Education Board; and

(xii) to make other miscellaneous and consequential amendments to that Act; and

(b) to make miscellaneous amendments to a number of University Acts.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 January 2013, it comes into operation on that day.
PART 2—PRINCIPLES

3 Principles underlying the Government education and training system

(1) In section 1.2.2(2)(d) of the Education and Training Reform Act 2006, for "training provider." substitute "training provider;".

(2) After section 1.2.2(2)(d) of the Education and Training Reform Act 2006 insert—

"(e) a student has a guaranteed vocational education and training place for a government-subsidised course if—

(i) the student is under 20 years of age on 1 January in the year the study is undertaken; or

(ii) the student is 20 years of age or older on 1 January in the year the study is undertaken, and the study leads to a higher vocational education and training qualification than the highest such qualification already obtained by the student—

in the following circumstances—

(iii) the course of study is available and has been approved to receive a Government subsidy; and

(iv) the student meets the admission requirements for the course of study; and
(v) the student meets any citizenship or residency requirements to undertake the course of study and the student is not an overseas student.".
PART 3—EDUCATION AND TRAINING PROVIDERS

Division 1—Registration of providers

4 Definitions

(1) In section 1.1.3(1) of the Education and Training Reform Act 2006 insert the following definition—

"RTO has the same meaning as in section 4.1.1(1);".

(2) In section 4.1.1(1) of the Education and Training Reform Act 2006 in the definition of AQTF—

(a) for "8 June 2001" substitute "9 June 2010";
(b) after "amended" insert "or as remade or endorsed".

(3) In section 4.1.1(1) of the Education and Training Reform Act 2006 for the definition of RTO standards substitute—

"RTO standards means the AQTF 2010 Essential Conditions and Standards for Initial Registration and the AQTF 2010 Essential Conditions and Standards for Continuing Registration as endorsed by the Ministerial Council on 9 July 2010 and as amended or as remade or endorsed from time to time by the Ministerial Council;".

(4) In section 4.1.1(1) of the Education and Training Reform Act 2006 insert the following definitions—

"high managerial agent in relation to a person or body means an employee, agent or officer (including an officer within the meaning of the Corporations Act) of the person or body
with duties of such responsibility that his or her conduct may fairly be assumed to represent the person or body in relation to the provision of education and training by the person or body;

principal executive officer in relation to a person or body, means the person who has executive responsibility for the operation of the person or body;".

5 Functions of Victorian Registration and Qualifications Authority

(1) After section 4.2.2(1)(fa) of the Education and Training Reform Act 2006 insert—

"(fb) assess and reassess from time to time the financial capability of registered providers;".

(2) After section 4.2.2(1)(n) of the Education and Training Reform Act 2006 insert—

"(na) protect the interests of students as consumers in the delivery of accredited courses and qualifications;

(nb) monitor compliance with, and enforce, the requirements relating to the provision of education or training in this Chapter;

(nc) investigate complaints against authorised officers;".

(3) For section 4.2.2(3) of the Education and Training Reform Act 2006 substitute—

"(3) In carrying out its functions under subsection (1)(d) and (f), the Authority is responsible for assessing whether providers or organisations are fit and proper persons or organisations to be registered or approved, having regard to the criteria set out in this Act, the regulations and any guidelines issued by the Authority.".
6 Membership of Authority

For section 4.2.4(1) and (2) of the Education and Training Reform Act 2006 substitute—

"(1) The Authority consists of not less than 9 and not more than 13 members of whom—

(a) one is to be appointed by the Governor in Council as Chairperson on the nomination of the Minister; and

(b) one is to be the Secretary or the nominee of the Secretary; and

(c) one is to be the Secretary to the Department of Innovation, Industry and Regional Development or his or her nominee; and

(d) the remaining members are to be appointed by the Governor in Council on the nomination of the Minister in accordance with subsection (2).

(2) In nominating persons for appointment to the Authority, the Minister must have regard to ensuring that—

(a) members have skills and experience that are drawn from appropriate fields relevant to the performance of the functions of the Authority including the following fields—

(i) education, including school education, vocational education and training, adult, community and further education and higher education;
(ii) quality assurance, business management, institutional governance, law, finance and industry; and

(b) the composition of the Authority—

(i) is a fair and balanced reflection of the diversity of the community; and

(ii) reflects both metropolitan and country interests.”.

7 Delegation of Authority's functions to TVET

(1) For section 4.2.7A(1)(a)(i) of the Education and Training Reform Act 2006 substitute—

"(i) the functions under Division 4 of Part 4.3 relating to the registration of training organisations except the function under section 4.3.18A;".

(2) In section 4.2.7A(1)(a)(v) of the Education and Training Reform Act 2006, after "qualification" insert "in relation to vocational education and training".

8 School sector registration

In the heading to Division 3 of Part 4.3 of the Education and Training Reform Act 2006, for "and VET" substitute "registration".

9 New section 4.3.9A inserted

In Division 3 of Part 4.3, before section 4.3.10 of the Education and Training Reform Act 2006 insert—
"4.3.9A Application of Division

This Division only applies to the registration of persons or bodies or schools in respect of accredited senior secondary courses and registered senior secondary qualifications.

Example

Senior secondary courses can include programs provided for the Victorian Certificate of Education (VCE), the Victorian Certificate of Applied Learning (VCAL) and the International Baccalaureate Diploma (IBD).

Note

A person or body or school will also need to comply with Division 4 in relation to the provision of senior secondary courses that are vocational and education or further education courses.”.

10 Registration of education and training organisations

(1) In section 4.3.10(2) of the Education and Training Reform Act 2006 for "course or qualification" substitute "accredited senior secondary course or registered senior secondary qualification".

(2) Section 4.3.10(5) and (6) of the Education and Training Reform Act 2006 are repealed.

11 National registration

For the heading to Division 4 of Part 4.3 of the Education and Training Reform Act 2006 substitute—

"Division 4—Nationally recognised vocational education and training”.

12 New section 4.3.12A inserted

In Division 4 of Part 4.3, before section 4.3.13 of the Education and Training Reform Act 2006 insert—
"4.3.12A Intent of Division

The intent of this Division is to establish a system for the registration and regulation of vocational education and training organisations, which is consistent with, and implements, the AQTF."

13 Application of Division

Section 4.3.13(2) of the Education and Training Reform Act 2006 is repealed.

14 New section 4.3.15 substituted

For section 4.3.15 of the Education and Training Reform Act 2006 substitute—

"4.3.15 Applying for registration

A person, body or principal of a school may apply to the Authority for registration on the National Register of the person, body or school as an education and training organisation."

15 Decision about registration under Division 4 of Part 4.3

(1) After section 4.3.16(2) of the Education and Training Reform Act 2006 insert—

"(2A) In deciding the application, the Authority must take into account—

(a) whether the applicant or a high managerial agent of the applicant—

(i) has ever become bankrupt or taken the benefit of any law for the relief of bankrupt debtors, or compounded with their creditors or made an assignment of their property for their benefit; or
(ii) has ever been a director of a company or body that has been wound up; or

(iii) has ever been disqualified from managing corporations under Part 2D.6 of the Corporations Act; or

(b) whether the applicant or a high managerial agent of the applicant has ever been convicted of—

(i) a sexual offence; or

(ii) an offence that involves fraud or dishonesty; or

(iii) an offence against a Consumer Act within the meaning of the Fair Trading Act 1999 or a law relating to company administration, including financial administration; or

(iv) an offence equivalent to an offence described in subparagraph (i), (ii) or (iii) in another jurisdiction; or

(c) whether the applicant or a high managerial agent of the applicant has ever had their registration under this Division suspended or cancelled; or

(d) whether the applicant or a high managerial agent of the applicant has ever had conditions imposed on their registration under this Division during the registration period.".
(2) After section 4.3.16(3)(b) of the Education and Training Reform Act 2006 insert—

"(ba) the applicant has a clearly demonstrated capacity to provide vocational education and training of a satisfactory standard; and

(bc) the applicant has paid any fee fixed by the Minister in respect of the application; and

(bd) the Authority is satisfied that any other criterion prescribed by the regulations has been complied with; and".

(3) In section 4.3.16(3)(c) of the Education and Training Reform Act 2006, after "applicant" (where first occurring) insert "and the relevant premises (within the meaning of section 5.8.3B) from which the applicant proposes to operate".

(4) In section 4.3.16(5) of the Education and Training Reform Act 2006 after "(2)" insert ", (2A)".

(5) After section 4.3.16(5) of the Education and Training Reform Act 2006 insert—

"(5A) For the purposes of subsection (3)(c), section 4.3.25 applies as if the applicant were an RTO.".

(6) In section 4.3.16(9) of the Education and Training Reform Act 2006—

(a) in paragraph (b) for "4.3.24." substitute "4.3.24; or";

(b) after paragraph (b) insert—

"(c) if a condition is imposed during the registration period, immediately after the decision is made to impose the condition.".
16 Conditions on registration

(1) After section 4.3.17(2)(d) of the Education and Training Reform Act 2006 insert—

"(da) the RTO must pay the fees for registration fixed by the Minister;".

(2) After section 4.3.17(2) of the Education and Training Reform Act 2006 insert—

"(2A) The conditions imposed by the Authority under section 4.3.16(6) or 4.3.21(2) must—

(a) relate to the obligations of an RTO under this Act or the regulations or the RTO standards; and

(b) be imposed for the purpose of—

(i) improving compliance with those obligations; or

(ii) preventing, or minimising the risk of, non-compliance with those obligations; or

(iii) protecting the interests of students enrolled with the RTO or the public interest.

