



VOCATIONAL EDUCATION, EMPLOYMENT AND TRAINING ACT 1994

No. 75 of 1994

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 75 of 1994

An Act to make provision relating to vocational education, employment and training; to repeal the Industrial and Commercial Training Act 1981 and the Tertiary Education Act 1986; and for other purposes.

[Assented to 1 December 1994]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Vocational Education, Employment and Training Act 1994*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

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

"ACEC" means the Adult Community Education Council established under Part 2;

"ANTA" means—

(a) the Australian National Training Authority established under the Commonwealth Act or that body under some other name fixed under the Commonwealth Act; or

(b) any other body declared by regulation to be the successor of ANTA;

"ARC" means the Accreditation and Registration Council established under Part 2;

"certificate" means certificate, diploma or other document certifying a person's competency, qualifications or achievement in a course;

"**Chief Executive Officer**" means the Chief Executive Officer of the department or administrative unit of the Public Service that is, subject to the Minister, responsible for the administration of this Act;

"**Commonwealth Act**" means the *Australian National Training Authority Act 1992* of the Commonwealth, as amended from time to time;

"**contract of training**" means a contract of training under Part 4 in respect of training in a trade or other declared vocation;

"**declared vocation**" means—

- (a) a trade; or
- (b) an occupation declared by notice in the *Gazette* under subsection (2) to be a declared vocation for the purposes of this Act;

"**Disputes Resolution Committee**" means the Disputes Resolution Committee established under Part 4;

"**Ministerial Council**" means the Ministerial Council established in accordance with the National Statement;

"**National Agreement**" means the agreement entitled "Agreement for a National Framework for the Recognition of Training" made by the Commonwealth, the States, the Northern Territory and the Australian Capital Territory on 21 July 1992, as amended or substituted from time to time;

"**National Statement**" means the statement (a copy of which is set out in the schedule of the Commonwealth Act) entitled "A National Vocational Education and Training System" agreed on by the Commonwealth, the States, the Northern Territory and the Australian Capital Territory and published on 21 July 1992, as amended or substituted from time to time;

"**National Strategic Plan**" has the same meaning as in the National Statement;

"**State Training Profile**" has the same meaning as in the National Statement;

"**trade**" means an occupation declared by notice in the *Gazette* under subsection (2) to be a trade;

"**VEET Board**" means the Vocational Education, Employment and Training Board established under Part 2.

(2) The Minister may, on the recommendation of ARC, by notice in the *Gazette*—

- (a) declare an occupation to be a trade or a declared vocation for the purposes of this Act; or
- (b) vary or revoke such a declaration.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.

**PART 2
ADMINISTRATION**

DIVISION 1—STATE TRAINING AGENCY

Minister to be Agency

4. The Minister is the State Training Agency contemplated by the Commonwealth Act.

Functions of Minister as Agency

5. (1) As the State Training Agency, the Minister has the following functions:

- (a) to provide to ANTA advice and information on vocational and adult community education and training needs and the funding implications of those needs, in consultation with all interested parties including industry, commerce and government;
- (b) to develop, in conjunction with ANTA, a detailed State Training Profile based on the National Strategic Plan;
- (c) to ensure that the management of the State's system of vocational and adult community education and training, including—
 - (i) planning, regulation and provision of public and private training; and
 - (ii) allocation of resources within the State on a program and geographic basis, is in accordance with the National Strategic Plan and State Training Profile;
- (d) to provide annually to ANTA a report on performance to enable the compilation of an annual integrated report for approval by the Ministerial Council;
- (e) the other functions contemplated by the National Statement and any other functions that the Minister considers appropriate.

(2) The Minister is to ensure that the vocational and adult community education and training needs of the State are identified and met in a cost effective and efficient manner.

Delegation by Minister

6. (1) The Minister may delegate to the VEET Board, ARC or ACEC, or any other person or body, a function of the Minister as the State Training Agency or any other function or matter that the Minister considers appropriate.

