The Education and Training Reform Amendment (VET Sector and Other Matters) Bill 2012 amends the Education and Training Reform Act 2006 (the Principal Act).

The amendments proposed by the Bill fall into eight groups. These are—

- Transfer of certain Victorian Skills Commission's regulatory functions.
- Governance reforms in the adult, community and further education sector.
- Power for injunctions in respect of registered training organisations (RTOs) that breach regulatory requirements.
- Authority for the State's education regulator, the Victorian Registration and Qualifications Authority (VRQA), to share information requested by its Commonwealth counterparts.
- Extending the Victorian student number (VSN) system to Commonwealth-regulated providers operating in Victoria, subject to enabling regulations being made by the Commonwealth.
- Clarification that public sector employees already receiving full-time salaries are not eligible for extra pay as directors of boards of TAFE institutes or adult education institutions.
Facilitating the grant of leave of absence to members of the Councils of Universities.

Machinery and technical amendments.

An explanation of these matters arranged by topic is set out below, followed by clause notes.

**Transfer of the Victorian Skills Commission's regulatory functions**

The Victorian Skills Commission's main role is now policy advice and development in relation to vocational education and training. The Bill proposes to transfer its remaining regulatory roles. Specifically—

- Apprenticeship regulation will move to the VRQA.
- Reserve powers relating to unsatisfactory directors of TAFE institute boards will transfer to the Minister.

The Bill does not make substantive changes to the regulatory system for apprenticeships, other than transferring responsibility for its administration to a different agency.

Similarly, the Bill does not change the operation of the reserve powers for removal of unsatisfactory directors of TAFE institute boards, other than that the power to recommend removal to the Governor in Council is to be conferred on the Minister (assisted by the Department) rather than the Victorian Skills Commission.

**Governance in the adult, community and further education sector**

Victoria has two adult education institutions, the Centre for Adult Education (CAE) and the Adult Multicultural Education Services (AMES). The Bill implements a recommendation of the State Services Authority that adult education institution governance be brought into line with TAFE institute governance reforms for TAFE institutes passed in 2010 and now reflected in this Act.

In particular, each adult education institution will be required to prepare a strategic plan and an annual statement of corporate intent and submit them to the Minister. Adult education institutions must also hold an annual meeting each year, open to the public, to report on operations in the past year and consult on plans for the coming year.

The Bill provides that Regional Councils of Adult Education will no longer have power to employ staff, as they are now employed by the Department of Education and Early Childhood Development. The Regional Councils will retain their planning and advisory functions. As a result, it is no longer necessary for the Regional Councils to be incorporated entities. The Bill
therefore changes the legal status of Regional Councils—they will no longer be incorporated. The Bill also transfers the property assets, contractual rights, legal obligations and other responsibilities of the Regional Councils as corporations to the Adult, Community and Further Education Board.

**Injunctions**

Under the Principal Act, the VRQA is Victoria’s education regulator. Where an RTO is not complying with its obligations, the VRQA may ask that RTO for an “enforceable undertaking” in relation to its future conduct. An undertaking may deal with positive actions that the RTO agrees to take to improve its performance and avoid future breaches. If a RTO does not comply with its obligations under an enforceable undertaking, the VRQA may seek an order from the Magistrates’ Court to require the RTO to comply.

Enforceable undertakings are a recent innovation. They allow regulatory action to be tailored to the circumstances of a particular provider. For instance, a generally well run provider may have one area of weakness, which it agrees to address progressively through an improvement program.

However, there is a gap in the regulatory scheme. The use of enforceable undertakings depends on the RTO being willing to acknowledge the need for improvement and then entering into the enforceable undertaking. Where an RTO is unwilling to provide an undertaking, the regulator may have to rely on other mechanisms, such as penalties or deregistration proceedings. These may not be the most appropriate or effective sanctions in every case.

Under the changes proposed by the Bill, the VRQA will have an additional option of seeking an injunction from the courts against an RTO. Injunctions will be of two types. Either the injunction may prohibit the RTO from doing certain things (a restrictive injunction), or it may require the RTO to do certain things or take certain actions (a positive injunction). Restrictive or positive injunctions may be imposed by the Magistrates’ Court or by the County Court.

Proposed injunctions could require an RTO to do much the same range of things as an enforceable undertaking can at present. The main difference between them lies in the process: that is, an enforceable undertaking is agreed between the RTO and the regulator, but injunctions are court orders. It is expected that injunctions would normally be sought after negotiations to agree on an appropriate undertaking from the RTO are unsuccessful.

It should be noted that approximately half the RTOs operating in Victoria are regulated by the VRQA, and the other half by the Commonwealth vocational education and training regulator known as the Australian Skills Quality Authority (ASQA). The injunctions powers proposed in this Bill are broadly
comparable to similar powers under the equivalent Commonwealth legislation. In particular, the National Vocational Education and Training Regulator Act 2011 of the Commonwealth enables RTOs to give enforceable undertakings (Division 3 of Part 6) and also enables the ASQA to seek injunctions from the Federal Court or Federal Magistrates’ Court (Division 5 of Part 6).

Sharing of information requested by Commonwealth regulators

The Bill authorises Victoria's education regulator, the VRQA, to provide information and documents to Commonwealth education regulators in accordance with written requests.

Until recently, the VRQA was the sole education regulator for all sectors in Victoria, although RTOs registered by interstate regulators could operate here on the basis of that registration.

There are now three main pieces of Commonwealth legislation dealing with the regulation of education. These are—

- The National Vocational Education and Training Regulator Act 2011 of the Commonwealth (the NVR Act). Since July 2011, the ASQA is the sole regulator of RTOs in all States and Territories other than Victoria and Western Australia. ASQA also regulates RTOs in Victoria and Western Australia if the RTO has overseas students, or if the RTO also operates in a jurisdiction where ASQA is the sole regulator. At present, ASQA regulates approximately half of the RTOs operating in Victoria, including all 14 TAFE institutes and the four University TAFE Divisions. The remaining RTOs are regulated by the VRQA.

- The Tertiary Education Quality Standards Agency Act 2011 of the Commonwealth. Since January 2012, the Tertiary Education Quality Standards Agency is the sole regulator for all higher education across Australia.

- The Education Services for Overseas Students Act 2000 of the Commonwealth. Under that Act, it is illegal to provide courses to overseas students unless both the institution and the course are registered under that Act. Until recently, the VRQA was the designated authority under that Act for the purposes of investigating courses and providers in Victoria and determining whether they were suitable for registration. That role has recently been transferred to ASQA.
In implementing these new arrangements, the Commonwealth regulators seek access to information and records from the VRQA relating to education providers that are now their responsibility but were formerly regulated by the VRQA. The Bill will facilitate such transfer of information for these purposes by authorising the VRQA to provide information and documents where requested in writing by a Commonwealth regulator.

The Bill will facilitate the transfer of information and documents to Commonwealth regulators, at their written request, on an ongoing basis, in addition to the start-up period. This is because the VRQA will continue to regulate some RTOs into the future and, from time to time, some providers will move from the State to the Commonwealth system. Further, some providers operate across more than one sector of education, for instance some provide both secondary and vocational education and training. Consequently, a provider may be regulated by the VRQA for some purposes and by, say, ASQA for other purposes. In such situations, the Commonwealth regulator may need information held by its State counterpart.

There are already provisions in the Commonwealth Acts dealing with exchange of information, but these do not cover every situation. For this reason, the Bill proposes that the VRQA be authorised to provide information and documents to a Commonwealth regulator in accordance with a written request.

**Extending the Victorian student number (VSN) system to Commonwealth-regulated providers**

Under Part 5.3A of the Principal Act, education and training providers operating in Victoria are required, when enrolling students, to allocate or verify a Victorian student number for each student. For this purpose, an education and training provider is one registered by the VRQA (or its delegate) to provide school education, vocational education and training or adult, community and further education.

As outlined above, since July 2011, the ASQA is registering and regulating around half of the vocational education and training providers in this State. Consequently, these providers no longer come within the definition of education or training provider in Part 5.3A and are no longer required to comply with VSN requirements.

The Bill therefore extends the definition of education or training provider in Part 5.3A to include ASQA-registered providers so that they will be required to assign and verify VSNs, as before.
However, under recent amendments to the NVR Act, unless and until a regulation is made at the Commonwealth level to specify this Victorian law as one with which ASQA-registered providers must comply, the NVR Act will exempt those providers from the need to comply with these State requirements.