Note

Section 4.3.12A refers to the intent of this Division, which is to establish a scheme for the registration and regulation of vocational education and training organisations that is consistent with, and implements, the AQTF.

(2B) Conditions may be imposed under section 4.3.16(6) on or during the period of registration.

(2C) The conditions imposed under section 4.3.16(6) may be conditions that apply to a particular RTO or that apply generally to RTOs or a class of RTOs.
(2D) The Authority must give an RTO or RTOs 28 days to make written submissions on a proposal to impose a condition on the registration of the RTO or RTOs during the period of registration and must consider any submissions before deciding whether or not to impose the condition.

17 New section 4.3.18A inserted

After section 4.3.18 of the Education and Training Reform Act 2006 insert—

"4.3.18A Guidelines

(1) The Authority may issue guidelines in relation to the following—

(a) matters relating to the criteria for registration or refusal of registration under this Division;

(b) matters relating to the criteria or grounds for—

(i) the suspension or cancellation of registration under this Division; or

(ii) the amendment of the scope of such registration or the registered conditions on such registration; or

(iii) the imposing of a new condition on such registration;

(c) conditions imposed on registration by the Authority including—

(i) the matters in relation to which conditions may be imposed; and

(ii) the types of conditions that may be imposed; and

(iii) the circumstances in which conditions may be imposed; and
(iv) the measures to be taken by RTOs to comply with those conditions;

(d) matters relating to the RTO standards including matters relating to—

(i) the planning, operation and management of the business of RTOs, including financial management;

(ii) assessing and monitoring the financial capabilities of RTOs;

(iii) quality assurance, review and evaluation processes of RTOs;

(e) matters relating to student learning outcomes and welfare services achieved or provided by RTOs;

(f) matters relating to teaching, learning and assessment provided by RTOs;

(g) matters relating to governance, probity and compliance with statutory requirements carried out or achieved by RTOs;

(h) matters relating to the keeping of records by RTOs;

(i) matters relating to the circumstances in which the Authority may register an RTO for less than 5 years.

(2) The Authority in preparing the guidelines must consider—

(a) the RTO standards; and

(b) any guidelines issued under a law of the Commonwealth or of another State or Territory implementing the principles set out in the AQTF relating to the
registration of vocational education and training organisations.

(3) The guidelines must not be inconsistent with—
   (a) this Act or the regulations; or
   (b) the RTO standards.

(4) The guidelines may apply, adopt or incorporate any matter contained in any document issued, or published by a body or person whether—
   (a) wholly or partially or as amended by the guidelines; or
   (b) as issued or published at the time that the guidelines are issued or at any time before then; or
   (c) as amended from time to time.

(5) The regulations may require a person, body or school to comply with any guidelines issued under this section.”.

18 Amending, suspending or cancelling registration

(1) For section 4.3.21(3) of the Education and Training Reform Act 2006 substitute—

"(3) The grounds are as follows—
   (a) the registration, or part of the scope of registration, was obtained because of incorrect or misleading information;
   (b) the RTO has contravened a condition of registration;
   (c) the RTO or a high managerial agent of the RTO has not complied with or does not have a record of compliance with RTO standards;"
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(d) the RTO or a high managerial agent of the RTO—

(i) has become bankrupt or taken the benefit of a law for the relief of bankrupt debtors, or compounded with their creditors or made an assignment of their property for their benefit; or

(ii) is a director of a company or body that has been wound up; or

(iii) has been disqualified from managing corporations under Part 2D.6 of the Corporations Act; or

(e) the RTO or a high managerial agent of the RTO has been convicted of—

(i) a sexual offence; or

(ii) an offence that involves fraud or dishonesty; or

(iii) an offence against a Consumer Act within the meaning of the Fair Trading Act 1999 or a law relating to company administration, including financial administration; or

(iv) an offence equivalent to an offence described in subparagraph (i), (ii) or (iii) in another jurisdiction;

(f) the RTO has not paid the required registration fees.". 
19  New section 4.3.21A inserted

After section 4.3.21 of the Education and Training Reform Act 2006 insert—

"4.3.21A Faster action in exceptional circumstances

(1) The powers under this section are in addition to, and not in derogation of, the powers conferred by section 4.3.21(9).

(2) Subject to this section, the Authority may suspend the registration, or part of the scope of the registration, of an RTO or cancel the registration of an RTO under section 4.3.21, without delay, if the Authority is satisfied that exceptional circumstances exist.

(3) The Authority must give the RTO at least 3 working days to make submissions if the Authority intends to suspend the registration, or part of the scope of the registration, of the RTO.

(4) The Authority must give the RTO at least 7 days to make submissions if the Authority intends to cancel the registration of the RTO.

(5) The Authority may take the action referred to in this section concurrently with any action under section 4.5.5 in relation to an RTO.

(6) In this section exceptional circumstances include, but are not limited to the following—

(a) the RTO has committed a serious breach of occupational health and safety laws;

(b) the RTO has notified the Authority or its students that it will cease trading or cease conducting operations and that notice is given less than 28 days before
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it proposes to cease trading or cease conducting operations;

(c) urgent action is required—

(i) because of significant non-compliance by the RTO with the RTO standards; and

(ii) to safeguard or ensure the continuity or quality of the education of the students of the RTO.

20 Accreditation of a course or part of a course
For section 4.4.2(2) of the Education and Training Reform Act 2006 substitute—

"(2) In deciding an application for accreditation of a course or part of a course in vocational education and training or further education, the Authority must also apply the standards for accreditation of courses adopted under the AQTF.".

21 Who can issue qualifications
In section 4.4.5 of the Education and Training Reform Act 2006—

(a) for "person or body" (wherever occurring) substitute "person, body or school";

(b) for "Division 3" (wherever occurring) substitute "Division 3 or 4".

22 Registration of education and training organisations
(1) After section 4.6.2(2) of the Education and Training Reform Act 2006 insert—

"(3) The Authority must also include in the division persons, bodies or schools who are registered on the National Register under Division 4 of Part 4.3."
(4) The division must specify in relation to the persons, bodies or schools referred to in subsection (3), the details required to be specified on the National Register in respect of those persons, bodies or schools.

(5) If a person, body or school referred to in subsection (3) is no longer registered on the National Register the Authority must remove the person, body or school and its details from the State Register.

(2) Section 4.6.4(1) of the Education and Training Reform Act 2006 is repealed.

(3) In section 4.6.4 of the Education and Training Reform Act 2006—

(a) in subsection (4) after "Register" (where secondly occurring) insert "and the State Register";

(b) in subsection (5) after "Register" (where thirdly occurring) insert "and the State Register".

23 Definition of education or training provider

In section 5.3A.1 of the Education and Training Reform Act 2006 for the definition of education or training provider substitute—

"education or training provider" means—

(a) a person, body or school registered by the Authority under Division 1 or 3 of Part 4.3; or

(b) a person, body or school registered under Division 4 of Part 4.3; or

(c) a person or body registered by TVET to the extent that the person or body operates in Victoria; or
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(d) a person or body receiving a grant subsidy or loan by the Adult, Community and Further Education Board (within the meaning of Part 3.3) in relation to the provision of adult, community and further education—

but does not include a university, except the TAFE division of a university;".

Division 2—Single purpose entity requirements for RTOs providing courses to overseas students

24 Approval to provide courses for overseas students

After section 4.5.1(1) of the Education and Training Reform Act 2006 insert—

"(1A) The Authority must not approve an education or training organisation or institution under this section unless the Authority is satisfied that the organisation or institution has the principal purpose of providing education and training.

(1B) For the purposes of subsection (1A), the principal purpose of providing education and training includes the provision of prescribed ancillary services to students.

(1C) Subsection (1A) does not apply if the Authority acting as a designated authority within the meaning of the Education Services for Overseas Students Act 2000 of the Commonwealth is not required to certify for the purposes of that Commonwealth Act that the organisation or institution has the principal purpose of providing education.

Note
See section 9(2)(c)(i) of the Education Services for Overseas Students Act 2000 of the Commonwealth.".
25 Suspension or cancellation of approval

After section 4.5.3(1) of the Education and Training Reform Act 2006 insert—

"(1A) Without limiting subsection (1), it is a ground for suspension or cancellation of an approval if the organisation or institution has ceased to have the provision of education and training as its principal purpose and the organisation or institution would be required to have that principal purpose if it applied for an approval under section 4.5.1.

Note

See section 4.5.1(1B) which allows applicants to provide certain prescribed ancillary services and not fall outside of having the principal purpose of providing education and training."

26 Single purpose entity requirement

(1) After section 4.3.16(3)(ba) of the Education and Training Reform Act 2006 insert—

"(bb) the Authority is satisfied that the applicant—

(i) has the principal purpose of providing education and training; or

Note

See subsection (4C) which allows applicants to provide certain prescribed ancillary services and not fall outside of having the principal purpose of providing education and training.

