Education and Training Reform Amendment (Skills) Bill 2010

Amended Print

EXPLANATORY MEMORANDUM

General

Main changes made by the Bill

The Education and Training Reform Amendment (Skills) Bill 2010 ("the Bill") extends and strengthens the legal framework for the regulation of vocational education and training (VET) in Victoria.

In particular, the Bill—

- Introduces a range of legislative measures designed to protect students in the VET sector, in relation to both the quality of that education and fair treatment; and
- Alters governance and accountability arrangements in the VET sector, and especially for TAFE institutes; and
- Gives legislative recognition to the policy "Skills for Life—the Victorian Training Guarantee", which commits the State to providing subsidised places for vocational education and training on certain conditions; and
- Changes the functions of the Adult, Community and Further Education Board and the Regional Councils of ACFE.

Explanation of technical terms

Several technical educational or legal terms are used throughout this Explanatory Memorandum or in the Bill. Some of these are explained below—

- ACFE—stands for adult, community and further education.
- AQTF—refers to the "Australian Quality Training Framework".
The AQTF is a policy framework that defines the conditions and standards for the registration of training organisations and the accreditation of courses in vocational education and training.

The AQTF was first agreed between the Commonwealth, State and Territory Governments on 8 June 2001 and has been remade several times, most recently on 9 June 2010. ETRA, as amended by this Bill, aims to give effect to the AQTF policy framework in Victoria, in the form agreed nationally from time to time.

- **ESOS Act**—refers to the Education Services for Overseas Students Act 2000 of the Commonwealth. This Act regulates educational services for overseas students across all sectors of education.

  Among other things, the ESOS Act requires that any institution or course for overseas students be registered with the relevant Commonwealth Department (currently the Department of Education, Employment and Workplace Relations).

  Under current arrangements, such approval is given following a review and report by the education authorities of the relevant State. In Victoria's case, that role is carried out by the Victorian Registration and Qualifications Authority (VRQA) under the powers conferred by Part 4.5 of ETRA.

  Thus, Part 4.5 of ETRA forms part of a cooperative federal/State system of regulation.

- **ETRA**—stands for the Education and Training Reform Act 2006, which covers all sectors of education and training in Victoria. ETRA is the Principal Act mainly amended by this Bill.

- **RTO**—stands for "registered training organisation". This is the term used in the AQTF to refer to bodies that are approved to deliver nationally-recognised training. The term is already used in ETRA to refer to bodies registered under that Act to provide VET.

RTOs include not only private educational institutions which provide education and training to private students on a "fee for service" basis, it also includes a wide range of other bodies that provide VET that is nationally-recognised. Examples of RTOs include businesses, such as banks, and Government agencies,
such as Victoria Police, which provide in-house training to their staff. Other examples are "group training schemes", groups of employers that collectively employ apprentices, and community-based providers of adult education.

- **VET**—is the common abbreviation for "vocational education and training". VET provides skills and knowledge for work. VET does not include higher education, such as university degrees.

Under ETRA, it is not mandatory for a provider of VET to be registered as an RTO. But a body that is not an RTO may not falsely claim to be one—see section 4.7.5 of ETRA. Further, it is an offence to claim falsely that a course is on the national register of VET courses—see section 4.7.8 of ETRA.

- **VRQA**—refers to the Victorian Registration and Qualifications Authority, which is the public authority established by ETRA as the State's main regulator of education and training.

The VRQA will exercise most of the new regulatory functions and powers under this Bill.

### Explanation of ETRA structure and numbering

The numbering system for provisions of ETRA is complex and an explanation may assist the reader.

ETRA is divided into six Chapters, numbered 1 to 6 followed by title headings. For example, Chapter 4 is titled "Victorian Registration and Qualifications Authority".

The Chapters are in turn divided into Parts. A Part number consists of the Chapter number in which it is located, followed by a full stop and a second number that indicates the location of the Part within the Chapter. For example, Part 4.3 is the third Part within Chapter 4. It is titled "Registration of Students and Providers".

Parts are organised into Divisions; and sometimes Subdivisions.

Section numbers in ETRA have three components: the Chapter number, then the Part number, then its number in that Part. For example, section 4.3.1 is found in Chapter 4, third Part, where it is the first section.
The Bill mainly amends the following Chapters, Parts, Divisions and Schedules of ETRA—

Chapter 1—General
- Part 1.1—Preliminary
- Part 1.2—Principles

Chapter 3—Post School Education and Training
- Part 3.1—Vocational education and training
  - Division 1—Co-ordination of State training system
  - Division 2—TAFE institutes
- Part 3.3—Adult, community and further education
  - Division 2—Adult, community and further education board
  - Division 4—Regions of adult, community and further education

Chapter 4—Victorian Registration and Qualifications Authority
- Part 4.3—Registration of Students and Providers
  - Division 3—School sector registration
    [Division heading amended by this Bill]
  - Division 4—Nationally recognised vocational education and training
    [Division heading amended by this Bill]
  - Division 7—Reserve step-in powers
    [New Division inserted by this Bill]
- Part 4.5—Overseas students
- Part 4.6—State Register
- Part 4.6A—Complaint handling [and dispute resolution]
  [New Part inserted by this Bill, then amended]
- Part 4.7—Offences
Chapter 5—General

- Part 5.8—Enforcement
  - Division 1—Appointment of authorised officers
    [Division heading inserted by this Bill]
  - Division 2—Enforcement powers that do not apply to RTOs
    [Division heading inserted by this Bill]
  - Division 3—Enforcement powers relating to RTOs
    [Division heading inserted by this Bill]
  - Division 4—General
    [Division heading inserted by this Bill]

Chapter 6—Repeals, amendments, savings and transitionalss

Schedule 5—Regulation making powers

Schedule 7—Dispute resolution and student welfare scheme
[New Schedule inserted by this Bill]

Overview of the Bill’s structure and content

Part 1 sets out the purposes of the Bill and when the various provisions commence operation. The Bill may be proclaimed to commence in stages, the whole commencing no later than 1 January 2013.

Part 2 amends the statement of principles underlying the Education and Training Reform Act 2006 (ETRA).

It adds to the education guarantees in that Act by including entitlements under “Skills for Life—the Victorian Training Guarantee”. It will guarantee access to a government-subsidised vocational education and training place for “upskilling” purposes in certain circumstances.

Part 3 deals with the regulation of education and training providers, especially providers of vocational education and training. The Part has 9 Divisions.

Division 1 deals with the registration of providers of vocational education and training. Currently, they are registered under Division 3 of Part 4.3 of ETRA, along with schools. Under the amendments, VET providers will in future be registered under Division 4.
Division 2 imposes "single-purpose entity" requirements on providers for overseas students to conform to recently legislated Commonwealth requirements in this sector.

Division 3 will, following an implementation period, impose a similar State requirement with respect to registered training organisations (RTOs) that provide courses (whether to overseas or domestic students) on a "for profit" basis. Whether Division 3 applies to an RTO determines whether some subsequent Divisions of Part 3 also apply to that RTO.

Division 4 will require those RTOs to which Division 3 applies to establish complaint handling schemes for their students.

Division 5 will, at a later time, provide for formal approval of independent, expert and binding dispute resolution schemes. Participation by RTOs in these schemes will be voluntary, but a provider to which Division 3 applies will have to disclose whether or not it participates in such a scheme.

Division 6 deals with "fair contract terms" which are deemed to apply as part of contracts between students and "fee for service" RTOs. These terms will be prescribed by regulations.

Division 7 confers monitoring and enforcement powers on the VRQA for these purposes.

Division 8 inserts new regulation-making powers related to the amendments made by Part 3. These powers include the making of regulations to set "fair contract terms".

Division 9 establishes "reserve step-in powers", which will enable the Supreme Court, on the application of the VRQA, to appoint a judicial administrator of a failed or failing RTO, to supervise its orderly exit from the education and training market.

Part 4 amends provisions of ETRA that deal with post-school education and training.

Division 1 alters the composition and functions of the Victorian Skills Commission, the State's main public authority with responsibility for advising Government on industry training needs and VET policy.

Division 2 alters the composition and functions of the boards of TAFE Institutes, which are public statutory authorities charged with the management and control of their respective Institutes. The boards will have fewer members, selected on criteria that give more emphasis to professional, business, management and other skills appropriate to the boards' functions. A review of the
constitution of each current board will be conducted to bring it into line with the new requirements.

Each board will be required to develop a strategic plan and an annual "statement of corporate intent" for submission to the Minister. In addition, each board will be required to conduct annual meetings, open to the public. A board must present its institute's report of operations and financial statements for the previous calendar year to an annual meeting, as well as outlining its proposed services for the coming year. Division 3 places limitations on using the terms "TAFE" and "technical and further education" in a body's name if that use would be reasonably understood to indicate that the body is a TAFE Institute, unless exempted.

Division 4 amends the functions of the Adult, Community and Further Education Board and Regional Councils of ACFE. Part 5 makes transitional and savings provisions, including the requirement for a review of the constitution of the board of each TAFE Institute to conform to their new composition and functions under Division 2 of Part 4 (see above). Part 6 makes a number of statute law revisions to ETRA and University Acts. The amendments to University Acts are set out in the Schedule to the Bill.

Clause Notes

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Bill.

Clause 2 sets out the commencement arrangements for the Bill. The Bill will come into operation in stages, on dates that will be fixed by the Governor in Council by proclamation.

This will allow time for the necessary administrative arrangements to be put in place prior to commencement, including the recruitment and training of the staff that will carry out new functions under the legislation. Further, it is intended that, relying on the powers conferred by section 13 of the Interpretation of Legislation Act 1984, some implementation arrangements will be made before provisions are proclaimed.

It will also allow time for institutions and registered training organisations (RTOs) to arrange to comply with the new legislative requirements before they take effect.
PART 2—PRINCIPLES

Overview

Part 2 amends the statement of principles underlying the Education and Training Reform Act 2006 that are set out in section 1.2.2 of that Act to extend its guarantee of education and training. In particular, it guarantees government-subsidised places for vocational education and training for "upskilling".

Clause 3 amends section 1.2.2(2) of ETRA, which sets out the principles underlying that Act. The amendment adds a new paragraph (d), which reflects the Victorian Government's commitment to subsidise vocational education and training for eligible Victorians.

Subject to eligibility and course availability, the Government will now guarantee government subsidised vocational education and training for Victorians aged up to 20, and for students aged over 20 who are "upskilling". This is also reflected as a purpose of the Bill in clause 1(a)(ii).

It should be noted that the principles set out in section 1.2.2 do not give rise to civil cause of action.

PART 3—EDUCATION AND TRAINING PROVIDERS

Division 1—Registration of providers

Overview

Division 1 deals with the registration of education and training providers. It makes a number of reforms to ensure that the regulation of vocational education and training in Victoria implements fully the national policy framework known as the Australian Quality Training Framework (AQTF), as adopted on 9 June 2010 by the Ministerial Council for Tertiary Education and Employment.

Division 1 will substantially change the provisions of ETRA that govern standards for registration and regulation of vocational education and training providers (RTOs). These provisions, and those that govern the associated administrative processes, will be split from those which apply to schools (currently Division 3 of Part 4.3) and placed in a separate Division (Division 4 of Part 4.3).
Division 1 will also alter the composition and functions of the Victorian Registration and Qualifications Authority (VRQA), reflecting its changed responsibilities under this Bill.

Clause 4 makes a number of amendments related to the registration of providers.

Subclause (1) adds a definition of RTO to section 1.1.3 of ETRA, which is the general definition section for that Act. The term is already defined in section 4.1.1(1) for the purposes of Part 4 of the Act, but the term is now also used in other places in the Act (especially the new Division 3 of Part 5.8 being inserted by clause 44), so a general definition of RTO is needed.

Subclause (2) updates the definition of AQTF in section 4.1.1(1) of ETRA, to refer to the version of the AQTF adopted by the Ministerial Council for Tertiary Education and Employment on 9 June 2010, and any future remaking of the AQTF. The AQTF is the nationally agreed policy framework for the regulation of VET in Australia, and ETRA (as amended by this Bill) provides the legal machinery to carry it into effect.

A copy of the current version of the AQTF will be made available in the Parliamentary Library when this Bill is introduced.

Subclause (3) substitutes the definition of the RTO standards in section 4.1.1(1) of ETRA, to refer to the documents adopted by the Ministerial Council for Tertiary Education and Employment on 9 July 2010, and any future remaking or amendment of those documents.

Copies of the documents referred to in the new definition of RTO standards will be made available in the Parliamentary Library when this Bill is introduced.

Subclause (4) inserts new definitions of high managerial agent and principal executive officer of an RTO into section 4.1.1(1) of ETRA. These definitions are relevant for the purposes of assessing the suitability of an RTO for registration under ETRA—see in particular new sections 4.3.16(2A) and 4.3.21(3), to be inserted by clauses 15 and 18 of the Bill respectively.

