

South Australia

## **Training and Skills Development Act 2008**

An Act relating to higher education, vocational education and training, adult community education, and education services for overseas students; to establish the Training and Skills Commission; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Training and Skills Development Act 2008*.

### 3—Objects

The objects of this Act are to further the State's economic and social development through the operations of the Training and Skills Commission—

- (a) in assisting the Minister to establish priorities and workforce development strategies to meet the State's current and future work skills needs through education, training, skills development and workforce development; and
- (b) in providing quality assurance in relation to higher education (other than that delivered by a State university) and vocational education and training by regulating training providers, courses and the relationship between employers and apprentices/trainees; and
- (c) in promoting—
  - (i) equity and participation in and access to education, training and skills development; and
  - (ii) partnerships with industry and enterprises for the development of skills for the State's workforce; and
  - (iii) an integrated national system of education and training that recognises the diversity of the State's workforce needs; and
  - (iv) the development of a culture of continuous learning through adult community education.

### 4—Interpretation

- (1) In this Act, unless the contrary intention appears—

*accredited*—see subsection (3);

*apprentice/trainee* means a person (who may be either an apprentice or a trainee) undertaking training in a trade or declared vocation under a training contract;

*AQF* means the policy framework entitled "*Australian Qualifications Framework*" that defines qualifications recognised nationally in post-compulsory education within Australia, as approved by the Ministerial Council on Education, Employment, Training and Youth Affairs from time to time;

**AQTF** means the policy framework entitled "*Australian Quality Training Framework*" that defines the criteria and standards for the registration of training providers and the accreditation of courses in the vocational education and training sector, as approved by the Ministerial Council for Vocational Education and Training from time to time;

**authorised operations** of a registered training provider means the operations of the provider that are within the scope of the provider's registration;

**Commission** means the Training and Skills Commission established under Part 2;

**condition** includes a limitation or restriction;

**contravene** includes fail to comply with;

**corresponding law** means a law of the Commonwealth or of another State or a Territory relating to higher education, vocational education and training and education services for overseas students;

**course accrediting body** means the body equivalent to the Commission under a corresponding law that is responsible for the administration of the accreditation of courses under the corresponding law;

**declared institution** means an institution declared under section 5 to be—

- (a) —
  - (i) a university; or
  - (ii) a university college; or
  - (iii) a specialised university of a kind specified in the declaration; or
- (b) a self-accrediting higher education institution; or
- (c) if the institution is an overseas higher education institution—an institution authorised to offer non AQF higher education qualifications in the State;

**declared vocation** means an occupation declared under section 6 to be a declared vocation for the purposes of this Act;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**higher education**—see subsection (2);

**Industrial Relations Commission** means the Industrial Relations Commission of South Australia;

**National Protocols** means the protocols entitled "*National Protocols for Higher Education Approval Processes*" relating to quality assurance for the higher education sector in Australia, and includes any guidelines relating to the protocols, as approved by the Ministerial Council on Education, Employment, Training and Youth Affairs from time to time;

**qualification** has the same meaning as in the AQF;

**reference group**—see Part 2;

**Register** means the Training and Skills Register;

**registered**—see subsection (4);

**registering body** means the body equivalent to the Commission under a corresponding law that is responsible for the registration of training providers under the corresponding law;

**repealed Act** means the *Training and Skills Development Act 2003* repealed under Schedule 2;

**scope of the registration**—

- (a) in relation to a registered training provider—means the operations that the provider is authorised by the registration to conduct, as determined by the conditions imposed on the registration;

**Note**—

See section 27(1)(a).

- (b) in relation to a registered employer—means the operations that the employer is authorised by the registration to conduct, as determined by the conditions imposed on the registration;

**Note**—

See section 56(a).

**spouse**—a person is the spouse of another if they are legally married;

**standards for accreditation of courses** means—

- (a) in relation to higher education—the criteria for accreditation of courses under the National Protocols;
- (b) in relation to vocational education and training—the standards for accreditation of courses under the AQTF;
- (c) in relation to education services for overseas students—the standards determined from time to time by the Minister;

**standards for registered training providers** means—

- (a) in relation to a training provider for higher education—the criteria for registration of training providers under the National Protocols;
- (b) in relation to a training provider for vocational education and training—the standards for registration of training providers under the AQTF;
- (c) in relation to a training provider for education services for overseas students—the standards determined from time to time by the Minister;

**standards for registering/course accrediting bodies** means—

- (a) in relation to higher education—the criteria for registering bodies and course accrediting bodies under the National Protocols;
- (b) in relation to vocational education and training—the standards for registering bodies and course accrediting bodies under the AQTF,

and includes, in relation to higher education, education services for overseas students or vocational education and training, any standards determined by the Minister from time to time;

*statement of attainment* has the same meaning as in the AQF;

*State university* means a university established under an Act of this State;

*Territory* means a Territory of the Commonwealth;

*trade* means an occupation declared under section 6 to be a trade for the purposes of this Act;

*Training Advocate* means the person holding or acting in the office of Training Advocate under this Act;

*training contract* means a training contract under Part 4;

*training package*—a training package is an integrated set of competency standards, assessment guidelines and AQF qualifications for a specific industry, industry sector or enterprise;

*variation of registration*—see sections 28 and 58;

*vocational education and training*—see subsection (2).

- (2) For the purposes of this Act—
- (a) education in relation to which qualifications are issued under the higher education provisions of the AQF is *higher education*;
  - (b) education and training for work in relation to which qualifications and statements of attainment are issued under the vocational education and training provisions of the AQF is *vocational education and training*;
  - (c) education and training services provided to persons holding a student visa within the meaning of the *Education Services for Overseas Students Act 2000* of the Commonwealth are *education services for overseas students*.
- (3) For the purposes of this Act, a course is *accredited* if—
- (a) the course is entered as an accredited course in higher education, and the conditions of accreditation and details of the course are recorded, on the Register; or
  - (b) the course is entered as an accredited course in vocational education and training, and the conditions of accreditation and details of the course are recorded, on the Register.
- (4) For the purposes of this Act—
- (a) a training provider is *registered* if—
    - (i) the training provider is entered as a registered training provider in relation to higher education, and the conditions of registration and details of the provider are recorded, on the Register; or
    - (ii) the training provider is entered as a registered training provider in relation to vocational education and training, and the conditions of registration and details of the provider are recorded, on the Register; or

- (iii) the training provider is entered as a registered training provider in relation to education services for overseas students, and the conditions of registration and details of the provider are recorded, on the Register;
  - (b) an employer is *registered* if the employer is entered as a registered employer in relation to undertaking the training of persons under training contracts, and the conditions of registration and details of the employer are recorded, on the Register.
- (4a) For the purposes of this Act, a person is an *associate* of another person if—
  - (a) they are partners; or
  - (b) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
  - (c) 1 is a body corporate and the other is a director or a member of the governing body of the body corporate; or
  - (d) 1 is a body corporate and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate; or
  - (e) 1 is an employer or employee of the other; or
  - (f) 1 is the spouse, domestic partner, parent or child of the other; or
  - (g) a chain of relationships can be traced between them under any 1 or more of the preceding paragraphs.
- (5) A reference in this Act to a particular agreement, policy framework or protocol defined in subsection (1) is—
  - (a) a reference to the agreement, policy framework or protocol as amended from time to time; or
  - (b) if the regulations declare a document to be in substitution for the agreement, policy framework or protocol—a reference to the substituted document as amended from time to time.

## **5—Declarations relating to universities and higher education**

- (1) For the purposes of this Act, the Minister may, by notice in the Gazette, make any of the following declarations:
  - (a) that an institution is—
    - (i) a university; or
    - (ii) a university college; or
    - (iii) a specialised university of a kind specified in the declaration;
  - (b) that an institution is a self-accrediting higher education institution;
  - (c) that an institution that is an overseas higher education institution is an institution authorised to offer non AQF higher education qualifications in the State.
- (2) The Minister must, in making a declaration under this section, apply—
  - (a) the National Protocols; and

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- (b) any other guidelines determined by the Minister.
  - (3) A declaration under this section—
    - (a) may be subject to such conditions (including conditions that determine the scope of the operations of the institution) as the Minister thinks fit and specifies in the declaration; and
    - (b) will operate for the period set in the declaration; and
    - (c) may, by further notice in the Gazette, be varied or revoked.
  - (4) It is an offence for an institution in relation to which a declaration has been made under this section to contravene a condition imposed by the Minister and specified in the declaration.

Maximum penalty: \$10 000.

Expiation fee: \$500.

## 6—Declarations of trades and declared vocations

For the purposes of this Act, the Minister may, on the Commission's recommendation—

- (a) by notice in the Gazette, declare an occupation to be—
  - (i) a trade; or
  - (ii) a declared vocation; and
- (b) by further notice in the Gazette, vary or revoke such a declaration.

## Part 2—Administration

### Division 1—Minister

#### 7—Functions of Minister

The Minister has the following functions under this Act:

- (a) to establish priorities and workforce development strategies to meet the State's current and future work skills needs in conjunction with industry, commerce, employee representatives and governments;
- (b) to manage—
  - (i) the State's system of vocational education and training and adult community education by allocating resources within the State on a program and geographic basis; and
  - (ii) the State's system of higher education (other than that delivered by a State university), vocational education and training and adult community education through planning and regulating the provision of public and private training; and
  - (iii) the State's role as part of an integrated national system of education and training;
- (c) as the State Training Authority under the *Skilling Australia's Workforce Act 2005* of the Commonwealth;

- (d) any other function assigned to the Minister under this or any other Act or that the Minister considers appropriate.

## **8—Delegation by Minister**

- (1) The Minister may delegate a function or power of the Minister under this Act—
  - (a) to the Commission or any other particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) must be made by instrument in writing; and
  - (b) may be made subject to conditions specified in the instrument of delegation; and
  - (c) is revocable at will and does not prevent the delegator from acting in a matter.

## **Division 2—Training and Skills Commission**

### **9—Establishment of Training and Skills Commission**

- (1) The *Training and Skills Commission* is established.
- (2) The Commission will consist of not more than 11 members appointed by the Governor on the nomination of the Minister.
- (3) Membership of the Commission will include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Commission's functions, of whom—
  - (a) at least 1 will be nominated after consultation with State employer associations, including the South Australian Employers' Chamber of Commerce and Industry Inc (*Business SA*); and
  - (b) at least 1 will be nominated after consultation with the United Trades and Labor Council (*SA Unions*).
- (4) The Governor may, on the nomination of the Minister—
  - (a) appoint a member to chair meetings of the Commission; and
  - (b) appoint a member to be the deputy of the member appointed to chair meetings of the Commission (and the deputy may perform or exercise the functions and powers of that member in the member's absence).
- (5) The Governor may, on the nomination of the Minister, appoint a suitable person to be the deputy of a member (other than the members referred to in subsection (4)) and a person so appointed may act as a member of the Commission in the member's absence.
- (6) The qualifications required for the appointment of members under subsection (3) extend to the appointment of deputies.
- (7) The same number of members must be appointed by the Governor under subsection (3)(a) and (b).