(ii) is a school that is registered under this Act; and".
(2) After section 4.3.16(4) of the Education and Training Reform Act 2006 insert—

"(4A) Despite subsection (3)(bb), the following persons or bodies are not required to have the principal purpose of providing education and training—

(a) a University;
(b) a TAFE institute;
(c) an adult education institution;
(d) a school;
(e) a person or body receiving a grant subsidy or loan by the Adult, Community and Further Education Board (within the meaning of Part 3.3) in relation to the provision of adult, community and further education;
(f) a public sector body within the meaning of the Public Administration Act 2004;
(g) any department or public statutory authority of the Commonwealth or of another State or Territory;
(h) a prescribed person or body or person or body of a prescribed class of person or body;
(i) a person or body exempted by the Minister under subsection (4B) from the requirement to have the principal purpose of providing education and training under subsection (3)(bb)."
(4B) The Minister may grant an exemption to a person or body from the requirement to have the principal purpose of providing education and training under subsection (3)(bb) if—

(a) the person or body is a community based organisation; or

(b) the person or body provides education and training services on a not-for-profit basis; or

(c) the person or body provides education and training only to its staff members or staff members of related entities.

(4C) For the purposes of subsection (3)(bb)(i), the principal purpose of providing education and training includes the provision of prescribed ancillary services to students.

27 Grounds for suspension and cancellation

(1) In section 4.3.21(1) and (2) of the Education and Training Reform Act 2006 after ",(3)" insert "or (3A)".

(2) After section 4.3.21(3) of the Education and Training Reform Act 2006 insert—

"(3A) A further ground is that the RTO has ceased to have the provision of education and training as its principal purpose, unless an exemption under section 4.3.16(4A) applies.

Note
See section 4.3.16(4C) which allows applicants to provide certain prescribed ancillary services and not fall outside of having the principal purpose of providing education and training.".
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28 Approval to provide courses to overseas students

For section 4.5.1(1C) of the Education and Training Reform Act 2006 substitute—

"(1C) Subsection (1A) does not apply if—

(a) the Authority acting as a designated authority within the meaning of the Education Services for Overseas Students Act 2000 of the Commonwealth is not required to certify for the purposes of that Commonwealth Act that the organisation or institution has the principal purpose of providing education; and

Note
See section 9(2)(c)(i) of the Education Services for Overseas Students Act 2000 of the Commonwealth.

(b) the organisation or institution is exempted under section 4.3.16(4A) from the requirement to have the principal purposes of providing education and training.".

Division 4—Complaint handling

29 Interpretation

In section 4.1.1(1) of the Education and Training Reform Act 2006 insert the following definition—

"effective complaint handling process means a complaint handling process established in accordance with Part 4.6A;".
30 Complaint handling process

(1) Before section 4.3.16(3) of the Education and Training Reform Act 2006 insert—

"(2B) In deciding the application, the Authority must also take into account whether the applicant has an effective complaint handling process to handle complaints by past, current or prospective students if the applicant is required to have such a process under Part 4.6A.

Note
See Part 4.6A for what constitutes an effective complaint handling process.

(2) After section 4.3.16(3) of the Education and Training Reform Act 2006 insert—

"(3A) The Authority must not grant the application unless the Authority is satisfied that the applicant has an effective complaint handling process to handle complaints by past, current or prospective students if the applicant is required to have such a process under Part 4.6A.

Note
See Part 4.6A for what constitutes an effective complaint handling process.

(3) In section 4.3.16(5) of the Education and Training Reform Act 2006, for "Subsections (2), (2A) and (3)" substitute "Subsections (2), (2A), (2B), (3) and (3A)".

(4) In section 4.3.21(1) and (2) of the Education and Training Reform Act 2006 for "subsection (3) or (3A)" substitute "subsection (3), (3A) or (3B)".
(5) Before section 4.3.21(4) of the Education and Training Reform Act 2006 insert—

"(3B) A further ground is that the RTO does not have an effective complaint handling process to handle complaints by past, current or prospective students, which the applicant is required to have under Part 4.6A.

Note
See Part 4.6A for what constitutes an effective complaint handling process."

31 New Part 4.6A inserted

After Part 4.6 of the Education and Training Reform Act 2006 insert—

"PART 4.6A—COMPLAINT HANDLING

4.6A.1 Definition of RTO in this Part

In this Part, except section 4.6A.6, RTO does not include any person or body exempted under section 4.3.16(4A) from the requirement to have the principal purpose of providing education and training.

Note
Persons and bodies exempted from this requirement include universities, TAFE institutes, adult education institutions and schools. Persons and bodies may also be exempted by the regulations or the Minister.

4.6A.2 Complaint handling process

An RTO must establish a process in accordance with the regulations for the handling of complaints by persons who are past, current or prospective students of the RTO and who are affected by decisions, actions or omissions by the RTO in relation to the provision of vocational education and training.
4.6A.3 Register of complaints

(1) An RTO must keep a register of complaints in accordance with this section of all complaints made to it under the complaints handling process.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

(2) The purposes of the register of complaints are—

(a) to assist in the management of the complaint handling process required under this Part and the regulations; and

(b) to enable the Authority to audit compliance by the RTO with the complaint handling process requirements under this Part and the regulations.

(3) The register of complaints must contain the following matters—

(a) the name of the person who made the complaint;

(b) the date on which the complaint was made;

(c) the date on which the complaint was resolved or closed (if applicable);

(d) a reference to the RTO's complete records relating to the complaint kept in accordance with section 4.6A.5;

(e) any other prescribed matter.
4.6A.4 Access to register of complaints
An RTO must make the register of complaints available during business hours at the principal office of the RTO for inspection by a person authorised by the Authority.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate.

4.6A.5 RTO must keep complete records of complaints
(1) An RTO must keep all records relating to the handling of a complaint by the RTO under its complaint handling process.

(2) The records required to be kept under this section must be kept separately to the register of complaints.

4.6A.6 Student may make complaint to Authority
(1) Without limiting any other means available for making or resolving a complaint, a past, current or prospective student of an RTO may make a complaint to the Authority in relation to—

(a) an alleged contravention by the RTO of this Act or the regulations; or

(b) an alleged contravention by the RTO of the RTO standards.

(2) The Authority may appoint a person or body to handle complaints made to the Authority under this section.

(3) Subsection (1) does not apply in respect of complaints made against the Victoria Police within the meaning of the Public Administration Act 2004.

__________________"
Division 5—Complaint handling and dispute resolution

32 Substitution of heading to Part 4.6A

For the heading to Part 4.6A of the Education and Training Reform Act 2006 substitute—

"PART 4.6A—COMPLAINT HANDLING AND DISPUTE RESOLUTION"

33 New sections 4.6A.5A, 4.6A.5B and 4.6A.5C inserted

After section 4.6A.5 of the Education and Training Reform Act 2006 insert—

"4.6A.5A Referral of complaint under approved scheme if not resolved by RTO

(1) This section applies if a complaint made to an RTO under its complaint handling process is not resolved within 30 days and the RTO is a member of an approved dispute resolution and student welfare scheme.

(2) The complainant may refer the matter to the person appointed to handle disputes under an approved dispute resolution and student welfare scheme, if—

(a) the scheme applies to a class of persons that includes the complainant; and

(b) the matter falls within the scope of the dispute resolution processes provided for in the scheme.

Note

See section 4.6A.6 for complaints by students if no approved scheme applies.
4.6A.5B Approval of dispute resolution and student welfare scheme

(1) The Minister may, by notice published in the Government Gazette, approve a dispute resolution and student welfare scheme for the purposes of this Part.

(2) In determining whether to approve a scheme under this section, the Minister must have regard to—

(a) the matters set out in Schedule 7; and

(b) any criteria set out in the regulations.

4.6A.5C RTO must disclose whether member of dispute resolution and student welfare scheme

An RTO must disclose in the prescribed manner to past, current and prospective students whether it is a member of a dispute resolution and student welfare scheme approved under this Part.

Penalty: 10 penalty units for a natural person and 50 penalty units for a body corporate."

34 New Schedule 7 inserted

After Schedule 6 to the Education and Training Reform Act 2006 insert—

"SCHEDULE 7

Section 4.6A.5B

DISPUTE RESOLUTION AND STUDENT WELFARE SCHEME

1 Scheme must apply to overseas students

The scheme must apply to overseas students of RTOs providing courses in Victoria.
2 Scheme may apply to domestic students
The scheme may apply to domestic students of RTOs.

3 Dispute resolution process
(1) The scheme must provide for dispute resolution processes in relation to disputes between past, current or prospective students and RTOs that are members of the scheme.

(2) In considering any dispute resolution process to be provided by the scheme, the Minister must have regard to—

   (a) the integrity and fairness of the scheme including whether—

      (i) the process provides a fair procedure; and

      (ii) the persons appointed to decide disputes will be independent and able to make decisions based on the merits of a case; and

      (iii) a decision on the dispute will bind members of the scheme; and

      (iv) persons appointed to decide disputes will have appropriate qualifications and experience; and

   (b) the cost of referring a complaint to the dispute resolution process; and

   (c) the past history (if any) of the operation of the scheme.

4 Other matters
The Minister must consider whether the scheme also covers the following functions—
(a) providing information and advice to students in relation to—

(i) their rights under this Act and the regulations and the scheme; and

(ii) training contracts; and

(iii) other training matters affecting students;

(b) conducting inquiries in relation to systemic matters affecting the vocational education and training sector;

(c) facilitating pastoral care services for overseas students.

5 Regulations

The Minister must also consider whether the scheme will be able to operate in accordance with the requirements for operation set out in the regulations.

"...".

Division 6—Fair contract terms

35 New section 4.3.29A inserted

After section 4.3.29 of the Education and Training Reform Act 2006 insert—

"4.3.29A RTO contracts taken to include fair contract terms

(1) This section does not apply in respect of a contract entered into between an RTO and a student or a prospective student for the provision of vocational education and training before the commencement of this section."
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(2) If the regulations prescribe terms to be taken to be included in a contract entered into between an RTO and a student or a prospective student for the provision of vocational education and training, those terms are taken to be terms of that contract and any other term of that contract that is inconsistent with those terms is void.