The term high managerial agent is also used in the ESOS Act and in existing section 4.2.2(3) of ETRA. Speaking generally, it refers to individuals who represent or have a major influence over the management of an education and training provider. High managerial agent includes individuals who are a company's "officers" within the meaning of the Corporations Act 2001 of the Commonwealth, which includes de facto directors of a company, that is, people who hold no formal position in a
company but who exercise significant influence over the company’s affairs in practice.

Definitions of these terms previously appeared in section 4.2.2(3) of ETRA but subclause (4) moves the definitions to section 4.1.1(1), which is the general definition section for Chapter 4 of ETRA. In their new location, therefore, the terms will be defined for the purposes of the whole of Chapter 4.

Clause 5 amends section 4.2.2 of ETRA, which sets out the functions of the VRQA.

Subclause (1) inserts new paragraph (fb) into section 4.2.2(1) of ETRA. It confers on the VRQA the function of assessing, on an ongoing basis, the financial capability of RTOs.

Subclause (2) inserts new paragraphs (na), (nb) and (nc) into section 4.2.2(1). It confers general functions on the VRQA to protect the interests of students as consumers, monitor RTOs’ compliance with legislative requirements and investigate complaints against the VRQA’s authorised officers.

Other provisions of this Bill deal in detail with these matters.

Subclause (3) substitutes subsection (3) of section 4.2.2 of ETRA. The substituted subsection will require the VRQA to have regard to the criteria set out in ETRA, and in the regulations and guidelines made under ETRA, when the VRQA is carrying out its functions of authorising providers to deliver accredited courses in nationally-recognised training, and when approving providers of courses for overseas students for the purposes of the ESOS Act.

Clause 6 amends section 4.2.4 of ETRA to alter the VRQA’s composition.

Subsections (1) and (2) have been recast so that the background and experience of the membership is no longer prescribed in terms of mandatory qualifications for certain members.

Instead, the Bill confers discretion on the Minister to select members “having regard to the desirability of ensuring” that the VRQA has amongst its membership the necessary range of skills and experience to carry out its functions. In particular, the Minister is asked to appoint VRQA members who, as a group, bring to its work skills and experience across all sectors of education and in quality assurance, business management, institutional governance, law, finance and industry.

The new section retains the current requirement that the board be a fair and balanced representation of community diversity and that it reflect both metropolitan and country interests.
Clause 7 substitutes subsection (1)(a)(i) of section 4.2.7A of ETRA.

By way of background, section 4.2.7A was inserted into ETRA on 29 January 2009 by the Education and Training Reform Further Amendment Act 2008, as part of cooperative national regulatory arrangements in relation to training.

Section 4.2.7A currently enables the VRQA to delegate to TVET certain specified functions that relate to the registration and audit of RTOs that operate across multiple jurisdictions, but principally in Victoria. TVET may only carry out delegated functions in relation to RTOs approved by the VRQA for that purpose—see existing sections 4.2.7A and 4.3.37 of ETRA. Educational authorities of other jurisdictions also delegate to TVET.

TVET is defined by section 4.1.1(1) to mean a specific company, namely Technical and Vocational Education and Training Australia Limited (ACN 062 758 632), and its successors in law.

Subclause (1), then, alters the list of the provisions that are "delegable" to TVET. This is necessary because of other amendments made by this Bill.

In particular, the changes to section 4.2.7A(1)(a)(i) omit references to the delegation of functions under Division 3 of Part 4.3, because RTOs will no longer be registered under that Division—see in particular the amendments to be made by clauses 9, 11 and 14. Instead, the VRQA will be authorised to delegate to TVET regulatory powers of the kind currently authorised, but which will now be set in Division 4 of Part 4.3 of ETRA.

The VRQA may not delegate powers under new section 4.3.18A, which is to be inserted by clause 17. This is because that section confers power to issue guidelines applying to providers generally and is not an "operational" power.

Subclause (2) amends section 4.2.7A(1)(a)(v) of ETRA. The amendment extends the VRQA's ability to delegate functions (under Division 4 of Part 4.3) to TVET. The amendment enables delegation of the power to recognise and give credit for a person's prior learning. The amendment restricts delegation of those powers to the vocational education and training sector. This is related to the amendment of section 4.4.5(1) by clause 21.

Clause 8 amends the heading to Division 3 of Part 4.3. The heading will no longer refer to VET, but only to "School sector registration". This change flows from other amendments in the Bill that move VET sector registration matters to Division 4 from Division 3.
Clause 9 inserts a new section 4.3.9A at the beginning of Division 3 of Part 4.3. The new section provides that in future the Division applies only to the schools sector in respect of senior secondary courses and qualifications that have been formally accredited.

The Example at the foot of new section 4.3.9A mentions the senior secondary qualifications and courses that are formally accredited at present. They are the Victorian Certificate of Education, the Victorian Certificate of Applied Learning and the International Baccalaureate Diploma.

Some courses and qualifications are accredited for both VET and secondary education purposes. Division 3 of Part 4.3 currently covers both sectors. In future it will only cover senior secondary; the VET sector will be dealt with by Division 4—see the notes on clause 11 below. For these reasons, the legislative Note at the foot of the new section draws readers' attention to the fact that, where a course or qualification straddles both sectors, registration is needed under both Divisions.

Clause 10 amends section 4.3.10(2) of ETRA. It restricts applications for registration under Division 3 of Part 4.3 to senior secondary courses and qualifications only. In future, the VET sector will be dealt with under Division 4 of Part 4.3.

Clause 11 substitutes the heading to Division 4 of Part 4.3 of ETRA. The new heading is "Nationally recognised vocational education and training", which reflects changes to the Division's contents.

Currently, VET providers are registered under Division 3 of Part 4.3 of ETRA. However, Division 4 contains provisions to give effect to national policies and standards for the VET sector. RTOs are therefore covered by both Divisions, with Division 4 overriding Division 3 in case of an inconsistency between the two, so as to give effect to national "rules".

This arrangement has proven complex and difficult for both RTOs and the VRQA to work with in practice.

To simplify the provisions, clause 11 and related clauses provide that registration for VET purposes will be dealt with under Division 4. Later clauses (explained below) will insert into Division 4 some regulatory machinery for VET that is currently dealt with by Division 3. Related amendments to Division 3 will restrict that Division to the senior secondary sector—see the notes on clauses 8 and 9 above. These changes will not invalidate existing RTO registrations under Division 3—see section 14(2) of the Interpretation of Legislation Act 1984.
Clause 12 inserts a new section 4.3.12A into ETRA, which declares that the "legislative intent" of Division 4 of Part 4.3 is to establish a system for registration and regulation of VET that is consistent with and implements the AQTF.

The AQTF sets out an agreed, common policy that all Australian jurisdictions apply in regulating the VET sector. However, the AQTF is a policy framework and not a body of legal rules.

For this reason, the AQTF envisages that jurisdictions will legislate to provide enforceable legislative machinery to carry it into operation, and to impose legal obligations on RTOs to comply. For example, Condition 3 of the AQTF 2010—Essential Standards for Continuing Registration states—

- The RTO must comply with relevant Commonwealth, State or Territory legislation and regulatory requirements that are relevant to its operations and its scope of registration. It ensures that its staff and clients are fully informed of these requirements that affect their duties or participation in vocational education and training.

To this end, Division 4 establishes legal machinery and enforceable laws in Victoria to implement, and which are intended to be consistent with, the AQTF.

Section 4.3.12A declares this legislative intent to assist the interpretation of Division 4. Section 35 of the Interpretation of Legislation Act 1984 provides that constructions promoting the purpose or object underlying an Act should be preferred.

Clause 13 repeals section 4.3.13(2) of ETRA, which is the provision that says Division 4 overrides Division 3 in case of inconsistency between them in relation to VET registration.

The subsection has been made redundant because there will no longer be scope for such an inconsistency. Division 3 is restricted to the senior secondary sector by clauses 8 and 9, and Division 4 will deal with VET registration. A provider that wishes to operate simultaneously in both sectors must comply with both Divisions—see the Note at the foot of new section 4.3.9A, inserted by clause 9.
Clause 14 substitutes section 4.3.15 of ETRA.

Currently, a person may apply under section 4.3.15(1) for national registration as an education or training organisation. Further, under section 4.3.15(2), a registration application by a person, body or school under Division 3 in relation to VET is also treated as an application under Division 4.

In future, the new section 4.3.15 will be the only way for a person, body or the principal of a school to apply for registration to provide a nationally-recognised VET course.

Clause 15 amends section 4.3.16 of ETRA.

Subclause (1) inserts a new subsection (2A). This sets out additional criteria that the VRQA must take into account in deciding an application for registration (under Division 4 of Part 4.3 of ETRA) to provide a nationally-recognised VET qualification.

These new criteria relate to matters of past conduct, whether by the applicant or one of its "high managerial agents" (see the explanation of that term in the notes on clause 4 above), which are relevant to assessing risks involved in registering the applicant.

These criteria do not form part of an exhaustive list—see the amendment to be made to section 4.3.16(5) by subclause (4).

Matters that the VRQA must take into account in assessing an applicant's suitability to be an RTO include—

- Involvement in bankruptcies or in companies that have been wound-up;
- Certain offences, including any sexual offence that disqualifies a person from teaching in a school, dishonesty offences, and offences against consumer protection laws; and
- Any history of cancellation or suspension of RTO registration, or conditions imposed on RTO registration.

The VRQA will conduct background checks on these matters.

The amendments proposed by subclause (1) have been assessed as not limiting the right to privacy and reputation under section 13 of the Charter of Human Rights and Responsibilities.
Subclause (2) inserts new paragraphs (ba) to (bd) into section 4.3.16(3), which will set out additional mandatory criteria for registration as an RTO. The VRQA must not register an applicant as an RTO unless—

- the applicant has a clearly demonstrated capacity to provide VET to a satisfactory standard; and
- the applicant has paid any fees fixed by the Minister; and (Note, fees are fixed by Ministerial Orders under section 5.2.13 of ETRA.)
- the VRQA is satisfied that any mandatory criteria prescribed by the regulations have been complied with. (Note, the power to make such regulations will be conferred by clause 49, new item 8C.1(1) of Schedule 5.)

Prescribing criteria by regulations will provide greater flexibility in giving legal effect to the AQTF in Victoria.

Subclause (3) amends section 4.3.16(3)(c) to authorise VRQA compliance audits to include an applicant's premises. This power will not extend to Victoria Police premises—see clause 44, new section 5.8.3A(2).

Subclause (4) amends section 4.3.16(5), to provide that the new registration criteria inserted by subclause (1) are not part of an exhaustive list of the grounds on which the VRQA may decide not to grant an application. Note that section 4.3.16(5) will be subsequently amended by clause 30(3) of the Bill.

Subclause (5) inserts a new subsection (5A) into section 4.3.16. It provides that existing section 4.3.25, which confers powers on the VRQA to conduct compliance audits of RTOs, also applies to the conduct of compliance audits on applicants for registration as an RTO.

Subclause (6) inserts a new paragraph (c) into section 4.3.16(9). If the VRQA imposes a condition of registration on an RTO during the period of the RTO's registration, it must comply with subsection (8) and give notice to the RTO and enter the condition on the register.

Clause 16 amends section 4.3.17 of ETRA.

Subclause (1) inserts a new paragraph (da) into 4.3.17(2), which requires an RTO to pay relevant registration fees fixed by the Minister. Such fees are fixed by a Ministerial Order under existing section 5.2.13.
Subclause (2) inserts new subsections (2A) to (2D) into section 4.3.17.

New subsection (2A) limits the purposes for which the VRQA may impose conditions on an RTO's registration under sections 4.3.16(6) or 4.3.21(2). Conditions must—

- be related to the obligations of an RTO under the Act, regulations or the RTO standards under the AQTF (see the notes on clause 4(3) above); and
- be imposed to improve compliance with those obligations, to prevent or minimise the risk of non-compliance with those obligations, or to protect the interests of students or the public interest.

New subsection (2B) enables such conditions to be imposed at an RTO's registration or during its period of registration.

New subsection (2C) provides that conditions imposed under section 4.3.16(6) may apply either to RTOs generally, or to a class of RTOs.

New subsection (2D) requires the VRQA to give RTOs 28 days to make a written submission, which the VRQA must consider before imposing a condition.

Clause 17 inserts a new section 4.3.18A into ETRA, which will enable the VRQA to issue Guidelines in relation to a number of matters. It is intended to use such guidelines to give effect to the AQTF and the RTO Standards—see the notes on clause 4 above on the definition of those terms.