(2) A function or matter 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—VOCATIONAL EDUCATION, EMPLOYMENT AND TRAINING BOARD**Establishment of VEET Board**

7. (1) The *Vocational Education, Employment and Training Board* (VEET Board) is established.

(2) The VEET Board is to consist of not less than seven and not more than 12 members.

(3) The Chief Executive Officer is to be a member of the VEET Board and the remaining members are to be appointed by the Governor.

(4) One member will be appointed by the Governor to be chairperson of the VEET Board and one to be deputy chairperson.

(5) At least two members appointed by the Governor must be persons nominated by the Minister, after consultation with employer associations (including the South Australian Employers' Chamber of Commerce and Industry, the Master Builders' Association of South Australia Inc., and the Engineering Employers Association, South Australia), to represent the interests of employers.

(6) At least two members appointed by the Governor must be persons nominated by the Minister, after consultation with the United Trades and Labor Council, to represent the interests of employees.

(7) The same number of members must be appointed by the Governor under subsections (5) and (6) to represent the interests of employers and employees respectively.

(8) At least one member appointed by the Governor must be a woman and one a man.

(9) Schedule 1 makes further provision relating to the VEET Board and its members.

Ministerial control

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

Functions of VEET Board

9. (1) The VEET Board's general functions are to assist and advise and report to the Minister on matters relating to vocational education, employment and training, including adult community education.

(2) The VEET Board's functions include—

- (a) developing and recommending to the Minister a draft State Training Profile each year (setting out the vocational and adult community education and training needs of the State and proposals for meeting those needs); and
- (b) monitoring vocational and adult community education and training in the State and advising the Minister of the extent of compliance with, and any departures from, the National Strategic Plan or the State Training Profile; and

- (c) collecting and analysing information and data relating to vocational and adult community education and training needs and the measures taken to meet those needs; and
- (d) providing advice to the Minister on policies and programs to enhance employment opportunities; and
- (e) promoting and encouraging the development of, and participation in, vocational and adult community education and training; and
- (f) approving guidelines to govern the performance of ARC's functions under Part 3; and
- (g) approving the establishment of committees by ARC or ACEC and the terms of reference of the committees; and
- (h) reporting annually to the Minister on vocational and adult community education and training in this State and on expenditure for the purposes of the State Training Profile; and
- (i) assisting in the coordination of matters within the ambit of ARC's or ACEC's functions; and
- (j) monitoring, and making recommendations to the Minister on, the administration and operation of this Act; and
- (k) performing any other function assigned to the VEET Board by the Minister or under this or any other Act.

(3) For the purpose, or in the course, of performing its functions, the VEET Board may—

- (a) establish committees (which may but need not consist of members of the VEET Board); and
- (b) with the consent of the Minister, delegate a function to such a committee, or to ARC or ACEC, or to any other person or body.

(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 VEET Board must, in developing a draft State Training Profile, and generally to the extent practicable, consult with—

-
- (a) industry and commerce, including industry training advisory bodies and associations and organisations established by or representing industry and commerce; and
 - (b) associations and organisations representing employees; and
 - (c) relevant governmental bodies, including ARC and ACEC.

Minister to provide facilities, staff, etc.

10. (1) The Minister must provide the VEET Board with facilities and assistance by staff and consultants as reasonably required for the proper performance of the Board's functions.

(2) For the purposes of subsection (1), the Minister may, if so requested by the VEET Board, do either or both of the following:

- (a) allow the VEET Board to select persons to be engaged as staff members or consultants to assist the Board;
- (b) engage staff members or consultants otherwise than as Public Service employees or officers or employees under the *Technical and Further Education Act 1975*.

Report

11. (1) The VEET Board must, on or before 31 March in each year, present to the Minister a report on its operations and on the operations of ARC and ACEC for the preceding calendar year.

(2) The Minister must, within six 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—ACCREDITATION AND REGISTRATION COUNCIL

Establishment of ARC

12. (1) The *Accreditation and Registration Council (ARC)* is established.