(3) Subsection (2) does not apply to—

(a) a public sector body within the meaning of the Public Administration Act 2004; or

(b) any department or public statutory authority of the Commonwealth or of another State or Territory; or

(c) a prescribed person or body or person or body of a prescribed class of person or body."

36 New item 8B inserted in Schedule 5

After item 8A of Schedule 5 to the Education and Training Reform Act 2006 insert—

"8B Standard terms for contracts with RTOs

Terms to be taken to be included in contracts between RTOs and students or prospective students for the purposes of section 4.3.29A(2) including terms relating to—

(a) termination of contracts;

(b) resolution of disputes;

(c) fees, including the payment and refund of fees and the levying, collection and management of fees;"
(d) cooling-off periods;
(e) rights to compensation;
(f) the awarding, conferral or issuing of qualifications, certificates or statements of attainment;
(g) the provision of information to students.

Division 7—Monitoring and enforcement

37 New sections 4.7.10 to 4.7.12 inserted in Part 4.7

After section 4.7.9 of the Education and Training Reform Act 2006 insert—

"4.7.10 RTO must keep certain information or documents available for inspection

(1) An RTO must keep, at relevant premises within the meaning of Division 3 of Part 5.8, the following information or documents available for inspection by an authorised officer who is exercising a power under that Division—

(a) a list of all the students enrolled in courses provided by the RTO at the relevant premises; and

(b) the name of the owner and occupier of the relevant premises; and

(c) a copy of any information prescribed by this Act or the regulations to be made available to students about the RTO's complaint handling processes and the rights of students to lodge complaints with the RTO or the Authority; and
(d) a copy of a certificate of public liability insurance relating to the relevant premises.

Penalty: 20 penalty units in the case of a natural person and 50 penalty units in the case of a body corporate.

(2) Subsection (1) does not apply to the Victoria Police within the meaning of the Public Administration Act 2004.

4.7.11 False or misleading information

A person must not knowingly in purported compliance with this Act or the regulations—

(a) give information or make a statement that is false or misleading in a material particular to the Authority; or

(b) produce a document that is false or misleading in a material particular to the Authority without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

4.7.12 RTO must keep student records

(1) An RTO must keep records relating to current and former students in accordance with this section.

Penalty: 20 penalty units in the case of a natural person and 100 penalty units in the case of a body corporate.
(2) Student records kept under this section must—

(a) be accurate and up to date; and

(b) contain the particulars prescribed in the regulations; and

(c) be kept in the form prescribed in the regulations; and

(d) be kept for the time prescribed in the regulations.

38 New Division heading inserted

In Part 5.8, before section 5.8.1 of the Education and Training Reform Act 2006 insert the following heading—

"Division 1—Appointment of authorised officers".

39 Authorised Officers

After section 5.8.1(3) of the Education and Training Reform Act 2006 insert—

"(4) The Authority may appoint any of the following persons as an authorised officer for the purposes of Subdivision 3 of Division 3—

(a) a person employed under Part 3 of the Public Administration Act 2004; or

(b) a person employed by a public entity within the meaning of section 5 of the Public Administration Act 2004.

(5) The Secretary, Institute or Authority must not appoint an authorised officer under this section unless the Secretary, Institute or Authority is satisfied that the person is
appropriately qualified or has successfully completed appropriate training.”.

40 Identification

After section 5.8.2(2) of the Education and Training Reform Act 2006 insert—

"(3) On appointing an authorised officer under section 5.8.1(4) the Authority must issue a document to that officer, which must—

(a) set out the name of the officer; and

(b) set out the powers under Subdivision 3 of Division 3, which the authorised officer is authorised to exercise; and

(c) include information about a person's right to make a complaint to the Authority about the exercise of a power by an authorised officer appointed under section 5.8.1(4).”.

41 New section 5.8.2A inserted

After section 5.8.2 of the Education and Training Reform Act 2006 insert—

"5.8.2A Authorised officer must return identity card to Authority

If an authorised officer's appointment under section 5.8.1(4) is revoked or expires, the officer must return his or her identity card to the Authority as soon as is practicable.

Penalty: 10 penalty units.”.
42 New Division heading and section 5.8.2B inserted

In Part 5.8, before section 5.8.3 of the Education and Training Reform Act 2006 insert—

"Division 2—Enforcement powers that do not relate to RTOs

5.8.2B Application of this Division

This Division does not apply in respect of an RTO.".

43 Powers of authorised officers

After section 5.8.3(3) of the Education and Training Reform Act 2006 insert—

"(4) An authorised officer may not exercise any power under this section in relation to premises used or used mainly as residential premises, except with the consent of the occupier.

(5) An authorised officer may not exercise any power under this section in relation to premises if the occupier of the premises has required the officer to produce his or her identification card for inspection by the occupier and the officer fails to comply with the requirement.".
44 New Division 3 of Part 5.8 inserted

After section 5.8.3 of the Education and Training Reform Act 2006 insert—

"Division 3—Enforcement powers relating to RTOs

Subdivision 1—General

5.8.3A Application of Division

(1) This Division applies only in respect of an RTO.

(2) In this Division RTO does not include the Victoria Police within the meaning of the Public Administration Act 2004.

5.8.3B Definitions

In this Division—

occupier in relation to relevant premises means a natural person who—

(a) if the premises or part of the premises is being used for residential purposes, is the occupier of the premises or the part of the premises; or

(b) in any other case, is or appears to be at least 16 years of age and who is or appears to be in charge of the premises;

relevant premises means any premises—

(a) from which an RTO carries on the business of providing vocational education and training; or
(b) from which the business of providing vocational education and training is carried out and that is occupied by an RTO; or

c) that is the registered office under the Corporations Act or the principal place of business of an RTO;

relevant law means this Act, the regulations, the RTO standards within the meaning of Chapter 4 or an undertaking given under this Division that is subject to a court order.

Subdivision 2—Warnings

5.8.3C Warning notice to public about RTO

(1) If satisfied it is in the public interest to do so, the Authority may publish or cause to be published a notice containing statements or giving warnings or information about both or either of the following—

(a) that an RTO specified in the notice is under investigation for compliance with a relevant law;

(b) the possible risks involved in participating in activities or the kind of activities or using the services or the kind of services specified in the notice.

(2) A notice under this section must be published in the Government Gazette and in a newspaper circulating generally throughout the State.
Subdivision 3—Powers of authorised officers

5.8.3D Authorised officers defined for this Subdivision

In this Subdivision authorised officer means an authorised officer appointed under section 5.8.1(4).

5.8.3E Production of identity card

(1) An authorised officer must produce for inspection his or her identity card and the document issued under section 5.8.2(3) setting out the powers under this Subdivision, which the officer is authorised to exercise—

(a) before exercising a power under this Subdivision, other than a requirement made by post; and

(b) at any other time during an inspection or search of any premises if asked to do so.

(2) It is not necessary for an authorised officer to comply with a request to produce his or her identity card and document under subsection (1), if—

(a) the request is made by a person to whom the officer has already produced his or her identity card and document before or during the exercise of a power under this Subdivision; and

(b) the officer considers the request to be unreasonable or made for the purpose of delaying or hindering the exercise of a power under this Subdivision.
5.8.3F Searches of premises to monitor compliance with a relevant law

(1) For the purposes of monitoring compliance with the relevant law, an authorised officer may, subject to this section—

(a) enter and search any relevant premises;

(b) open an unlocked door, panel, object or other thing or open an unlocked place at the premises;

(c) move, but not take away, any thing on the premises that is not locked or sealed;

(d) check the existence of and inspect any facilities or equipment required to be installed, used or maintained on the premises by a relevant law;

(e) in the case of any document required to be kept on the premises by a relevant law—

(i) require the document to be produced for examination;

(ii) inspect and make copies of, or take extracts from, the document or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;

(iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;

(f) inspect any thing found on or in the premises that the officer believes on reasonable grounds provides, or may on
(g) use any assistants the officer considers necessary to exercise the powers conferred by this section.

(2) Before requiring a person to comply with a requirement to assist the authorised officer in the exercise of a power under subsection (1) the officer must—

(a) warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and

(b) warn the person that it is an offence to hinder, obstruct or delay an authorised officer in the exercise of a power under subsection (1); and

(c) inform the person of the effect of section 5.8.3S.

(3) An authorised officer may only enter relevant premises and exercise a power under subsection (1) at any reasonable hour in the daytime or at any time that the premises are open to the public, unless the occupier has consented to the entry and to the exercise of the power at a time outside of those times.

(4) An authorised officer must not enter, or exercise a power under subsection (1) in, any part of relevant premises that is used for residential purposes.

(5) An authorised officer must not enter relevant premises under this section if it is unattended.
(6) If an authorised officer enters relevant premises under this section and finds it unattended, the officer must—

(a) leave a notice for the occupier—

(i) informing the occupier that an entry has occurred; and

(ii) setting out the provisions of this Act under which the officer had entered the premises; and

(iii) setting out the officer's contact details; and

(b) immediately leave the premises.

(7) An authorised officer may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purposes of determining compliance with the relevant law.