New subsection (1) authorises guidelines to deal with (among other things)—

- criteria for RTO registration (see the amendments made by clause 5(3) about the use of these criteria by the VRQA);
- grounds for suspending or cancelling an RTO's registration, and conditions on registration;
- matters dealt with by the RTO Standards;
- student welfare services;
- governance and probity matters;
- record-keeping; and
- term of registration.
New subsection (2) requires the VRQA, in preparing guidelines, to consider the RTO Standards and any guidelines issued by other jurisdictions that implement the AQTF in those jurisdictions. The aim is to facilitate and encourage consistent and complementary regulatory systems across jurisdictions.

New subsection (3) provides that guidelines must not be inconsistent with the ETRA or the regulations made under it, nor with the RTO Standards.

New subsection (4) enables guidelines to incorporate other documents by reference, despite section 32 of the Interpretation of Legislation Act 1984. For example, the VRQA’s guidelines could adopt and apply a standard or guideline issued by an educational authority of the Commonwealth or another State or Territory.

New subsection (5) enables regulations under ETRA to require a person, body or school to comply with any guidelines. That is, the regulations may make matters set out in guidelines enforceable legal obligations.

In relation to the legal effect of guidelines, it should also be noted that section 4.2.2(3) of ETRA (as substituted by clause 5(3)) will require the VRQA to have regard to criteria in the guidelines when registering RTOs and when approving providers of courses for overseas students for the purposes of the ESOS Act.

Clause 18 substitutes subsection (3) of section 4.3.21 of ETRA, which deals with the amending, suspending or cancelling of an RTO’s registration.

The grounds for registration are being revised so that they reflect, in substance, those that will be set out in new subsection (2A) of section 4.3.16 in respect of decisions on an RTO’s initial registration. For an explanation of these grounds, see the notes on clause 15 above, which will insert section 4.3.16(2A).

Clause 19 confers new powers on the VRQA to take faster action in relation to the suspension of an RTO’s registration in exceptional circumstances. These are modelled on similar powers, inserted into Part 4.5 of ETRA by the Education and Training Reform Amendment (Overseas Students) Act 2009, in respect of approval of providers to overseas students.

Exceptional circumstances include where the RTO has committed a serious breach of occupational health and safety laws, where the RTO has notified the RTO that it will cease trading within less than 28 days, where urgent action is required because of significant non-compliance with the RTO Standards.
(see the notes on this definition in clause 4 above), or where urgent action is needed to safeguard the continuity or ensure the quality of the education being provided by the RTO.

These powers are in addition to those presently conferred by section 4.3.21(9), which enables the VRQA "to direct [an] RTO to immediately stop conducting operations" continued under section 4.3.23(3).

Clause 20 substitutes subsection (2) of section 4.2.2. This will require the VRQA, when deciding an application for course accreditation, to apply relevant standards under the AQTF.

This provision helps ensure that Victorian regulation of VET providers and courses is fully consistent with the national standards and conditions, as agreed from time to time through the AQTF policy framework.

Clause 21 amends section 4.4.5(1), which deals with the award of VET qualifications. The amendment adds bodies registered under Division 4 of Part 4.3 to the list of bodies that may award such qualifications.

This amendment is consequential on other amendments in this Bill that provide for VET providers to be registered in future under Division 4 of Part 4.3 instead of under Division 3 of that Part as at present. For an explanation of those changes, see the notes to clauses 9 and 11 above.

Clause 22 amends sections 4.6.2 and 4.6.4 of ETRA.

Subclause (1) inserts new subsections (3) to (5) into section 4.6.2 of ETRA. These deal with the registration of RTOs on the State Register, the State's official register of accredited courses and qualifications maintained by the VRQA.

Section 4.6.2 requires the VRQA to maintain in the State Register a division that lists RTOs. There is also a national register of VET courses, which is maintained by the Commonwealth Department of Education, Employment and Workplace Relations: see the definition of National Register in section 4.1.1(1) of ETRA.

A VET course is accredited if listed on both State and National Registers—see the definition of accredited in section 1.1.3(1) of ETRA.

The amendments made by clause 22 deal with the maintenance of the State Register and keeping it consistent with the National Register. The clause is consequential on other amendments in this Bill that will result in VET providers being registered under
Division 4 (instead of Division 3) of Part 4.3—see the notes to clauses 9 and 11 for explanation.

New subsection (3) will require the VRQA to include on the State Register persons, bodies or schools who are registered on the National Register under Division 4 of Part 4.3.

New subsection (4) requires the VRQA to enter relevant details from the National Register on the State Register.

New subsection (5) requires the VRQA to remove a person, body or school from the State Register if it ceases to be on the National Register.

Subclause (2) repeals section 4.6.4(1) of ETRA. That section currently requires the VRQA to place on the National Register a person or body who is registered under section 4.3.10 (that is, under Division 3 of Part 4.3) with respect to a VET course or qualification. As Division 3 will no longer apply with respect to VET courses and qualifications, section 4.6.4(1) has been made redundant.

Subclause (3) amends section 4.6.4(4) and (5). The effect of the amendments is that, whenever the accreditation of a course expires or is cancelled, the VRQA must remove it from the State Register (as well the National Register).

Clause 23 substitutes the definition of education or training provider in section 5.3A.1. The amended provision is in Part 5.3A, which deals with the issuing of student numbers to Victorian students, namely those studying with Victorian education or training providers. The changes to the legislation governing the registration of providers therefore need to be reflected in the definition of education or training provider in section 5.3A.1.

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

**Overview**

The regulation of provision of education services to overseas students is regulated cooperatively by State and federal governments.

The Education Services for Overseas Students Act 2000 of the Commonwealth (the ESOS Act) requires institutions and courses for overseas students to be registered under that Act. Registration involves a review by the "designated authority" of a State (in Victoria's case the VRQA) and a report to the Commonwealth Department on whether the provider or course is
suitable for registration under the criteria set out in the ESOS Act.

Part 4.5 of ETRA confers on the VRQA, as a State authority, the necessary powers to carry out the functions of a designated State authority for the purposes of the ESOS Act.

Under amendments made by the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010 of the Commonwealth, all existing registrations of providers to overseas students will expire on 31 December 2010 unless, before that time, the provider has been re-registered in accordance with new and more stringent criteria established by those amendments—see new section 92A of the ESOS Act.

Amongst these new ESOS conditions for registration are requirements that the designated authority of a State certify that—

- the provider has the principal purpose of providing education (new section 9A(1)(d)(ii) of ESOS); and
- the provider has the clearly demonstrated capacity to provide education of a satisfactory standard (new section 9A(1)(d)(iii) of ESOS).

The purpose, then, of the amendments made by Part 3, Division 2 of this Bill is to update Part 4.5 of ETRA so that the VRQA's powers and functions enable it to carry out its tasks as the "designated authority of the State" under the amended ESOS Act in relation to the approval of providers for overseas students.

The new Commonwealth laws and conditions are already in force, and current registrations of overseas providers will lapse on 31 December 2010 unless re-registrations under the new laws have been approved by then. It is therefore proposed that Division 2 of Part 3 of the Bill will be brought into operation as soon as possible after Royal Assent. This will enable the VRQA to give the certifications needed to satisfy federal requirements, and overseas students' providers to be re-registered in Victoria to continue operating after 31 December 2010.

Clause 24 amends section 4.5.1 by inserting new subsections (1A) to (1C), dealing with "single-purpose entity" requirements for providers to overseas students.

New subsection (1A) provides that the VRQA must not approve an education or training organisation unless the Authority is satisfied that it has "the principal purpose of providing education
This single-purpose entity requirement follows the wording of section 9(2)(c)(ii) of the ESOS Act, which makes that a condition for registration of a new provider. Other ETRA provisions impose a similar condition for re-registration, de-registration, etc. This amendment changes State law to enable the VRQA to comply with federal requirements regarding criteria for approval.

New subsection (1B) enables regulations to be made under ETRA to prescribe "ancillary services", the provision of which will not be taken as infringing the "single-purpose entity" requirement. This is to ensure that an RTO does not breach the single-purpose entity requirement, and make itself ineligible for approval or at risk of having an existing approval revoked, only because it provides such prescribed ancillary services. The kinds of things that may be prescribed include the provision of meals and similar student services.

Similar regulations will be made under Division 3 of Part 3 (see below) in relation to the single purpose entity requirement which is to be imposed on RTOs generally. The two sets of regulations may be combined.

New subsection (1C) enables a provider to overseas students to be exempted from the single-purpose entity requirement under ETRA if the provider is exempt from that requirement under ESOS.

Note that subsection (1C) is to be substituted by clause 28 of this Bill, when that provision commences at a later time (see notes on clause 28). Essentially, that future amendment will add to the criteria for exemption an additional ground, namely that the provider satisfy the criteria for exemption from single purpose entity requirements for RTOs generally that are being inserted by Division 3 of Part 3.

Clause 25 inserts a new subsection (1A) into section 4.5.3 of ETRA, which deals with grounds for a provider to overseas students having their approval to do so suspended or cancelled.

Section 4.5.1 of ETRA, as amended by clause 24 of this Bill, will create a "single-purpose entity" requirement in relation to applicants for approval to provide courses for overseas students (see notes on clause 24). Clause 25 makes the corresponding changes to section 4.5.3 of ETRA, so that failure to comply with the single-purpose entity requirement on an ongoing basis will be grounds for approval to be suspended or cancelled.

The legislative note at the foot of the new subsection draws attention to the fact that providing prescribed ancillary services will not breach the single-purpose entity requirement.
Division 3—Single purpose entity requirements for RTOs

Overview

A "single-purpose entity" requirement restricts the entity (usually a company) to which it applies to a particular activity.

Division 3 of Part 3 of the Bill proposes to include a single-purpose entity requirement for registration to operate as an RTO in Victoria.

The proposed requirement would not prevent other commercial ventures in different fields, provided that they are conducted through separate entities. The practical effect would be that the part of the business engaged in provision of education and training would have to be "quarantined" and conducted through a separate corporate entity established for that purpose.

Single-purpose entity requirements, either contractual or statutory, are used for a number of commercial or regulatory purposes, including—

- Ensuring that the business activities and priorities of a party are focussed on the area of key importance; and

- Limiting the risk of conflicts of priorities and interests with other aspects of the entity's commercial activities; and

- Facilitating regulatory and other remedial action to minimise or mitigate harm that may arise from the activities of the entity that is subject to the requirement; and

- Facilitating a "step-in", by a regulator or other commercial party, to take temporary control of the relevant activity if a "trigger" event occurs. This is to prevent significant commercial losses or, for regulatory purposes, as a reserve power to minimise or mitigate harm arising from of the conduct of a regulated entity.

An example of "single-purpose entity" arrangements is in section 32 of the Airports Act 1996 of the Commonwealth in relation to licensees of major airports. This also restricts transfer of ownership and control. Another example is the recent amendment to the ESOS Act which requires providers of courses to overseas students to have the provision of education as their principal business.
From the regulatory point of view, a major advantage in single-purpose entity requirements is that the exercise of reserve powers, such as the appointment of an administrator, is not complicated by the entity's engagement in activities outside the regulated area. This is the main reason for the single-purpose entity requirements proposed by Division 3 of Part 3 of this Bill.

New Division 7 of Part 4.3 (to be inserted by clause 50) will confer power on the Supreme Court of Victoria, on application of the VRQA, to appoint a judicial administrator of a failed or failing RTO. The exercise of these powers could be frustrated if an entity registered as an RTO were also running a range of unconnected business activities, say, supermarkets or motels. Any judicial administrator appointed to run (usually temporarily) a company that is an RTO would also be responsible for all those other business activities. This may make it impracticable for such an appointment to be made.

The Bill's proposed "single-purpose entity" requirements (Division 3 of Part 3) are therefore closely linked to the Bill's proposed "reserve step-in powers" (Division 9 of Part 3). It is intended that the RTOs covered by both will be those which provide education or training on a "for profit" basis.

It is intended that exemptions from the single-purpose entity requirements will be given to RTOs that do not operate deliver education and training to the general community on a "for profit" basis, such as—

- Government agencies;
- Businesses providing (accredited) in-house training to their staff, such as a bank or a manufacturer;
- Group training schemes for apprentices;
- Adult, community and further education providers; and
- Other community-based organisations.

A body which is exempt from the single-purpose entity requirement will also be exempt from the reserve step-in powers, the requirement to have a student complaint system and a number of other new regulatory provisions.

It is intended that an extended period will be provided before this part of the Bill is proclaimed, and not before 1 January 2012. This will give the VRQA and RTOs time to put in place administrative arrangements or to comply with the new provisions, before they commence operation. It will also provide time for exemptions to be given, where appropriate.
Clause 26 amends section 4.3.16 of ETRA which sets out the matters that the VRQA must apply when deciding an application for registration as an RTO.