(2) ARC is to consist of 11 persons appointed by the Minister, of whom—

- (a) one will be appointed to be chairperson;
- (b) three must be persons appointed, after consultation with employer associations (including the South Australian Employers' Chamber of Commerce and Industry, the Master Builders' Association of South Australia Inc., and the Engineering Employers Association, South Australia), to represent the interests of employers;
- (c) three must be persons appointed, after consultation with the United Trades and Labor Council, to represent the interests of employees;
- (d) one must be a person who will, in the opinion of the Minister, represent the interests of private training providers;
- (e) one must be a person who will, in the opinion of the Minister, provide appropriate expertise in training for para-professional occupations;

(f) one must be a person who will, in the opinion of the Minister, provide appropriate expertise in university education;

(g) one must be the Chief Executive Officer or his or her nominee.

(3) At least one member appointed by the Minister must be a woman and one a man.

(4) The Minister must appoint a person employed in the Public Service of the State to be the deputy chairperson and that person may attend ARC meetings and, in the absence of the chairperson, will act in the place of the chairperson.

(5) The Minister must appoint a suitable person to be the deputy of a member of ARC (other than the chairperson) and a person so appointed may act as a member of ARC in the absence of that member.

(6) Schedule 1 makes further provision relating to ARC and its members.

Ministerial control

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

Functions of ARC

14. (1) ARC's functions are to—

- (a) accredit courses and register education and training providers under Part 3; and
- (b) prepare or approve codes of practice for education and training providers; and
- (c) develop, for the approval of the VEET Board, guidelines to govern the performance of ARC's functions under Part 3; and
- (d) make recommendations to the Minister relating to the occupations that should constitute trades or other declared vocations; and
- (e) perform the functions assigned to ARC under Part 4 in relation to trades and other declared vocations; and
- (f) grant, or arrange for or approve the granting of, certificates to persons completing education and training courses; and
- (g) enter into reciprocal arrangements with appropriate bodies with respect to the recognition of education and training; and
- (h) assess by such means as ARC thinks fit the competency of persons who have acquired qualifications or skills otherwise than through courses accredited by ARC and, in appropriate cases, grant, or arrange for or approve the granting of, certificates certifying that competency; and
- (i) encourage the development of courses that will qualify for accreditation and encourage providers of education and training to obtain registration and secure accreditation for their courses; and

- (j) encourage participation in accredited education and training courses; and
 - (k) perform any other functions assigned to ARC by the Minister or under this or any other Act.
- (2) For the purpose, or in the course, of performing its functions, ARC may—
- (a) with the approval of the VEET Board, establish committees (which may but need not consist of members of ARC); and
 - (b) with the consent of the Minister, delegate a function to such a committee or to any other person or body; and
 - (c) make use of employees or facilities of the Government of the State with the consent of the responsible Minister.
- (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 ARC from acting in a matter.
- (4) In performing its functions, ARC must, to the extent practicable, consult with—
- (a) industry and commerce, including industry training advisory bodies and associations and organisations established by or representing industry and commerce; and
 - (b) associations and organisations representing employees; and
 - (c) relevant governmental bodies.

Report

15. ARC must present an annual report on its operations to the VEET Board in sufficient time to enable that body to prepare its annual report for the Minister.

DIVISION 4—ADULT COMMUNITY EDUCATION COUNCIL

Establishment of ACEC

16. (1) The *Adult Community Education Council* (ACEC) is established.
- (2) ACEC is to consist of not more than nine persons appointed by the Minister.
- (3) The members of ACEC must be persons who, in the opinion of the Minister, are experienced in the administration or provision of adult community education.
- (4) At least one member appointed by the Minister must be a woman and one a man.
- (5) One member will be appointed by the Minister to be chairperson of ACEC and one to be deputy chairperson.

(6) Schedule 1 makes further provision relating to ACEC and its members.