5.8.3G Entry and search of relevant premises with consent if alleged contravention

(1) If an authorised officer believes, on reasonable grounds, that a person has contravened a relevant law and that there may be evidence of the alleged contravention at any relevant premises, the officer, with the consent of the occupier of the premises, may, subject to this section—

(a) enter and search the premises;

(b) seize and take any thing found on the premises, which the officer believes on reasonable grounds, to be connected with the alleged contravention;

(c) in the case of any document on the premises, if the officer believes, on reasonable grounds, that it is connected
with the alleged contravention, the officer may do all or any of the following—

(i) require the document to be produced for examination;

(ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;

(iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;

(d) make any still or moving image or audio-visual recording that the officer believes, on reasonable grounds, is necessary for the purpose of establishing the alleged contravention;

(e) use any assistants the officer considers necessary to exercise the powers conferred by this section.

(2) Before requiring a person to comply with a requirement to assist the authorised officer in the exercise of a power under subsection (1) the officer must—

(a) warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and

(b) warn the person that it is an offence to hinder, obstruct or delay an authorised officer in the exercise of a power under subsection (1); and
(c) inform the person of the effect of section 5.8.3S.

(3) An authorised officer must not enter, or exercise a power under subsection (1) in, any part of relevant premises that is used for residential purposes.

5.8.3H Procedure for obtaining consent to searches under section 5.8.3F or 5.8.3G

(1) An authorised officer must not enter and search any relevant premises under section 5.8.3F or 5.8.3G with the consent of the occupier unless, before the occupier consents to that entry, the officer has—

(a) produced for inspection his or her identity card and the document issued under section 5.8.2(3) setting out the powers under the relevant section, which the officer is authorised to exercise; and

(b) informed the occupier—

(i) of the purpose of the search; and

(ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and

(iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and

(iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
(2) If an occupier consents to an entry and search, the authorised officer who requested consent must before entering the relevant premises ask the occupier to sign an acknowledgment stating—

(a) that the occupier has been informed of the purpose of the search and that any thing seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and

(b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of any thing or to the taking of any copy or extract; and

(c) that the occupier has consented to the entry and search; and

(d) the date and time that the occupier consented.

(3) If an occupier consents to the seizure or taking of any thing during a search under section 5.8.3F or 5.8.3G, the authorised officer must, before seizing or taking the thing, ask the occupier to sign an acknowledgment stating—

(a) that the occupier has consented to the seizure or taking of the thing; and

(b) the date and time that the occupier consented.

(4) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the authorised officer leaves the relevant premises.
(5) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

(6) For the purposes of this Part, a person does not obstruct or hinder an authorised officer by refusing to consent to an entry or the exercise of a power under section 5.8.3F or 5.8.3G.

(7) Consent given under this section may be withdrawn at any time.

(8) If consent given under this section is withdrawn, the exercise of any power under section 5.8.3F or 5.8.3G that is reliant on that consent must immediately cease.

5.8.3I Search warrants

(1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular relevant premises or former relevant premises, if the officer believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened a relevant law.

(2) If a magistrate is satisfied, by the evidence, on oath or by affidavit, of the authorised officer that there are reasonable grounds to believe that there is a thing, document or device of a particular kind connected with a contravention of a relevant law on any relevant premises or former relevant premises, the magistrate may issue a search warrant, in accordance with the Magistrates' Court Act 1989, authorising an authorised
officer named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—

(a) to enter the premises specified in the warrant; and

(b) to do all or any of the following—

(i) search for;

(ii) seize;

(iii) secure against interference;

(iv) examine and inspect—

a thing, document or device of a particular kind named or described in the warrant and which the officer believes, on reasonable grounds, to be connected with the alleged contravention; and

(c) in the case of any document of a particular kind, named or described in the warrant, if the officer believes, on reasonable grounds, that it is connected with the alleged contravention, do all or any of the following—

(i) require the document to be produced for inspection;

(ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts to be done on the premises or elsewhere;

(iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document.
(3) A search warrant directed to a named authorised officer under subsection (2) may be executed by any authorised officer who is empowered under this Subdivision to apply for such a search warrant.

(4) A search warrant issued under this section must state—

(a) the purpose for which the search is required and the nature of the alleged contravention; and

(b) any conditions to which the warrant is subject; and

(c) the premises to be searched; and

(d) the thing or things in respect of which the warrant is issued; and

(e) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(f) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(5) Except as provided by this Act, the rules to be observed with respect to search warrants under the Magistrates' Court Act 1989 extend and apply to warrants under this section.

(6) In this section former relevant premises means any premises—

(a) from which an RTO carried on the business of providing vocational education and training within the last 6 months; or
(b) from which the business of providing vocational education and training was carried out and that was occupied by an RTO within the last 6 months.

5.8.3J Announcement before entry

(1) On executing a search warrant in respect of any premises, the authorised officer executing the warrant—

(a) must announce that he or she is authorised by the warrant to enter the premises; and

(b) if the officer has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

(2) An authorised officer need not comply with subsection (1) if he or she believes, on reasonable grounds that immediate entry to the premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

5.8.3K Details of warrant to be given to occupier or person

(1) If the occupier is present at any premises where a search warrant is being executed, the authorised officer must—

(a) identify himself or herself to the occupier; and

(b) give to the occupier a copy of the warrant.

(2) If the occupier is not present at any premises where a search warrant is being executed, the authorised officer must—
(a) identify himself or herself to a person at the premises; and
(b) give to the person a copy of the warrant.

5.8.3L Seizure of things not mentioned in the warrant

A search warrant under section 5.8.3I authorises an authorised officer executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

(a) the authorised officer believes, on reasonable grounds, that the thing—

(i) is of a kind which could have been included in a search warrant issued under this Subdivision; or

(ii) will afford evidence about the contravention of a relevant law; and

(b) in the case of seizure, the authorised officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of a relevant law.

5.8.3M Receipt must be given for any thing seized

(1) An authorised officer must not seize a thing, document or device apparently in the possession or custody of a person under this Subdivision unless the authorised officer gives the person a receipt for the thing, document or device seized that—

(a) identifies the thing, document or device; and
(b) states the name of the officer and the reason why the thing, document or device is being seized.

(2) If an authorised officer is unable to discover the identity of—

(a) the lawful owner of a thing, document or device seized under this Subdivision; or

(b) the person from whose custody a thing, document or device is seized under this Subdivision—

the authorised officer must leave the premises from which the thing, document or device was seized.

5.8.3N Copies of seized documents

(1) If an authorised officer retains possession of a document seized from a person under this Subdivision, the officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.

(2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

5.8.3O Retention and return of seized documents or things

(1) If an authorised officer seizes a document or other thing under this Subdivision, the officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
(2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—

(a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) the Magistrates’ Court makes an order under section 5.8.3P extending the period during which the document or thing may be retained.

5.8.3P Magistrates’ Court may extend 3 month period

(1) An authorised officer may apply to the Magistrates’ Court—

(a) within 3 months after seizing a document or other thing under this Subdivision; or

(b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the officer may retain the document or thing but so that the total period of retention does not exceed 12 months.

(2) The Magistrates’ Court may order an extension under this section if it is satisfied that—

(a) it is in the interests of justice; and

(b) the total period of retention does not exceed 12 months; and
(c) retention of the document or other thing is necessary—

(i) for the purposes of an investigation into whether a contravention of a relevant law has occurred; or

(ii) to enable evidence of a contravention of a relevant law to be obtained for the purposes of a proceeding under this Act.

(3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

5.8.3Q Requirement to assist authorised officer during entry

To the extent that it is reasonably necessary to determine compliance with the relevant law, an authorised officer exercising a power of entry of premises under this Subdivision who produces his or her identity card and document issued under section 5.8.2(3) for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

(a) to give information to the officer, orally or in writing; and

(b) to produce documents, required to be kept at the premises by a relevant law, to the officer; and

(c) to give reasonable assistance to the officer.
5.8.3R Refusal or failure to comply with requirement

(1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Subdivision.

Penalty: 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate.

(2) Despite subsection (1), it is not an offence for a person to fail to comply with a requirement of an authorised officer under this Subdivision if the authorised officer did not comply with section 5.8.3E(1) or either section 5.8.3F(2) or 5.8.3G(2) (as the case requires) before requiring the person to comply with the requirement.

5.8.3S Protection against self-incrimination

(1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Subdivision, if the giving of the information or the doing of that other thing would tend to incriminate the person.

(2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Subdivision, if the production of the document would tend to incriminate the person.
5.8.3T Offence to give false or misleading information

A person must not knowingly—

(a) give information to an authorised officer under this Subdivision that the person believes to be false or misleading in any material particular; or

(b) produce a document to an authorised officer under this Subdivision that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 5 penalty units.

5.8.3U Complaints against authorised officers

(1) Any person may complain to the Authority about the exercise of a power under this Subdivision by an authorised officer appointed under section 5.8.1(4).

(2) The Authority must—

(a) investigate any complaint made to the Authority; and

(b) provide a written report to the complainant on the results of the investigation.

Subdivision 4—Undertakings

5.8.3V Undertakings

(1) The Authority may accept a written undertaking given by an RTO in connection with—
(a) any matter in relation to which the Authority has a power or function under this Act; or

(b) any matter relating to a contravention of a relevant law.

(2) For the avoidance of doubt, an RTO may give an undertaking under this Subdivision to establish a trust fund into which students' fees are paid and the circumstances in which funds may be withdrawn from that trust fund.

(3) For the avoidance of doubt, an undertaking given or Court order made under this Subdivision may not be inconsistent with a relevant law.

(4) An RTO may withdraw or vary an undertaking at any time, if the RTO has first obtained the consent of the Authority.