- (8) At least 1 member of the Commission must be a woman and 1 a man.

## 10—Functions of Commission

- (1) The Commission's general functions are—
- (a) to assist, advise and make recommendations to the Minister on matters relating to the development, funding, quality and performance of vocational education and training and adult community education; and
  - (b) to regulate—
    - (i) training providers under Part 3; and
    - (ii) apprenticeships/traineeships under Part 4.
- (2) The Commission's functions include—
- (a) promoting and encouraging the development of investment, equity and participation in, and access to, vocational education and training and adult community education; and
  - (b) advising and making recommendations to the Minister—
    - (i) on strategies and priorities for workforce development in the State with the aim of supporting employment growth and investment in the State (including the recognition of skills and qualifications gained outside of Australia); and
    - (ii) on strategies for the development of vocational education and training and adult community education in the State; and
    - (iii) relating to the amount and allocation of funds for vocational education and training and adult community education; and
    - (iv) about the occupations that should constitute trades or declared vocations; and
    - (v) in relation to the State's role as part of an integrated national system of education and training; and
    - (vi) on the Minister's role as the State Training Authority; and
  - (c) registering training providers and accrediting courses under Part 3; and
  - (d) performing the functions assigned to the Commission under Part 4; and
  - (e) monitoring, and reporting annually to the Minister on the state of, vocational education and training and adult community education in the State, including the expenditure of public money in these areas; and
  - (f) developing guidelines—
    - (i) for the purposes of Part 4; and
    - (ii) if required—for the purposes of Part 3 for the approval of the Minister; and
  - (g) promoting pathways between the secondary school, vocational education and training, adult community education, and higher education, sectors; and
  - (h) entering into reciprocal arrangements with appropriate bodies with respect to the recognition of education and training; and

- (i) monitoring, and making recommendations to the Minister on, the administration and operation of this Act; and
  - (j) performing any other function assigned to the Commission by the Minister or by or under this or any other Act.
- (3) For the purpose or in the course of performing its functions, the Commission may—
  - (a) establish committees (which may but need not consist of members of the Commission); and
  - (b) with the consent of the Minister, delegate a function—
    - (i) to a particular committee, reference group or any other person or body; or
    - (ii) to the person for the time being occupying a particular office or position.
- (4) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (5) A delegation—
  - (a) must be made by instrument in writing; and
  - (b) may be made subject to conditions specified in the instrument of delegation; and
  - (c) is revocable at will and does not prevent the delegator from acting in a matter.
- (6) The Commission must, for the purposes of assisting, advising and making recommendations to the Minister on the Minister's functions under this Act, and generally to the extent practicable, consult with—
  - (a) industry and commerce, including industry skills boards and other training advisory bodies and associations and organisations established by or representing industry and commerce; and
  - (b) associations and organisations representing employees; and
  - (c) relevant bodies, associations or organisations representing higher education, vocational education and training and adult community education; and
  - (d) relevant government and community bodies.

## **11—Ministerial control**

Except in relation to the formulation of advice and reports to the Minister, the Commission is, in the performance of its functions, subject to control and direction by the Minister.

## **12—Conditions of membership**

- (1) A member of the Commission will be appointed for a term not exceeding 2 years and on conditions determined by the Governor and specified in the instrument of appointment.
- (2) A member of the Commission will, at the expiration of a term of appointment, be eligible for reappointment.

- (3) The Governor may remove a member from office—
  - (a) for misconduct; or
  - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
  - (c) for contravention of a condition of his or her appointment; or
  - (d) if serious irregularities have occurred in the conduct of the Commission's affairs or the Commission has failed to carry out its functions satisfactorily and its membership should, in the opinion of the Governor, be reconstituted for that reason.
- (4) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (e) is removed from office under subsection (3).
- (5) On the office of a member becoming vacant, a person may be appointed in accordance with this Division to the vacant office.

### **13—Proceedings of Commission**

- (1) The member appointed to chair meetings of the Commission will preside at each meeting of the Commission at which the member is present.
- (2) If the member appointed to chair meetings of the Commission is absent from a meeting of the Commission, the following provisions apply:
  - (a) if another member has been appointed as that member's deputy and is present at the meeting—the deputy will preside at the meeting;
  - (b) in any other case—a member chosen by the members present at the meeting will preside at the meeting.
- (3) Subject to subsection (4), a quorum of the Commission consists of half of the total number of its members (ignoring any fraction resulting from the division) plus 1 and must include a member appointed under section 9(3)(a) and a member appointed under section 9(3)(b).
- (4) If during a meeting of the Commission—
  - (a) a member absents himself or herself from the meeting room (whether because of the member's duty with respect to a conflict of interest or for some other reason) during a discussion or voting in relation to a matter decided or under discussion by the Commission; and
  - (b) as a result of the member's absence, there is no longer a quorum present, those remaining members constitute a quorum for the purpose of any discussion or voting at that meeting in relation to that matter.

- (5) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Commission.
- (6) Each member present at a meeting of the Commission has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (7) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Commission at which the participating members are present.
- (8) A proposed resolution of the Commission becomes a valid decision of the Commission despite the fact that it is not voted on at a meeting of the Commission if—
  - (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Commission; and
  - (b) a majority of the members express their concurrence in the proposed resolution by letter, fax or other written communication setting out the terms of the resolution.
- (9) The Commission must cause accurate minutes to be kept of its proceedings.
- (10) Subject to this Act, the Commission may determine its own procedures.
- (11) Subject to the directions of the Commission, this section applies to a committee of the Commission in the same way as to the Commission.

### **13A—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the Commission will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with employers generally or employees generally, or a substantial section of employers or employees.

### **14—Validity of acts**

An act or proceeding of the Commission or a committee of the Commission is not invalid by reason only of a vacancy in its membership.

### **15—Staff**

- (1) The Commission's staff consists of—
  - (a) Public Service employees assigned to work in the office of the Commission under this Act; and
  - (b) officers or employees under the *Technical and Further Education Act 1975* assigned to work in the office of the Commission under this Act; and
  - (c) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
  - (a) exclude—

- (i) Public Service employees who are members of the Commission's staff from specified provisions of the *Public Sector Act 2009*; and
    - (ii) officers or employees under the *Technical and Further Education Act 1975* who are members of the Commission's staff from specified provisions of that Act; and
  - (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)(i) or (ii)—determine that those provisions will apply,  
and such a notice will have effect according to its terms.
- (3) The Commission may, with the consent of the Minister, appoint staff for the purposes of this Act.
  - (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.
  - (5) The Commission may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## **16—Report**

- (1) The Commission must, on or before 31 March in each year, present to the Minister a report on its operations for the preceding calendar year.
- (2) The Minister must, within 6 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

## **Division 3—Reference groups**

### **17—Establishment of reference groups**

- (1) The Minister must establish—
  - (a) a reference group to advise the Commission in relation to the performance of the functions assigned to the Commission under Part 3 and Part 4; and
  - (b) a reference group to advise the Commission in relation to the performance of its functions relating to adult community education.
- (2) The Minister may establish other reference groups as the Minister considers necessary to advise the Commission in relation to the carrying out of its functions or particular matters relating to its functions.
- (3) A reference group will consist of not more than 5 members appointed by the Minister, of whom—
  - (a) 1 (who will chair meetings of the reference group) will be a member of the Commission; and
  - (b) the remainder (who may but need not be members of the Commission) must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the reference group's functions.

- (4) Members of a reference group will hold office on such terms and conditions as the Minister thinks fit.
- (5) Subject to this Act, a reference group may determine its own procedures.
- (6) A reference group must submit to the Commission for inclusion in each annual report of the Commission a report on its operations (if any) during the year to which the report relates.

## **Division 4—Training Advocate**

### **18—Training Advocate**

There will be a Training Advocate.

### **19—Appointment of Training Advocate**

- (1) The Governor may, by notice in the Gazette, appoint a person to be the Training Advocate.
- (2) Subject to this Act, the terms and conditions of appointment and employment (including salary and allowances) of the Training Advocate will be as determined by the Governor.

### **20—Term of office of Training Advocate etc**

- (1) The Training Advocate will be appointed for a term of office of 5 years and, on the expiration of a term of office, is eligible for reappointment.
- (2) The office of Training Advocate becomes vacant if the Training Advocate—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by notice in writing to the Governor; or
  - (d) is removed from office by the Governor under subsection (3).
- (3) The Governor may remove the Training Advocate from office for—
  - (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.

### **21—Functions of Training Advocate**

- (1) A charter must be prepared for the Training Advocate by the Minister, after consultation with the Training Advocate and the Commission, setting out the functions of the Training Advocate.
- (2) The charter may (but need not) give the Training Advocate the following functions:
  - (a) to promote the benefits of higher education, vocational education and training and adult community education in the State;

- (b) to provide an independent complaint handling process and investigate complaints relating to the provision of higher education, vocational education and training, education services for overseas students, adult community education and training contracts;
  - (c) to promote the development of employment and skills formation policies and procedures;
  - (d) to give advice on the powers that may be exercised in relation to matters arising under this Act;
  - (e) to speak for and negotiate on behalf of education and training providers and clients (and prospective clients) of education and training providers in the resolution of any matter arising out of the delivery of education and training;
  - (f) to speak for and negotiate on behalf of an employer or an apprentice/trainee in the resolution of any matter arising under Part 4;
  - (g) to monitor the administration of this Act and make recommendations (if any) to the Minister for legislative change;
  - (h) to perform any other function that may be assigned to the Training Advocate—
    - (i) by the Minister after consultation with the Training Advocate and the Commission; or
    - (ii) under this or any other Act.
- (3) The Minister may, after consultation with the Training Advocate and the Commission, amend the charter at any time.
- (4) The charter or an amendment to the charter comes into force and is binding on the Training Advocate on a day specified in the charter or amendment.
- (5) On the charter or an amendment to the charter coming into force, the Minister must, within 6 sitting days, cause a copy of the charter, or the charter in its amended form, to be laid before both Houses of Parliament.

## 22—Training Advocate subject to direction of Minister

- (1) The Training Advocate is subject to direction (which must be given in writing) of the Minister.
- (2) However, no Ministerial direction may be given by the Minister in relation to an investigation of the Training Advocate undertaken in the performance of his or her functions.