It is for this reason that the VSN amendments proposed by this Bill have no fixed commencement date, nor a deadline for commencement. The amendments cannot commence unless and until a regulation is made under the NVR Act to specify the amended Principal Act as a State law that may apply to ASQA-registered providers. In the absence of such a regulation, the proposed provision would be inoperative because of section 9 of the NVR Act and section 109 of the Commonwealth Constitution, which provides for Commonwealth laws to prevail over inconsistent laws of a State.

If and when an appropriate Commonwealth regulation is made, the provision may then be proclaimed to commence, and will operate as permitted by the Commonwealth regulation.

**Public sector staff not eligible for extra remuneration as board directors**

The Bill clarifies that public sector staff receiving a full-time salary are not entitled to additional remuneration as a director of the board of a TAFE institute or an adult education institution.

**University Act amendments**

The Bill will amend eight University Acts to enable leave of absence to be granted to members of the Councils of those Universities. Those Acts are the Deakin University Act 2009, the La Trobe University Act 2009, the University of Melbourne Act 2009, the Monash University Act 2009, the Royal Melbourne Institute of Technology Act 2010, the Swinburne University of Technology Act 2010, the University of Ballarat Act 2010 and the Victoria University Act 2010.

**Machinery amendments**

The Bill also makes a number of amendments of a machinery or statute law revision nature. One of these provisions is retrospective, namely clause 62(5). The reasons for this are explained in the notes to clause 2 below.
Clause Notes

PART 1—PRELIMINARY

Clause 1  sets out the main purposes of the Bill.

Clause 2  provides for the commencement of the Act.

Most of the Act comes into operation on days to be fixed by proclamation, but no later than 1 January 2013. The 3 exceptions are explained below.

The first exception is clause 50, which is to come into operation on day to be fixed by proclamation. No forced commencement or forced repeal of these provisions is included in the Bill. The reason for this is as follows.

The purpose of clause 50 is to amend Part 5.3A of the Education and Training Reform Act 2006 (the Principal Act) to extend the Victorian student number (VSN) provisions to providers registered under the Commonwealth National Vocational Education and Training Regulator Act 2011 of the Commonwealth (NVR Act). The VSN is a unique student identifier, which enables a student's academic progress and record to be recorded throughout their educational career as they move between institutions and courses.

The purpose of this amendment is to ensure that Commonwealth-registered providers assign or verify the VSNs when enrolling students. The amendment is necessary because registration under the NVR Act only began on 1 July 2011, and the Principal Act's VSN provisions do not apply to them. Prior to that date, providers were registered by the State regulator, the VRQA.

However, the NVR Act also provides that providers registered under it are not required to comply with Victorian laws on vocational education and training. This would, at present, prevent the amendments to be made by clause 50 from having full effect.

In late 2011, the National Vocational Education and Training Regulator Amendment Act 2011 of the Commonwealth was passed, but it is not yet in force. Under amendments to be made by that Act, regulations may, with the consent of the Ministerial Council, be made that specify a State vocational education and training law. A specified State vocational education and training
law will be binding on Commonwealth-registered vocational education and training providers in that State.

Once these amendments to the NVR Act take effect, it is intended to seek Ministerial Council approval for a Commonwealth regulation to be made that specifies the amendments to be made by clause 50 of this Bill. This will require Commonwealth-registered providers to assign or verify the VSNs of their Victorian students.

For these reasons, the timing of the commencement of clause 50 (or whether it commences at all) will depend on Ministerial Council consent and the making of Commonwealth regulations. If and when this consent is obtained, and the required regulations are made, clause 50 will be proclaimed so as to commence at the same time as those regulations.

The second exception is clause 62(5), which is to be taken to have come into operation on 1 July 2007, the commencement date for the Principal Act.

Clause 62(5) corrects transitional provisions in the Principal Act. While the provision is retrospective, it merely corrects cross-references to ensure that two transitional arrangements of that Act work as originally intended.

In particular, clause 62(5) amends clause 1.6 (d) and (e) of Schedule 8 to the Principal Act. The purpose of those provisions was to deem that course accreditations and authorisations to conduct courses given under the former Tertiary Education Act 1993 would continue to have effect as if given under the corresponding provisions of the Principal Act. It has recently been discovered, however, that clause 1.6 cited these corresponding provisions incorrectly.

The effect of the amendments is to ensure that tertiary education and course accreditations and authorisations as at 1 July 2007 were not made invalid on that date because of the incorrect cross-referencing. It also ensures that the validity of any qualifications issued to persons who undertook such higher education courses are not called into question only because of these errors.

The third exception is Part 7 of the Bill, which will come into operation on the day following Royal Assent. Part 7 will amend eight University Acts to enable leave of absence to be granted to members of the University Councils and to deal with related
matters. It will also make a technical correction to the Preamble of the University of Melbourne Act 2009.

PART 2—TRANSFER OF FUNCTIONS OF COMMISSION RELATING TO APPRENTICES

The main purpose of Part 2 of the Bill is to transfer the regulatory functions of the Victorian Skills Commission (VSC) in relation to apprenticeships and related matters to the Victorian Registration and Qualifications Authority (VRQA). For more information about this change, see the General section of this Memorandum. Part 2 also makes a number of related amendments, such as expanding the statement of the VRQA’s functions set out in the Principal Act.

Clause 3 amends section 4.2.2(1) of the Principal Act. That section sets out the functions of the VRQA. A new paragraph (ga) will be added to the functions statement, setting out the proposed new function of the Authority in relation to the regulation of apprenticeships. In addition paragraph (nb) will be amended to include a function of monitoring and enforcing requirements relating to apprentices under Part 5.5.

Clause 4 amends section 5.5.2 of the Principal Act to transfer to the VRQA the VSC’s function of determining approved training programs for apprentices. A determination can deal with the matters specified in subsection (2) of section 5.5.2, such as the length of training programs and the skills and knowledge to be attained by apprentices.

An existing training program determined by the VSC will continue as if it had been set by the VRQA under its new powers: see the transitional provision in clause 52, new section 6.1.27(1).

It should be noted that, under amendments to section 9 of the NVR Act that were passed in 2011 but are not yet in force, the regulation of apprenticeships in Victoria will remain a State responsibility.

Clause 5 amends section 5.5.3 of the Principal Act. That section enables the apprenticeship regulator to determine that certain apprenticeship regulation provisions of Part 5.5 of the Principal Act do not apply with respect to certain apprenticeship vocations. For instance, the regulator could determine that section 5.5.15(1), which deals with cancellation of training contracts, does not apply for apprenticeships in a particular trade.
The effect of the amendment is to transfer the powers to make such determinations from the VSC to the VRQA.

An existing determination of the VSC will continue as if it had been set by the VRQA under its new powers: see the transitional provision in clause 52, new section 6.1.27(2).

Clause 6 amends section 5.5.6 of the Principal Act. That section requires that an employer have the approval of the apprenticeship regulator before employing an apprentice. It is an offence to employ an apprentice without this approval.

The amendments replace two references to the VSC with references to the VRQA as the apprenticeship regulator.

Clause 7 amends section 5.5.7 of the Principal Act. That section sets out the process and criteria for the apprenticeship regulator in giving approval to employ apprentices. For instance, the regulator has regard to the employer's premises, equipment, training methods, qualifications of supervisory staff and whether the employer is a fit and proper person to employ an apprentice. Section 5.5.7 also enables the regulator to place conditions on an approval.

The effect of the amendments is to transfer the powers to give such approval or set conditions from the VSC to the VRQA.

Existing approvals given by the VSC, and any conditions on such approvals, will continue as if given or set by the VRQA under its new powers: see the transitional provision in clause 52, new section 6.1.27(3).

Clause 8 amends section 5.5.10 of the Principal Act. That section requires training contracts to be in the form set by the apprenticeship regulator, which in turn must be consistent with decisions of the Ministerial Council.

The amendment replaces references to the VSC with references to the VRQA as the apprenticeship regulator.

Existing approvals given by the VSC will continue as if given by the VRQA under its new powers: see the transitional provision in clause 52, new section 6.1.27(4).

Clause 9 amends section 5.5.11 of the Principal Act. That section sets out who are the parties to a training contract. Where an apprentice is under the age of 18, their parent or guardian must also be a party to the contract, unless the apprenticeship regulator—
approves another person to act in the place of the parent or guardian; or
consents to the contract being signed only by the apprentice and the employer.