5.8.3W Copy of undertaking

The Authority must give a copy of an undertaking given under section 5.8.3V to the RTO that gave the undertaking.

5.8.3X Register of undertakings

The Authority must—

(a) maintain a register of undertakings; and

(b) register each undertaking given under this Subdivision in the register of undertakings.

5.8.3Y Authority may apply for Court order if undertaking breached

(1) If the Authority considers that an RTO has breached any of the terms of an undertaking given by the RTO under this Subdivision, the
Authority may apply to the Magistrates' Court for an order under subsection (2).

(2) If the Magistrates' Court is satisfied that the RTO has breached a condition of the undertaking, the Magistrates' Court may make all or any of the following orders—

(a) an order directing the RTO to comply with the condition of the undertaking;

(b) an order directing the RTO to pay to the State an amount up to the amount of any financial benefit that the RTO has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Magistrates' Court considers appropriate directing the RTO to compensate any other person who has suffered loss, injury or damage as a result of the breach;

(d) any other order that the Magistrates' Court considers appropriate.

(3) If a body corporate is found to have breached an undertaking given under this Subdivision—

(a) each officer of the body corporate is deemed to have so breached the undertaking if the officer knowingly authorised or permitted the breach; and

(b) the Magistrates' Court may, against the officer, make all or any of the orders set out in subsection (2) that the Magistrates' Court thinks appropriate.
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Subdivision 5—Infringements

5.8.3Z Infringements

(1) An authorised officer appointed under section 5.8.1(4) may serve an infringement notice on an RTO in respect of a prescribed offence against this Act or the regulations if the inspector has reason to believe that the RTO committed the offence.

(2) A prescribed offence referred to in subsection (1) is an infringement offence within the meaning of the Infringements Act 2006.

(3) The infringement penalty for an offence referred to in subsection (1) is the prescribed infringement penalty in respect of that offence.

45 New Division heading inserted

In Part 5.8 before section 5.8.4 of the Education and Training Reform Act 2006 insert the following heading—

"Division 4—General".

46 Section 5.8.4 substituted

For section 5.8.4 of the Education and Training Reform Act 2006 substitute—

"5.8.4 Offence to hinder, obstruct or delay an authorised officer

(1) A person must not, without reasonable excuse, hinder, obstruct or delay an authorised officer who is exercising or attempting to exercise his or her functions or powers under this Part.

Penalty: 60 penalty units."
(2) Despite subsection (1), it is not an offence for a person to hinder, obstruct or delay an authorised officer appointed under section 5.8.1(4) who is exercising or attempting to exercise his or her functions or powers under Subdivision 3 of Division 3 if the authorised officer did not comply with section 5.8.3E(1) or either section 5.8.3F(2) or 5.8.3G(2) (as the case requires) before exercising those functions or powers."

47 Offences by a body corporate

(1) In the heading to section 5.8.7 of the Education and Training Reform Act 2006, for "corporations etc." substitute "a body corporate etc."

(2) In section 5.8.7(1), (2) and (3) of the Education and Training Reform Act 2006, for "corporation" (wherever occurring) substitute "body corporate".

(3) In section 5.8.7(1) of the Education and Training Reform Act 2006, for "the person who is the principal executive officer (however described)" substitute "each officer (within the meaning of section 9 of the Corporations Act)".

48 New section 5.8.7A inserted

After section 5.8.7 of the Education and Training Reform Act 2006 insert—

"5.8.7A Conduct by officers, employees or agents

(1) For the purposes of any proceedings under this Act, any conduct engaged in on behalf of a body corporate is deemed to have been engaged in also by the body corporate if the conduct was engaged in by an employee, agent or officer (within the meaning of section 9 of the Corporations Act) of the body corporate within the scope of the actual
or apparent authority of the employee, agent or officer.

(2) If, in any proceedings under this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

(a) that the conduct was engaged in by an officer of the body corporate within the scope of the officer's actual or apparent authority and the officer had that state of mind; or

(b) that the conduct was engaged in by an agent of the body corporate and—

(i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; or

(ii) the agent had that state of mind; or

(iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.

(3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.".
Division 8—Regulation-making powers

49 Amendments to regulation-making powers

(1) Before item 9 in Schedule 5 to the Education and Training Reform Act 2006 insert—

"8C  RTO requirements

8C.1 Requirements that an RTO must comply with including requirements relating to the following matters—

   (a) information to be made available to past, current or prospective students including the following matters—

      (i) fees, including the policy for payment and refunding of fees and for the levying, collection and management of fees;

      (ii) course timelines;

      (iii) facilities and equipment available for use by students;

      (iv) whether the RTO is a member of a prescribed tuition assurance scheme;

      (v) information about the RTO's complaint handling processes and the rights of students to lodge complaints with the RTO or the Authority;

   (b) the methods by which the RTO is to make available to past, current or prospective students the information referred to in paragraph (a) including the publishing of that information;
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(c) the provision of the information referred to in paragraph (a) to the Authority for publishing by the Authority;

(d) requirements to be met before entering into contracts with students or prospective students;

(e) the contents of contracts, including the terms, entered into between the RTO and students or prospective students;

(f) publications and marketing materials;

(g) the awarding, conferral or issuing of qualifications, certificates or statements of attainment;

(h) public liability insurance;

(i) the keeping of records relating to current and past students including records of qualifications and statements of attainment;

(j) complaint handling processes;

(k) the register of complaints;

(l) criteria that must be complied with before being granted registration by the Authority;

(m) conduct in relation to dealing with past, current or prospective students.

8C.2 Prescribing tuition assurance schemes for RTOs.”.

(2) In item 10.3 in Schedule 5 to the Education and Training Reform Act 2006, for "10 penalty units" substitute "20 penalty units".
(3) After section 5.10.2(4) of the Education and Training Reform Act 2006 insert—

"(5) The regulations may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the Subordinate Legislation Act 1994.".

Division 9—Reserve step-in powers

50 New Division 7 inserted in Part 4.3

After Division 6 of Part 4.3 of the Education and Training Reform Act 2006 insert—

"Division 7—Reserve step-in powers

4.3.38 Definitions

In this Division—

ESOS Act means the Education Services for Overseas Students Act 2000 of the Commonwealth;

RTO does not include any person or body exempted under section 4.3.16(4A) from the requirement to have the principal purpose of providing education and training.

Note

Persons and bodies exempted from this requirement include universities, TAFE institutes, adult education institutions and schools. Persons and bodies may also be exempted by the regulations or the Minister.
4.3.39 Displacement of other laws

This Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of that Act.

Note
Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

4.3.40 Notices relating to appointment of external administrator under Corporations Act

(1) A person, other than the Authority, must not make an application to the court under Chapter 5 of the Corporations Act for the appointment of an external administrator of an RTO unless the person has first given the Authority written notice of that application.

Penalty: 20 penalty units.

(2) An administrator of an RTO that is appointed under section 436A, 436B or 436C of the Corporations Act must give the Authority a copy of the notice of appointment required to be lodged under section 450A of that Act before the end of the next business day after the appointment.

Penalty: 20 penalty units.
4.3.41 Application for order for judicial administration

(1) The Authority may apply to the Supreme Court for an order that an RTO be placed under judicial administration.

(2) The RTO is entitled to be heard in relation to an application by the Authority under this section.

4.3.42 Order for judicial administration

On an application under section 4.3.41, the Supreme Court may make an order that an RTO be placed under judicial administration if the Court is satisfied that it is in the interests of the RTO's students having regard to the following matters—

(a) whether the RTO is, or is likely to become, unable to deliver services to students in accordance with its obligations;

(b) whether the RTO has failed to comply with this Act, the regulations, the ESOS Act or the RTO standards;

(c) whether there are reasonable grounds for believing that the RTO is inefficiently or incompetently managed, and that the inefficient or incompetent management represents a substantial risk—

(i) of non-compliance by the RTO with the RTO standards; or

(ii) that the RTO will be unable to deliver services.
4.3.43 Commencement of judicial administration

The judicial administration of an RTO commences—

(a) at the time specified in the order for judicial administration as the time at which the judicial administration is to commence; or

(b) if no time is so specified, when the order is made.

4.3.44 Appointment of judicial administrator

(1) If the Supreme Court orders the judicial administration of an RTO, the Court must, by its order, appoint a judicial administrator of the RTO.

(2) The appointment may be for a period specified in the order, which must not exceed one month.

(3) The Supreme Court may by order extend the appointment of the judicial administrator.

(4) The Supreme Court may at any time cancel the appointment of a judicial administrator and appoint another person as judicial administrator.

4.3.45 Remuneration of judicial administrator

(1) The Supreme Court may give directions as to—

(a) the remuneration and allowances that a judicial administrator is to receive; and

(b) who is to pay the remuneration and allowances.

(2) The Supreme Court may charge the judicial administrator's remuneration and allowances on the property of the RTO under judicial
administration in such order of priority in relation to any existing charges on that property as the Court thinks fit.

4.3.46 Administration to vest in judicial administrator

If the Supreme Court has made an order placing an RTO under judicial administration, then, at the time the judicial administration commences—

(a) any person vested with the administration of the RTO immediately before that time is divested of that administration; and

(b) the administration of the RTO vests in the judicial administrator appointed by the Court.