Ministerial control

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

Functions of ACEC

18. (1) ACEC's functions are to—

- (a) promote and encourage the provision of adult community education; and
- (b) advise the Minister on matters relating to government support for adult community education; and
- (c) make recommendations to the Minister on the allocation of grants to providers of adult community education; and
- (d) advise the Minister on matters relevant to adult community education that are referred to it by the Minister or that should, in the opinion of ACEC, be brought to the Minister's attention; and
- (e) perform any other functions assigned to ACEC by the Minister or under this or any other Act.

(2) For the purpose, or in the course, of performing its functions, ACEC may—

- (a) with the approval of the VEET Board, establish committees (which may but need not consist of members of ACEC); and
- (b) with the consent of the Minister, delegate a function to such a committee or to any other person or body; and
- (c) make use of employees or facilities of the Government of the State with the consent of the responsible Minister.

(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 ACEC from acting in a matter.

(4) In performing its functions, ACEC must, to the extent practicable, consult with community organisations, local government and other relevant governmental bodies.

Report

19. ACEC must present an annual report on its operations to the VEET Board in sufficient time to enable that body to prepare its annual report for the Minister.

PART 3
ACCREDITATION AND REGISTRATION

Accreditation and registration

20. ARC may, on application or of its own motion—

- (a) accredit a course or proposed course of vocational education and training; or
- (b) accredit other courses or proposed courses of education and training; or
- (c) register a person as a provider of an accredited course or part of an accredited course; or
- (d) register a person as a provider of education and training to overseas students.

Conditions

21. Accreditation or registration is subject to conditions determined, from time to time, by ARC which may include—

- (a) conditions requiring compliance with a code of practice prepared or approved by ARC; and
- (b) conditions as to the contents of courses and requiring approval of alterations to courses; and
- (c) conditions as to any on-the-job training component of courses; and
- (d) conditions as to suitability of premises at which courses may be provided; and
- (e) conditions as to recognition of prior education, training and experience for entry to a course or towards satisfying the requirements of a course; and
- (f) conditions as to the qualifications of teachers, trainers and assessors; and
- (g) conditions as to standards and methods of instruction; and
- (h) conditions as to assessment; and
- (i) conditions as to the granting of certificates; and
- (j) conditions as to financial safeguards or insurance to protect the interests of fee-paying students; and
- (k) conditions as to reporting and the keeping of records.

Determination of applications and conditions

22. (1) ARC must, in determining an application for accreditation or registration and in fixing conditions of accreditation or registration, apply—

- (a) the principles contained in the National Agreement (if applicable); and
- (b) any applicable guidelines approved by the VEET Board.

(2) ARC must consult with the universities in the State before determining a matter relating to a course in relation to which a degree is to be conferred.

(3) ARC may, by notice in the *Gazette*, define the classes of courses that may be accredited under this Part and may refuse to entertain an application for accreditation of a course that appears from the application not to fall within any of those classes.

Duration and renewal

23. Subject to this Act, accreditation or registration is for a maximum period of five years and may be renewed by ARC, on application or of its own motion, for further maximum periods of five years.

Applications

24. (1) An application for accreditation or registration or for renewal of accreditation or registration—

- (a) must be made in a manner and form determined by ARC; and
- (b) must be accompanied by the fee fixed under the regulations.

(2) An applicant must provide ARC with such information relevant to the application as ARC may reasonably require.

Review

25. (1) ARC may, at any time, review accreditation or registration under this Part.

(2) For the purposes of a review under subsection (1), the holder of the accreditation or registration must provide ARC with such information as ARC may reasonably require.

Revocation or suspension

26. (1) ARC may revoke or suspend accreditation or registration on contravention of, or failure to comply with, this Act or a condition of the accreditation or registration.

(2) Revocation or suspension—

- (a) must be imposed by written notice to the holder of the accreditation or registration; and
- (b) may have effect at a future time or for a period specified in the notice.