The amendment replaces references to the VSC with references to the VRQA as the apprenticeship regulator for these purposes.

Existing approvals and consents given by the VSC will continue as if given by the VRQA under its new powers: see the transitional provision in clause 52, new section 6.1.27(5).

Clause 10 amends section 5.5.12 of the Principal Act. That section requires the employer to lodge a training contract with the apprenticeship regulator within 14 days of employment commencing.

Where this does not occur, the regulator has certain discretionary powers, such as executing the contract on behalf of any or all parties, or declaring that an apprentice (since dismissed) had been employed under a training contract.

The amendment replaces references to the VSC with references to the VRQA as the apprenticeship regulator for these purposes.

Clause 52, new section 6.1.27(6) and (7), sets out detailed transitional arrangements in relation to the handover of such cases from the VSC to the VRQA.

Under the transitional arrangements to be set out in new section 6.1.27(6), the VSC must hand over any training contracts it holds to the VRQA. If, on the date these amendments commence, an apprentice has already been employed but their training contract had not yet been lodged with the VSC, then the employer must lodge that contract with the VRQA instead, or with a person who had been authorised by the VSC to accept lodgement of contracts prior to the commencement day.

Under the transitional arrangements to be set out in new section 6.1.27(7), if the VSC had declared under section 5.5.12(3) that a dismissed apprentice is to be treated as if he or she had been employed under a training contract prior to their dismissal, then that declaration will continue to have effect after the commencement day as if made by the VRQA.
Clause 11 amends section 5.5.13 of the Principal Act. That section requires an employer to arrange for—

- an apprentice to be enrolled in the appropriate vocational education and training course;
- a training plan to be signed by the apprentice, the employer and the provider of the vocational education and training course; and
- to lodge a copy of the training plan with the apprenticeship regulator.

The amendment replaces two references to the VSC with references to the VRQA as the apprenticeship regulator for these purposes.

Under the transitional arrangements to be set out in new section 6.1.27(8), the VSC must transfer to the VRQA any training plan that had been lodged with the VSC under section 5.5.13. If, on the date these amendments commence, an apprentice has already been employed but their training plan had not yet been lodged with the VSC, then the employer must lodge that plan with the VRQA instead, or with a person who had been authorised by the VSC to accept lodgement of plans prior to the commencement day, or with any person who is nominated for the purpose by the VRQA after this Bill receives Royal Assent.

Clause 12 amends section 5.5.14 of the Principal Act. That section enables the apprenticeship regulator to set the term of an apprentice's training contract, or to shorten or lengthen that term.

The amendment replaces references to the VSC with references to the VRQA as the apprenticeship regulator for these purposes.

From the date these amendments commence, determinations of the VSC under these powers will continue in operation as if they were determinations made by the VRQA: see the transitional provision in clause 52, new section 6.1.27(9).

Clause 13 amends section 5.5.15 of the Principal Act. That section enables apprentices and employers to cancel or suspend training contracts by mutual consent. The apprenticeship regulator may also order cancellation or suspension of a contract where it considers that special circumstances make that desirable.
The amendments transfer the regulator's discretions under section 5.5.15 from the VSC to the VRQA.

If, on the date these amendments commence, the VSC had begun to consider whether it should exercise these powers, it may continue to handle the matter and make an order in that particular case as if section 5.5.15 had not been amended: see the transitional provision in clause 52, new section 6.1.27(10).

From the date these amendments commence, an order made by the VSC under these powers before on or after commencement will continue in operation as if made by the VRQA: see the transitional provision in clause 52, new section 6.1.27(11).

Clause 14 amends section 5.5.16 of the Principal Act. That section deals with the suspension of training contracts owing to lack of sufficient work or financial difficulties. In certain situations, this can only occur if the apprenticeship regulator, after due inquiry, is satisfied that it is warranted and makes an order to that effect.

The amendment transfers the regulator's discretions under section 5.5.16 from the VSC to the VRQA.

If the VSC receives an application for an order under section 5.5.16 before the date these amendments commence but has not finally determined the matter by that date, then the VSC may continue to handle the matter and make an order after that date as if this amendment had not been made: see the transitional provision in clause 52, new section 6.1.27(12).

Where the VSC has made an order under these powers before on or after the commencement day, then the order will continue in operation as if it had been made by the VRQA: see the transitional provision in clause 52, new section 6.1.27(13).

Clause 15 amends section 5.5.17 of the Principal Act. That section enables the apprenticeship regulator to determine grievances between employers and apprentices, within certain limits. For instance, the regulator may not determine questions about whether money is due to an apprentice from an employer.

The amendments replace references to the VSC with references to the VRQA as the apprenticeship regulator for these purposes.
Where a grievance was referred to the VSC under section 5.5.17 before the date these amendments commence, then the VSC may determine the matter after that date as if this amendment had not been made: see the transitional provision in clause 52, new section 6.1.27(14).

Where the VSC has made a determination under these powers before on or after the commencement day, then the determination will continue in operation as if it had been made by the VRQA: see the transitional provision in clause 52, new section 6.1.27(15).

Clause 16 amends section 5.5.21 of the Principal Act. That section enables the apprenticeship regulator to delegate its powers to approved training agents. Approved training agents are appointed by the Minister to perform certain functions in the training system. A copy of an instrument of delegation must be published in the Government Gazette.

The amendment enables the VRQA, as the new apprenticeship regulator, to delegate to approved training agents in the same manner as the VSC may delegate under the present provisions. This will not limit the other delegation powers of the VRQA under section 4.2.7.

There is no transitional provision for the continuation of existing VSC delegations to approved training agents, so that existing delegations will not continue automatically. It will be for the VRQA to determine what powers it will delegate to approved training agents in the future.

Clause 17 amends section 5.5.22 of the Principal Act. That section enables a person who is aggrieved by a decision by a decision of an approved training agent to apply, within 14 days, to the apprenticeship regulator for a review of that decision. The regulator may then affirm, vary or set aside the decision of the approved training agent.

The amendments replace references to the VSC with references to the VRQA as the apprenticeship regulator for these purposes.

If the VSC receives an application under section 5.5.22 before the date these amendments commence but it has not finally determined the matter by that date, then the VSC may continue to determine the matter after that date as if this amendment had not
been made: see the transitional provision in clause 52, new section 6.1.27(16).

Where the VRQA receives an application under section 5.5.22 after the commencement day in relation to a decision of an approved training agent acting under a delegation it held from the VSC, then the VRQA may deal with the application as if the approved training agent had acted as the VRQA’s own delegate: see the transitional provision in clause 52, new section 6.1.27(17).

Clause 18 amends section 5.5.23 of the Principal Act. That section requires the apprenticeship regulator to maintain a register of apprentices. The amendment replaces a reference to the VSC with a reference to the VRQA as the apprenticeship regulator for these purposes. On the date these amendments commence, the VSC must transfer the register of apprentices to the VRQA: see the transitional provision in clause 52, new section 6.1.27(18).

Clause 19 amends section 5.5.24 of the Principal Act. That section enables the apprenticeship regulator to pay a subsidy to an apprentice towards the cost of attending a vocational education and training course remote from his or her home or work. The amendment replaces a reference to the VSC with a reference to the VRQA as the apprenticeship regulator for these purposes.

Clause 20 amends section 5.5.25 of the Principal Act. That section enables the apprenticeship regulator to charge a fee (as fixed by the Minister) for issuing a certificate or duplicate certificate for the purposes of Part 5.5 of the Principal Act. The amendment replaces a reference to the VSC with a reference to the VRQA as the apprenticeship regulator for these purposes.

Clause 21 substitutes section 5.8.1(1) of the Principal Act. That section currently enables the Department Secretary to appoint authorised officers for the purposes of the apprenticeship provisions of Part 5.5 of the Act. There are two main differences between the existing provision and the new provision. First, the VRQA (in addition to the Secretary) will be able to appoint authorised officers for the purposes of the apprenticeship provisions.
Secondly, in addition to the categories of persons who are already eligible to be appointed as authorised officers, VRQA staff will also be eligible. These are the public servants employed for the purposes of Chapter 4 of the Principal Act, referred to in paragraph (a) of the new subsection (1).

There is no transitional provision in relation to this amendment. Public servants who had been appointed as authorised officers by the Secretary prior to the amendment taking effect will continue to be authorised afterwards, so long as they remain eligible, by operation of section 16(b) of the Interpretation of Legislation Act 1984. The VRQA will be able to make its own appointments after this Bill receives Royal Assent.