## 23—Delegation by Training Advocate

- (1) The Training Advocate may delegate any of his or her powers or functions under this or any other Act to a Public Service employee, or an officer or employee under the *Technical and Further Education Act 1975*, who has been assigned to assist the Training Advocate in the performance of his or her functions or, with the approval of the Minister, to any other person.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and

- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not derogate from the power of the Training Advocate to act in any matter.

## **24—Staff**

- (1) The Training Advocate's staff consists of—
  - (a) Public Service employees assigned to work in the office of the Training Advocate under this Act; and
  - (b) officers or employees under the *Technical and Further Education Act 1975* assigned to work in the office of the Training Advocate under this Act; and
  - (c) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
  - (a) exclude—
    - (i) Public Service employees who are members of the Training Advocate's staff from specified provisions of the *Public Sector Act 2009*; and
    - (ii) officers or employees under the *Technical and Further Education Act 1975* who are members of the Training Advocate's staff from specified provisions of that Act; and
  - (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)(i) or (ii)—determine that those provisions will apply,and such a notice will have effect according to its terms.
- (3) The Training Advocate may, with the consent of the Minister, appoint staff for the purposes of this Act.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.
- (5) The Training Advocate may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## **25—Report**

- (1) The Training Advocate must, on or before 31 March in each year, present to the Minister a report on the Training Advocate's activities for the preceding calendar year.
- (2) A report under this section must include any direction of the Minister given to the Training Advocate under this Act during the year.
- (3) The Minister must, within 6 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

## **Part 3—Higher education, vocational education and training and education services for overseas students**

### **Division 1—Registration of training providers**

#### **26—Registration of training providers**

- (1) The Commission may, on application or of its own motion, register, or renew the registration of, a person as a training provider—
  - (a) to—
    - (i) deliver education and training and provide assessment services; and
    - (ii) issue qualifications and statements of attainment under the AQF, in relation to higher education or vocational education and training (or both); or
  - (b) to—
    - (i) provide assessment services; and
    - (ii) issue qualifications and statements of attainment under the AQF, in relation to higher education or vocational education and training (or both); or
  - (c) for the delivery of education services for overseas students.
- (2) An application for registration or renewal of registration must—
  - (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.

#### **27—Conditions of registration**

- (1) Registration of a training provider is subject to—
  - (a) the conditions determined by the Commission as to what operations the provider is authorised to conduct by the registration; and
  - (b) the condition that the provider will comply with the standards for registered training providers, as in force from time to time; and
  - (c) if guidelines have been developed by the Commission and approved by the Minister—the condition that the provider will comply with the guidelines, as in force from time to time; and
  - (d) any other condition determined by the Commission.

- (2) It is an offence for a training provider registered under this Part to contravene a condition imposed under this Act on the registration of the provider.

Maximum penalty: \$10 000.

Expiation fee: \$500.

## **28—Variation or cancellation of registration**

- (1) The Commission may, on application or of its own motion, vary or cancel the registration of a training provider.
- (2) An application to vary or cancel the registration must—
- (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.
- (4) For the purposes of this Act, *variation of registration* of a training provider means variation of the conditions of registration or the registered details of the provider.

## **29—Criteria for registration**

- (1) The Commission must, in determining whether to register, or renew or vary the registration of, a training provider, and in determining conditions of registration—
- (a) apply—
    - (i) the standards for registered training providers; and
    - (ii) the guidelines (if any) developed by the Commission and approved by the Minister; and
  - (b) have regard to the standards for State and Territory registering/course accrediting bodies.
- (2) The Commission may not register, renew or vary the registration of a person under this section unless the Commission is satisfied that the person is fit and proper to be so registered, or to have the registration so renewed or varied, taking into account—
- (a) the prior conduct of the person or an associate of the person (whether in this State or elsewhere), including (for example) such of the following matters as may be relevant:
    - (i) whether the person or an associate of the person has been convicted of a criminal offence;
    - (ii) whether the person or an associate of the person has been refused registration as a training provider;
    - (iii) whether registration held by the person or an associate of the person has been suspended or cancelled;
    - (iv) whether a condition of registration of the person or an associate of the person has been imposed or varied as a result of contravention of this Act or a corresponding law or a condition of the registration;
    - (v) whether—

- (A) in the case of a natural person—the person or an associate of the person has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
  - (B) in the case of a body corporate—a winding-up order has been made in respect of the person or an associate of the person;
  - (vi) whether the person or an associate of the person has ever been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; and
  - (b) any other matter that the Commission considers relevant.
- (3) The Commission may not register, or renew or vary the registration of, a training provider that is registered as the result of a determination by some other registering body unless the Commission determines (according to such criteria as the Commission thinks fit) that this State will be the provider's principal place of business as a training provider.

## **Division 2—Accreditation of courses**

### **30—Accreditation of courses**

- (1) The Commission may, on application or of its own motion, accredit a course, or renew the accreditation of a course, as a course in higher education or vocational education and training.
- (2) An application for accreditation must—
  - (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.

### **31—Conditions of accreditation**

- (1) Accreditation of a course is subject to—
  - (a) the condition that the course will comply with the standards for accreditation of courses, as in force from time to time; and
  - (b) if guidelines have been developed by the Commission and approved by the Minister—the condition that the course will comply with the guidelines, as in force from time to time; and
  - (c) any other condition determined by the Commission.
- (2) It is an offence for a holder of accreditation of a course to contravene a condition imposed under this Act on the accreditation of the course.

Maximum penalty: \$10 000.

Expiation fee: \$500.

### **32—Variation or cancellation of accreditation**

- (1) The Commission may, on application or of its own motion, vary or cancel the accreditation of a course.
- (2) An application to vary or cancel the accreditation must—
  - (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.
- (4) For the purposes of this Act, *variation of accreditation* of a course means variation of the conditions of accreditation of the course.

### **33—Criteria for accreditation**

The Commission must, in determining whether to accredit, or renew the accreditation of, a course, and in determining conditions of accreditation—

- (a) apply—
  - (i) the standards for accreditation of courses; and
  - (ii) the guidelines (if any) developed by the Commission and approved by the Minister; and
- (b) have regard to the standards for State and Territory registering/course accrediting bodies.

## **Division 3—Duration of registration/accreditation**

### **34—Duration of registration/accreditation**

- (1) Subject to this Act, registration or accreditation remains in force (except for any period for which it is suspended), on initial grant or renewal, for a period (which may not be longer than 5 years) determined by the Commission.
- (2) The holder of registration or accreditation must, at intervals fixed by regulation—
  - (a) pay to the Commission the fee fixed by regulation; and
  - (b) lodge with the Commission a return in the manner and form required by the Commission.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (3) An amount payable under this section as a fee may be recovered by the Commission as a debt in a court of competent jurisdiction.
- (4) In this section the *holder of registration or accreditation* includes a person whose registration or accreditation has been suspended.

## **Division 4—Other powers of Commission relating to training providers and courses**

### **35—Grievances**

- (1) A person with a grievance relating to—
  - (a) the delivery of education and training, provision of assessment services, or issue of qualifications and statements of attainment under the AQF, in relation to higher education or vocational education and training by a registered training provider; or
  - (b) the provision of education services for overseas students by a registered training provider,may refer the grievance to the Commission for consideration.
- (2) The aggrieved person and the registered training provider must provide the Commission with any information required by the Commission for the purposes of considering the grievance.
- (3) The Commission must inquire into a matter referred to it under this section and take such action (if any) the Commission thinks fit in the circumstances, including—
  - (a) discontinuing the inquiry if, in the Commission's opinion—
    - (i) the matter is trivial; or
    - (ii) the grievance is frivolous or vexatious or not made in good faith; or
    - (iii) having regard to all the circumstances of the case, the inquiry into the matter is unnecessary or unjustifiable; or
    - (iv) for reasons of resources or otherwise, it is not viable to conduct or continue an inquiry; or
  - (b) referring the matter and relevant information to the Training Advocate, another registering body or some other person or body, specified by the Commission, for consideration and action; or
  - (c) issuing proceedings for an alleged contravention of this Act or a corresponding law.

### **36—Inquiries and interventions**

- (1) The Commission may, at any time, inquire into a training provider or course, whether registered or accredited or the subject of an application for registration or accreditation.
- (2) The Commission may inquire into—
  - (a) a training provider the registration of which was, or is to be, determined by some other registering body; or
  - (b) a course the accreditation of which was, or is to be, determined by some other course accrediting body,at the request of or after consultation with the relevant body.

- (3) The holder of, or applicant for, the registration or accreditation must provide the Commission with any information required by the Commission for the purposes of an inquiry under this section.
- (4) After conducting an inquiry into a training provider under this section, the Commission may do 1 or more of the following:
  - (a) require (whether by varying the conditions of, or imposing further conditions on, the provider's registration, or otherwise)—
    - (i) the provider to take specified action to ensure compliance with this Act;
    - (ii) the provider to correct specified irregularities or to reverse specified action;
    - (iii) the provider to apply specified management practices;
    - (iv) a financial, quality or other audit of the affairs of the provider to be conducted by an auditor approved by the Commission at the expense of the provider;
  - (b) recommend to the Minister that an administrator be appointed to conduct the authorised operations of the provider;
  - (c) if satisfied that there are grounds to do so—take such action under section 37 in relation to the provider as the Commission thinks appropriate in the circumstances;
  - (d) take such other action as may be prescribed by regulation.
- (5) The Commission must not make a recommendation to the Minister under subsection (4)(b) unless satisfied—
  - (a) that serious irregularities or difficulties have occurred or arisen in relation to the conduct of the provider's authorised operations; or
  - (b) that the provider has contravened or failed to comply with a condition imposed on the provider's registration under this Act; or
  - (c) that the provider has committed a breach of this Act and has, after notice by the Commission of the breach, failed, within the time referred to in the notice, to remedy the breach; or
  - (d) as to such other grounds as may be prescribed by regulation.

### **36A—Appointment of administrator**

- (1) On the recommendation of the Commission under section 36(4)(b) to appoint an administrator to conduct the authorised operations of a training provider, the Minister may, with the agreement of the provider, appoint, by notice in writing, such an administrator.
- (2) An administrator appointed under this section—
  - (a) must not be a member of the staff of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act; and

- (b) has all the powers, functions and duties of the training provider, and may act in the name of and on behalf of the provider in relation to the conduct of the provider's authorised operations; and
  - (c) for the purpose of conducting the provider's authorised operations—may consult with the Commission, the Training Advocate and any other person or body as the administrator thinks fit; and
  - (d) is entitled to such remuneration as is approved by the Minister; and
  - (e) must report regularly to the Minister on the administration; and
  - (f) must, on the termination of his or her appointment, fully account to the Minister for the administration of the authorised operations of the provider.
- (3) The remuneration of an administrator and all other costs and expenses arising out of the administration of the authorised operations of a training provider are payable out of the funds of the provider.
- (4) The administrator of the authorised operations of a training provider appointed under this section may, by notice in writing, require an officer or employee or former officer or employee of the provider to provide a written report on such matters relating to the operations of the provider as the administrator may specify in the notice.
- (5) A person required to provide a report under subsection (4) may be reimbursed out of the funds of the training provider for such costs and expenses as the administrator considers have been reasonably incurred in making the report.
- (6) A person who fails to comply with a requirement made under subsection (4) is guilty of an offence.