Subclause (1) inserts new paragraph (bb) into section 4.3.16(3). That subsection sets out mandatory conditions for registration of an RTO in Victoria. That is, the VRQA must not register an entity as an RTO if it does not meet any of the conditions set out in section 4.3.16(3).

The new requirement is that the VRQA must be satisfied that an applicant for registration as an RTO has the principal business purpose of providing education and training.

Note that provision of certain ancillary services to students, such as a student canteen, will not infringe this rule—see new subsection (4C) to be inserted by subclause (2).

This new requirement will not apply in the case of a school, or to bodies that are exempted under proposed new subsection (4A) of section 4.3.16, which will be inserted by subclause (2) (see below).

Subclause (2) inserts new subsections (4A) to (4C) into section 4.3.16.

New subsection (4A) sets out exemptions from the single-purpose requirements.

It is intended that the single-purpose entity requirement (and some related provisions—see below) will apply to "for profit" RTOs which deliver education and training to students on a "fee for service" basis, rather than other kinds of RTOs.

In particular, the RTOs that will or may be exempt from the single-purpose entity requirement under paragraphs of new subsection (4A), and the reason for those exemptions, are—

<table>
<thead>
<tr>
<th>Para./s</th>
<th>Exempt RTOs</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Universities</td>
<td>Operate under specific legislation governing their educational activities, and are also subject to the State Ombudsman</td>
</tr>
<tr>
<td>(b)</td>
<td>TAFE institutes</td>
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24
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<thead>
<tr>
<th>Para./s</th>
<th>Exempt RTOs</th>
<th>Reason</th>
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<tbody>
<tr>
<td>(c)</td>
<td>An &quot;adult education institution&quot;, namely—</td>
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<td></td>
<td>• Adult Multicultural Education Services</td>
<td></td>
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<td></td>
<td>• Centre for Adult Education</td>
<td></td>
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<tr>
<td></td>
<td>See definition in section 1.1.3(1) of <em>ETRA</em></td>
<td></td>
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<tr>
<td>(d)</td>
<td>Schools</td>
<td>&quot; &quot; &quot;</td>
</tr>
<tr>
<td>(e)</td>
<td>A person or body receiving a grant from the ACFE Board in relation to the provision of ACFE</td>
<td>These are principally providing ACFE, not &quot;fee for service&quot; training</td>
</tr>
<tr>
<td>(f)</td>
<td>A public sector body within the meaning of the <em>Public Administration Act 2004</em></td>
<td>Government agencies that are RTOs train public servants, and do not provide &quot;fee for service&quot; training</td>
</tr>
<tr>
<td>(g)</td>
<td>Departments or public statutory authorities of other governments.</td>
<td>&quot; &quot; &quot;</td>
</tr>
<tr>
<td>(h)</td>
<td>A person or body to be prescribed by the regulations</td>
<td>This provides flexibility to exempt other classes of RTOs which do not operate on a &quot;fee for service&quot; basis. A possible example is group training schemes</td>
</tr>
<tr>
<td>(i)</td>
<td>A person or body exempted by the Minister under new subsection (4B)</td>
<td>See notes on new subsection (4B) below</td>
</tr>
</tbody>
</table>
An exemption under new section 4.3.16(4A) will affect how a number of other provisions of ETRA (as amended by this Bill) apply to the exempt body. In particular, an exemption under new section 4.3.16(4A) is relevant to the operation of the following provisions (see also the notes on these clauses)—

- New section 4.3.21(3A) (to be inserted by cl. 27(2))—An exempt entity is not liable for deregistration as an RTO on the ground that is not a single-purpose entity.

- New section 4.5.1(1C) (to be substituted by cl. 28)—An overseas student provider may be exempted from the special single-purpose entity requirements applying to those providers if (in addition for eligibility for exemption under ESOS) it is an exempt entity under 4.3.16(4A).

- New section 4.6A.1 (to be inserted by cl. 31)—An exempt entity is not required to have a student complaint system of the kind that will be required under new Part 4.6A.

- New section 4.3.38 (to be inserted by cl. 50), definition of RTO—an exempt entity will not be subject to the reserve step-in powers under new Division 7 of Part 4.3, which enables the Supreme Court to appoint a judicial administrator of an RTO on the application of the VRQA.

New subsection (4B) confers power on the Minister to grant an exemption from the single-purpose entity requirements (and related provisions, such as the "reserve step-in powers" or the requirement to have a student complaint system) if the RTO is a community-based organisation, if it provides its services on a "not for profit" basis or if it only provides "in-house" training to its own staff.

New subsection (4C) provides more detail about what constitutes a "single-purpose entity" for the purposes of new section 4.3.16(3)(bb). Regulations may be made that specify certain "ancillary services to students" which an RTO may provide without infringing the requirement. For example, it is expected that canteens for students would be permitted ancillary services under the regulations, even if operated on a "for profit" basis.
Clause 27 amends section 4.3.21 of ETRA, which deals with the grounds of suspension or cancellation of an RTO. Infringing the "single-purpose entity" requirement will be a ground for cancellation or suspending an RTO's registration, if it is not exempt.

Clause 28 will substitute subsection (1C) of section 4.5.1 of ETRA. Subsection (1C) will be inserted into ETRA by clause 24 soon after the Bill is passed. It is part of the provisions that will enable the VRQA to implement the single-purpose entity requirement in force under the ESOS Act. As enacted by clause 24, subsection (1C) will enable the VRQA to disregard the requirement in relation to approval of courses for overseas students, so long as the provider may be exempted under ESOS.

The State requirement for RTOs to be single-purpose entities will apply to RTOs generally, including providers to overseas students. But it will commence at a later time, probably on 1 January 2012, to allow sufficient time for implementing or complying with the new arrangements.

When clause 28 commences operation at that later time, it will substitute section 4.5.1(1C). From then on, to be exempted from the single-purpose entity requirement a provider to overseas students must be eligible for exemption from the requirement under both the federal ESOS Act and the State ETRA.

Division 4—Complaint handling

Overview

The Bill contains a number of provisions that are designed to improve the fair treatment of students, especially overseas students, who enrol at Victorian RTOs operating on a "fee for service" basis.

Division 4 will formalise the role that the VRQA currently performs in investigating complaints by students of RTOs of alleged contraventions of the legislation or applicable educational standards. The VRQA's complaints role will cover all RTOs, other than Victoria Police training.

However, not all complaints about the operations of an RTO relate to breaches of the law or the RTO Standards. Many involve contractual disputes. Some complaints may not even relate to the contract, but may arise out of dissatisfaction or differing understandings or expectations about the education and training and related services that would be provided.
The Bill will require "fee for service" RTOs to establish an effective complaint handling process for dealing with complaints by individuals who are current students, past students or prospective students (whether overseas or domestic) of the RTO, and who are affected by the decisions or actions of the registered provider in relation to the provision of vocational education and training.

In doing this, the Bill implements Standard 2.7 of the RTO Standards, which is part of the national policy framework of standards and conditions for registering RTOs, and which says RTOs must have defined efficient and effective complaints and dispute handling processes to be eligible for registration.

A registered provider must maintain a register of complaints, to facilitate compliance audits by the VRQA. Details on that register will be minimal, in the interests of students' privacy, but full records of complaints must be kept separately.

These requirements will not apply to RTOs that do not operate as such on a "for profit" basis, such as public education institutions, Government agencies and businesses that train their own staff and community-based providers.

Many of the details about what will constitute an effective complaint handling process will be prescribed in regulations, to be made following a regulatory impact statement process. For this reason, and to enable sufficient time for existing RTOs to comply, the new provisions will not commence for some time.

The provisions inserted into ETRA (by Division 4 of Part 3 of the Bill) to deal with the handling of complaints internally by RTOs will be modified at a later time (by Division 5 of Part 3) to include provisions about external dispute-resolution schemes.

Clause 29 inserts a new definition of effective complaint handling process into section 4.1.1(1) of ETRA. That section contains definitions for Chapter 4 of ETRA, which establishes the VRQA and sets out its main powers and functions in registering and regulating providers of education and training in Victoria.

An effective complaint handling process will be one that satisfies the requirements of the new "Part 4.6A—Complaint Handling", which is to be inserted into ETRA by clause 31.

The term "effective complaint handling process" intentionally adopts the language of the RTO Standards, the nationally agreed policy framework of standards and conditions for registering RTOs. Standard 2.7 of the RTO Standards requires RTOs to have effective complaints handling processes.
Clause 30 amends sections 4.3.16 and 4.3.21 of ETRA, which set out the matters that the VRQA must consider when registering, or cancelling or suspending, the registration of an RTO.

The amendments implement Standard 2.7 of the RTO Standards by converting into a legal rule the nationally agreed policy that RTOs must have effective complaints handling processes as an essential condition for both their initial and ongoing registration.

Subclause (1) inserts a new subsection (2B) into section 4.3.16. This will require the VRQA to take into account whether an applicant to be an RTO has an "effective complaint handling process" as defined (see clause 29 above).

Subclause (2) inserts a new subsection (3A) into section 4.3.16. This will provide that the VRQA must not register an applicant as an RTO that does not have an "effective complaint handling process" if one is required under the new Part 4.6A. For an explanation of which providers are exempt from the requirement, see the notes on clause 26.

Subclause (3) amends section 4.3.16(5) of ETRA. That section provides that the criteria for registration listed in the section are not the only criteria that the VRQA may apply, that is, that the list is not intended to be exhaustive.

The effect of the amendment made by subclause (3), therefore, is that the registration criteria relating to complaints handling processes should not be construed as part of an exhaustive list of the grounds on which the VRQA may decide RTO applications.

Section 4.3.16(5) of ETRA will be amended first by clause 15(4) of this Bill, in relation to the registration criteria to be inserted earlier by clause 15. The section will be amended again later by clause 30(3), at the same time as the provisions that relate to complaint handling processes commence operation.

Subclause (4) amends section 4.3.21(1) and (2) of ETRA, and subclause (5) inserts a new section 4.3.21(3B). Section 4.3.21 deals with cancellation or suspension of registration of RTOs.

The amendments will make compliance with the complaints handling requirements (under the new Part 4.6A) a condition for an RTO’s ongoing registration (by making non-compliance a ground for suspension or cancellation), in the same way as such compliance is a condition for initial registration. This gives legal effect to the national policy framework set by the RTO Standards.
Clause 31 inserts a new Part 4.6A into ETRA, to be headed "COMPLAINT HANDLING".

Note that the heading to new Part 4.6A will be subsequently amended by clause 32.

The new Part 4.6A will set out the obligations of "for profit" RTOs to have an internal system for handling complaints from their students. This is consistent with the RTO Standards under the AQTF, which require (at Standard 2.7) that a provider must have an effective complaint handling process.

Notes follow on each of the proposed sections of new Part 4.6A.

New section 4.6A.1 defines RTO for the purposes of new Part 4.6A. It excludes those providers that will be exempt under section 4.3.16(4A) from the single-purpose entity requirement.

That is, an exemption from the single-purpose entity requirements automatically "flows through" as an exemption from the internal complaint handling process as well. The legislative note at the foot of the new section draws attention to this, and gives some examples of exempt bodies.

The practical effect is that the complaints handling process requirements will apply mainly to RTOs that provide vocational education and training to students on a "fee for service" basis, and not to Government institutions, community-based providers and businesses that train their own staff. Students of these bodies may, however, complain to the VRQA about alleged non-compliance with laws and standards governing VET.

For further information and explanation about which RTOs will be exempt from these requirements, see the notes on clause 26(2) above.

New section 4.6A.2 provides that an RTO must establish a process for handling complaints by past, present and prospective students affected by the decisions, actions or omissions of the RTO in relation to vocational education and training (VET).

Some aspects to note about the proposed complaint handling process that an RTO will be required to have—

- Standard 2.7 of the RTO Standards specifies a nationally agreed policy that an RTO having a defined effective and efficient complaints process is an essential condition for initial and ongoing registration as an RTO.
- The complaints process relates to an entity's capacity as an RTO only, that is, in relation to its VET services.
The matters on which a complaint may be made is not restricted to matters dealt with in applicable legislation, RTO standards or contracts. Any RTO decision, action or omission which affects the student may be the subject of a complaint. Many complaints do not relate to regulatory breaches, but may relate to unhelpful behaviour or poor communication.

Complaints may be made not only by present students, but also by past and prospective students. For example, a past student may wish to complain about the matter which led them to leave the RTO and seek a refund of fees. A prospective student may wish to complain about unhelpful behaviour, or incorrect information supplied, during negotiations over whether to enrol with the RTO.

New section 4.6A.3 requires RTOs to keep a register of complaints, which records all complaints made under the complaints handling process. The purpose is to facilitate management of complaints by the RTO, and to enable the VRQA to conduct compliance audits.