(3) ARC must not revoke or suspend accreditation or registration unless ARC first—

- (a) gives the holder of the accreditation or registration 28 days written notice of its intention to do so; and
- (b) takes into account any representations made by the holder within that period.

Appeal to Administrative Appeals Court

27. (1) An appeal to the Administrative Appeals Court may be made against a decision of ARC—

- (a) refusing an application for the grant or renewal of accreditation or registration; or

- (b) imposing or varying conditions of accreditation or registration; or
- (c) suspending or revoking accreditation or registration.

(2) The Court may, in exercising its jurisdiction under this Act, be constituted of a Magistrate.

(3) Subject to subsection (5), an appeal must be instituted by a person within one month of the making of the decision appealed against, but the Court may dispense with the requirement that an appeal be so instituted.

(4) ARC must, if so required by a person affected by a decision made by it, state in writing the reasons for the decision.

(5) If the reasons of ARC are not given in writing at the time of making a decision and the person affected by the decision (within one month of the making of the decision) requires ARC 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.

(6) Subject to subsection (7), the operation of a decision appealed against will continue pending the determination of the appeal.

(7) The Court or ARC may make an interim order suspending the operation of a decision.

(8) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court so determines, by affidavit.

(9) The Court may, on the hearing of an appeal—

- (a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks appropriate; and
- (b) make an order as to any other matter that the case requires (including an order for costs).

Register

28. ARC must keep a register of courses accredited, and persons registered, under this Part and must make it available for public inspection.

Offences relating to degrees and courses

29. (1) Subject to this section, a person must not—

- (a) offer or provide a course of education and training in relation to which a degree is to be conferred unless the course is accredited under this Part and provided by a person registered under this Part; or
- (b) offer or confer a degree except in relation to successful completion of such a course provided by such a person.

Penalty: Division 7 fine.

(2) Subsection (1) does not apply in relation to a person authorised by ARC to provide such a course or confer such a degree.

(3) A person must not—

- (a) offer or provide a course of education and training of a class required by regulation to be accredited under this Part unless the course is so accredited; or
- (b) offer or provide an accredited course of education and training of a class prescribed by regulation, or a part of such a course, unless the person is registered under this Part as a provider of that course or part of a course; or
- (c) offer or confer a degree or other award purporting to recognise achievement in a course of education and training of a class required by regulation to be accredited under this Part except in relation to successful completion of a course so accredited.

Penalty: Division 7 fine.

(4) This section does not apply in relation to a university in the State or an institution, or institution of a class, prescribed by regulation.

PART 4
CONTRACTS OF TRAINING

Training under contracts of training

30. (1) An employer must not undertake to train a person in a trade except under a contract of training.

Penalty: Division 7 fine.

(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 contract of training, or who has an equivalent trade or vocational qualification.

(3) An employer may undertake to train a person in a declared vocation (other than a trade) under a contract of training.

(4) A contract of training—

- (a) must be in the form required by ARC by notice in the *Gazette* for the trade or other declared vocation to which the contract relates; and
- (b) must contain the conditions required by ARC by notice in the *Gazette* for that trade or other declared vocation.

(5) An employer must, within two weeks after employing a person under a contract of training, provide ARC with a copy of the contract of training and with the particulars required by ARC by notice in the *Gazette*.

Penalty: Division 7 fine.

(6) Two or more employers may, with the approval of ARC, enter into a contract of training with the same trainee.

Minister may enter contracts of training

31. (1) The Minister may enter into a contract of training, assuming the rights and obligations of an employer under the contract.

(2) The Minister may not enter into a contract of training except—

- (a) on a temporary basis; or
- (b) where it is not reasonably practicable for some other employer to enter into the contract of training.

Termination or suspension of contract of training

32. (1) Subject to this Act, a contract of training may not be terminated or suspended without the approval of ARC.

(2) A party to a contract of training may terminate the contract by notice in writing to the other party or parties to the contract within the period after the commencement of the term of the contract that is specified by ARC by notice in the *Gazette* for the trade or other declared vocation to which the contract relates.