Clause 22 Subclause (1) amends section 5.8.3(1) of the Principal Act. That section sets out the powers of authorised officers appointed by the Secretary of the Department under section 5.8.1(1) for the purposes of the apprenticeship provisions of Part 5.5 of the Act. The effect of the amendment is to confer these powers also on authorised officers appointed by the VRQA. This reflects the fact that, in future, the VRQA will also be appointing authorised officers for the purposes of the apprenticeship provisions: see clause 21.

Subclause (2) amends section 5.8.3(3) of the Principal Act to clarify that the authorised officers enforcing the matters in that subsection are appointed by the Authority (the VRQA) under section 5.8.1(3).

Clause 23 amends section 5.8.8(3) of the Principal Act, which is an evidentiary provision enabling certificates signed by the Secretary to the Department to be used in evidence in prosecutions about approvals and the like under the apprenticeship regulation provisions of Part 5.5.

The amendment made by paragraph (a) corrects a cross-reference to the provision under which training contracts are lodged with the apprenticeship regulator. The correct provision is section 5.5.12, and this is inserted in place of the existing incorrect cross-reference to section 5.5.8.

The amendment made by paragraph (b) relates to the power of the Secretary to issue an evidentiary certificate that, as at a given date, a person did or did not have the approval of the apprenticeship regulator to employ a person under a training
contract, that is, to employ an apprentice. The effect of the amendment is to change the reference to the VSC as the apprenticeship regulator for these purposes as a reference to the VRQA.

Clause 24 amends clause 2 of Schedule 4 to the Principal Act.

Schedule 4 deals with wage and employment conditions of apprentices. Although in 2009 Victoria referred to the Commonwealth the State's industrial powers in relation to apprentices, Schedule 4 may continue to apply in some cases.

Clause 2 of Schedule 4 enables the apprenticeship regulator to declare, by a notice published in the Government Gazette, that Schedule 4 does not apply to a class of training contract. The effect of the amendment is to transfer that power from the VSC to the VRQA.

From the date these provisions take effect, a declaration under clause 2 of Schedule 4 that had been gazetted by the VSC and was in force as at that date will continue in operation as if it were a declaration gazetted by the VRQA; see the transitional provision in clause 52, new section 6.1.27(19).

Clause 25 amends clause 5 of Schedule 4 to the Principal Act. The effect of the amendment is to substitute references to the VRQA for references to the VSC in existing provisions that require an employer to notify the apprenticeship regulator if—

- the employer wishes to terminate the employment of an apprentice without providing the notice required by the training contract, or
- if the employer does not intend to continue employing the apprentice after completion of the training contract.

Clause 26 amends clause 6 of Schedule 4 to the Principal Act. That provision deals with the fixing of wages of apprentices by reference to federal award rates, with the apprenticeship regulator having power to specify the appropriate industry or skill level for these purposes. The effect of the amendment is to substitute the VRQA for the VSC as the apprenticeship regulator for these purposes. Although Victoria referred industrial powers in relation to apprentices to the Commonwealth in 2009, clause 6 of Schedule 4 may still apply in some circumstances.
PART 3—AMENDMENTS CONCERNING TAFE INSTITUTES AND ADULT EDUCATION INSTITUTIONS

Part 3 makes a number of governance reforms to the provisions of the Education and Training Reform Act 2006 that deal with the governance and oversight of Victoria’s 14 TAFE institutes and its two adult education institutions, which are the Centre for Adult Education (CAE) and the Adult Multicultural Education Services (AMES). These changes are detailed below. Among the more significant are the transfer of certain reserve powers in relation to TAFE institutes from the Victorian Skills Commission to the Minister, and changes to the functions, planning and governance of adult education institutions.

Clause 27 substitutes section 3.1.11(2) of the Principal Act. Section 3.1.11 confers power on the Governor in Council to create, amalgamate, abolish or change the name of TAFE institutes. Subsection (2) deals with the process by which such an Order may be made. The effect of this clause is to omit the requirement for the Minister to consult the VSC before recommending the making of such an Order.

Clause 28 substitutes section 3.1.12(3) of the Principal Act. Section 3.1.12 confers power on the Governor in Council to create, amalgamate, abolish or change the name of boards of TAFE institutes. Subsection (3) deals with the process by which such an Order may be made. The effect of this clause is to omit the requirement for the Minister to consult the VSC before recommending the making of an Order in relation to a TAFE institute board.

Clause 29 amends section 3.1.18 of the Principal Act. That section deals with the removal of a director of a board of a TAFE institute by the Governor in Council for breach of the director’s duties under the Principal Act. This power is subject to certain procedural safeguards, such as the director having an opportunity to submit an explanation before action is taken. The amendment will transfer the VSC’s roles in this process to the Minister.

Clause 30 substitutes paragraph (f) of section 3.3.14 of the Principal Act. That section deals with delegations by the Adult, Community and Further Education Board. The effect of the amendment is to enable executive officers of the DEECD to receive and exercise delegations of the statutory powers and functions of the Adult, Community and Further Education Board. At the same time, the
existing provision enabling delegations to the VSC or its Director will be repealed.

Clause 31 substitutes paragraph (e) of section 3.3.15 of the Principal Act. That section deals with delegations by the General Manager of the Adult, Community and Further Education Board. The effect of the amendment is to enable executive officers of the DEECD to receive and exercise delegations of the statutory powers and functions of the General Manager of the Board. At the same time, the existing provision enabling delegations to the VSC or its Director will be omitted.

Clause 32 amends section 3.3.30(1) of the Principal Act, which deals with the functions of the governing boards of adult education institutions. Victoria has two adult education institutions, the Centre for Adult Education (CAE) and the Adult Multicultural Education Services (AMES).

The first amendment is to insert a new paragraph (ab) into the functions statement in section 3.3.30(1). This will require each governing board to ensure that its institution operates in accordance with its strategic plan. The proposed requirements in relation to the preparation and making of adult education institutions’ strategic plans are set out in clause 35, new section 3.3.34A.

The second set of amendments are to existing paragraphs (c) and (g) of section 3.3.30(1). These are technical amendments to correct references to “adult, community and further education”, the education sector that adult education institutions mainly serve. The current wording of “adult, community, further education” is not consistent with the definition in the Principal Act of adult, community and further education and other references in the Principal Act to that sector.

Clause 33 substitutes paragraph (a) of section 3.3.33(1) of the Principal Act with new paragraphs (a) and (ab). That section deals with the membership of the governing boards of the adult education institutions. The main effect of the amendments is that the chairperson of each governing board will be appointed by the Governor in Council, instead of being chosen by the board itself as at present. To maintain the existing balance between the various categories of membership, the GIC appointed chairperson will count as a Ministerial appointed director.
Clause 34 substitutes subsection (1) of section 3.3.34 of the Principal Act with new subsections (1) and (1A). Subsection (1) currently enables the Minister to remove, at any time, a Ministerial appointed director of the governing board of an adult education institution. The amendments made by this clause consequential on clause 33. They enable the Governor in Council to remove a GIC appointed chairperson, and the Minister to remove a Ministerial appointed director, at any time.

Clause 35 inserts new sections 3.3.34A, 3.3.34B, 3.3.34C and 3.3.34D into the Principal Act, which are intended to establish stronger mechanisms for reporting and accountability of the governing boards of adult education institutions, namely, the CAE and the AMES.

The proposed arrangements were recommended by the State Services Authority, and are consistent with similar requirements that already apply to the boards of TAFE institutes.

The governing board of each adult education institution must prepare a long-term strategic plan and an annual statement of corporate intent, and submit these to the Minister. The governing boards must also hold annual meetings that are open to the public to report on their previous year's operations and consult in relation to planning of their future services. The content of the proposed new provisions is explained below.

Like other education institutions, adult education institutions conduct operations on a calendar year basis, and statements of corporate intent will reflect this.

New section 3.3.34A provides that governing board of an adult education institution must prepare and submit to the Minister, in accordance with guidelines established by the Minister, a strategic plan for the operation of the institution. Note that, under new paragraph (ab) of section 3.3.30(1) (which is to be inserted by clause 32), the preparation of strategic plans will become one of the functions of the governing boards of adult education institutions.
A strategic plan must be prepared in accordance with guidelines to be established by the Minister. The Minister may either—

- accept a strategic plan submitted by a governing board;
- accept the plan with amendments; or
- refuse to accept the plan.