4.3.47 Powers and duties of judicial administrator

(1) If a judicial administrator is appointed to control the affairs of an RTO, the judicial administrator—

(a) is taken to be the governing body of the RTO; and

(b) has and may exercise all of the powers of the governing body of the RTO; and

(c) has such other powers as the Supreme Court directs; and

(d) must have regard to the interests of the students of the RTO; and

(e) subject to paragraph (d), is subject to all of the duties of the governing body of the organisation; and
(f) must comply with this Act, the regulations and the RTO standards; and

Note

The administrator of an RTO may also have to comply with the ESOS Act if the RTO is required to comply with that Act.

(g) must consult with—

(i) the Authority; and

(ii) in the case of an RTO that is also registered under the ESOS Act, the head of the Commonwealth Department administering that Act—

in carrying out his or her duties or in exercising his or her powers or functions under this Division.

(2) The powers conferred by this section are in addition to powers conferred on a judicial administrator by any other provision of this Division.

### 4.3.48 Supreme Court’s control of judicial administrator

(1) A judicial administrator is subject to the control of the Supreme Court.

(2) In addition to duties imposed by this Division, a judicial administrator has such duties as the Supreme Court directs.

(3) The judicial administrator must report to the Supreme Court at the times that the Court directs.
(4) A judicial administrator may apply to the Supreme Court at any time for instructions—
   (a) as to the way in which the judicial administration should be conducted; or
   (b) in relation to any matter arising during the judicial administration.

(5) Before applying to the Supreme Court for instructions, the judicial administrator must—
   (a) inform the Authority that he or she intends to make the application; and
   (b) give the Authority written details of the application.

(6) The Authority is entitled to be heard on the application.

4.3.49 Application by Authority for instructions to judicial administrator

(1) The Authority may apply to the Supreme Court for an order that the Court give instructions to the judicial administrator relating to the conduct of the judicial administration of an RTO.

(2) The judicial administrator is entitled to be heard on the application.

4.3.50 Request by Authority for information

(1) The Authority may ask a judicial administrator to give the Authority information about one or more of the following in a reasonable time specified in the request—
(a) the conduct of the judicial administration;

(b) the financial position of the RTO under judicial administration.

(2) The judicial administrator must comply with the Authority's request.

4.3.51 Duration of judicial administration

(1) If the Supreme Court orders that an RTO be placed under judicial administration, the RTO remains under judicial administration until the judicial administration is cancelled or ends.

(2) The Supreme Court may extend a period of judicial administration.

4.3.52 Effect of cancellation or ending of judicial administration

At the time when the judicial administration of the RTO is cancelled or ends—

(a) the judicial administrator is divested of the administration of the RTO; and

(b) the administration of the RTO vests in the person or body that would have been the governing body of the RTO if the judicial administrator not been appointed.

4.3.53 How judicial administrator is to administer

The judicial administrator of an RTO must conduct the judicial administration as efficiently and economically as possible having regard to the interests of the students of that RTO."
PART 4—POST-SCHOOL EDUCATION AND TRAINING

Division 1—Victorian Skills Commission

51 Functions of the Commission

Section 3.1.2(1)(c) of the Education and Training Reform Act 2006 is repealed.

52 Functions of the Commission as State Training Authority

(1) At the foot of section 3.1.3(1) of the Education and Training Reform Act 2006 insert—

"Note
See section 3(1) of the Skilling Australia's Workforce Act 2005 of the Commonwealth which sets out the definition of a State Training Authority."

(2) At the foot of section 3.1.3(2) of the Education and Training Reform Act 2006 insert—

"Note
See section 16 of the Skilling Australia's Workforce Act 2005 of the Commonwealth which sets out the responsibilities the State must give to a State Training Authority."

53 Members

(1) In section 3.1.7(1)(d) of the Education and Training Reform Act 2006 after "the Secretary" insert "to the Department of Innovation, Industry and Regional Development".

(2) For section 3.1.7(3)(a) of the Education and Training Reform Act 2006 substitute—

"(a) the membership of the Commission includes at least 7 persons with knowledge of or experience in industry, training, workforce development or community development;".
(3) Section 3.1.7(3)(b) and (c) of the Education and Training Reform Act 2006 are repealed.

Division 2—TAFE institutes

54 Incorporation of TAFE institute boards

After section 3.1.12(6) of the Education and Training Reform Act 2006 insert—

"(7) A copy of every Order under this section must be laid before each House of Parliament as soon as practicable after it is made.".

55 Functions of TAFE institute boards

(1) After section 3.1.13(1)(a) of the Education and Training Reform Act 2006 insert—

"(ab) to ensure that the institute operates in accordance with its strategic plan; and
(ac) to provide for the proper, efficient and effective performance by the institute of its functions and powers; and
(ad) to account to the Minister for the performance of the institute in carrying out its functions and exercising its powers; and
(ae) to operate as part of the network of public education institutions in Victoria; and".

(2) After section 3.1.13(1)(b) of the Education and Training Reform Act 2006 insert—

"(ba) to provide vocational education and training; and".

(3) After section 3.1.13(2) of the Education and Training Reform Act 2006 insert—

"(3) Subject to any direction or guideline issued by the Minister the board of an institute may engage in an activity on a commercial basis
if the activity is consistent with, and does not interfere with, the carrying out of the functions referred to in subsections (1) and (2) or the institute's strategic plan.”.

56 Powers of TAFE institute boards

In section 3.1.14(2) of the Education and Training Reform Act 2006 for "3.1.13(2)" substitute "3.1.13(2) and (3)".

57 Board directorship

(1) In section 3.1.16(1) of the Education and Training Reform Act 2006—

(a) before paragraph (a) insert—

"(aa) the chairperson of the board who must be appointed by the Governor in Council;",

(b) for paragraph (a) substitute—

"(a) a number must be appointed by the Minister that together with the chairperson is more than one half of the directors of the board;".

(2) In section 3.1.16(3) of the Education and Training Reform Act 2006, for "referred to in" substitute "appointed by the Minister under".

58 Removal of directors

In section 3.1.18(1) of the Education and Training Reform Act 2006, after "remove" insert "the chairperson or".
59 New sections 3.1.18A to 3.1.18D inserted

After section 3.1.18 of the Education and Training Reform Act 2006 insert—

"3.1.18A Strategic plans

(1) The board of a TAFE institute must at the direction of the Minister and at the time or times determined by the Minister, prepare and submit to the Minister for acceptance a strategic plan for the operation of the institute.

(2) A strategic plan must be prepared in accordance with the guidelines established by the Minister from time to time.

(3) The Minister may—

(a) accept a strategic plan; or

(b) accept a strategic plan with amendments; or

(c) refuse to accept a strategic plan.

(4) The board of a TAFE institute must advise the Minister if it wishes to exercise its functions in a manner inconsistent with its accepted strategic plan.

3.1.18B When statement of corporate intent to be prepared

(1) In respect of each year, the board of a TAFE institute must—

(a) prepare, in consultation with the Secretary of the Department of Innovation, Industry and Regional Development, a proposed statement of corporate intent in relation to the provision of vocational education and training; and
(b) submit the proposed statement of corporate intent to the Minister.

(2) If, prior to 1 October the Minister provides to the board of a TAFE institute a statement of expectations in relation to the operations of the institute in the next year, these must be taken into account in preparing a statement of corporate intent.

(3) If the board of a TAFE institute and the Minister fail to agree on a statement of corporate intent before 1 March of the year to which the statement of corporate intent relates, the Minister may make a statement of corporate intent in relation to the TAFE institute.

(4) A statement of corporate intent may be varied at any time if the board of a TAFE institute and the Minister so agree.

(5) If the board of a TAFE institute and the Minister fail to agree to a proposed variation of a statement of corporate intent within 28 days after the variation is proposed, the Minister may—

(a) vary the statement of corporate intent; or

(b) decline to vary the statement of corporate intent.

(6) The Minister must cause copies of each statement of corporate intent and any variation to be made available on request to a member of the public.

3.1.18C Content of statement of corporate intent

A statement of corporate intent made by a board of a TAFE institute under section 3.1.18B must—
(a) be consistent with the strategic plan accepted by the Minister for the institute; and

(b) specify in respect of the year to which it relates—

(i) the services to be provided by the institute and the funds to be provided to the institute; and

(ii) the objectives, priorities and key performance outcomes to be met by the institute; and

(iii) the performance indicators, targets or other measures against which the performance of the institute is to be assessed and monitored; and

(iv) how and when the institute must report to the Minister and the Secretary of the Department of Innovation, Industry and Regional Development on its performance in relation to the specified objectives, priorities and key performance outcomes; and

(v) any other matter agreed from time to time between the Minister and the board of the TAFE institute, or determined by the Minister.

3.1.18D Annual meetings

(1) The board of a TAFE institute must ensure that the chief executive officer convenes an annual meeting of an institute to be held on or after 1 January and—

(a) on or before 30 June in each year; or
(b) if the Secretary of the Department of Innovation, Industry and Regional Development in writing approves a later date, on or before that later date in each year.

(2) The chief executive officer of the institute must cause notice of the annual meeting to be published in a newspaper circulating generally in the area where an institute is located giving notice—

(a) of the date, time and place of the meeting; and

(b) that the meeting is open to the public.

(3) The chief executive officer of the institute must give notice of the annual meeting to the Commission.