The information contained in the complaints register will be sufficient to identify who made the complaint, and when, and where the full complaint records are located. This is to minimise the risks to privacy that may arise from having too much information in the register. If the VRQA (or its authorised officer) wish to learn more about a particular complaint and how it was handled by the RTO, there are other powers conferred by this Bill which will enable them to seek that information.

New section 4.6A.4 requires an RTO to make its register of complaints available for inspection by the VRQA during business hours. Non-compliance will be an offence with a maximum penalty of 10 penalty units for natural persons and 50 penalty units for a body corporate.

New section 4.6A.5 requires an RTO to keep complete records of complaints handling, to be kept separately from the register to minimise risks to privacy. The VRQA may be able to gain access to and inspect these records under the powers conferred by the provisions to be inserted by clause 44 of the Bill.

New section 4.6A.6 will enable a student of most RTOs to make a complaint to the VRQA about an alleged contravention by the RTO of ETRA, the regulations or the RTO Standards (as defined).
This function is directly related to the VRQA's functions as the State's principal regulator of education and training. Student complaints are an important source of information, and can lead to the exercise of other powers, such as consideration (under section 4.3.21 of ETRA) of cancellation or suspension of an RTO's registration.

To safeguard the security of Victoria Police procedures and records, these powers will not apply to Victoria Police. However, it is understood that, consistent with those limitations, Victoria Police and VRQA would in practice cooperate in good faith in relation to training matters.

**Division 5—Complaint handling and dispute resolution**

**Overview**

The Bill provides for the establishment of an approved dispute resolution and student welfare scheme for RTOs in relation to their vocational education and training business.

The Bill will enable the Minister to approve an industry-based scheme (or schemes) to deal with unresolved student complaints and promote students' welfare. To be eligible for approval, a scheme—

- must cover overseas students, and may cover other students; and
- must provide for unresolved disputes to be referred to an independent expert, whose decisions must be binding on an RTO which is a member of that scheme.

Participation by RTOs in such a scheme will not be mandatory under this Bill. However, consistent with the RTO Standards, participation in an effective dispute resolution scheme will be a matter that the VRQA can take into account in deciding suitability for registration as an RTO.

RTOs must disclose to past, current and prospective students whether they participate in an approved scheme.

The proposals balance the cost of regulation with the aim of providing fair treatment of student, especially overseas students:

- RTOs will not necessarily be required to join a dispute resolution scheme as a condition of their registration. However, they may be encouraged to join a scheme that are formally approved under State law.
Prospective students will be able to make an informed choice between providers, knowing which RTOs provide access to an approved and independent dispute resolution process.

The Education Services for Overseas Students Legislation Amendment Bill 2010 of the Commonwealth, which was introduced into federal Parliament on 23 June 2010 (but since lapsed), is also relevant to how this Bill may operate in practice.

The lapsed Commonwealth Bill proposed to create a Commonwealth "Overseas Students Ombudsman", who would have jurisdiction to investigate complaints by overseas students. The Bill also provided that the new Ombudsman would transfer complaints to a statutory complaint handler of a State who has a function of investigating action taken by a private registered provider in connection with an overseas student.

The dispute resolution scheme proposed in this Bill might have been recognised under the lapsed Commonwealth Bill. In that case, unresolved complaints from students of a participating RTO would be referred to a State-endorsed, industry-based scheme. In contrast, complaints by students of a non-participating RTO would be investigated by the Ombudsman.

Division 5 of Part 3 of the Bill will come into operation after Division 4. Division 5 will then amend the complaint handling provisions in new Part 4.6A of ETRA (by then already inserted by Division 4). It will widen Part 4.6A's scope to span external dispute resolution as well as internal complaints handling.

This longer lead time for the dispute resolution provisions is meant to allow sufficient time for industry to establish a scheme, for the Minister to assess and approve it, for eligible RTOs to join it, and for regulations to be made and mandatory disclosure arrangements put in place.

Clause 32 substitutes the heading to new Part 4.6A of ETRA.

Part 4.6A will be inserted into ETRA by clause 31, and its initial heading will refer only to "Complaint handling". When the dispute resolution provisions are inserted at a later time, clause 32 will change Part 4.6A's heading to "COMPLAINT HANDLING AND DISPUTE RESOLUTION".

Clause 33 will insert new sections 4.6A.5A, 4.6A.5B and 4.6A.5C into the new Part 4.6A of ETRA, dealing with approved dispute resolution and student welfare schemes (as defined).
New section 4.6A.5A will confer a right on a past, present or prospective student of an RTO, to refer an unresolved complaint to a person appointed under an approved scheme.

There are several points to note about the right conferred by new section 4.6A.5A—

- The complaint to an RTO that is a member of an approved scheme. Membership of a scheme is not compulsory, and not all RTOs will be members of an approved scheme. However, it will be compulsory for an RTO to disclose whether it participates in such a scheme—see notes on new section 4.6A.5C below.
- A complaint may be made by a past, present or prospective student—see notes on clause 31 above, new section 4.6A.2.
- The complainant must first make their complaint to the RTO for consideration through its complaints handling process.
- The scheme has to apply to a person in the complainant's circumstances. As it will not be compulsory for RTOs to participate in a dispute resolution scheme, the particular RTO to which the complaint relates may not be a member of the scheme. Further, schemes do not necessarily cover all students—the schemes are to cover vocational education and training matters, and they may cover only overseas students.
- The complainant may refer the complaint, if it is not resolved within 30 days, through the RTO's internal complaint system.

The legislative note at the foot of the new section draws attention to the fact that a complainant may be able to complain to the VRQA under section 4.6A.6 (to be inserted by clause 31).

New section 4.6A.5B will confer power on the Minister to approve a dispute resolution and student welfare scheme if it meets the criteria set out in Schedule 7 (see notes on clause 34 below), and taking into account any criteria to be set out in the regulations. The formal mechanism for approval is a notice published in the Government Gazette.
New section 4.6A.5C will require "for profit" RTOs, to which the Part applies, to disclose to past, current and prospective students whether the RTO is a member of an approved scheme. The regulations will prescribe the manner in which the information is to be provided; for example, the regulations could require it to be included in enrolment papers and in certain advertising material. It will be an offence to fail to disclose this information as required with a maximum penalty of 10 penalty units for a natural person and 50 penalty units for a body corporate.

Clause 34 inserts a new Schedule 7 into ETRA headed "Dispute Resolution and Student Welfare Scheme". It is envisaged that such a scheme will be established by industry. An industry-based scheme may be recognised under the Act if it meets the criteria to be set out in the new Schedule 7, and after considering any criteria to be prescribed in regulations.

Clause 1 provides that, to be eligible for approval, a scheme must apply to overseas students of Victorian RTOs. Overseas students is defined in section 1.1.3(1) of ETRA.

Clause 2 provides that a scheme may also apply to domestic students. However, this coverage is not a requirement for a scheme to be approved.

Clause 3 sets out features that a scheme must have if it is to be approved by the Minister. These include—

- The scheme must apply to resolution of dispute between complainants and providers.
- The Minister must consider whether the scheme—
  - has a fair procedure;
  - decisions will be made independently on the merits;
  - decisions will be binding; and
  - decision-makers are appropriately qualified.
- The cost of using the scheme.
- The scheme's past history (if any).
Clause 4 sets out other features of a scheme that the Minister must consider. These include the provision of information and advice to students, conducting inquiries in relation to systemic matters affecting the VET system, and facilitating pastoral care of students.

Clause 5 enables regulations to be made which prescribe other matters for the Minister to consider when deciding whether to approve a scheme.

Division 6—Fair contract terms

Overview

Students, especially overseas students, are not in an equal position when negotiating contracts with "for profit" RTOs.

To ensure that the contracts between students and RTOs are fair, the Bill provides that "fair contract terms" may be prescribed by regulations.

The regulations may prescribe that an RTO must include certain fair contract terms in their student contracts.

Regulations may also prescribe terms that are deemed to be in the student contracts and legally effective as such, even if they are not in the actual document signed by the RTO and student. However, it is still intended to make it compulsory for an RTO to include the prescribe terms in the documents actually signed by the students, to ensure that they are made aware of the terms at the time of enrolment, and are not misled by their omission.

It is intended that such regulations would be the subject of a regulatory impact statement assessing the costs and benefits of the proposed model clauses, and would be the subject of consultation with both students and providers through the RIS process.

Clause 35 inserts new section 4.3.29A into ETRA.

Subclause (1) provides that "fair contract terms" requirements will not apply in respect of a contract already in place when these provisions of the Bill commence operation. This is to avoid retrospectivity.

New subsection (2) provides that "fair contract terms" prescribed by the regulations will take effect as part of the contract between an RTO and student, even if the actual contract they sign does not include those terms. Further, any inconsistent term in the contract that is signed will be invalid to that extent.
It should also be noted that clause 49 will enable the regulations to prescribe "the contents of contracts, including the terms, entered into between the RTO and students or prospective students"—see new item 8C.1(e) of Schedule 5.

It is intended that regulations will be made using these powers in combination, to prescribe—

- fair contract terms that must be included in contracts; and
- that, if in breach of this requirement those terms are not actually included in the contract, they are deemed to be.

New subsection (3) provides that these provisions do not apply to Government agencies, or other RTOs exempted by the regulations.

Clause 36 inserts a new item 8B into Schedule 5 to ETRA. That Schedule sets out the matters on which regulations may be made.

The new item 8B will enable regulations to prescribe fair contract terms. These will be deemed to be part of the contracts between RTOs and students. The matters with respect to which the regulations may prescribe deemed fair contract terms include—termination of contracts; dispute resolution; fees (whether for tuition or other fees), including the payment and refund of fees; cooling-off periods; compensation rights; award or conferral of qualifications, etc; and the provision of information to students.

These regulations that deem "fair contract terms" into contracts may be made in combination with regulations under new item 8C.1(e) of Schedule 5 (see amendments to be made by clause 49), which will enable regulations to prescribe the contents of the contracts that the students actually sign.

Division 7—Monitoring and Enforcement

Overview

Division 7 of Part 3 of the Bill sets out new monitoring and enforcement provisions in relation to vocational education and training. The monitoring and enforcement provisions of ETRA are left largely unchanged insofar as they relate to other sectors of education.

Division 7 also confers new powers on the VRQA to appoint authorised officers to carry out its new monitoring and enforcement powers in relation to VET. Whilst these are more extensive than those that apply under ETRA generally, they are
made subject to a number of safeguards based on the recommendations of the Victorian Parliament's Law Reform Committee's report on *The Powers of Entry, Search, Seizure and Questioning by Authorised Persons* (May, 2002) (the LRC report).

Clause 37 inserts new sections 4.7.10 to 4.7.12 into ETRA.

New section 4.7.10 will require an RTO to keep, at relevant premises, the information and documents listed in new section 4.7.10. This includes a list of all students, the name of the owner and the occupier of the premises, a copy of any information required to be kept available for inspection under the Act or regulations, and a certificate of public liability insurance. This section does not apply to the Victoria Police.

This information will facilitate the VRQA carrying out the compliance audits required under the RTO Standards.

The term relevant premises will be defined in new section 5.8.3B, which is to be inserted into ETRA by clause 44 of the Bill. In short, it means the place where an RTO carries on operations, and includes its registered office. The offence carries a maximum penalty of 20 penalty units for a natural person and 50 penalty units for a body corporate.

New section 4.7.11 will make it an offence for a person knowingly to give information, make a statement or produce a document to the VRQA which is false or misleading. The maximum penalty is 60 penalty units for a natural person and 300 penalty units for a body corporate.

New section 4.7.12 will require an RTO to keep accurate student records, with the details set out in subsection (2) or in any regulations. It will be an offence to fail to comply. The VRQA may inspect student records under other powers to be conferred by this Bill. The maximum penalty is 20 penalty units for a natural person and 100 penalty units for a body corporate.

Clause 38 inserts a new Division heading at the beginning of Part 5.8, as one of several that create a Division structure in that Part. The heading to Division 1 is "Appointment of Authorised Officers".

Clause 39 inserts new subsections (4) and (5) into section 5.8.1 of ETRA.

New subsection (4) enables the VRQA to appoint public servants and employees of other public entities as authorised officers for the purposes of its VET powers.
New subsection (5) requires that authorised officers appointed under ETRA be appropriately qualified or trained. This implements recommendation 17 of the Victorian Parliament's Law Reform Committee's report on *The Powers of Entry, Search, Seizure and Questioning by Authorised Persons* (May, 2002) (the LRC report) that agencies have clear and appropriate qualification requirements and educational and training standards for their inspectors.

Clause 40 requires the VRQA to provide to its authorised officers a document that sets out which of the new monitoring and enforcement powers that that officer is authorised to exercise. In some other provisions to be inserted by this Bill, an authorised officer may have to produce this document to individuals affected by the exercise of those powers: see new section 5.8.3E to be inserted by clause 44.