If a governing board wished to exercise a function in a manner that is inconsistent with its strategic plan as accepted by the Minister, then the governing board must first advise the Minister.

New section 3.3.34B details how and when a statement of corporate intent is made.

Each year, the governing board of an adult education institution must prepare a proposed statement of corporate intent in relation to the provision of—

- adult, community and further education; and
- vocational education and training; and
- employment; and
- other associated—

programs and services. This reflects the main functions of an adult education institution under section 3.3.30(1).

The statement of corporate intent must be prepared in consultation with the Secretary of the Department of Education and Early Childhood Development (DEECD) and must then be submitted to the Minister.

In preparing the statement, the board must take into account any statement of expectations for the following year which the Minister had provided to the board before 1 October.

If the governing board and the Minister are unable to agree on a statement of corporate intent before 1 March of a particular year, the Minister can issue a statement of corporate intent for the adult education institution. A statement can be amended if both the Minister and the governing board agree. However, if agreement on a proposed variation is not reached within 28 days of the variation being proposed, the Minister can decide to vary the statement as the Minister determines, or can decline to vary the statement.
The Minister must make available to any member of the public, on request, a copy of any statement of corporate intent or variation to it.

New section 3.3.34C sets out what a statement of corporate intent of an adult education institution must contain. In particular, a statement must be consistent with any accepted strategic plan, and it must specify for the relevant planning year—

- what services will be provided by the adult education institution; and
- what the institutions' objectives, priorities and key performance outcomes will be; and
- the performance indicators and other measures for assessing and monitoring the institutions' performance; and
- how and when performance will be reported to the Minister and the Secretary of the DEECD; and
- any other matters agreed from time to time between the Minister and the governing board.

New section 3.3.34D details requirements in relation to annual meetings of a governing board of an adult education institution. It provides that the Chief Executive Officer (CEO) of an adult education institution must convene such a meeting after 1 January in a given year and on or before 30 June of that year, or at a later time with the permission of the Secretary of the DEECD. The CEO must also publish a notice of the meeting in a newspaper that circulates generally in the area where the institution is located. This meeting notice must set out its time and date and indicate that the meeting is open to the public. The CEO must also give notice of the meeting to the Secretary.

At each annual meeting, the governing board must—

- submit the financial statements of the adult education institution; and
- report on services provided in the prior year, and the services it proposes to provide in the coming year; and
- must report on any other matters that may be required under regulations that may be made for these purposes.
PART 4—POWER TO GRANT INJUNCTIONS IN RESPECT OF RTOs

Part 4 amends the Principal Act to insert a new Subdivision 4A of Part 5.8 of the Principal Act. This new Subdivision will enable injunctions to be granted by courts in respect of RTOs. Injunctions may either restrain RTOs from engaging in certain conduct (restraining injunctions), or may require them to carry out specific actions or to do specific things as set out in the injunction itself (positive injunctions).

These powers will complement provisions enacted in 2010 that deal with the giving of enforceable undertakings by RTOs. The State's education regulator, the VRQA, may in future seek an injunction from the courts, even if an RTO refuses to give a satisfactory undertaking.

The proposed injunctions powers in this Bill are broadly similar to the injunctions provisions in the Fair Trading Act 1999. It is noted that the NVR Act also provides for both enforceable undertakings and injunctions in relation to RTOs that are registered and regulated at the national level.

Clause 36 inserts a new Subdivision 4A of Part 5.8 into the Principal Act, dealing with injunctions in respect of RTOs and which will consist of new sections 5.8.3YA, 5.8.3YB, 5.8.3YC, 5.8.3YD and 5.8.3YE. Each of these proposed new sections is explained below.

New section 5.8.3YA deals with the grant of restraining injunctions to restrain RTOs' conduct.

The State's education regulator, the VRQA, may apply to either the County Court or the Magistrates' Court for an injunction that restrains an RTO from engaging in certain conduct. As explained above, it is likely that injunctions would be sought after attempts to obtain an enforceable undertaking from the RTO had proved unsuccessful. However, this will not be a precondition for seeking or granting an injunction.

A restraining injunction under new section 5.8.3YA may restrain an RTO from—

- contravening a relevant law, or attempting or conspiring to do so; or
- aiding, abetting, counselling, procuring or inducing another RTO to contravene a relevant law; or
• being in any way directly or indirectly knowingly concerned in the breach of a relevant law.

Of course, breaching laws in these ways may make the RTO liable to prosecution or regulatory sanctions independent of whether an injunction is granted. However, if an injunction has been granted and the RTO breaches that injunction, the RTO and its managers may also be liable to be dealt with by the court for contempt of court, which may incur more severe penalties.

The term relevant law is defined in section 5.8.3B, inserted by amendments passed in 2010. Relevant law means the Principal Act, regulations under that Act, the RTO Standards (a nationally agreed document), and any enforceable undertaking that may have already been given by the RTO under the Principal Act.

Injunctions may be granted if the court is satisfied that the RTO is currently engaging in, or has engaged in, conduct of the kind described above, whether or not the RTO intends to continue doing so or do so again. Injunctions may also be given by consent of the parties.

An application for an injunction may be made ex parte, that is, the VRQA may apply for the injunction without the RTO being notified or present in court. This does not mean that the RTO will never be notified or present, but the option of proceeding in this way may be appropriate in some cases, such as urgent applications.

New section 5.8.3YB deals with the grant of positive injunctions to carry out specific actions or to do specific things.

The circumstances in which positive injunctions may be granted are similar to those in relation to restraining injunctions under section 5.8.3YA (see above).

A positive injunction may require an RTO to carry out one or more of the following acts or things—

• institute a training program for the RTO's employees in relation to a relevant law, as defined—for instance, this could require the RTO to train its employees in relation to their obligations under the regulations in relation to fair treatment of students of the RTO;
refund money to past, current or prospective students—for instance, this could require the repayment of fees to a student or group of students that had been collected from them in breach of fair contract terms prescribed by the regulations;

provide a service or make a service or facility available to past, current or prospective students—for instance, this could require an RTO to allow a student (or group of students) to complete a course or sit an exam or receive a qualification that the RTO had refused to the student or students, with or without the payment of additional fees;

disclose information about the RTO’s business activities or business associates—for instance, the court may order an RTO to disclose information about its connections, if any, to associates that had been found unsuitable to be involved in the management of an RTO because of previous misconduct or offences;

honour any promise made in the course of misleading or deceptive conduct or a false representation—for instance, where an RTO had published false or misleading information to prospective students about services or facilities that would be available to them, the RTO may be ordered actually to provide those services or facilities.

As with restraining injunctions, an application for a positive injunction may be made ex parte. This means the VRQA may apply for an interim injunction without the RTO being notified or present in court where this is considered necessary.

New section 5.8.3YC enables the County Court or Magistrates’ Court to grant interim injunctions pending determination of an application for a restraining or positive injunction.

Interim injunctions can be granted even though it has yet to be established that the RTO has engaged in, or intends to engage in, conduct of the kind that would be grounds for granting a restraining or positive injunction.

Applications for interim injunctions may also be made ex parte, that is, the VRQA may apply for the injunction without the RTO being notified or present in court. This does not mean that the RTO will never be notified or present, but the option of
proceeding in this way may be appropriate in some cases, such as urgent applications.

New section 5.8.3YD confers power on the County Court and Magistrates' Court to vary or rescind restraining injunctions under section 5.8.3YA, positive injunctions under section 5.8.3YB or interim injunctions under section 5.8.3YC.

New section 5.8.3YE makes it clear that the powers to be conferred on the County Court and Magistrates' Court by the proposed new Subdivision 4A in Division 3 of Part 5.8 are in addition to, and do not limit, any other powers that those Courts have, whether under the Principal Act or any other Act.

For instance, other provisions of the Principal Act will confer power on the Magistrates' Court to order an RTO to comply with an enforceable undertaking it had previously given. Thus, the one hearing before that Court arising out of an RTO's conduct could result in—

- in respect of matters covered in an earlier enforceable undertaking—an order that an RTO must comply with that undertaking; and
- in respect of matters not dealt with in that enforceable undertaking—an injunction.

PART 5—OTHER AMENDMENTS TO THE EDUCATION AND TRAINING REFORM ACT 2006

Part 5 makes a number of amendments to governance and regulatory arrangements in the vocational education and training and adult, community and further education sectors.