(3) Where a contract of training is terminated under subsection (2), the employer must, within seven days of the termination, notify ARC, in writing, of the termination.

Penalty: Division 7 fine.

Transfer of contract to new employer

33. (1) A change in the ownership of a business does not result in the termination of a contract of training entered into by the former owner, but, where a change of ownership occurs, the rights, obligations and liabilities of the former owner under the contract are transferred to the new owner.

(2) Where a contract of training is transferred or assigned from one employer to another (whether by subsection (1) or otherwise), the employer to whom the contract is transferred or assigned must, within seven days of the transfer or assignment, notify ARC, in writing, of the transfer or assignment.

Penalty: Division 7 fine.

Requirements in relation to employment under contract of training

34. (1) Where a trainee is employed under a contract of training, the employer must ensure that the following requirements are complied with:

- (a) the place of employment of the trainee must be as approved by ARC;
- (b) the equipment and methods to be used in the training must be as approved by ARC;
- (c) the persons who are to supervise the trainee's work must be as approved by ARC;
- (d) the ratio between the number of persons employed by the employer under contracts of training and the number of persons who are to supervise their work must not exceed the appropriate ratio fixed under subsection (5).

(2) An approval under subsection (1) may be given subject to conditions determined by ARC.

(3) ARC may, by notice served on an employer, withdraw its approval given under subsection (1) if—

- (a) in ARC's opinion—
 - (i) the place in which the trainee is employed; or
 - (ii) the equipment and methods used in training; or
 - (iii) the persons who supervise the trainee's work,
are no longer suitable; or
- (b) there has been a contravention of, or failure to comply with, a condition of ARC's approval.

(4) ARC must not give an approval under subsection (1) at variance with an order of the Disputes Resolution Committee.

(5) ARC may fix, or vary, a ratio for the purposes of subsection (1)(d)—

- (a) in relation to a particular employer—by notice served on the employer; or
- (b) in relation to a class of employers—by notice in the *Gazette*.

(6) An employer who fails to comply with a requirement of this section in relation to a trainee employed under a contract of training is guilty of an offence.

Penalty: Division 7 fine.

Age not to be disqualification

35. No person is disqualified from entering into a contract of training by reason of his or her age.

Term of contract of training

36. (1) The term of a contract of training is to be determined by ARC by notice in the *Gazette*.

(2) ARC may, of its own motion or on the application of the parties to a contract of training or proposed contract of training, 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 contract of training be treated as a period of training served under the contract of training; or
- (c) that a period for which the trainee was absent from employment under the contract of training be excluded from consideration in computing the length of the trainee's service under the contract of training.

(3) Subject to subsection (4), the term of a contract of training must be computed and the contract must be construed and must apply in accordance with a determination made by ARC under subsection (2).

(4) Where a conflict occurs between a determination of ARC under this section and a determination of the Disputes Resolution Committee, the determination of the Committee prevails.

(5) Where a trainee has completed at least three-quarters of the term of his or her contract of training, and ARC is satisfied of the competence of the trainee, ARC may, of its own motion, or on the application of all parties to the contract, relieve the trainee of his or her obligations under the contract, and the trainee is to be taken to have completed the training required under the contract.

(6) ARC may, by notice in writing to the parties to a contract of training, increase or reduce the term of the contract.

(7) This section does not prejudice the extension of the term of a contract of training by the Disputes Resolution Committee.

Contract of training to provide for employment

37. (1) A contract of training must provide for the employment of the trainee who is to be trained under the contract.

(2) ARC may, on the application of all parties to a contract of training, alter the contract so that it provides for part-time training instead of full-time training, or full-time training instead of part-time training.

Requirement to attend courses

38. (1) A trainee under a contract of training is required—

- (a) to comply with requirements of ARC imposed by notice in the *Gazette* as to—
 - (i) attendance at vocational education and training courses; and
 - (ii) the hours, and total hours, of attendance at those courses; and
- (b) to complete the courses that he or she is required to attend to the satisfaction of ARC; and
- (c) to comply with any other requirements of ARC in relation to his or her training.