This partially implements recommendation 19 of the LRC report that an authorised officer be required to produce identification automatically, and recommendation 21 that a person should not be convicted of obstructing an authorised officer unless the officer has identified himself or herself and advised the person of his or her powers.

Clause 41 inserts new section 5.8.2A, which will require an authorised officer appointed under new section 5.8.1(4) to return his or her identity card if his or her appointment is revoked or expires.

Clause 42 inserts a new Division 2 heading—"Enforcement powers that do not relate to RTOs". It also inserts a new section 5.8.2B, which provides that the powers that are set out in Division 2 do not apply to RTOs.

The effect of these amendments is to preserve the existing monitoring and enforcement powers in ETRA but to restrict their scope to non-RTO matters. That is because this Bill is concerned with the regulation of VET, rather than education and training generally. Monitoring and enforcement relating to VET will be dealt with in the new Division 3, to be inserted by clause 44.

Clause 43 inserts new subsections (4) and (5) into section 5.8.3 of ETRA. These provisions are currently in section 5.8.4(1) of ETRA. New subsection (4) will provide that the search and entry powers under that section may not be used in relation to residential premises except with the consent of the occupier.
New subsection (5) will provide that an authorised officer may not exercise powers in relation to premises if he or she has not produced his or her identity card for inspection when requested. This partially implements recommendation 19 of the LRC report that an authorised officer be required to produce identification.

Clause 44 inserts a new Division 3 of Part 5.8 of ETRA.

The new Division 3 is headed—"Enforcement powers relating to RTOs". It comprises five Subdivisions.

The first Subdivision is headed—"Subdivision 1—General".

New section 5.8.3A provides that the monitoring and enforcement powers in the new Division 3 of Part 5.8 will apply only to RTOs. However this Division does not apply to the Victoria Police. Other education and training providers will continue to be dealt with under existing powers, and will be found in new Division 2 of Part 5.8.

New section 5.8.3B sets out definitions for the purposes of the new Division 3.

An occupier of premises is defined to mean an individual who is the occupier of premises used for residential purposes, or in other cases means a person over 16 in charge of the premises.

relevant premises means the place where an RTO carries on operations, and includes its registered office.

relevant law means the ETRA, regulations under ETRA, the RTO Standards, and any enforceable undertaking that has been given by the RTO under this legislation.

The next Subdivision is headed—"Subdivision 2—Warnings".

New section 5.8.3C enables the VRQA to publish warnings to the public about dealing with an RTO that is under investigation. These powers are broadly similar to the powers conferred by section 162A of the Fair Trading Act 1999 with respect to public warnings to consumers.

The next Subdivision is headed: "Subdivision 3—Powers of authorised officers". These provisions have been assessed under the Charter assessment as imposing reasonable restrictions on Charter rights.

New section 5.8.3D defines authorised officer for the purposes of new Subdivision 3. It means an officer appointed under new section 5.8.1(4), to be inserted by clause 39 of this Bill.
New section 5.8.3E requires an authorised officer to produce for inspection his identity card and the document (which lists his or her powers) issued under new section 5.8.2(3) before exercising most powers under Subdivision 3.

This partially implements recommendation 19 of the LRC report that an authorised officer be required to produce identification.

New section 5.8.3F enables searches to be conducted of relevant premises to monitor compliance with a relevant law.

Under subsection (2), an authorised officer must first issue warnings to a person to whom a requirement is issued. This implements recommendation 21 of the LRC report that an authorised officer be required to give warnings.

New section 5.8.3G enables an authorised officer to enter certain premises with consent in case of an alleged contravention of the relevant law, and to collect evidence.

New sections 5.8.3F and 5.8.3G have been assessed as limiting the right to freedom of expression under the Charter of Human Rights and Responsibilities. However, on the basis of an analysis under section 7(2) of the Charter, this limitation is considered reasonable.

New section 5.8.3H sets out the procedures for an authorised officer to obtain consent for searches under sections 5.8.3F or 5.8.3G above.

An officer must not enter or search premises without “informed consent”, that is, the officer must produce his or her identification card and authorising document, inform the occupier of the purpose of the proposed search and the occupier's right to refuse consent to certain matters (such as copying documents). The person will be asked to sign an acknowledgement. Failure to give consent is not a hindering offence. These provisions are intended to be consistent with the LRC’s recommendations.

New section 5.8.3I enables the Magistrates' Court to issue a search warrant on the application of an authorised officer. The provision then sets out the manner in which a warrant may be exercised. Once a warrant is issued, it may be executed by another authorised officer. This may be necessary, for example, if the officer who applied for the warrant is unavailable because of illness.
The powers under new sections 5.8.3G and 5.8.3I to seize evidence, with consent or with a search warrant respectively, have been assessed as not limiting the right to property under section 20 of the Charter of Human Rights and Responsibilities because the seizures would be carried out with lawful authority.

New section 5.8.3J requires an officer to announce that he or she is executing a search warrant before entering premises.

New section 5.8.3K sets out the details an officer must give to an occupier before executing a search warrant.

New section 5.8.3L authorises an officer executing a search warrant to seize other evidence found during the search, if the officer believes on reasonable grounds that it provides evidence of a contravention.

New section 5.8.3M requires an authorised officer to give a receipt for any thing taken under Subdivision 3 powers for example during execution of a search warrant.

New section 5.8.3N requires an officer who has seized a document to return a certified copy within 21 days to the person from whom it was seized.

New section 5.8.3O requires an officer to take reasonable steps to return any seized article if the reason for its seizure no longer exists.

New section 5.8.3P enables the Magistrates' Court to extend the period for retaining seized documents or things.

New section 5.8.3Q sets out the circumstances in which an officer may require the occupier of premises being inspected to render assistance, for instance, by providing information or producing documents required by law to be kept at the premises.

New section 5.8.3R provides that it is an offence for a person to refuse, without reasonable excuse, to comply with a requirement of an authorised officer under this Subdivision unless the authorised officer did not comply with the requirement to produce identification or give warnings. The maximum penalty is 60 penalty units for a natural person and 300 penalty units for a body corporate.

New section 5.8.3S provides that the privilege against self-incrimination is a reasonable excuse for failing to comply with an officer's direction, but that this does not apply in the case of production of documents that the law requires to be produced.
New section 5.8.3T makes it an offence to knowingly give false or misleading information to an authorised officer. The maximum penalty is 5 penalty units.

New section 5.8.3U provides for a system for making complaints against authorised officers.

This is intended to implement LRC recommendation 28, "that the requirement for internal complaints mechanisms relating to inspectors' powers be enshrined in legislation".

The next Subdivision is headed—"Subdivision 4—Undertakings".

New section 5.8.3V enables the VRQA to accept enforceable undertakings from an RTO as an alternative to taking other enforcement action.

Enforceable undertakings provide another regulatory option. They may be used to encourage compliance and provide a structure for bringing an RTO into compliance, rather than merely punishing non-compliance.

The new section clarifies that one of the options available through undertakings is to establish a trust fund for students' fees, to minimise the risk of students being unable to receive a refund should the need arise.

New section 5.8.3W requires the VRQA to give an RTO a copy of an enforceable undertaking.

New section 5.8.3X requires the VRQA to register enforceable undertakings.

New section 5.8.3Y enables the VRQA to apply to the Magistrates' Court to enforce an undertaking given by an RTO. This can result in personal liability on the part of the RTO's managers.

The next Subdivision is headed—"Subdivision 5—Infringements".

New section 5.8.3Z authorises an authorised officer to issue infringement notices in respect of offences against the ETRA or regulations.

Clause 45 inserts a new Division 4 heading into Part 5.8 of ETRA, headed "General".
Clause 46 substitutes a new section 5.8.4 of ETRA.

New section 5.8.4 makes it an offence to hinder, obstruct or delay an authorised officer. However, it is defence to such an offence if the authorised officer did not give the required warnings. This is intended to implement LRC recommendation 21, that it should be a defence to a hindering offence if a warning was not given.

Clause 47 amends section 5.8.7 of ETRA. The amendment extends the liability of the CEO of a body corporate for offences by that body corporate to each officer of the body corporate. "Officer" has the same meaning as in the Corporations Act 2001 of the Commonwealth, and therefore includes individuals who do not formally hold a position but exercise some degree of control over the body corporate in practice.

Clause 48 inserts new section 5.8.7A.

New section 5.8.7A clarifies that the actions of agents or officers of a body corporate may be imputed to that body corporate. For this purpose, the state of mind of those agents or officers will be taken to be that of the body corporate.

Division 8—Regulation-making powers

Clause 49 amends Schedule 5 to ETRA to insert a new item 8C.

Subclause (1) sets out new matters with respect to which regulations may be made under ETRA.

New item 8C.1 enables regulations to be made on a wide range of matters relating to VET regulation and protection of students. These include—

- information to be made available to students about fees, courses, facilities, and whether the RTO is a member of a prescribed tuition assurance scheme (such as the assurance scheme established under the ESOS Act, or an industry-based assurance scheme recognised by the regulations);
- how such information is to be made available;
- requirements to be met before entering contracts;
- the contents of the contracts themselves (this power may be used to require that "fair contract terms" be set out in the written contract signed between RTO and student;
- publications and advertising material;
- awarding qualifications;
- public liability insurance;
- the keeping of student records;
- requirements relating to complaint handling processes;
- the keeping of the register of complaint;
- conduct in dealing with past, current and prospective students.

Subclause 49(2) increases the maximum penalty that may be prescribed by the regulations to 20 penalty units. This amendment does not actually increase any penalty, but only sets the upper limits for penalties that may be fixed by the regulations for offences in the regulations.

**Explanation of penalty increase—clause 49(2)—Maximum penalties for offences under the regulations**

The proposed increase in the penalty cap will enable penalties of up to 20 penalty units to be fixed by regulations made under ETRA. The current upper limit on penalties fixed by regulations under ETRA is 10 penalty units.

It is proposed that the regulations that will be made with respect to the "student protection" provisions of the Bill, such as a failure to include prescribed "fair contract terms" in a student's contract, will set penalties of up to the new maximum of 20 penalty units.

Breaches of student protection requirements may have severe consequences for the students concerned. The penalty to be fixed by the regulations needs to set a deterrent proportionate to the harm caused by the offence.

Further, where the offender is a body corporate (as most RTOs are), there may be a case for a higher penalty than the penalty that is fixed with respect to individuals. The increased penalty cap will provide scope for a higher penalty to be set for corporations.
Division 7—Reserve Step-in powers

Overview

Division 9 of Part 3 of the Bill will insert a new Division 7 into Part 4.3 of the Education and Training Reform Act 2006, headed "Reserve step-in powers".

The general scheme of the new Division 7 is that the Supreme Court of Victoria, on the application of the VRQA, may place an RTO under judicial administration if the Court considers that it is unlikely to be able to meet its obligations.

Only RTOs that are commercial entities and providing VET on a "for profit" basis will be subject to these powers. Government institutions and agencies, businesses that are RTOs only to provide in-house staff training, and community-based providers will not be subject to these provisions.

Judicial administration is a reserve power of last resort that is used to ensure an orderly exit of failing providers from the training market, so as to protect the interests of students, which may otherwise not be taken into account sufficiently by an external administrator of a failing RTO.

Any judicial administration under the new Division 7 is likely to be a temporary arrangement (for example, to facilitate transfers to other providers or to arrange refunds of fees to which students are entitled) with the usual provisions of the Corporations Act 2001 of the Commonwealth (Corporations Act) applying once appropriated transitional arrangements have been made.

A judicial administrator will be authorised to take students' interests into account.

The new Division 7 are partly modelled on provisions relating to judicial management of general insurers under Division 1 of Part VB of the Insurance Act 1973 of the Commonwealth, which are designed to protect the interests of insurance policy holders when an insurer fails.

Clause 50 inserts a new Division 7 of Part 4.3 of ETRA, as follows—

Division 7—Reserve step-in powers

New section 4.3.38 is a definition section.

The definition of RTO excludes from the scope of Division 7 those RTOs that will exempt from the "single-purpose entity" provisions under section 4.3.16(4A): see the notes on clause 26(2) above.
RTOs exempt from step-in include public education institutions (such as universities and TAFE Institutes), Government agencies and community-based providers.

In addition, other RTOs may be exempted by the regulations or by the Minister, as a class or on a case by case basis. It is intended that exemptions will be given to RTOs primarily engaged in in-house training (such as a bank) and other RTOs not engaged in selling education services to the general public (such as group training of apprentices).

New section 4.3.39 declares the new Division 7 to be a displacement provision for the purposes of the Corporations Act.