Maximum penalty: \$5 000.

### **37—Commission may cancel, suspend or vary registration or accreditation**

- (1) If the holder of registration or accreditation—
- (a) contravenes—
    - (i) this Act or a corresponding law; or
    - (ii) a condition of the registration or accreditation,
 (whether the contravention occurs in this State or elsewhere); or
  - (b) fails to pay a fee as required under this Part,
- the Commission may do either or both of the following:
- (c) impose or vary a condition of the registration or accreditation;
  - (d) cancel or suspend the registration or accreditation.
- (2) In addition, the Commission may—
- (a) cancel or suspend the registration of a training provider if the Commission is satisfied that the provider is no longer a fit and proper person to be so registered, taking into account—
    - (i) the conduct of the provider or an associate of the provider (whether in this State or elsewhere), including (for example) such of the following matters as may be relevant:

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- (A) whether the provider or an associate of the provider has been convicted of a criminal offence;
  - (B) whether registration held by an associate of the provider has been suspended or cancelled;
  - (C) whether a condition of registration of an associate of the provider has been imposed or varied as a result of contravention of this Act or a corresponding law or a condition of the registration;
  - (D) whether the provider or an associate of the provider has ever been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; and
- (ii) any other matter that the Commission considers relevant; or
- (b) cancel the registration of a training provider—
    - (i) subject to the regulations (if any), if the Commission determines (according to such criteria as the Commission thinks fit) that this State is no longer the provider's principal place of business as a training provider; or
    - (ii) if—
      - (A) in the case of a provider who is a natural person—the provider becomes bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
      - (B) in the case of a provider that is a body corporate—a winding-up order is made in respect of the provider.
- (3) Suspension of registration of a training provider under this section—
    - (a) may be for a specified period or until the fulfilment of stipulated conditions or until further notice by the Commission; and
    - (b) may allow for the provider to conduct, during the period of suspension, such restricted operations as are specified by the Commission in conditions.
  - (4) It is an offence for a training provider whose registration has been suspended under this section—
    - (a) if conditions have been imposed on the suspension—to contravene any such condition; or
    - (b) in any other case—to continue to operate as a provider.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (5) It is an offence for a training provider whose registration has been cancelled under this section to continue to operate as a provider.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;

- (b) in the case of a natural person—\$20 000.
- (6) Before taking action under this section, the Commission must—
  - (a) if of the opinion that urgent action is necessary—
    - (i) give the holder of the registration or accreditation 24 hours notice of the nature of the action the Commission intends to take against it; and
    - (ii) take into account any representations made by the holder of the registration or accreditation within that period; and
    - (iii) if the intended action is to cancel the registration of a training provider—consult the registering body in each State and Territory where the provider operates; and
    - (iv) if the intended action is to cancel the accreditation of a course—consult the course accrediting body in each State and Territory where the course is offered; and
  - (b) in the case where the Commission decides to cancel the registration of a training provider under subsection (2)(b)(ii) (other than in urgent circumstances)—
    - (i) give the holder of the registration 7 days written notice of the intention to cancel the provider's registration; and
    - (ii) take into account any representations made by the holder of the registration within that period; and
    - (iii) consult the registering body in each State and Territory where the provider operates; and
  - (c) in any other case—
    - (i) give the holder of the registration or accreditation 14 days written notice of the nature of the action the Commission intends to take against it; and
    - (ii) take into account any representations made by the holder of the registration or accreditation within that period; and
    - (iii) if the intended action is to cancel the registration of a training provider—consult the registering body in each State and Territory where the provider operates; and
    - (iv) if the intended action is to cancel the accreditation of a course—consult the course accrediting body in each State and Territory where the course is offered.
- (7) The Commission may not take action under this section—
  - (a) in relation to a training provider the registration of which was determined by some other registering body, except to impose conditions preventing the provider from operating in this State or restricting the provider's operations in this State; or

- (b) in relation to a course the accreditation of which was determined by some other course accrediting body, except to impose conditions preventing the holder of the accreditation from offering the course in this State or restricting the circumstances in which the holder of the accreditation may offer the course in this State.
- (8) Action to be taken under this section—
- (a) must be imposed by written notice to the holder of the registration or accreditation; and
  - (b) may have effect at a future time or for a period specified in the notice.

### **38—Commission may issue qualification or statement of attainment in certain circumstances**

- (1) The Commission may, on application, issue to a person a qualification or statement of attainment under the AQF in relation to specified higher education or vocational education and training offered by a registered training provider if satisfied that—
- (a) the person has achieved the learning outcomes or competencies necessary to demonstrate that the person possesses and is able to apply the knowledge and skills acquired; and
  - (b) the provider is unable (whether because it is no longer registered or for some other reason) to issue the qualification or statement of attainment.
- (2) An application under this section must—
- (a) be made to the Commission in the manner and form approved by the Commission; and
  - (b) be accompanied by the fee fixed by regulation.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.

### **39—Cancellation of qualification or statement of attainment**

- (1) The Commission may cancel a qualification or statement of attainment under the AQF in relation to specified higher education or vocational education and training issued to a person by a registered training provider (the *issuing training provider*) if the Commission is satisfied that—
- (a) the qualification or statement of attainment was issued—
    - (i) by mistake; or
    - (ii) on the basis of false or misleading information; or
  - (b) the issuing training provider contravened or failed to comply with the standards for registered training providers.
- (2) Cancellation must be imposed by written notice to the holder of the qualification or statement of attainment and the issuing training provider.
- (3) Before taking action under this section, the Commission must—
- (a) if of the opinion that urgent action is necessary—

- (i) take all reasonable steps to give the holder of the qualification or statement of attainment and the issuing training provider 24 hours written notice of its intention to cancel the qualification or statement of attainment; and
  - (ii) take into account any representations made by the holder of the qualification or statement of attainment and the issuing training provider within that period; and
- (b) in any other case—
  - (i) take all reasonable steps to give the holder of the qualification or statement of attainment and the issuing training provider 14 days written notice of its intention to cancel the qualification or statement of attainment; and
  - (ii) take into account any representations made by the holder of the registration or accreditation and the issuing training provider within that period.
- (4) The holder of a qualification or statement of attainment who has had the qualification or statement of attainment cancelled under this section may apply to a court of competent jurisdiction for an order that the issuing training provider pay to the person such amount by way of compensation as the court thinks just.
- (5) A person must not hold out that he or she is the holder of a qualification or statement of attainment if the qualification or statement of attainment has been cancelled under this section.  
Maximum penalty: \$2 500.
- (6) It is a defence to a charge of an offence against subsection (5) if the defendant proves that he or she did not know that the qualification or statement of attainment had been cancelled under this section.

#### **40—Commission may assess and certify competency in certain circumstances**

The Commission may assess, by such means as the Commission thinks fit, the competency of persons who have acquired skills or qualifications otherwise than under the AQF and, in appropriate cases, having regard to the standards and outcomes specified in accredited courses or training packages, grant, or arrange for or approve the granting of, statements certifying that competency.

#### **41—Public warning statements**

- (1) The Minister or the Commission may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about either or both of the following:
  - (a) the delivery or provision of education and training or other services in an unsatisfactory manner and training providers who deliver or provide those services;
  - (b) any other matter that adversely affects or may adversely affect the interests of persons in connection with their interaction with training providers.

- (2) The Training Advocate may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about a matter that adversely affects or may adversely affect the interests of persons in connection with their interaction with training providers.
- (3) A statement under subsection (1) or (2) may identify particular services and training providers.
- (4) The Crown incurs no liability for a statement made by the Minister, the Commission or the Training Advocate in good faith in the exercise or purported exercise of powers under this section.
- (5) No liability is incurred by a person for publishing in good faith—
  - (a) a statement referred to in subsection (4); or
  - (b) a fair report or summary of such a statement.

## **Division 5—Appeal to District Court**

### **42—Appeal to District Court**

- (1) An appeal to the District Court may be made against a decision of the Commission—
  - (a) refusing an application for the grant or renewal of registration or accreditation; or
  - (b) imposing or varying conditions of registration or accreditation; or
  - (c) suspending or cancelling registration or accreditation (other than cancelling registration under section 37(2)(b)(ii)); or
  - (d) cancelling a qualification or statement of attainment.
- (2) Subject to subsection (4), an appeal must be instituted by a person within 28 days of the making of the decision appealed against.
- (3) The Commission must, if so required by a person affected by a decision made by it, state in writing the reasons for the decision.
- (4) If the reasons of the Commission are not given in writing at the time of making a decision and the person affected by the decision (within 28 days of the making of the decision) requires the Commission to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.

## **Division 6—Offences**

### **43—Offences relating to registration and issuing of qualifications**

- (1) A person must not claim or purport to be a registered training provider in relation to higher education unless the person is registered as a training provider in relation to higher education.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (2) A person must not issue, or claim or purport to issue, qualifications or statements of attainment under the AQF in relation to higher education unless—
- (a) the person is a State university; or
  - (b) the person is—
    - (i) a declared institution; and
    - (ii) operating within the terms of the declaration; and
    - (iii) complying with any other condition of the declaration; or
  - (c) the person is—
    - (i) registered as a training provider in relation to higher education; and
    - (ii) operating within the scope of the registration of the provider; and
    - (iii) complying with any other condition of the registration.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (3) A person must not claim or purport to be a registered training provider in relation to vocational education and training unless the person is registered as a training provider in relation to vocational education and training.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (4) A person must not issue, or claim or purport to issue, qualifications or statements of attainment under the AQF in relation to vocational education and training unless the person is—
- (a) registered as a training provider in relation to vocational education and training; and
  - (b) operating within the scope of the registration of the provider; and
  - (c) complying with any other condition of the registration.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (5) A person must not claim or purport to be able to deliver education and training that will result in the issue of a qualification or statement of attainment by another person if the person knows that the other person is not lawfully able to issue the qualification or statement of attainment.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (6) This section does not apply to the Commission.