(4) At each annual meeting of a TAFE institute the board of that institute—

(a) must submit the financial statements and report of operations prepared in accordance with Part 7 of the Financial Management Act 1994; and

(b) must report on the services provided by the institute in the preceding year and on services proposed to be provided in the following year; and

(c) must report on any other matters as prescribed in the regulations.".
Division 3—Use of terms "TAFE" and "technical and further education"

60 New sections 3.1.26A and 3.1.26B inserted

After section 3.1.26 of the Education and Training Reform Act 2006 insert—

'3.1.26A Use of the term "TAFE" or "technical and further education"

(1) A person or body must not use the term "TAFE" or "technical and further education" in its name, or in a description of its activities, operations or services in connection with its operations in and from Victoria if having regard to the circumstances in which it is used it would be reasonably understood to indicate that—

(a) the person or body using the term in its name is a TAFE institute; or

(b) the activity, operation or service is being provided by a TAFE institute—unless the person or body is a TAFE institute.

Penalty: 20 penalty units in the case of a natural person and 100 penalty units in the case of a body corporate.

Example

A body that is not a TAFE institute (which includes the TAFE division of a university) and is not exempted under subsection (2) that offers education services using the name "Victoria TAFE Educators" would contravene subsection (1).
Part 4—Post-School Education and Training

(2) Subsection (1) does not apply to—

(a) a recognised TAFE Institute or a person or body that operates a recognised TAFE Institute; or

(b) a recognised University; or

(c) a prescribed person or body or person or body of a prescribed class of person or body; or

(d) a person or body to whom the Minister has given approval under subsection (3) to use the term "TAFE" or "technical and further education" in its name or in connection with its activities, operations or services.

(3) The Minister may give a person or body an approval to use the term "TAFE" or "technical and further education" in its name or in connection with its activities, operations or services despite the body or person not being a TAFE institute if satisfied that—

(a) the person or body is established by or operates in association with one or more TAFE institutes, recognised TAFE Institutes or recognised Universities; or

Examples

1 A company established by a TAFE institute (or in which a TAFE institute is a participant) for the conduct of TAFE related programs or activities.

2 A company established by one or more TAFE institutes to conduct professional development for staff of a TAFE institute or a body established by one or more TAFE institutes to represent or assist those
TAFE institutes in workplace relations matters.

(b) it is unlikely that a reasonable person would think that, because of the use of the term "TAFE" or "technical and further education" in the person or body's name or in connection with its activities, operations or services, the person or body is a TAFE institute.

(4) The Minister must ensure that notice of an approval given under subsection (3) is published in the Government Gazette.

(5) In this section—

*recognised TAFE Institute* means an institution that—

(a) is established under an Act of the Commonwealth or another State or Territory; and

(b) has similar functions to a TAFE institute relating to the provision of courses and programs for technical and further education;

*Note*

*TAFE institute* is defined in section 1.1.3(1).

*recognised University* has the same meaning as in section 4.1.1.

**3.1.26B Injunction to prevent or restrain a contravention**

The Authority may apply to the County Court for an injunction to prevent or restrain a person from contravening section 3.1.26A.'.
Division 4—Adult, community and further education

61 Functions of the Board

For section 3.3.3(2) of the Education and Training Reform Act 2006 substitute—

"(2) The Board must co-operate with the Commission to ensure that the Board's actions with respect to all adult, community and further education are consistent with arrangements for the provision of vocational education and training in Victoria.".

62 Consultation and financial powers

(1) Section 3.3.5(a) of the Education and Training Reform Act 2006 is repealed.

(2) For section 3.3.6(c) of the Education and Training Reform Act 2006 substitute—

"(c) may make payments by way of grants, subsidies or loans in relation to adult, community and further education to a board of a TAFE institute and any such payment must be made on any terms and conditions that the Board thinks fit; and".

63 Repeal of section 3.3.8

Section 3.3.8 of the Education and Training Reform Act 2006 is repealed.

64 Repeal of section 3.3.9

Section 3.3.9 of the Education and Training Reform Act 2006 is repealed.

65 Delegations by the Board

In section 3.3.14 of the Education and Training Reform Act 2006 omit ", its duty to make the adult, community and further education plan under section 3.3.8".
66 Delegations by the General Manager

Section 3.3.15(c) of the Education and Training Reform Act 2006 is repealed.

67 Functions of Regional Councils

In section 3.3.18(1) of the Education and Training Reform Act 2006—

(a) for paragraph (b) substitute—

"(b) to provide advice and prepare reports for the Board in relation to adult, community and further education; and";

(b) paragraphs (c), (e), and (j) are repealed.

68 Accountability

In section 3.3.20(b) of the Education and Training Reform Act 2006 omit "and the adult, community and further education plan".

69 Employment of staff

Section 3.3.25 of the Education and Training Reform Act 2006 is repealed.
PART 5—TRANSITIONAL AND SAVINGS PROVISIONS

70 New section 6.1.19 inserted

At the end of Chapter 6 of the Education and Training Reform Act 2006 insert—

"6.1.19 Transitional and savings provisions—Education and Training Reform Amendment (Skills) Act 2010

(1) The Authority is taken to be the same body despite the changes relating to its membership made by section 6 of the amending Act.

(2) The Commission is taken to be the same body despite the changes relating to its membership made by section 53 of the amending Act.

(3) Any guidelines issued under section 4.3.11(3) in force immediately before the commencement of section 17 of the amending Act are taken to be guidelines issued under section 4.3.18A to the extent that the guidelines issued under section 4.3.11(3) could have been issued under section 4.3.18A.

(4) Despite the commencement of section 57 of the amending Act—

(a) an Order in Council under section 3.1.12, which was in force immediately before that commencement continues in operation until it is remade in accordance with subsection (5); and

(b) a person who, immediately before that commencement, held office as a director of a TAFE institute board,
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continues to hold office as a director of that board subject to this Act and the relevant Order in Council continued under paragraph (a), until the Order in Council is remade in accordance with subsection (5); and

(c) a TAFE institute board, which immediately before that commencement was incorporated by an Order referred to in paragraph (a), is taken to be the same body after that commencement as it was immediately before that commencement.

(5) The Minister must ensure that within 12 months after the commencement of section 57 of the amending Act, or within any further period fixed by the Minister in respect of a particular TAFE institute board and published by notice in the Government Gazette, every Order in Council continued in operation under subsection (4)(a) is reviewed and remade.

(6) Section 3.1.26A inserted by section 60 of the amending Act does not apply to a person or body that was using the term "TAFE" or "technical and further education" in its name, or in a description of its activities, operations or services in connection with its operations in and from Victoria immediately before the commencement of section 60 of the amending Act until 1 January 2012.

(7) In this section amending Act means the Education and Training Reform Amendment (Skills) Act 2010.".
PART 6—AMENDMENTS AND REPEALS

Division 1—Amendments to other Acts

71 Amendments to University Acts

An Act specified in a heading to an item in the Schedule is amended as set out in that item.

72 Statute law revision amendments

(1) In section 46(2) of the Education and Training Reform Amendment Act 2010, for "of serious misconduct" substitute "or serious misconduct".

(2) In section 5.8.9 of the Education and Training Reform Act 2006, before "hearing panel" omit "formal".

Division 2—Repeal of amending Act

73 Repeal of amending Act

This Act is repealed on 1 January 2014.

Note

The repeal of this Act does not affect the amendments made by it (See section 15(1) of the Interpretation of Legislation Act 1984).
SCHEDULE

Section 71

AMENDMENTS TO UNIVERSITY ACTS

1 Deakin University Act 2009

1.1 In section 5—

(a) in paragraph (f), after "people" insert "of Australia";

(b) in paragraph (g) omit "the";

(c) for paragraph (h) substitute—

"(h) to confer degrees and grant diplomas, certificates and other awards;".

1.2 In the heading to section 10 for "grant degrees or confer awards" substitute "confer degrees or grant other awards".

1.3 In section 10 for "any award" (wherever occurring) substitute "any other award".

1.4 In section 26(7)(a) omit "the".

1.5 In section 31(3) for "university subject" substitute "university statute".

1.6 In section 52 for "Council" substitute "University".

1.7 In section 54(b) for "University" substitute "University—".

2 La Trobe University Act 2009

2.1 In section 54(b) for "University" substitute "University—".
3 Monash University Act 2009

3.1 In section 5—

(a) in paragraph (h) after "and" insert "grant";
(b) in paragraph (i) for "or resources" substitute "and resources".

3.2 In the heading to section 10 for "to grant" substitute "to confer".

3.3 In section 19(d) and (e) after "committee or" insert "the".

3.4 In section 26(7)—

(a) in paragraph (a) omit "the University's";
(b) for paragraph (b) substitute—

"(b) committee established from appropriately qualified members of staff.".

3.5 In the heading to section 33 for "Non-application of certain" substitute "Application of".

3.6 In section 45 for "Council" substitute "University".

3.7 In section 52 for "Council" substitute "University".

3.8 In section 54(b) for "University" substitute "University—".

4 Royal Melbourne Institute of Technology Act 2010

4.1 In section 54(b) for "University" substitute "University—".

5 Swinburne University of Technology Act 2010

5.1 In section 54(b) for "University" substitute "University—".
6 University of Ballarat Act 2010
   6.1 In section 54(b) for "University" substitute "University—".

7 University of Melbourne Act 2009
   7.1 In section 52 for "Council" substitute "University".
   7.2 In section 54(b) for "University" substitute "University—".
   7.3 In Schedule 1 in clause 1(2)(a) and (b) for "30 June" substitute "31 December".

8 Victoria University Act 2010
   8.1 In section 54(b) for "University" substitute "University—".
ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 12 August 2010
Legislative Council: 2 September 2010

The long title for the Bill for this Act was "A Bill for an Act to amend the Education and Training Reform Act 2006 in relation to vocational education and training and other matters and for other purposes."