The provisions of the Corporations Act most likely to be affected by the displacement are—

- Chapter 2B, which sets out the basic features of a company, such as company powers and how they are exercised;
- Division 1 of Part 2D.1, which deals with the general duties of the directors, officers and employees of a company, such as the duty to act in the best interests of the company;
- Chapter 5 of that Act, which deals with the appointment of external administrators and their powers; and
- the provisions of the Corporations Act listed in the table to section 141 of that Act, which are "replaceable rules" that, under the Corporations Act, may have contractual force within the company in relation to its governance.

Division 7 applies to RTOs that are not companies, but displacement provisions are relevant only to companies.

New section 4.3.40 requires a person who wishes to apply to the Federal Court under the Corporations Act for administration of an RTO must first notify the VRQA of its intention. Non-compliance is an offence.

If an administrator is appointed without court order (for example, by the company's board) under sections 436A, 436B or 436C of the Corporations Act, then the administrator must serve notice of that appointment on the VRQA within the same timeframe as service of other notices under section 450A of that Act.

By ensuring the VRQA has notice that an RTO is being placed under external administration, the VRQA has an opportunity to intervene or take action under Division 7.
New section 4.3.41 will enable the VRQA to apply for an order that an RTO be placed under judicial administration. An RTO will have a right to be heard on the application.

New section 4.3.42 will empower the Supreme Court of Victoria, on the application of the VRQA, to appoint a judicial administrator of an RTO, if it considers this in the interests of the provider’s students. In reaching a decision, the Court is to have regard to—

- the likelihood of the provider being unable to deliver services in accordance with its obligations;
- whether the RTO has failed to comply with relevant State and federal legislation and agreed national standards; and
- whether there are reasonable grounds for believing that inefficient or incompetent management represents a substantial risk of the RTO not complying with the RTO standards or being unable to deliver services.

New section 4.3.43 sets out when judicial administration of an RTO commences, namely, at the time specified by the Court (if any), otherwise immediately.

New section 4.3.44 requires that, if the Supreme Court orders the judicial administration of an RTO, it must appoint an administrator for this purpose.

The term must not exceed one month, but may be extended by a further order. The Court may at any time cancel the appointment of an administrator and appoint someone else.

New section 4.3.45 enables the Supreme Court to fix the remuneration and allowances of the judicial administrator and to charge these on the RTO’s property, and to place it in such order of priority as the Court thinks fit.

The charging of the remuneration and allowances of a judicial administrator on the property of an RTO may displace Chapter 2K of the Corporations Act, which deals with charges on company property.

New section 4.3.46 provides that, if the Supreme Court appoints a judicial administrator under Division 7, the administration of the RTO by any other person ceases at that time and administration vests instead in the judicial administrator.
The appointment of a judicial administrator may therefore displace a number of provisions of the Corporations Act, such as Chapter 2B in relation to a company's usual management, and Chapter 5 in relation to administrators.

New section 4.3.47 sets out the powers and duties of a judicial administrator. The judicial administrator is taken to be the governing body of the RTO, and such other powers as the Supreme Court directs.

A judicial administrator must have regard to the interests of the students of the RTO, but is otherwise subject to all the duties of the usual governing body of the organisation (such as its board of directors).

Because a judicial administrator may have regard to students' interests, they will be better able to manage a failed RTO's orderly exit from the training market. For example, an administrator may consider it appropriate to incur minor expenses to enable students to complete their exams, or to cooperate in transferring academic records.

New section 4.3.48 provides that a judicial administrator is subject to the control of the Supreme Court, has such duties as that Court directs, and may apply to the Court for instructions. The VRQA must be given notice of an application for instructions, and may be heard.

New section 4.3.48 enables the VRQA to apply to the Supreme Court for instructions to be given to a judicial administrator (who may be heard on the application).

New section 4.3.50 enables the VRQA to ask a judicial administrator for information about the conduct of the administration or the financial position of the RTO. A judicial administrator must comply.

New section 4.3.51 provides that if an RTO is placed under judicial administration, the RTO will remain under that administration until it is cancelled or ends under other provisions of the new Division 7. The Court may extend the judicial administration.

New section 4.3.52 provides that when judicial administration ends or is cancelled, the judicial administrator is divested of administration of the RTO and it vests in the person or body who otherwise would have been the governing body.
New section 4.3.53 provides that a judicial administrator must conduct the judicial administration as efficiently and economically as possible having regard to the interests of the students of the RTO.

For example, under new section 4.3.53, a judicial administrator of an RTO may consider it appropriate to incur minor expenses to protect students from hardship even though that may not be the most strictly economic use of the company's resources.

PART 4—POST-SCHOOL EDUCATION AND TRAINING

Division 1—Victorian Skills Commission

Clause 51 repeals section 3.1.2(1)(c) of ETRA, which stated that it was a function of the Victorian Skills Commission (VSC) to support local learning networks. Under recent machinery of government changes, this function is now the responsibility of the Department of Planning and Community Development.

Clause 52 inserts legislative notes at the foot of section 3.1.3(1) and (2), to cross-refer to the Commonwealth legislation which deals with the functions of the VSC as a "State Training Authority" under that legislation.

Clause 53 amends section 3.1.7 of ETRA to change a reference to the "Secretary" to reflect a transfer of responsibility under recent machinery of government changes to the Department of Innovation, Industry and Regional Development.

Clause 53 will also substitute paragraph (a) to subsection (3) of section 3.1.7. This varies the composition of the Victorian Skills Commission by broadening the scope of Ministerial discretion in appointing members with the range of skills required to carry out its functions.

Division 2—TAFE institutes

Clause 54 inserts new subsection (7) into section 3.1.12 of ETRA.

This provides that where an Order in relation to a TAFE Institute board is made by the Governor in Council, or by the Minister under the specific provisions of section 3.1.12, a copy of that Order must be laid before both Houses of Parliament as soon as possible after it is made.
Clause 55 inserts new paragraphs (ab) to (ae) into section 3.1.13(1) of ETRA to add new functions for a TAFE institute board of ensuring that the institute operates in accordance with its strategic plan, that it provides for the proper efficient and effective performance of the institute's functions and powers, that it accounts to the Minister for its performance, and that it operates as part of the network of public education institutions in Victoria.

New paragraph (ba) of section 3.1.13(1) is also inserted into ETRA. This will provide for another function of TAFE institute boards of providing vocational education and training to the needs of industry, students and the general community.

A new subsection 3.1.13 (3) is added after existing section 3.3.13(2) of ETRA to provide that a TAFE institute board may engage in commercial activity providing it is consistent with and does not interfere with any of its functions or the institute's strategic plan. This is subject to any direction or guideline issued by the Minister.

Clause 56 amends section 3.1.14(2) of ETRA to add reference to new subsection 3.1.13(3) above into this section.

Clause 57 amends sections 3.1.16(1), (2) and (3) of ETRA to make new provisions for membership of TAFE institute boards.

Under previous section 3.1.16(1), TAFE institute boards must have no less than 9 and not more than 15 persons. The new subsection provides that such a board must have no less than 10 and not more than 14 members. The new subsection provides that the Chairperson is to be appointed by the Minister (previously, the Chair was elected by the board).

The new subsection retains the staff-elected and student-elected directors of the board and the board membership of the Chief Executive Officer (CEO) of the institute. However it increases the Directors that must be appointed by the Minister by providing that the other Directors must be appointed by the Minister on the recommendation of the Chairperson. Previously, the provision required that "more than half" of the Directors had to be appointed by the Minister.

The amended subsection (2) of section 3.1.16 will require the Minister to have regard to the need for board directors to have experience in particular areas, such as law, management, finance, commerce and corporate governance. The amended subsection also requires the Minister to have regard to the total membership being reflective of the diversity of the community and to having equal numbers of men and women on the board. These provisions are unchanged from the previous subsection.
The amended subsection (3) of section 3.1.16 will require that at least half of the board directors appointed by the Minister must have experience of knowledge of any industry in which the TAFE delivers training. This provision is similar to the existing section 3.1.16(3) of ETRA.

Clause 58 amends section 3.1.18 of ETRA to update the cross-referencing to subsections amended by clause 56 in relation to the power of the Governor in Council to remove any director appointed by the Minister to a TAFE institute board, and in relation to staff and student elected board directors.

Clause 59 inserts new sections 3.1.18A to 3.1.18D after section 3.1.18 of ETRA to provide stronger mechanisms for reporting and accountability of TAFE institutes.

New section 3.1.18A provides that a TAFE institute board must prepare and submit to the Minister, at a time determined by the Minister a strategic plan for the operation of the institute. Section 3.1.13(1)(a) of ETRA already specifies that the preparation of strategic plans (as well as operational business plans) is one of the general functions of the boards of TAFE institutes.

The new section now outlines specific matters in relation to this strategic plan. It provides that the strategic plan must be prepared in accordance with guidelines established by the Minister. The Minister is given the discretion to accept any strategic plan submitted, or to accept it with amendments or to refuse to accept it. The new section also allows the board to advise the Minister if it wishes to exercise a function that is inconsistent with its accepted strategic plan.

New section 3.1.18B details requirements in relation to a statement of corporate intent. The provisions require a TAFE institute board to prepare its proposed statement in relation to delivery of VET in consultation with the Secretary of the Department of Innovation, Industry and Regional Development and that the statement must be submitted to the Minister. The new section requires the board to take into account in preparing the statement any statement of expectations for the following year which the Minister has provided to the board prior to 1 October.

If the board and the Minister are unable to agree on a statement of corporate intent by 1 March of a particular year, the Minister is empowered to issue a statement of corporate intent for the TAFE institute. The section also allows the statement to be amended if both the Minister and the board agree to it; however if both
parties cannot agree on a proposed variation within 28 days of the variation being submitted, the Minister can vary the statement, or refuse to do so. The new section also requires the Minister to make available to the public, on request, a copy of a statement of corporate intent.

New section 3.1.18C details requirements in relation to the content of a statement of corporate intent and specifies that the statement must be consistent with the accepted strategic plan, must specify for the year it relates to what services will be provided by the TAFE institute, what the institute's objectives and priorities are, what will be the indicators and targets for assessment and monitoring of the TAFE's performance, how and when reporting on performance will occur to the Minister and to the Secretary of the Department of Innovation, Industry and Regional Development.

New section 3.1.18D details requirements in relation to annual meetings of the TAFE institute board. It provides that the Chief Executive Officer (CEO) 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 Department of Innovation, Industry and Regional Development. The CEO must also publish a notice in a newspaper (circulating generally in the area where the institute is located) of the meeting time and date and indicating that the meeting is open to the public.

The CEO must also notify the Victorian Skills Commission of the annual meeting. At the annual meeting the financial statement of the TAFE institute must be tabled; the board must report on services provided in the prior year, and those that are proposed to be provided in the forthcoming year, as well as on any other prescribed matters.

Division 3—Use of the terms "TAFE" and "technical and further education"

Overview

TAFE institutes are established by State and Territory Governments to deliver VET and ACFE programs to meet the needs of industry and the community for technical and further education. Like the main universities and State schools, TAFE Institutes are public educational institutions.

Part 4.7 of ETRA already contains a number of provisions that control how educational bodies describe themselves or their services, to prevent misleading claims. Division 3 will amend
ETRA to regulate the use of the terms "TAFE" and "technical and further education" as well.

Under the amendments, providers and other bodies which are not TAFE institutes may not give a misleading impression that they are. The purpose is to protect the TAFE "brand". It aims to protect students from being misled into dealing with a provider, believing that it is a government TAFE institution when it is not.

The limitations on use of "TAFE" and "technical and further education" relate only to their use in the names of entities, not their use in other contexts. Further, the limitations apply only where a reasonable person may be misled.

There will be capacity to grant exemptions for bodies which use the terms legitimately, such as bodies associated with TAFE Institutes, for example, the Victorian TAFE Association which represents TAFE Institutes.

Clause 60 inserts two new sections after section 3.1.26 of ETRA. Section 3.1.26 is housed in Division 2 of ETRA which contains provisions dealing with TAFE institutes.

New section 3.1.26A makes it an offence for a person or body to use the words "TAFE" or "technical and further education" in its name or in a description of its activities which may give someone a reasonable, but incorrect impression that the person or body is a TAFE institute, or that what is being provided is being provided by a TAFE institute. The section provides for a maximum penalty of 20 penalty units for a natural person, and 100 penalty units for a body corporate.

The section also provides for exemptions to apply to a recognised TAFE Institute or a person or body operating one, a recognised University, a person or body or class of persons or bodies prescribed by regulations, or a person or body the Minister has approved to use the otherwise prohibited terms. In giving such approval the Minister must be satisfied that the person or body is established by or operates in association with one or more TAFE institutes, recognised TAFE institutes or recognised Universities (as defined by this section). Alternatively the Minister must be satisfied that a reasonable person would be unlikely to infer from the use of those terms that the person or body using them is a TAFE Institute. If the Minister approves the use of those terms, the Minister must publish the notice of approval in the Government Gazette.
Examples given in the section indicate that a body established by one or more TAFE institutes to represent them might be eligible for Ministerial approval to use the specific terms in their name. It is intended, for example, that the Victorian TAFE Association, which is a representative body of TAFE institutes, would fall within this category of being able to apply, and obtain approval from the Minister to use the term "TAFE" in its name.