(2) An employer must permit a trainee employed under a contract of training to carry out his or her obligations under this section.

Penalty: Division 7 fine.

(3) Where a trainee attends a course previously undertaken by the trainee, the time spent re-attending that course need not be counted for the purpose of determining the wages payable to the trainee, but, with that exception, the time spent attending or re-attending any course as required under this Part is to be treated for all purposes as part of the employment of a trainee.

Disputes Resolution Committee

39. (1) The *Disputes Resolution Committee* is established as a committee of ARC.

(2) Where a matter is referred to the Committee under this Act, the Committee will be constituted of—

- (a) the chairperson, or the deputy chairperson, of ARC; and
- (b) two other members of ARC—
 - (i) one being a member appointed to represent the interests of employers; and
 - (ii) one being a member appointed to represent the interests of employees,

as determined by the chairperson for the purposes of the hearing and determination of that matter.

(3) The Committee is not subject to control or direction by ARC, and, subject to subsection (4), ARC has no power to overrule or otherwise interfere with a decision or order of the Committee.

(4) If ARC, acting at the direction of the Minister, requests the Committee to review its decision or order on any matter, the Committee must review the decision or order and may, on the review—

- (a) confirm, vary or revoke the decision or order subject to the review; or
- (b) make any other decision or order in substitution for that decision or order.

(5) A decision or order in which two of the three members of the Committee concur is a decision or order of the Committee.

(6) Subject to subsection (5), the Committee may determine its own procedures.

Disputes and discipline

40. (1) Where—

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

a party to the contract may refer the matter to the Disputes Resolution Committee.

(2) Where ARC suspects on reasonable grounds that a party to a contract of training has breached, or failed to comply with, a provision of the contract or this Act, it may refer the matter to the Disputes Resolution Committee.

(3) The Disputes Resolution Committee must inquire into a matter referred to it under this section, and may, if it thinks fit, by order, exercise one or more of the following powers:

- (a) it may reprimand a party in default;
- (b) it may suspend a person from his or her employment under a contract of training for a period not exceeding four weeks commencing on a date specified in the order;
- (c) it may confirm or revoke a suspension imposed under subsection (7) and, in the event of revocation, order the employer to pay any wages that would, but for the suspension, have been payable under the contract;
- (d) it may extend the term of a contract of training;
- (e) it may cancel a contract of training as at the date specified in the order;
- (f) it may order a party to the contract to pay such wages or take such other action that, in the opinion of the Committee, he or she is required to take under the contract or under this Part;
- (g) it may excuse a party to the contract from performing one or more of his or her obligations under the contract;
- (h) it may order that, for the purpose of computing the period of training that has been served by a trainee, a specified period or periods be excluded;

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- (i) it may withdraw the approval granted by ARC under this Part in relation to the employment by an employer of trainees;
 - (j) it may order an employer not to employ any trainees in addition to those named in the order without the approval of the Committee;
 - (k) it may make any consequential orders that the Committee thinks necessary or expedient.

(4) The term of a contract of training must be computed and the contract must be construed and must apply in accordance with an order made by the Disputes Resolution Committee under subsection (3).

(5) The withdrawal of approval by the Disputes Resolution Committee under subsection (3)(i) may relate to a particular trainee or to all the trainees employed by the employer.

(6) Where, under subsection (3), the Disputes Resolution Committee orders one party to a contract of training to pay a sum of money to another party to the contract, that sum may be recovered by the other party as a debt.

(7) If an employer has reasonable grounds to believe that a trainee employed by him or her under a contract of training is guilty of wilful and serious misconduct, the employer may (without first obtaining the approval of ARC) suspend the trainee from employment under the contract, and must, in that event, immediately refer the matter to the Disputes Resolution Committee and confirm the reference in writing within three days of the suspension.

Penalty: Division 7 fine.