#### **44—Offences relating to universities, degrees etc**

- (1) A person must not claim or purport to be a university unless the person—
- (a) is a State university; or
  - (b) is an institution declared to be a university under section 5(1)(a)(i); or
  - (c) is an institution or an institution of a class prescribed by regulation; or
  - (d) has been exempted from the operation of this subsection by the Minister.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (2) A person must not claim or purport to be a university college unless the person is an institution declared to be a university college under section 5(1)(a)(ii).

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (3) A person must not claim or purport to be a specialised university of a specified kind unless the person is an institution declared to be a specialised university of that kind under section 5(1)(a)(iii).

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (4) A person must not claim or purport to be a self-accrediting higher education institution unless the person is—

- (a) a State university; or
- (b) an institution declared to be a self-accrediting higher education institution under section 5(1)(b).

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (5) An exemption under subsection (1)(d) may be subject to such conditions as the Minister thinks fit and may, at any time by written notice to the person, be varied or revoked by the Minister.

- (6) Subject to subsection (8), a person must not offer or provide a course of education and training in relation to which a degree or graduate qualification is to be conferred (a *degree/graduate course*) unless—

- (a) the person is—
  - (i) registered as a training provider under this Part; and
  - (ii) operating within the scope of the registration; and
  - (iii) complying with any other condition of the registration; and

- (b) the degree/graduate course is accredited under this Part.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (7) Subject to subsection (8), a person must not offer or confer a degree or graduate qualification unless—
- (a) the person is—
    - (i) registered as a training provider under this Part; and
    - (ii) operating within the scope of the registration; and
    - (iii) complying with any other condition of the registration; and
  - (b) the degree or graduate qualification is in relation to successful completion of a degree/graduate course accredited under this Part.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (8) Subsections (6) and (7) do not apply to—
- (a) a State university; or
  - (b) a declared institution that is operating within the terms and complying with the conditions (if any) of the declaration; or
  - (c) an institution or institution of a class prescribed by regulation that is operating within the terms and complying with the conditions (if any) prescribed.

- (9) In this section—

*degree* includes an associate degree;

*graduate qualification* includes a graduate certificate, graduate diploma or other post graduate qualification.

#### **44A—Offence to make false or misleading statements**

A person (whether registered as a training provider under this Part or not) must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided to a client or prospective client of the provider about the delivery or provision of education and training or other services regulated under this Part or a corresponding law.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

## Division 7—Orders for compensation

### 44B—Orders for compensation

- (1) On application by a person to a court of competent jurisdiction, if satisfied that the person has suffered, or is likely to suffer, loss or damage by reason of a contravention of this Act, the court may, for the purpose of compensating that person or preventing or reducing the extent of the loss or damage, make orders under this section against the person who committed the contravention or a person involved in the contravention.
- (2) The orders that may be made under this section are of the following kinds:
  - (a) an order for payment of the amount of the loss or damage;
  - (b) an order avoiding, in whole or in part, a contract;
  - (c) an order for the variation of a contract;
  - (d) an order directing the refund of money or the return of property;
  - (e) an order directing the delivery or provision of specified education and training or other specified services.

## Part 4—Apprenticeships/traineeships

### Division 1—Interpretation

#### 45—Interpretation

- (1) In this Part, unless the contrary intention appears—

*probationary period* for a training contract for a trade or declared vocation—see subsection (2);

*remuneration* means wages and other monetary benefits of employment;

*standard conditions* for a training contract for a trade or declared vocation—see subsection (2);

*standard form contract*—see subsection (2);

*training plan*—see section 46(6).
- (2) The Commission may, by notice in the Gazette—
  - (a) determine a *standard form contract* for the purposes of this Part;
  - (b) determine a *probationary period* for a training contract for a specified trade or declared vocation;
  - (c) determine *standard conditions* for a training contract for a specified trade or declared vocation, including—
    - (i) the term of the contract; and
    - (ii) the qualifications available for a person in the trade or declared vocation; and
    - (iii) any other condition considered necessary by the Commission.

- (3) The Commission may, by further notice in the Gazette, vary or revoke a notice under subsection (2).

## **Division 2—Training contracts**

### **46—Training under training contracts**

- (1) An employer must not undertake to train a person in a trade except under a training contract.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) Subsection (1) does not apply in relation to the further training or re-training of a person who has already completed the training required under a training contract, or who has an equivalent qualification.
- (3) An employer may undertake to train a person in a declared vocation under a training contract.
- (4) An employer must not enter into a training contract to train a person unless the employer is—
- (a) a registered employer; and
  - (b) operating within the scope of the registration of the employer; and
  - (c) complying with any other condition of the registration.
- Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (5) 2 or more registered employers may, with the approval of the Commission, enter into a training contract with the same apprentice/trainee.
- (6) A training contract must—
- (a) be in the form of the standard form contract; and
  - (b) contain the following conditions:
    - (i) a condition that the apprentice/trainee will be employed by the employer party to the contract in accordance with the applicable award or industrial agreement;
    - (ii) a condition specifying the probationary period for a contract for the relevant trade or declared vocation;
    - (iii) the standard conditions for a contract for the relevant trade or declared vocation;
    - (iv) a condition that the apprentice/trainee will be trained and assessed in accordance with the *training plan* (to be agreed between the employer, the apprentice/trainee and a registered training provider chosen jointly by the employer and the apprentice/trainee);
    - (v) any other conditions that have been agreed between the employer and the apprentice/trainee after consultation with the registered training provider.

- (7) An employer under a training contract must comply with the employer's obligations specified in the contract.
- (8) An apprentice/trainee under a training contract must comply with the apprentice's/trainee's obligations specified in the contract.
- (9) An employer must permit an apprentice/trainee party to a training contract to carry out his or her obligations under the contract.
- (10) Subject to subsection (11), the time spent by an apprentice/trainee attending a course as part of his or her apprenticeship/traineeship will be treated for all purposes as part of the apprentice's/trainee's employment.
- (11) If it is necessary for an apprentice/trainee to re-attend a course previously undertaken by the apprentice/trainee, the employer has a discretion as to whether time spent re-attending the course is to be taken into account for the purpose of determining the wages payable to the apprentice/trainee.
- (12) No person is disqualified from entering into a training contract by reason of his or her age.
- (13) Non-compliance with any of the provisions of this section does not of itself affect the validity of a training contract.

#### **47—Minister may enter training contracts**

- (1) The Minister may enter into a training contract assuming the rights and obligations of an employer under the contract.
- (2) The Minister may not enter into a training contract except—
  - (a) on a temporary basis; or
  - (b) where it is not reasonably practicable for some other employer to enter into the contract.

#### **48—Approval of training contracts**

- (1) An employer must, within 4 weeks after executing a contract by which the employer undertakes to train a person in a trade, apply to the Commission for approval of the contract.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) An employer must, within 4 weeks after executing a contract with a person that is intended to be a training contract under this Part, apply to the Commission for approval of the contract.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (3) An application for approval must be made by the employer party to the contract to the Commission in the manner and form approved by the Commission.
- (4) The applicant must provide the Commission with any information required by the Commission for the purposes of determining an application for approval of a contract as a training contract.

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- (5) The Commission may decline to approve a contract as a training contract if—
- (a) the employer is not a registered employer; or
  - (b) the contract—
    - (i) is not in the form of the standard form contract; or
    - (ii) does not contain conditions required by this Part; or
    - (iii) is not accompanied by the training plan for the contract; or
  - (c) the qualification to which the contract relates is, in the opinion of the Commission, an inappropriate qualification for a training contract; or
  - (d) the employer or apprentice/trainee will be unable, in the opinion of the Commission, to fulfil the obligations under the contract of the employer or the apprentice/trainee (as the case may be); or
  - (e) a term of the contract is, in the opinion of the Commission, prejudicial to the interests of the apprentice/trainee; or
  - (f) for any other reason that is, in the Commission's opinion, a proper reason as to why the contract should not be approved.
- (6) The Commission must notify the employer and apprentice/trainee in writing of the Commission's decision on an application and, if the Commission approves a contract as a training contract, the date of approval of the contract.
- (7) The date entered in the contract as the date on which the apprenticeship/traineeship of the person will commence will, from the date of approval of the training contract, be taken to be the date on which the training contract commenced.
- (8) Except as authorised by the Commission, an employer must not continue to train a person in a trade if the Commission has declined to approve the contract entered into with the person for that purpose.

Maximum penalty: \$5 000.

Expiation fee: \$315.

#### **49—Term of training contracts**

- (1) The Commission may, on the application of the parties to a training contract (or proposed training contract) for a trade or declared vocation or of its own motion, determine—
- (a) that the whole or a part of a period of training that occurred before the date of the contract be treated as a period of training served under the contract; or
  - (b) that the whole or a part of a period of training that occurred under a previous training contract be treated as a period of training served under the contract; or
  - (c) that a period of absence of the apprentice/trainee under the training contract be excluded from consideration in computing the length of the apprentice's/trainee's service under the contract.
- (2) Subject to subsection (3), the term of a training contract must be computed and the contract must be construed and must apply in accordance with a determination made by the Commission under subsection (1).

- (3) If a conflict occurs between a determination of the Commission under this section and a determination of the Industrial Relations Commission, the determination of the Industrial Relations Commission prevails.
- (4) The Commission may, by notice in writing to the parties to a training contract, increase or reduce the term of the contract.
- (5) If the Commission is satisfied of the competence of an apprentice/trainee or former apprentice/trainee, the Commission may, of its own motion or on the application of each party to the training contract relating to the particular apprenticeship/traineeship (whether or not the contract is still in operation)—
  - (a) certify that the apprentice/trainee is to be taken to have completed the training required under the contract; and
  - (b) if the contract is still in operation—terminate the contract and relieve the parties to the contract of their obligations under the contract.
- (6) This section does not prevent the extension or reduction of the term of a training contract by the Industrial Relations Commission.

#### **50—Variation of training under training contract to part-time or full-time**

- (1) The Commission may, on application by the parties to a training contract, vary the contract so that it provides for part-time training instead of full-time training, or full-time training instead of part-time training, if to do so is not inconsistent with the award or industrial agreement under which the apprentice/trainee is employed.
- (2) The Commission may, on application by the parties to a school-based training contract, vary the contract so that it provides for full-time training or part-time training (as the case requires) when the school-based apprentice/trainee finishes school.

#### **51—Termination or suspension of training contract**

- (1) Subject to this Part, no person, other than the Commission, may terminate or suspend, or purport to terminate or suspend, a training contract.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (2) Subject to this Part, the Commission may, on application or of its own motion, terminate or suspend a training contract.
- (3) An application for termination or suspension of a training contract must be made to the Commission in the manner and form approved by the Commission.
- (4) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.
- (5) The Commission must specify the date on which the training contract will terminate or be suspended or will be taken to have been terminated or suspended.
- (6) A party to a training contract may, after the commencement of the term of the contract and within the probationary period, terminate the contract by written notice to the other party or parties to the contract.