Recent machinery of government changes will be reflected in the text of the Principal Act, in particular the transfer of responsibility for the vocational education and training sector from the former Department of Innovation, Industry and Regional Development to the DEECD.

The Regional Councils of Adult, Community and Further Education will cease to be incorporated entities, with power to employ staff. Instead, they will become unincorporated bodies policy and advisory bodies, and staff are now employed by the DEECD. The assets and obligations of the Regional Councils will transfer to the Adult, Community and Further Education Board.
The recent establishment of the ASQA has made redundant the role of the company that had been established by Commonwealth, State and Territory governments to register and regulate (under delegation from State regulators) vocational education and training providers that operate in more than one jurisdiction. Consequently, that company (Technical and Vocational Education and Training Australia Limited or TVET) has now ceased operating. The amendments will therefore remove provisions relating to TVET from the Principal Act.

Under amendments to the Principal Act passed in 2008, an education or training provider (as defined) must, when enrolling students, assign or verify a unique Victorian student number (VSN) to each student and provide this information to the Secretary of the DEECD. This Bill will amend the definition of education and training provider, and thus the scope of the VSN provisions, by—

- including education and training providers registered by an interstate regulator (usually the Western Australian regulator) and operating in Victoria under mutual recognition arrangements; and
- including education and training providers registered by the new Commonwealth regulator the ASQA—subject to Commonwealth regulations being made to allow this; and
- omitting references to providers registered by the company known as TVET, for the reasons given above.

Clause 37 amends section 3.1.7(1)(d) of the Principal Act, in relation to the membership of the VSC. The effect of the amendment is that the Secretary to the Department of Education and Early Childhood Development (or his or her nominee) will be a member of the VSC rather than the Secretary to the Department of Industry, Innovation and Regional Development (or nominee).

The amended section 3.1.7(1)(d) will refer simply to "the Secretary", which is already defined in section 1.1.3(1) of the Principal Act to mean the Secretary to the Department. The term Department will in turn be defined to mean the Department of Education and Early Childhood Development—see the amendment being made to the definition of Department by clause 62(1) of this Bill.

It should be noted that the Secretary to the DEECD (or his or her nominee) has already taken over the role of VSC member under machinery of government changes implemented in 2011. The textual changes to the Principal Act made by this Bill will
bring it into line with administrative arrangements that have already been implemented. Specifically, items 75, 76 and 77 of Administrative Arrangements Order (No. 209) 2011 (published in Government Gazette No. S55 on 22 February 2011) reconstrued all relevant references in the *Education and Training Reform Act 2006* to the Department of Industry, Innovation and Regional Development (and the Secretary to that former Department) as references to the Department of Education and Early Childhood Development (or the Secretary to that Department, as the case may be).

Clause 38 amends section 3.1.18B(1)(a) of the Principal Act to omit a reference to the former Department of Industry, Innovation and Regional Development. That section will be inserted into the Principal Act by amendments passed in 2010 before clause 38 comes into operation.

Clause 39 amends section 3.1.18C(b)(iv) of the Principal Act to omit a reference to the former Department of Industry, Innovation and Regional Development, with the effect that the provision will refer instead to the Department of Education and Early Childhood Development. That section will be inserted into the Principal Act by amendments passed in 2010 before clause 39 comes into operation.

Clause 40 amends section 3.1.18D of the Principal Act. That section will be inserted into the Principal Act by amendments passed in 2010 before clause 40 comes into operation.

Paragraphs (a) and (c) make technical corrections to references to TAFE institutes in the wording of section 3.1.18D.

Paragraph (b) omits a reference to the former Department of Industry, Innovation and Regional Development, with the effect that the section will refer instead to the Department of Education and Early Childhood Development.

Paragraph (d) amends the section so that a TAFE institute's chief executive officer must give notice of its annual meeting to the Secretary to the DEECD instead of the VSC.
Clause 41 repeals subsection (3)(d) of section 3.3.21 of the Principal Act. The effect is to omit, from the list of qualifications for appointment to a Regional Council of Adult, Community and Further Education, "knowledge and experience of fiduciary requirements and the employment of staff". The reason for the omission is that the Regional Councils no longer have the responsibility of employing staff (the staff are now employed by the DEECD).

Clause 42 repeals section 3.3.24 of the Principal Act.

The effect of the repeal is that the Regional Councils of Adult, Community and Further Education will no longer be incorporated entities. It is no longer necessary that the Councils be incorporated, given that they will no longer employ staff, allocate funding or enter into contracts or other legally binding obligations.

The Regional Councils will become instead purely advisory and consultative bodies, although the existing Councils will continue in operation with their altered functions and current members will continue in office for the balance of their terms: see the transitional provision in clause 52, new section 6.1.29(2).

All rights, assets, liabilities and obligations of each Regional Council will become those of the Adult, Community and Further Education Board that is established under section 3.3.2 of the Principal Act: see the transitional provision in clause 52, new section 6.1.29(1)(b).

Further, the Adult, Community and Further Education Board will automatically be substituted as a party to any legal proceedings, contract agreement or arrangement to which a Regional Council is a party, and that Board may continue and complete any such matter: see the transitional provisions in clause 52, new section 6.1.29(1)(c) and (d).

Clause 43 repeals the definition of TVET in section 4.1.1(1) of the Principal Act, the definitions section for Chapter 4 of the Principal Act.

TVET refers to a company known as "Technical and Vocational Education and Training Australia Limited" ACN 062 758 632, which was established by Commonwealth, State and Territory education agencies to handle, under delegation from State education regulators, the registration and regulation of vocational education and training providers operating across jurisdictions.
The Commonwealth has now established the ASQA under the NVR Act, with powers as the only vocational education and training regulator in four States and the Territories, and regulatory responsibility for around half of the providers in the other, "non-referring", States of Victoria and Western Australia. The establishment of ASQA having superseded that of TVET, the latter has now ceased operations. Consequently, this Bill removes provisions from the Principal Act that refer to TVET and enabled it to operate under delegations from the State's education regulator, the VRQA.

Clause 44 repeals paragraph (c) of section 4.2.4 of the Principal Act, which sets out the membership of the VRQA, the State's education regulator. The effect of the amendment is to omit the Secretary of the former Department of Innovation, Industry and Regional Development (or nominee) from the board of the VRQA, consequent on the transfer of responsibility for vocational education and training to the DEECD. The Secretary to DEECD (or nominee) is already a member of the VRQA board under section 4.2.4(b).

Clause 45 repeals section 4.2.7A of the Principal Act. That section enables the VRQA to delegate certain functions relating to the registration and regulation of training organisations to the company known as TVET. That company has now ceased operating. For further explanation, see the notes to clause 43 above.

Clause 46 repeals section 4.2.7B of the Principal Act. That section enables the VRQA to enter into arrangements or agreements with the company known as TVET. That company has now ceased operating. For further explanation, see the notes to clause 43 above.

Clause 47 repeals section 4.3.37 of the Principal Act. That section deals with applications to the VRQA by training organisations as suitable to be registered and regulated by the company known as TVET. That company has now ceased operating. For further explanation, see the notes to clause 43 above.
Clause 48 substitutes a new subsection (1A) into section 4.9.4 of the Principal Act. This will authorise Victoria's education regulator, the VRQA, to provide information and documents to Commonwealth education regulators in accordance with written requests.

Specifically, the VRQA may disclose information or provide documents to any of the following Commonwealth education regulators, at their written request—

- the ASQA established under the NVR Act;
- the Tertiary Education Quality Standards Agency established under the Tertiary Education Quality Standards Agency Act 2011 of The Commonwealth;
- the Secretary or a designated authority under the Education Services for Overseas Students Act 2000 of the Commonwealth.

For further explanation of the reasons for these amendments, see the General section of this Memorandum.

This clause also makes consequential amendments to section 4.9.4(2) of the Principal Act.

Clause 49 substitutes paragraph (c) of the definition of *education or training provider* in section 5.3A.1 of the Principal Act, which deals with the Victorian student number.

The effect is to extend the obligations of education and training providers in relation to VSNs to providers operating in Victoria under their registration by an interstate regulator of vocational education and training, and to omit references to the company known as TVET.