New section 3.1.26B provides for the VRQA to apply for an injunction to the County Court to stop a person from using the terms inappropriately and in contravention of section 3.1.26A.

Division 4—Adult, community and further education

Overview
This Division makes a number of amendments to the provisions governing the functions of the Adult, Community and Further Education Board, and the composition and functions of Regional Councils of adult, community and further education.

One of the more general policy reforms that this Bill facilitates is the removal of centralised planning structures for the provision of accredited training and their replacement with a demand driven model. To this end, the amendments made by Division 4 repeal the requirement for the Adult, Community and Further Education Board and the Victorian Skills Commission to develop jointly an adult, community and further education plan.

Clause 61 substitutes subsection (2) of section 3.3.3 of ETRA.

Currently, subsection (2) specifies, as one of the functions of the Adult, Community and Further Education Board (ACFE Board), that the Board act jointly with the Victorian Skills Commission (VSC) to plan for adult, community and further education in Victoria.

The substitution is consequential on the repeal of section 3.3.8 by clause 63 of the Bill. Section 3.3.8 currently requires the ACFE Board and the VSC to cooperate in the development of an adult, community and further education plan (ACFE plan).

The new subsection (2) requires cooperation by the ACFE Board with the VSC, but omits references to the ACFE plan.

Despite the removal of the requirement for a formal ACFE plan, the ACFE Board and the VSC will need to continue to work in co-operation with each other. The rephrased subsection (2) reflects this fact.
Clause 62 amends sections 3.3.5 and 3.3.6 of ETRA, consequential on the repeal of section 3.3.8 by clause 63.

Subclause (1) repeals paragraph (a) of section 3.3.5, which currently requires the ACFE Board to give effect to the ACFE plan developed under section 3.3.8 of ETRA. Paragraph (a) is now redundant owing to the repeal of section 3.3.8.

Subclause (2) substitutes paragraph (c) of section 3.3.6 of ETRA. Paragraph (c) currently authorises the ACFE Board to make payments by way of grants, subsidies or loans for the purposes of adult, community and further education to a TAFE Institute, subject to those payments being consistent with the ACFE plan developed under section 3.3.8. The new paragraph (c) has had references to the ACFE plan omitted, in consequence of the repeal of section 3.3.8.

Clause 63 repeals section 3.3.8 of ETRA.

This omits the statutory requirement in that section for the ACFE Board and the VSC to develop jointly an adult, community and further education plan (ACFE plan).

Part of the reforms that this Bill facilitates is the removal of centralised planning structures for the provision of accredited training and their replacement with a demand driven model.

Despite the removal of the requirement for a formal ACFE plan, the ACFE Board will continue to work co-operatively with the Victorian Skills Commission. This fact is reflected in section 3.3.3(2), as substituted by clause 61.

Clause 64 repeals section 3.3.9 of ETRA, and the present requirement for the ACFE Board to give effect to the ACFE plan. This repeal is consequential on the repeal of section 3.3.8 by clause 63.

Clause 65 amends section 3.3.14 of ETRA to omit an obsolete reference to the ACFE plan from a delegations provision.

Clause 66 repeals section 3.3.15(c) of ETRA which is an obsolete reference to delegations by the General Manager of the ACFE Board to persons employed under Division 4 of Part 3.3. of ETRA.

Clause 67 amends section 3.3.18(1) of ETRA to amend the functions of Regional Councils of ACFE to include the function of providing advice and preparing reports to the ACFE Board.
Clause 67 also repeals the following paragraphs of section 3.3.18(1) of ETRA for the reasons explained below—

- Section 3.3.18(1)(c)—the ACFE Regional Councils do not determine policy;
- Section 3.3.18(1)(e)—the ACFE Regional Councils may provide advice on (but do not determine) funding and their advisory role is already set out in paragraph (b) of section 3.3.18(1); and
- Section 3.3.18(1)(j)—is an advisory role already encompassed within paragraph (b) of section 3.3.18(1), which makes paragraph (j) unnecessary.

Clause 68 amends section 3.3.20(b) of ETRA to omit an obsolete reference to the ACFE plan.

Clause 69 repeals section 3.3.25 of ETRA, which formerly enabled Regional Councils of ACFE to employ staff.

**PART 5—TRANSITIONAL PROVISIONS**

The main purpose of Part 5 is to facilitate the implementation of this Bill by making transitional provisions.

Clause 70 inserts new section 6.1.19 into ETRA, which sets out the transitional provisions for this Bill. It preserves the operation of various instruments issued under this Bill.

The main provision of significance is subsection (5), which will require a review to be conducted of the constitutions of all existing TAFE institute boards within 12 months, to bring them into line with the new requirements of the ETRA.

**PART 6—AMENDMENTS AND REPEALS**

Clause 71 gives effect to the Schedule to the Bill, which will amend several University Acts. These are "statute law revisions" of minor machinery, technical or "housekeeping" nature. They are described more fully in the clause notes below on the Schedule to the Bill.

Clause 72 makes minor statute law revisions to the *Education and Training Reform Amendment Act 2010* and to ETRA.

Subclause (1) amends section 46(2) of the *Education and Training Reform Amendment Act 2010* to correct a typographical error.
Subclause (2) amends the ETRA to make an amendment consequential on the changes made to Part 2.6 of the ETRA by the Education and Training Reform Amendment Act 2010 relating to hearing panels.

Clause 73 provides for the automatic repeal of this amending Act on 1 January 2014. The repeal of this amending Act does not affect in any way the operation of the amendments made by it (see section 15(1) of the Interpretation of Legislation Act 1984).

SCHEDULE

The Schedule to the Bill sets out a number of amendments, of a "statute law revision" nature, to several University Acts. The Schedule is given effect by clause 71 of the Bill.

Item 1 amends the Deakin University Act 2009 to provide consistency with the other University Acts passed at the same time. It also amends section 10 of that Act, which concerns the power of Council to confer degrees and grant other awards.

Subitem 1.1 amends section 5 of that Act which sets out the objects of the University, as follows—

- amends paragraph (f) dealing with the use of the University's expertise and resources to involve Aboriginal and Torres Strait Islander people in its teaching, learning, research and advancement of knowledge activities. In this subclause, the words "of Australia" are to be inserted after the word "people". This will now read "Aboriginal and Torres Strait Islander people of Australia";

- amends paragraph (g) dealing with an object of the university to provide programs in a way that reflects the principles of equity and social justice. In this subclause an unnecessary word "the" before the word "principles" should be omitted. The paragraph will now read: "to provide programs and services in a way that reflects principles of equity and social justice";

- substitutes a phrase in section 5(h) to describe more accurately the types of educational awards that Deakin University may confer. Deakin also grants diplomas, certificates and other awards. This paragraph will now read: "to confer degrees and grant diplomas, certificates and other awards".
Subitem 1.2 amends the heading of section 10 to use correct academic terminology. Degrees are "conferred" and other awards are "granted". The heading will now read "Power of Council to confer degrees or grant other awards".

Subitem 1.3 amends section 10 to reflect the amendment made by clause 1.1 (c) above. The phrase "any other award" is substituted for "any award".

Subitem 1.4 amends paragraph 26(7)(a) to omit the unnecessary word "the", the paragraph, which deals with delegation by the Vice-Chancellor to staff, will now read "any appropriately qualified member of staff".

Subitem 1.5 corrects a word used inappropriately in section 31(3), which deals with the making of university statutes and regulations. The existing paragraph uses the word "subject" in a place where the word "statute" was intended. The phrase to be amended currently reads "The Council may revoke or amend any university statute made under this Part in the same manner and subject to the same terms and conditions as the university subject was made.". The second reference to "subject" will be changed to "statute" and the phrase will now read "...terms and conditions as the university statute was made".

Subitem 1.6 amends section 52 and provides consistency with corresponding provisions of other University Acts. That section should refer to the "University" instead of to the "Council", which is an entity comprising not only the Council but also staff, graduates, students and emeritus professors of the University. The paragraph will now read "After consultation with the University, the Minister may, by order published in the Government Gazette, declare...".

Subitem 1.7 amends section 54(b), which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section gave a misleading impression that consultation on the final form and content only needed to occur with the University.

Item 2 amends section 54(b) of the La Trobe University Act 2009 which deals with consultation required by the Minister on approving or making guidelines. The amendments clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section referred to consultation on the final form and content only with the University.
Item 3 amends the Monash University Act 2009 to provide consistency with the other University Acts.

Subitem 3.1 amends section 5 of that Act, which sets out the objects of the University, as follows—

- amends section 5(h) to use the correct academic terminology relating to awards, namely, to "grant" rather than "confer" awards other than degrees. The section will now read: "to confer degrees and grant awards";

- amends section 5(i) to refer to use of the University's "resources and expertise", rather than "resources or expertise". The section will now read: "to utilise or exploit its expertise and resources, whether commercially or otherwise".

Subitem 3.2 amends the heading of section 10 to use the correct academic terminology in that degrees are "conferred" and other awards are "granted". The heading will now read "Power of Council to confer degrees and grant other awards".

Subitem 3.3 amends section 19(d) and (e) to insert the word "the" before the words "academic board" in two places. The paragraphs will now read "(d) on the Council, committee or the academic board or its equivalent; or (e) on any member or members of the Council, committee or the academic board or its equivalent".

Subitem 3.4 amends section 26(7) relating to the delegation powers of the University Vice-Chancellor to staff and committees made up of staff members, to clarify who may receive delegations.

Subitem 3.4(a) amends paragraph (a) to provide consistency with the other University Acts. The amendment removes the words "the University's" before the word "staff". The paragraph will now read "(a) appropriately qualified member of staff; or….",

Subitem 3.4(b) amends paragraph (b) to provide consistency with the other University Acts. The paragraph will now read "(b) committee established from appropriately qualified members of staff" instead of "(b) committee of appropriately qualified members of the University's staff".
Subitem 3.5 amends the heading of section 33 so that it refers to the "application" of certain laws to university statutes or regulations, rather than the "non-application", of certain laws, to make the heading consistent with the section's content. The heading will now read: "Application of certain laws to university statutes or university regulations".

Subitem 3.6 and 3.7 amend section 45 (dealing with borrowing powers) and section 52 (declaration of university commercial activity) respectively to provide consistency with the other University Acts. Those sections should refer to the "University" instead of to the "Council", which is an entity comprising not only the Council but also staff, graduates, students and emeritus professors of the University.

Subitem 3.8 amends section 54(b) of the Monash University Act 2009 which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of the guidelines. The previous format of the section gave a misleading impression that consultation on the final form and content only needed to occur with the University.

Item 4 amends section 54(b) of the Royal Melbourne Institute of Technology Act 2010 which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section gave a misleading impression that consultation on the final form and content only needed to occur with the University.

Item 5 amends section 54(b) of the Swinburne University of Technology Act which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section gave a misleading impression that consultation on the final form and content only needed to occur with the University.

Item 6 amends section 54(b) of the University of Ballarat Act 2010 to which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section suggested
incorrectly that consultation on the final form and content only needed to occur with the University.

Item 7 amends the **University of Melbourne Act 2009** to provide consistency with the other University Acts.

Subitem 7.1 amends section 52 to provide consistency with the other University Acts. It incorrectly referred to consultation with the "Council" in relation to declarations of university commercial activity instead of the "University" (consisting of the Council, staff, graduates, students and emeritus professors of the University). The paragraph will now read "After consultation with the University, the Minister may, by order published in the Government Gazette, declare—".

Subitem 7.2 amends section 54(b) which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section gave a misleading impression that consultation on the final form and content only needed to occur with the University.

Subitem 7.3 amends clause 1(2)(a) & (b) of Schedule 1 to correct the date for both Governor in Council and Council appointments, to 31 December of each year rather than 30 June. The paragraphs will now read—"(a) the Governor in Council may appoint an appointed member until 31 December in the year, or in the year following the year, the member's appointment takes effect to ensure that 2 offices of appointed member fall vacant each year; (b) the Council may appoint a Council appointed member until 31 December in the year, or in the year following the year, the member's appointment takes effect to ensure that 2 offices of appointed member fall vacant each year".

Item 8 amends section 54(b) of the **Victoria University Act 2010** which deals with consultation required by the Minister on approving or making guidelines, in order to provide more clarity to this section and clarify that consultation must occur with both the Treasurer and the University on the final form and content of guidelines. The previous format of the section gave a misleading impression that consultation on the final form and content only needed to occur with the University.