- (7) If a training contract is terminated during the probationary period, the employer under the contract must, within 7 days of the termination, notify the Commission in writing of the termination.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **52—Transfer of training contract to new employer**

- (1) A change in the ownership of a business (or part of a business) does not result in the termination of a training contract entered into by the former owner but, where a change in ownership occurs, the rights, obligations and liabilities of the former owner under the contract are transferred to the new owner.
- (2) If a training contract is transferred or assigned from 1 employer (the *former employer*) to another (the *new employer*) (whether by subsection (1) or otherwise), both the former employer and the new employer must, within 21 days of the transfer or assignment, notify the Commission in writing of the transfer or assignment.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **53—Offence to exert undue influence etc in relation to training contracts**

- (1) A person must not exert undue influence or pressure on, or use unfair tactics against, a person in relation to entering into a training contract.

Maximum penalty: \$5 000.

- (2) A person must not exert undue influence or pressure on, or use unfair tactics against, a party to a training contract in relation to—

- (a) the making of an application to the Commission in relation to the contract under section 49(5); or
- (b) variation of the contract; or
- (c) the transfer or assignment of the contract from 1 employer to another; or
- (d) the termination or suspension, or purported termination or suspension, of the contract.

Maximum penalty: \$5 000.

## **54—Termination/expiry of training contract and pre-existing employment**

If a training contract is entered into between an employer and a person who is already in the employment of the employer, the termination, or expiry of the term, of the training contract does not of itself terminate the person's employment with the employer.

## **Division 3—Registration of employers**

### **55—Registration of employers**

- (1) The Commission may, on application, register, or renew the registration of, an employer who may enter into a training contract as follows:
  - (a) in relation to a specified trade—for the training of a particular apprentice/trainee;
  - (b) in relation to a specified trade or specified trades—for training apprentices/trainees generally;
  - (c) in relation to a specified declared vocation—for the training of a particular apprentice/trainee;
  - (d) in relation to a specified declared vocation or specified declared vocations—for training apprentices/trainees generally.
- (2) An application for registration or renewal of registration must be made to the Commission in the manner and form approved by the Commission.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.

### **56—Conditions of registration**

Registration of an employer is subject to—

- (a) the conditions determined by the Commission as to the operations that the employer is authorised to conduct by the registration; and
- (b) a condition that an apprentice/trainee, or apprentices/trainees of a specified class, will be managed in a specified way; and
- (c) if guidelines have been developed by the Commission—the condition that the employer will comply with the guidelines, as in force from time to time; and
- (d) any other condition determined by the Commission.

### **57—Criteria for registration**

- (1) The Commission must, in determining whether to register, or renew or vary the registration of, an employer, and in determining conditions of registration—
  - (a) apply the guidelines (if any) developed by the Commission; and
  - (b) have regard to the following matters:
    - (i) the place of employment of the apprentice/trainee;
    - (ii) the equipment and methods to be used in the training of the apprentice/trainee;
    - (iii) the persons who are to supervise the work of the apprentice/trainee;
    - (iv) the ratio between the number of apprentices/trainees party to training contracts with the employer and the number of persons who are to supervise their work;

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- (v) any other matter that is, in the opinion of the Commission, relevant to the registration.
- (2) The Commission may not register, renew or vary the registration of a person under this section unless the Commission is satisfied that the person is fit and proper to be so registered, or to have the registration so renewed or varied, taking into account—
- (a) the prior conduct of the person or an associate of the person (whether in this State or elsewhere); and
  - (b) any other matter that the Commission considers relevant.

### **58—Variation or cancellation of registration**

- (1) The Commission may, on application, vary or cancel the registration of an employer.
- (2) An application to vary or cancel the registration must be made to the Commission in the manner and form approved by the Commission.
- (3) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.
- (4) For the purposes of this Act, *variation of registration* of an employer means variation of the conditions of registration or the registered details of the employer.

### **59—Duration of registration**

Subject to this Act, registration of an employer remains in force, on initial grant or renewal, for a period (which may not be longer than 5 years) determined by the Commission.

### **60—Commission may cancel, suspend or vary registration**

- (1) If—
  - (a) a registered employer contravenes this Act or a corresponding law or a condition of the registration (whether the contravention occurs in this State or elsewhere); or
  - (b) the circumstances are such that it is, in the Commission's opinion, no longer appropriate that the employer be so registered,the Commission may do either or both of the following:
  - (c) impose or vary a condition of the registration;
  - (d) cancel or suspend the registration.
- (2) The Commission may not take action under this section unless the Commission first—
  - (a) gives the holder of the registration 28 days written notice of the nature of the action the Commission intends to take against it; and
  - (b) takes into account any representations made by the holder of the registration within that period.

### **61—Appeal to District Court**

- (1) An appeal to the District Court may be made against a decision of the Commission—
  - (a) refusing an application for the grant or renewal of registration of an employer; or

- (b) imposing or varying conditions of registration; or
  - (c) suspending or cancelling registration.
- (2) Subject to subsection (4), an appeal must be instituted by a person within 28 days of the making of the decision appealed against.
  - (3) The Commission must, if so required by a person affected by a decision made by it, state in writing the reasons for the decision.
  - (4) If the reasons of the Commission are not given in writing at the time of making a decision and the person affected by the decision (within 28 days of the making of the decision) requires the Commission to state the reasons in writing, the time for instituting an appeal runs from the time at which the person receives the written statement of those reasons.

## **62—Commission may inquire into employers**

- (1) The Commission may, at any time, inquire into an employer, whether registered or the subject of an application for registration.
- (2) The holder of, or applicant for, the registration must provide the Commission with any information required by the Commission for the purposes of an inquiry under this section.

## **Division 4—Compliance notices, misconduct, disputes and grievances**

### **63—Compliance notices**

- (1) If it appears that an employer has contravened a provision of this Act, a member of the Commission, or a person authorised by the Commission to exercise the powers conferred by this section, may issue a compliance notice requiring the employer, within a period stated in the notice—
  - (a) to take specified action to remedy the non-compliance; and
  - (b) to produce reasonable evidence of the employer's compliance with the notice.
- (2) An employer who fails to comply with a compliance notice within the time allowed in the notice is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- (3) The following applications may, within 14 days after the issue of a compliance notice under this section, be made to the Industrial Relations Commission for a review of the notice:
  - (a) an employer may apply to the Industrial Relations Commission on the ground that the employer has in fact complied with this Act;
  - (b) an employee may apply to the Industrial Relations Commission on the ground that the employer's failure to comply with this Act is more extensive than stated in the notice.
- (4) The Industrial Relations Commission may, at the conclusion of the review—
  - (a) confirm the notice; or
  - (b) confirm the notice with such modification as it thinks fit; or

- (c) cancel the notice.

#### **64—Employer may suspend apprentice/trainee for serious misconduct**

- (1) If an employer has reasonable grounds to believe that an apprentice/trainee employed by the employer is guilty of wilful and serious misconduct, the employer may (without first obtaining the approval of the Commission) suspend the apprentice/trainee from employment and must, in that event—

- (a) immediately refer the matter to the Industrial Relations Commission; and  
(b) within 3 days of the suspension—confirm the reference in writing.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A suspension under this section must, unless confirmed or extended by the Industrial Relations Commission under section 65, not operate for more than 7 working days.

#### **65—Other matters to be dealt with by Industrial Relations Commission**

- (1) If—

- (a) a dispute arises between parties to a training contract; or  
(b) a party to a training contract is aggrieved by the conduct of another party,

a party to the contract may apply to the Industrial Relations Commission for consideration of the matter.

- (2) The Industrial Relations Commission may, if it thinks fit, by order, exercise 1 or more of the following powers in relation to a matter before the Industrial Relations Commission:

- (a) it may make recommendations to the Commission about the assessment of the skills of an apprentice/trainee and, if appropriate, the granting of an appropriate qualification under the AQF;
- (b) it may reprimand a party in default;
- (c) it may suspend the employment of an apprentice/trainee (for a period not exceeding 4 weeks) commencing on a date specified in the order;
- (d) it may confirm, extend (for a period not exceeding 4 weeks) or revoke a suspension imposed by an employer under section 64 and, in the event of revocation—
- (i) order the employer to pay any remuneration, or compensation for any non-monetary benefit, to which the apprentice/trainee would, but for the suspension, have been entitled; and
- (ii) order the employer to treat the period of suspension as service for specified purposes;
- (e) it may extend or reduce the term of, or otherwise vary, a training contract;
- (f) it may terminate a training contract as at the date specified in the order;
- (g) it may order an employer to pay any remuneration to which an apprentice/trainee is entitled;

- (h) it may order an employer to pay compensation for any breach of the training contract;
  - (i) it may order a party to a training contract to take any other action that, in the opinion of the Industrial Relations Commission, the party is required to take under the contract or under this Part;
  - (j) it may excuse a party to a training contract from performing 1 or more of his or her obligations under the contract;
  - (k) it may order that, for the purpose of computing the period of training that has been served by an apprentice/trainee, a specified period or specified periods be excluded;
  - (l) it may vary, suspend or cancel the registration of an employer granted by the Commission under this Part;
  - (m) it may order an employer not to employ any apprentices/trainees in addition to those named in the order without the approval of the Industrial Relations Commission;
  - (n) it may make any consequential orders that the Industrial Relations Commission thinks necessary or expedient.
- (3) The Commission may, without further inquiry, accept and act on any recommendation of the Industrial Relations Commission under this Division.
- (4) The term of a training contract must be computed and the contract must be construed and must apply in accordance with an order made by the Industrial Relations Commission under this Division.
- (5) The cancellation or suspension of the registration of an employer by the Industrial Relations Commission under this Division may relate to a particular apprentice/trainee or to all apprentices/trainees employed by the employer.
- (6) Notice must be given by the Industrial Relations Commission to the Commission of the outcome of any application or reference of a matter under this Division.
- (7) A person must not contravene an order of the Industrial Relations Commission under this Division.  
Maximum penalty: \$5 000.
- (8) An application to the Industrial Relations Commission under subsection (1) must be made during the term of the relevant training contract or within 6 months after the expiry, termination or cancellation of the relevant training contract.
- (9) The Industrial Relations Commission may extend the time within which any such application may be made.
- (10) In this section—  
***party to a training contract*** or ***party*** includes a person who was formerly a party to a training contract.

