

## LEGISLATIVE ASSEMBLY

### EDUCATION AND TRAINING REFORM AMENDMENT (SKILLS) BILL 2010

#### (Amendments and New Clause to be moved by Ms Pike)

1. Clause 1, page 2, after line 20 insert—  
"() to enable the Victorian Registration and Qualifications Authority to apply to the Supreme Court for an order that a registered training organisation be placed under judicial administration;".
2. Clause 21, line 21, omit "(1)".
3. Clause heading to clause 33, omit "**4.6AC**" and insert "**4.6A.5C**".
4. Page 66, after line 31 insert the following heading—  
**"Division 9—Reserve step-in powers"**.
5. Clause 57, line 14, omit "3.1.16(1)(e)" and insert "3.1.16(1)(a) and (e)".
6. Clause 57, lines 15 and 16, omit paragraph (b) and insert—  
'() in subsection (2), for "or appointed to the board under section 3.1.16(1)(b), (c) or (e)" **substitute** "to the board under section 3.1.16(1)(b) or (c)".'.
7. Clause 63, line 8, omit "**2009**" and insert "**2006**".
8. Clause 69, line 14, omit "52" and insert "53".
9. Clause 69, line 18, after "17" insert "of the amending Act".
10. Clause 69, line 23, omit "56" and insert "57".
11. Clause 69, page 81, line 15, omit "56" and insert "57".
12. Clause 69, page 81, line 22, omit "59" and insert "60".
13. Clause 69, page 81, line 29, omit "59" and insert "60".
14. Clause 69, page 81, line 30, omit '2012.'" and insert "2012.".
15. Clause 69, page 81, line 33, omit "**2010.**" and insert '**2010.**'.

#### NEW CLAUSE

16. Insert the following New Clause to follow clause 49 and the heading proposed by amendment number 4—

**'AA New Division 7 inserted in Part 4.3**

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

**"Division 7—Reserve step-in powers**

**4.3.38 Definitions**

In this Division—

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

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

**Note**

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

**4.3.39 Displacement of other laws**

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

**Note**

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

**4.3.40 Notices relating to appointment of external administrator under Corporations Act**

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

Penalty: 20 penalty units.

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

Penalty: 20 penalty units.

**4.3.41 Application for order for judicial administration**

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

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

#### **4.3.42 Order for judicial administration**

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

- (a) whether the RTO is, or is likely to become, unable to deliver services to students in accordance with its obligations;
- (b) whether the RTO has failed to comply with this Act, the regulations, the ESOS Act or the RTO standards;
- (c) whether there are reasonable grounds for believing that the RTO is inefficiently or incompetently managed, and that the inefficient or incompetent management represents a substantial risk—
  - (i) of non-compliance by the RTO with the RTO standards; or
  - (ii) that the RTO will be unable to deliver services.

#### **4.3.43 Commencement of judicial administration**

The judicial administration of an RTO commences—

- (a) at the time specified in the order for judicial administration as the time at which the judicial administration is to commence; or
- (b) if no time is so specified, when the order is made.

#### **4.3.44 Appointment of judicial administrator**

- (1) If the Supreme Court orders the judicial administration of an RTO, the Court must, by its order, appoint a judicial administrator of the RTO.
- (2) The appointment may be for a period specified in the order, which must not exceed one month.
- (3) The Supreme Court may by order extend the appointment of the judicial administrator.
- (4) The Supreme Court may at any time cancel the appointment of a judicial administrator and appoint another person as judicial administrator.

#### **4.3.45 Remuneration of judicial administrator**

- (1) The Supreme Court may give directions as to—
  - (a) the remuneration and allowances that a judicial administrator is to receive; and
  - (b) who is to pay the remuneration and allowances.
- (2) The Supreme Court may charge the judicial administrator's remuneration and allowances on the property of the RTO under judicial administration in such order of priority in relation to any existing charges on that property as the Court thinks fit.

#### **4.3.46 Administration to vest in judicial administrator**

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

- (a) any person vested with the administration of the RTO immediately before that time is divested of that administration; and
- (b) the administration of the RTO vests in the judicial administrator appointed by the Court.

#### **4.3.47 Powers and duties of judicial administrator**

- (1) If a judicial administrator is appointed to control the affairs of an RTO, the judicial administrator—
  - (a) is taken to be the governing body of the RTO; and
  - (b) has and may exercise all of the powers of the governing body of the RTO; and
  - (c) has such other powers as the Supreme Court directs; and
  - (d) must have regard to the interests of the students of the RTO; and
  - (e) subject to paragraph (d), is subject to all of the duties of the governing body of the organisation; and
  - (f) must comply with this Act, the regulations and the RTO standards; and

##### **Note**

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

- (g) must consult with—
  - (i) the Authority; and
  - (ii) in the case of an RTO that is also registered under the ESOS Act, the head of the Commonwealth Department administering that Act—

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

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

#### **4.3.48 Supreme Court's control of judicial administrator**

- (1) A judicial administrator is subject to the control of the Supreme Court.
- (2) In addition to duties imposed by this Division, a judicial administrator has such duties as the Supreme Court directs.
- (3) The judicial administrator must report to the Supreme Court at the times that the Court directs.
- (4) A judicial administrator may apply to the Supreme Court at any time for instructions—

- (a) as to the way in which the judicial administration should be conducted; or
  - (b) in relation to any matter arising during the judicial administration.
- (5) Before applying to the Supreme Court for instructions, the judicial administrator must—
- (a) inform the Authority that he or she intends to make the application; and
  - (b) give the Authority written details of the application.
- (6) The Authority is entitled to be heard on the application.

#### **4.3.49 Application by Authority for instructions to judicial administrator**

- (1) The Authority may apply to the Supreme Court for an order that the Court give instructions to the judicial administrator relating to the conduct of the judicial administration of an RTO.
- (2) The judicial administrator is entitled to be heard on the application.

#### **4.3.50 Request by Authority for information**

- (1) The Authority may ask a judicial administrator to give the Authority information about one or more of the following in a reasonable time specified in the request—
  - (a) the conduct of the judicial administration;
  - (b) the financial position of the RTO under judicial administration.
- (2) The judicial administrator must comply with the Authority's request.

#### **4.3.51 Duration of judicial administration**

- (1) If the Supreme Court orders that an RTO be placed under judicial administration, the RTO remains under judicial administration until the judicial administration is cancelled or ends.
- (2) The Supreme Court may extend a period of judicial administration.

#### **4.3.52 Effect of cancellation or ending of judicial administration**

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

- (a) the judicial administrator is divested of the administration of the RTO; and
- (b) the administration of the RTO vests in the person or body that would have been the governing body of the RTO if the judicial administrator not been appointed.

#### **4.3.53 How judicial administrator is to administer**

The judicial administrator of an RTO must conduct the judicial administration as efficiently and economically as possible having regard to the interests of the students of that RTO.".'.

AMENDMENTS TO SCHEDULE

17. Schedule, line 2, omit "70" and insert "71".
18. Schedule, page 84, after line 21 insert—
  - '3.8 In section 54(b) for "University" **substitute** "University—".'