Part 5.3A of the *Education and Training Reform Act 2006* was inserted by amendments passed in 2008. It requires education or training providers operating in Victoria, at the time of enrolling a student, to allocate or verify a unique VSN for the student. They must then provide this information to the Secretary to the DEECD. By altering the definition of *education or training provider* for these purposes, the clause alters the range of providers to which these requirements apply.
The new paragraph (c) will include within these VSN requirements providers who operate in Victoria under their registration by interstate regulators of vocational education and training and who are able to operate in Victoria under the mutual recognition provisions of section 4.3.14 of the Principal Act. Practically speaking, this mainly covers providers registered and regulated in Western Australia. The new Commonwealth regulator, ASQA, now regulates providers in New South Wales, South Australia, Tasmania and the Territories. Queensland had also agreed to refer powers over providers in that State, although referring legislation has not yet been passed in that State.

The existing paragraph (c), which is to be omitted, applied the VSN provisions to training organisations registered and regulated by the company known as TVET. That company has now ceased operating. For further explanation, see the notes to clause 43 above.

Clause 50 inserts a new paragraph (ca) into the definition of education or training provider in section 5.3A.1 of the Principal Act, which deals with the VSN.

The effect is to extend the obligations of education and training providers in relation to VSNs to providers operating in Victoria under their registration by the Commonwealth regulator, ASQA. For explanation of the VSN provisions, see the notes to clause 49 above.

Until 1 July 2011, State and Territory agencies regulated providers of vocational education and training, and those registered by the Victorian regulator were required to comply with the State's VSN legislation.

However, since 1 July 2011, a vocational education and training provider operating in Victoria must register under the NVR Act if it has (or proposes to have) any overseas students, or if it also operates in any part of Australia other than Victoria and Western Australia. Approximately half of vocational education and training providers operating in Victoria are now registered by the ASQA under the Commonwealth Act, including all 14 Victorian TAFE institutes.

Consequently, these ASQA-registered providers, including the 14 TAFE institutes, now fall outside the VSN requirements.
To overcome this problem, clause 50 amends the definition of education or training provider so that ASQA-registered providers come within the scope of Part 5.3A of the Principal Act and must continue to assign or verify VSNs when enrolling students.

There is, however, a constitutional issue and this affects the timing of the amendment's commencement.

Under section 109 of the Commonwealth Constitution, if a State law is inconsistent with a Commonwealth law then the Commonwealth law prevails and the State law is inoperative to the extent of the inconsistency. Section 9 of NVR Act provides that an ASQA-registered provider does not have to comply with a State vocational education and training law. Consequently, the amendments to be made by clause 50 cannot take effect unless and until that inconsistency is removed.

Amendments to the NVR Act passed in late 2011, but not yet in operation, enable regulations to be made, with the consent of the Ministerial Council, which specify a State vocational education and training law. An ASQA-registered provider will be bound by a State law specified in this way.

There is no forced commencement date for clause 50. Whether and when it takes effect depends on the making of Commonwealth regulations that allow the Principal Act's VSN provisions to operate with respect to ASQA-registered providers.

See the General section of this Memorandum for further explanation.

Clause 51 amends clause 3(3) and (4) of Schedule 2 to the Principal Act. These amendments clarify the rule that individuals who draw full-time public sector salaries are not entitled to additional part-time remuneration as directors on the boards of TAFE institutes or the governing boards of adult education institutions.

**PART 6—TRANSITIONAL AND SAVINGS PROVISIONS**

Clause 52 inserts new sections 6.1.27, 6.1.28, 6.1.29 and 6.1.30 at the end of Chapter 6 of the Principal Act. These are transitional and savings provisions relating to the substantive amendments to be made to that Act by other provisions of this Bill. The effect of the transitional and savings provisions is explained in the notes to the substantive provisions to which they relate.
The following table sets out the links between the transitional or savings provisions of clause 52 and the substantive amendments made elsewhere in this Bill. A summary of the effect of each transitional or savings provision is also given; further explanation is given in the notes relating to the relevant clause of the Bill.

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<td>Part 2, especially cl. 14</td>
<td>s. 5.5.16(2)</td>
<td>If the VSC has, as at the commencement day, received an application from an employer to cancel or suspend a training contract because of lack of business or financial difficulties, the VSC may make an order relating to that application as if section 5.5.16(2) had not been amended.</td>
</tr>
<tr>
<td>(13)</td>
<td>cl. 14</td>
<td>s. 5.5.16(2)</td>
<td>Continuation of VSC orders to cancel or suspend training contracts because of lack of business or financial difficulties, whether made before, on or after the commencement day.</td>
</tr>
<tr>
<td>(14)</td>
<td>Part 2, especially cl. 15</td>
<td>s. 5.5.17</td>
<td>If the VSC, as at the commencement day, a question or difference arising between an employer and an apprentice has been referred to the VSC but has not been finally determined, the VSC may make such an determination as if section 5.5.17 had not been amended by Part 2 of this Bill.</td>
</tr>
<tr>
<td>(15)</td>
<td>cl. 15</td>
<td>s. 5.5.17</td>
<td>Continuation of VSC determinations or orders under section 5.5.17 relating to grievances between apprentices and employers, whether made before, on or after the commencement day.</td>
</tr>
<tr>
<td>Transitional or savings provision</td>
<td>Related provision of Bill</td>
<td>Related provision of Principal Act</td>
<td>Summary of effect</td>
</tr>
<tr>
<td>----------------------------------</td>
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</tr>
<tr>
<td>(16)</td>
<td>Part 2, especially cl. 17</td>
<td>s. 5.5.22</td>
<td>If, before the commencement day, a person aggrieved by a decision of an approved training agent acting as the VSC's delegate had applied for review of that decision, the VSC may make continue and determine such an application as if section 5.5.22 had not been amended by Part 2 of this Bill. For applications made after the commencement day, see subclause (17) below.</td>
</tr>
<tr>
<td>(17)</td>
<td>cl. 17</td>
<td>s. 5.5.22</td>
<td>If, on or after the commencement day, a person aggrieved by a decision of an approved training agent acting as the VSC's delegate applies for review of that decision, the VRQA may determine the application as if the approved training agent had been acting as the VRQA's delegate. For applications made before the commencement day, see subclause (16) above.</td>
</tr>
<tr>
<td>(18)</td>
<td>cl. 18</td>
<td>s. 5.5.23</td>
<td>The VSC must transfer to the VRQA the register of apprentices established and maintained under section 5.5.23.</td>
</tr>
<tr>
<td>(19)</td>
<td>cl. 24</td>
<td>Schedule 4, clause 2</td>
<td>Continuation of VSC declarations that the State training and employment provisions set out in Schedule 4 to the Principal Act do not apply to certain training contracts or classes of training contracts.</td>
</tr>
<tr>
<td>(20)</td>
<td>—</td>
<td>—</td>
<td>Definitions for the purposes of new section 6.1.27.</td>
</tr>
<tr>
<td>Transitional or savings provision</td>
<td>Related provision of Bill</td>
<td>Related provision of Principal Act</td>
<td>Summary of effect</td>
</tr>
<tr>
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</tr>
<tr>
<td>New section 6.1.28</td>
<td>Part 3</td>
<td>Part 3.3</td>
<td>Transitional and savings provisions relating to changes to governance and oversight of adult education institutions, as detailed below.</td>
</tr>
<tr>
<td>(1)(a) cl. 33 s. 3.3.29</td>
<td></td>
<td></td>
<td>Despite the changes to be made to governance arrangements for adult education institutions (namely, the CAE and AMES) by clause 33 of the Bill, an Order in Council that constitutes the governing board of an adult education institution will continue in operation until it is remade in accordance with subsection (2).</td>
</tr>
<tr>
<td>(1)(b) cl. 33 s. 3.3.29</td>
<td></td>
<td></td>
<td>Members of governing boards of adult education institutions also continue in office pending the remaking of the relevant Order in Council.</td>
</tr>
<tr>
<td>(1)(c) cl. 33 s. 3.3.29</td>
<td></td>
<td></td>
<td>Continuity of the governing boards of adult education institutions as the same legal entities despite governance amendments.</td>
</tr>
<tr>
<td>(2) cl. 33 s. 3.3.29</td>
<td></td>
<td></td>
<td>The Minister must arrange for the Orders in Council that constitute the governing boards of the adult education institutions (namely, the CAE and AMES) to be reviewed and remade within 12 months, or a longer period as fixed by the Minister by notice published in the Government Gazette.</td>
</tr>
<tr>
<td>(3) — —</td>
<td></td>
<td></td>
<td>Definition for the purposes of new section 6.1.28.</td>
</tr>
<tr>
<td>Transitional or savings provision</td>
<td>Related provision of Bill</td>
<td>Related provision of Principal Act</td>
<td>Summary of effect</td>
</tr>
<tr>
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</tr>
<tr>
<td>New section 6.1.29</td>
<td>Part 5</td>
<td>Part 3.3</td>
<td>Transitional and savings provisions relating to changes to cessation of the incorporation of the Regional Councils of Adult, Community and Further Education, as detailed below.</td>
</tr>
<tr>
<td>(1)(a) cl. 42 s. 3.3.2</td>
<td></td>
<td>The Adult, Community and Further Education Board becomes the successor in law to each of the Regional Councils.</td>
<td></td>
</tr>
<tr>
<td>(1)(b) cl. 42 s. 3.3.2</td>
<td></td>
<td>The assets, rights and obligations of each of the Regional Councils, as incorporated entities, become the assets, rights and obligations of the Adult, Community and Further Education Board.</td>
<td></td>
</tr>
<tr>
<td>(1)(c) cl. 42 s. 3.3.2</td>
<td></td>
<td>The Adult, Community and Further Education Board is substituted as a party in any legal proceedings, contract, agreement or arrangement to which Regional Council was a party.</td>
<td></td>
</tr>
<tr>
<td>(1)(d) cl. 42 s. 3.3.2</td>
<td></td>
<td>The Adult, Community and Further Education Board may continue and complete any other matter or thing involving a Regional Council.</td>
<td></td>
</tr>
<tr>
<td>(2) and (3) clauses 41 and 42 ss. 3.3.21 and (3)(d) and 3.3.24</td>
<td></td>
<td>Each Regional Council continues in operation as an unincorporated body after ceasing to be incorporated. Despite Regional Councils ceasing to be incorporated, each member remains in office for the period of their appointment.</td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td></td>
<td>Definitions for the purposes of new section 6.1.29.</td>
<td></td>
</tr>
</tbody>
</table>
**PART 7—AMENDMENTS OF UNIVERSITIES' ACTS**