## 66—Holding of conciliation conferences compulsory

- (1) Proceedings (other than applications for review of a compliance notice issued under section 63) before the Industrial Relations Commission under this Division are proceedings to which Chapter 5, Part 1, Division 4A of the *Fair Work Act 1994* applies.

### Note—

That Division of that Act provides for the holding of compulsory conciliation conferences.

- (2) If a conciliation conference before the Industrial Relations Commission is held in proceedings relating to a suspension under section 64, the member presiding at the conference—
  - (a) is not required to give a preliminary assessment or to make a recommendation under section 155B(3) of the *Fair Work Act 1994*; and
  - (b) if the proceedings are not resolved by conciliation or withdrawn—is not disqualified from further involvement in the proceedings by reason only of the fact that he or she presided at the conference.

## 67—Representation in proceedings before Industrial Relations Commission

- (1) The following provisions govern representation in proceedings (other than appellate proceedings) before the Industrial Relations Commission under this Division:
  - (a) representation of a party by a legal practitioner or registered agent will not be permitted;
  - (b) if a party to the proceedings is a body corporate—the Industrial Relations Commission may, if the party seeks to be represented by an officer or employee who is not a legal practitioner or registered agent, permit such representation;
  - (c) if a party to the proceedings satisfies the Industrial Relations Commission that he or she will be disadvantaged in the proceedings if he or she is not represented by another person—the Industrial Relations Commission may permit the party to be represented by a person who is not a legal practitioner or registered agent, but only if that person is acting gratuitously.

- (2) In this section—

*registered agent* means a person who is a registered agent under the *Fair Work Act 1994*.

## 68—Participation of assessors and other experts in proceedings before Industrial Relations Commission

- (1) In any proceedings (other than those to which subsection (2) applies) before the Industrial Relations Commission under this Division, the Industrial Relations Commission—
  - (a) must sit with assessors selected in accordance with Schedule 1; and
  - (b) may select an expert in accordance with Schedule 1 to advise the Industrial Relations Commission in relation to a matter relating to the proceedings.

- (2) In proceedings to which this subsection applies before the Industrial Relations Commission under this Division, the Industrial Relations Commission has absolute discretion to do either or both of the following:
  - (a) sit with assessors selected in accordance with Schedule 1;
  - (b) select an expert in accordance with Schedule 1 to advise the Industrial Relations Commission in relation to a matter relating to the proceedings.
- (3) Subsection (2) applies to the following proceedings:
  - (a) a conference under Chapter 5, Part 1, Division 4A of the *Fair Work Act 1994*;
  - (b) proceedings for the purposes of—
    - (i) dealing with preliminary, interlocutory or procedural matters; or
    - (ii) dealing with questions of costs; or
    - (iii) entering consent orders;
  - (c) a part of the proceedings relating only to questions of law;
  - (d) appellate proceedings.

## **Division 5—General**

### **69—Relation to other Acts and awards etc**

- (1) This Act and any statutory instrument made under this Act prevail to the extent of any inconsistency over the *Fair Work Act 1994* and any regulation, award or other determination, enterprise agreement or industrial agreement made under that Act or an Act repealed by that Act.
- (2) Despite subsection (1), a provision of an award or other determination, enterprise agreement or industrial agreement made under the *Fair Work Act 1994* or an Act repealed by that Act requiring employers to employ apprentices/trainees in preference to junior employees remains in full force.

### **70—Making and retention of records**

- (1) An employer who employs an apprentice/trainee must keep records as required by the Commission by notice in the Gazette.
- (2) An employer must retain a record kept under subsection (1) for at least 7 years after the expiry or termination of the training contract to which the record relates.

Maximum penalty: \$5 000.

Expiation fee: \$315.

## **Part 5—Miscellaneous**

### **71—Training and Skills Register**

- (1) The State register under the repealed Act continues in existence as the *Training and Skills Register* (the **Register**) under this Act.
- (2) The Commission must ensure that the following matters are recorded in the Register:
  - (a) details of the declarations (if any) made by the Minister under section 5;

- (b) the registration of training providers and accreditation of courses under Part 3;
  - (c) the variation, cancellation, suspension or expiry of the registration of a training provider or accreditation of a course under Part 3;
  - (d) the registration of employers under Part 4;
  - (e) the variation, cancellation, suspension or expiry of the registration of an employer under Part 4;
  - (f) any other matter that, in the opinion of the Commission, should be recorded in the Register.
- (3) The Register will be kept in the form of a computer record and published on a website determined by the Commission.
  - (4) The Register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Commission.
  - (5) The Commission must ensure that copies of material on the Register can be purchased for a reasonable fee at the public office, or public offices, at which the Register is kept available for inspection.

## **72—Provision of information to/by prescribed authority**

- (1) The Commission or the Training Advocate may, by notice in writing, request a prescribed authority to provide the Commission or Training Advocate (as the case may be) with information about—
  - (a) an applicant for registration under Part 3; or
  - (b) a training provider; or
  - (c) a student or prospective student of a training provider; or
  - (d) an applicant for registration under Part 4; or
  - (e) a registered employer; or
  - (f) an apprentice/trainee; or
  - (g) any other matter relating to the functions of the Commission or the Training Advocate under this Act.
- (2) A prescribed authority—
  - (a) is authorised to comply with a request under subsection (1); and
  - (b) must comply with such a request within a reasonable time.
- (3) The Commission may, subject to such conditions as the Commission thinks fit, provide to a prescribed authority information obtained by the Commission in the course of carrying out its functions under this Act.
- (4) The Training Advocate may, subject to such conditions as the Training Advocate thinks fit, provide to a prescribed authority information obtained by the Training Advocate in the course of carrying out his or her functions under this Act.

(5) In this section—

*prescribed authority* means—

- (a) an agency or instrumentality of the Crown; or
- (b) a person or authority prescribed by regulation.

## 72A—Confidentiality of information

A person must not divulge or communicate information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person to whom the information relates; or
- (b) in connection with the administration of this Act; or
- (c) to a member of the police force of this State or of the Commonwealth or another State or a Territory; or
- (d) to a person concerned in the administration of a corresponding law; or
- (e) for the purposes of legal proceedings.

Maximum penalty: \$20 000.

## 73—Other powers of Commission, Training Advocate etc

- (1) For the purposes of this Act, a member of the Commission, the Training Advocate, or a person authorised by the Commission or the Training Advocate (an *authorised person*), may exercise any 1 or more of the following powers:
  - (a) an authorised person may question any person—
    - (i) in relation to Part 3—about the delivery or provision of education and training or other services;
    - (ii) in relation to Part 4—about—
      - (A) the delivery or provision of education or training; or
      - (B) the employment of an apprentice/trainee;
  - (b) an authorised person may require the production of any record or document required to be kept by or under this Act and—
    - (i) examine, copy and take extracts from any record or document; and
    - (ii) take any record or document; and
    - (iii) seize and remove anything that may constitute evidence of an offence against this Act; and
    - (iv) take photographs, films or video recordings;
  - (c) an authorised person may enter and inspect, at any reasonable time, the following places or premises or anything in the following places or premises:
    - (i) a place or premises in which education or training is provided, including a place or premises in which a person undertakes the practical component of any such course;
    - (ii) a place or premises in which an apprentice/trainee is employed.

- (2) An authorised person must, when exercising a power under this section—
  - (a) carry an identity card in a form approved by the Commission or the Training Advocate (as the case requires); and
  - (b) produce the identity card at the request of a person in relation to whom the power is being exercised.
- (3) A person must not—
  - (a) hinder or obstruct an authorised person in the exercise of a power conferred by this section; or
  - (b) refuse or fail to answer truthfully to the best of the person's knowledge or belief a question put to the person under this section; or
  - (c) without lawful excuse, fail to comply with a requirement made under this section.

Maximum penalty: \$10 000.

- (4) A person is not obliged to answer a question under this section if the answer would tend to incriminate the person or make the person liable to a penalty.

#### **75—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

#### **75A—Imputation of conduct or state of mind of officer etc**

- (1) For the purposes of proceedings for an offence against this Act—
  - (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;
  - (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person,

(but not so as to affect any personal liability of the officer, employee or agent).

- (2) It will be a defence in any criminal proceedings under the Act against a body corporate or a natural person where conduct or a state of mind is imputed to the body or person under subsection (1) if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.
- (3) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

### **75B—Offences by bodies corporate and employees**

- (1) If a body corporate is guilty of an offence against this Act, each director of the body corporate, and each person concerned in the management of the body corporate, is guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.
- (2) It is a defence to a charge of an offence arising under subsection (1) if the defendant establishes that the defendant took reasonable precautions and exercised due diligence to prevent the commission of an offence by the body corporate.
- (3) If an employee is guilty of an offence against this Act, the employer is liable to the same penalty as is prescribed for the principal offence.
- (4) It is a defence to a charge of an offence arising under subsection (3) if the defendant establishes that—
  - (a) the defendant had no knowledge of the actual offence; or
  - (b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of an offence by the employee.

### **76—Evidentiary provision relating to registration**

- (1) In proceedings for an offence against Part 3, an allegation in the complaint that—
  - (a) a training provider was or was not at a specified time registered; or
  - (b) the registration of a training provider was at a specified time subject to specified conditions; or
  - (c) a registered training provider was at a specified time acting outside the scope of the registration of the provider,will be accepted as proved in the absence of proof to the contrary.
- (2) In proceedings for an offence against Part 4—
  - (a) an allegation in the complaint that a training contract was or was not at a specified time approved will be accepted as proved in the absence of proof to the contrary; and
  - (b) an allegation in the complaint that—
    - (i) an employer was or was not at a specified time registered; or
    - (ii) the registration of an employer was at a specified time subject to specified conditions,will be accepted as proved in the absence of proof to the contrary.

### **77—Gazette notices may be varied or revoked**

A notice published in the Gazette by the Commission under this Act may be varied or revoked by the Commission by subsequent notice in the Gazette.

### **78—Service**

A notice or other document required or authorised to be given to or served on a person under this Act may be given or served personally or by post.

## 79—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) impose conditions on the Commission in the exercise of its powers in relation to training providers the registration of which was determined by a registering body other than the Commission; and
  - (b) make provision with respect to the contents of the Register; and
  - (c) fix, or provide for the Minister or the Commission to fix, fees and provide for the payment, recovery, waiver or refund of fees; and
  - (d) impose a penalty, not exceeding \$5 000, for contravention of a regulation.

## Schedule 1—Appointment and selection of assessors and other experts for Industrial Relations Commission proceedings under Part 4

### Division 1—Assessors

- 1 The Minister must—
  - (a) on the advice of the Commission and after consultation with State employer associations, including the South Australian Employers' Chamber of Commerce and Industry Inc (*Business SA*)—establish a panel of not more than 5 persons who may sit with the Industrial Relations Commission as assessors in proceedings under Part 4; and
  - (b) on the advice of the Commission and after consultation with the United Trades and Labor Council (*SA Unions*)—establish a panel of not more than 5 persons who may sit with the Industrial Relations Commission as assessors in proceedings under Part 4.
- 2 Membership of a panel must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Industrial Relations Commission's functions under Part 4.
- 3 A member of a panel will be appointed by the Minister for a term of office not exceeding 2 years and on conditions determined by the Minister and specified in the instrument of appointment.
- 4 A member of a panel will, on the expiration of a term of office, be eligible for reappointment.
- 5 Subject to clause 6, in proceedings before the Industrial Relations Commission in which assessors are to sit, the member of the Industrial Relations Commission presiding at the proceedings must select 1 member from each of the panels for the purposes of those proceedings.
- 6 A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Industrial Relations Commission is disqualified from participating in the hearing of the matter.

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- 7 If an assessor dies or is for any reason unable to continue with any proceedings, the Industrial Relations Commission constituted of the member of the Industrial Relations Commission who is presiding at the proceedings and the other assessor may, if the presiding member so determines, continue and complete the proceedings.

## **Division 2—Experts**

- 8 The Minister may establish, as the Minister considers necessary, another panel of persons with expertise in higher education and vocational education and training to provide advice to the Industrial Relations Commission in proceedings under Part 4.
- 9 In proceedings under Part 4, the member of the Industrial Relations Commission presiding at the proceedings may, if of the opinion that the provision of expert advice on a matter under consideration would expedite the proceedings, select a member of the panel referred to in clause 8 for that purpose.

## **Schedule 2—Transitional provisions**

### **Part 4—Transitional provisions**

#### **11—Transitional provisions**

- (1) On the commencement of Part 3 of this Schedule—
- (a) the offices of the members of the Training and Skills Commission established under the repealed Act are vacated;
  - (b) the offices of the members of the Grievances and Disputes Mediation Committee established under the repealed Act are vacated;
  - (c) the offices of the members of any committee established by the Training and Skills Commission under the repealed Act are vacated;
  - (d) the offices of the members of any panel established by the Minister for the purpose of constituting the Grievances and Disputes Mediation Committee under the repealed Act are vacated;
  - (e) the offices of the members of any reference group established by the Minister under the repealed Act are vacated.
- (2) Subject to this Act, a declaration that an occupation is a trade or a declared vocation in force under section 5 of the repealed Act immediately before the commencement of section 6 of this Act will be taken to be a declaration under that section of this Act that the occupation is a trade or a declared vocation (as the case requires).
- (3) Subject to this Act, registration or accreditation in force under Part 3 of the repealed Act immediately before the commencement of Part 3 of this Act will continue in force for the unexpired portion of the term for which the registration or accreditation was granted, or last renewed, as registration or accreditation under Part 3 of this Act.
- (4) Subject to this Act, if an employer was, immediately before the commencement of Part 4 of this Act—
- (a) an approved employer within the meaning of Part 4 of the repealed Act; and
  - (b) party to a contract of training under Part 4 of the repealed Act,

the employer will be taken to have been registered under Part 4 of this Act (with registration for a period of 5 years to be taken to have come into force immediately before the commencement of Part 4 of this Act).

- (5) Subject to this Act, a contract of training in force under Part 4 of the repealed Act immediately before the commencement of Part 4 of this Act will continue in force as a training contract under Part 4 of this Act.
- (6) Subject to this Act, a suspension, order or decision of the Grievances and Disputes Mediation Committee in force under the repealed Act immediately before the commencement of Part 4 of this Act will continue in force as a suspension, order or decision of the Industrial Relations Commission under Part 4 of this Act.
- (7) If, immediately before the commencement of Part 4 of this Act, a matter has, under section 19(7) of the repealed Act, been referred by the Commission (acting at the direction of the Minister) to the Grievances and Disputes Mediation Committee (**GDMC**) for review but the GDMC has not yet completed the review, the matter will be taken to be the subject of an appeal under section 207 of the *Fair Work Act 1994*—
  - (a) as if the decision or order of the GDMC at first instance were a determination of the Industrial Relations Commission; and
  - (b) as if the party who made the request of the Minister for the giving of the direction were the appellant,(and the provisions of Chapter 5, Part 3, Division 4 of that Act will apply to the appeal).
- (8) A reference in an Act or an instrument or document—
  - (a) to the Training and Skills Commission is to be read as a reference to the Training and Skills Commission established under this Act and is to be construed accordingly;
  - (b) to a training organisation is to be read as a reference to a training provider and is to be construed accordingly;
  - (c) to an occupation as a trade or declared vocation is to be read as a reference to an occupation that is a trade or a declared vocation declared as such under section 6 of this Act and is to be construed accordingly;
  - (d) to an apprentice/trainee under a contract of training is to be read as a reference to an apprentice/trainee under a training contract and is to be construed accordingly;
  - (e) to a contract of training is to be read as a reference to a training contract and is to be construed accordingly;
  - (f) to an approved employer is to be read as a reference to a registered employer and is to be construed accordingly.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Training and Skills Development Act 2008* repealed the following:

*Training and Skills Development Act 2003*

### Legislation amended by principal Act

The *Training and Skills Development Act 2008* amended the following:

*Fair Work Act 1994*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2008	30	<i>Training and Skills Development Act 2008</i>	10.7.2008	1.9.2008 ( <i>Gazette</i> 24.7.2008 p3465)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 159 (ss 358—361)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
<b>2011</b>	<b>8</b>	<b><i>Training and Skills Development (Miscellaneous) Amendment Act 2011</i></b>	<b>31.3.2011</b>	<b>30.5.2011 (<i>Gazette</i> 5.5.2011 p1330)</b>
2015	8	<i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i>	18.6.2015	Pt 40 (ss 260—266)—1.7.2015 ( <i>Gazette</i> 25.6.2015 p3076)

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.2.2010

Pt 1

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s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.2.2010
<b>s 4</b>		
<b>s 4(1)</b>		
<b>authorised operations</b>	<b>inserted by 8/2011 s 4(1)</b>	<b>30.5.2011</b>
<b>s 4(4a)</b>	<b>inserted by 8/2011 s 4(2)</b>	<b>30.5.2011</b>
<b>s 5</b>		
<b>s 5(4)</b>	<b>amended by 8/2011 s 5</b>	<b>30.5.2011</b>
<b>Pt 2</b>		
s 13A	inserted by 84/2009 s 358	1.2.2010
s 15		
s 15(2)	amended by 84/2009 s 359	1.2.2010
s 24		
s 24(2)	amended by 84/2009 s 360	1.2.2010
<b>Pt 3</b>		
<b>Pt 3 Div 1</b>		
<b>s 27</b>		
s 27(2)	<b>amended by 8/2011 s 6(1), (2)</b>	<b>30.5.2011</b>
<b>s 28</b>		
s 28(1)	<b>amended by 8/2011 s 7</b>	<b>30.5.2011</b>
<b>s 29</b>		
s 29(2)	<b>amended by 8/2011 s 8(1)</b>	<b>30.5.2011</b>
s 29(4)	<i>deleted by 8/2011 s 8(2)</i>	<i>30.5.2011</i>
<b>Pt 3 Div 2</b>		
<b>s 31</b>		
s 31(2)	<b>amended by 8/2011 s 9(1), (2)</b>	<b>30.5.2011</b>
<b>s 32</b>		
s 32(1)	<b>amended by 8/2011 s 10</b>	<b>30.5.2011</b>
<b>Pt 3 Div 3</b>		
<b>s 34</b>		
s 34(1)	<b>amended by 8/2011 s 11(1)</b>	<b>30.5.2011</b>
s 34(2)	<b>amended by 8/2011 s 11(2)</b>	<b>30.5.2011</b>
<b>Pt 3 Div 4</b>		
<b>s 35</b>		
s 35(3)	<b>inserted by 8/2011 s 12</b>	<b>30.5.2011</b>
<b>s 36</b>		
s 36(4) and (5)	<b>inserted by 8/2011 s 13</b>	<b>30.5.2011</b>
<b>s 36A</b>	<b>inserted by 8/2011 s 14</b>	<b>30.5.2011</b>
<b>s 37</b>	<b>substituted by 8/2011 s 15</b>	<b>30.5.2011</b>
<b>s 39</b>		
s 39(1)	<b>substituted by 8/2011 s 16(1)</b>	<b>30.5.2011</b>
s 39(3)	<b>substituted by 8/2011 s 16(2)</b>	<b>30.5.2011</b>

s 39(4)—(6)	inserted by 8/2011 s 16(2)	30.5.2011
s 41	substituted by 8/2011 s 17	30.5.2011
<b>Pt 3 Div 5</b>		
s 42		
s 42(1)	amended by 8/2011 s 18	30.5.2011
<b>Pt 3 Div 6</b>		
s 43		
s 43(1)	amended by 8/2011 s 19(1)	30.5.2011
s 43(2)	amended by 8/2011 s 19(2)	30.5.2011
s 43(3)	amended by 8/2011 s 19(3)	30.5.2011
s 43(4)	amended by 8/2011 s 19(4)	30.5.2011
s 43(5)	amended by 8/2011 s 19(5)	30.5.2011
s 44		
s 44(1)	amended by 8/2011 s 20(1)	30.5.2011
s 44(2)	amended by 8/2011 s 20(2)	30.5.2011
s 44(3)	amended by 8/2011 s 20(3)	30.5.2011
s 44(4)	amended by 8/2011 s 20(4)	30.5.2011
s 44(6)	amended by 8/2011 s 20(5)	30.5.2011
s 44(7)	amended by 8/2011 s 20(6)	30.5.2011
s 44A	inserted by 8/2011 s 21	30.5.2011
<b>Pt 3 Div 7</b>	inserted by 8/2011 s 21	30.5.2011
<b>Pt 4</b>		
s 57		
s 57(3)	<i>deleted by 8/2011 s 22</i>	30.5.2011
<b>Pt 5</b>		
s 72A	inserted by 8/2011 s 23	30.5.2011
s 73		
s 73(1)	amended by 8/2011 s 24(1)	30.5.2011
s 73(3)	amended by 8/2011 s 24(2)	30.5.2011
s 74	<i>deleted by 84/2009 s 361</i>	1.2.2010
s 75	amended by 8/2011 s 25	30.5.2011
ss 75A and 75B	inserted by 8/2011 s 26	30.5.2011
<b>Sch 2</b>		
<i>Pts 1—3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.2.2010

## Historical versions

1.2.2010