Part 7 amends the Deakin University Act 2009, the La Trobe University Act 2009, the University of Melbourne Act 2009, Monash University Act 2009, the Royal Melbourne Institute of Technology Act 2010, the Swinburne University of Technology Act 2010, the University of Ballarat Act 2010 and the Victoria University Act 2010. These amendments enable formal leave of absence to be granted to members of the Councils of those Universities, subject to approval of the Minister for periods of leave greater than 3 months. The Minister may determine the conditions of appointment of any acting member appointed during a member’s absence on leave. It should be noted that a power to make acting appointments in these circumstances arises from the operation of section 41 of the Interpretation of Legislation Act 1984.

Clause 53 inserts new clauses 4A, 4B and 4C into Schedule 1 to the Deakin University Act 2009. These new clauses enable the Council of that University to grant leave of absence to members of the Council. Such leave must be in accordance with Schedule 1 to
that Act, namely under existing clause 4(1)(i) or new clause 4A(2) and (3) of that Schedule. The Council may grant leave of absence for up to 3 months under new clause 4A(2) and, with the prior approval of the Minister, may grant leave of absence for up to 12 months under new clause 4A(3). New clause 4B enables the Minister to determine the terms and conditions of appointment of any acting member. New clause 4C clarifies that these new provisions do not affect or take away from section 41 of the Interpretation of Legislation Act 1984, which deals with powers to make acting appointments.

Clause 54 inserts new clauses 4A, 4B and 4C into the Schedule to the La Trobe University Act 2009. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.

Clause 55 amends the third paragraph of the Preamble to the University of Melbourne Act 2009 to correct the description of one of the effects of the University's original constituting legislation, namely to enable the licensing of establishments (in the plural) as student residences.

Clause 56 inserts new clauses 4A, 4B and 4C into Schedule 1 to the University of Melbourne Act 2009. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.

Clause 57 inserts new clauses 4A, 4B and 4C into Schedule 1 to the Monash University Act 2009. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.

Clause 58 inserts new clauses 4A, 4B and 4C into Schedule 1 to the Royal Melbourne Institute of Technology Act 2010. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.
Clause 59 inserts new clauses 4A, 4B and 4C into Schedule 1 to the Swinburne University of Technology Act 2010. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.

Clause 60 inserts new clauses 4A, 4B and 4C into Schedule 1 to the University of Ballarat Act 2010. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.

Clause 61 inserts new clauses 4A, 4B and 4C into Schedule 1 to the Victoria University Act 2010. These new clauses are identical in effect to those proposed to be inserted into the Deakin University Act 2009 by clause 53—see the notes to that clause for more information.

PART 8—STATUTE LAW REVISION AMENDMENTS

Clause 62 makes several amendments of a statute law revision nature to the Principal Act. One of these, the amendment to be made by subclause (5), is to be deemed to have come into operation on 1 July 2007, which is the day that the Principal Act commenced operation.

Subclause (1) amends the definition of Department in section 1.1.3(1) of the Principal Act. The text of the current definition refers to the Department of Education. After amendment by clause 62, it will refer instead to the Department of Education and Early Childhood Development. However, it should be noted that the definition should already be read as if it referred to that Department—see item 9 Administrative Arrangements Order (No. 196) 2007 (published in Government Gazette No. S 189 on 14 August 2007) and items 75 and 77 of Administrative Arrangements Order (No. 209) 2011 (published in Government Gazette No. S55 on 22 February 2011).

Subclause (2) corrects the spelling of the word "Institute" in section 3.1.26A(2)(a) of the Principal Act.

Subclause (3) replaces the word "a" with the word "an" before the word "accredited" in section 4.3.10(2) of the Principal Act.
Subclause (4) omits the subsection number "(1)" from section 4.3.13 of the Principal Act. This is because that section is no longer divided into subsections since subsection (2) was repealed by legislation passed in 2010.

Subclause (5) corrects cross-referencing errors in the original transitional and savings provisions of the Principal Act, which came into operation on 1 July 2007.

Paragraph (a) of subclause (5) corrects a cross-referencing error in clause 1.6(d) of Schedule 8 to the Principal Act. The purpose of clause 1.6(d) was to provide for the continuity of accreditation of higher education courses that had been accredited under section 11 of the Tertiary Education Act 1993 (now repealed). To this end, the existing clause 1.6(d) deemed these courses to have been accredited under section 4.3.32 of the Principal Act. This deeming took effect on the commencement of that Act on 1 July 2007. However, section 4.3.32 does not and did not deal with higher education course accreditation. Clause 1.6(d) should have cross-referred to Division 1 of Part 4.4 instead.

This situation creates doubts about the continuity of higher education course accreditations following the Principal Act's commencement on 1 July 2007.

Subclause (5)(a) therefore seeks to ensure that the validity of the accreditation of higher education courses, and also the validity of any qualifications issued to person who took those courses, are not called into question only because of this error. To this end, the Bill corrects the cross-reference error with retrospective effect to the date on which the Principal Act commenced operation, namely 1 July 2007. A consequential amendment to change a reference from "that provision" to "that Division" is also made.

Paragraph (b) of subclause (5) corrects a similar cross-referencing error in clause 1.6(e) of Schedule 8 to the Principal Act. The purpose of clause 1.6(e) was to provide for the continuity of authorisations given to institutions to conduct higher education courses that had been given under section 11 of the former Tertiary Education Act 1993. To this end, clause 1.6(e) deemed these "authorisations to conduct" courses to have been given under section 4.3.32 of the Principal Act, with effect from the commencement of that Act on 1 July 2007. However, section 4.3.32 does not deal with higher education
institution authorisations. The reference should have been to section 4.3.33 instead.

This situation creates similar doubts about the continuity of authorisations given to higher education institutions to conduct higher education courses following the Principal Act's commencement on 1 July 2007.

Subclause (5)(b) therefore seeks to ensure that the validity of higher education courses delivered by institutions in reliance on continuing authorisation, and also the validity of any qualifications issued to person who took those courses, are not called into question only because of this error. To this end, the Bill corrects the cross-reference error retrospectively to the date on which the Principal Act commenced operation, namely 1 July 2007.

**PART 9—REPEAL OF AMENDING ACT**

Clause 63 provides for the automatic repeal of this amending Act on the first anniversary of the day all of its provisions are in operation. The repeal of this Act does not affect in any way the continuing operation of the amendments made by this Act (see section 15(1) of the Interpretation of Legislation Act 1984).