(8) A suspension under subsection (7) must, unless confirmed by the Disputes Resolution Committee, not operate for more than seven working days.

(9) Notice must be given by the Disputes Resolution Committee to ARC of the cancellation of a contract of training under subsection (3).

(10) The Disputes Resolution Committee may consult with industry training advisory bodies before exercising its powers under this section.

(11) The Disputes Resolution Committee may, at any time, vary or revoke an order made by it under this section.

(12) A person must not contravene, or fail to comply with, an order of the Disputes Resolution Committee under this section.

Penalty: Division 7 fine.

(13) In this section—

"party to a contract of training" or "party" includes a person who was formerly a party to a contract of training.

Relation to other Acts and awards, etc.

41. (1) This Act prevails to the extent of any inconsistency over the *Industrial and Employee Relations 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 *Industrial and Employee Relations Act 1994* or an Act repealed by that Act requiring employers to employ trainees under contracts of training in preference to junior employees remains in full force.

Making and retention of records

42. (1) An employer who employs a person under a contract of training must keep records as required by ARC by notice in the *Gazette*.

Penalty: Division 7 fine.

(2) An employer must retain a record kept under subsection (1) for at least two years after the expiry or termination of the contract of training to which the record relates.

Penalty: Division 7 fine.

**PART 5
MISCELLANEOUS**

Powers of entry and inspection

43. (1) For the purposes of Part 3 or 4, a member of ARC, or a person authorised by ARC to exercise the powers conferred by this section, may—

- (a) enter at any reasonable time any place or premises in which education and training is provided; and
- (b) inspect the place or premises or anything in the place or premises; and
- (c) question any person involved in education and training; and
- (d) require the production of any record or document required to be kept by or under this Act and inspect, examine or copy it.

(2) A person exercising a power under this section must—

- (a) carry an identity card in a form approved by ARC; 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 a member of ARC or other 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.

Penalty: Division 7 fine.

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

(5) A person authorised by ARC to exercise powers conferred by this section incurs no liability for anything done honestly in the exercise, or purported exercise, of the powers.

(6) A liability that would, but for subsection (5), attach to a person attaches instead to the Crown.

Offences by persons exercising powers

44. A person who, while exercising powers under section 43—

- (a) addresses offensive language to any other person; or

- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 7 fine.

Gazette notices may be varied or revoked

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

Service

46. 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.

Regulations

47. (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) fix, or provide for the Minister or a body established by this Act to fix, fees and provide for the payment, recovery, waiver or refund of fees; and
- (b) impose a penalty, not exceeding a division 7 fine, for breach of a regulation.

SCHEDULE 1*Provisions relating to Statutory Bodies and their Members and Committees***Interpretation****1. In this schedule—**

"appointing authority" means—

- (a) in relation to the VEET Board—the Governor; or
- (b) in relation to ARC or ACEC—the Minister;

"appointed member" means a member of a statutory body appointed by the Governor or the Minister;

"committee" of a statutory body includes a committee established by a statutory body;

"statutory body" means the VEET Board, ARC or ACEC.

Terms and conditions of office of appointed members

2. (1) An appointed member of a statutory body holds office for a term not exceeding two years and on conditions determined by the appointing authority and specified in the instrument of appointment.

(2) A member of a statutory body is, on the expiration of a term of office, eligible for re-appointment.

(3) The appointing authority may remove an appointed 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 breach of, or non-compliance with, a condition of his or her appointment; or
- (d) if serious irregularities have occurred in the conduct of the statutory body's affairs or the statutory body has failed to carry out its functions satisfactorily and its membership should, in the opinion of the appointing authority, be reconstituted for that reason.

(4) The office of an appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice to the Minister; or
- (d) is convicted of an indictable offence; or
- (e) is removed from office under subclause (3).

(5) On the office of an appointed member becoming vacant, a person may be appointed in accordance with this Act to the vacant office.

Proceedings

3. (1) A meeting of a statutory body will be chaired by the chairperson or, in his or her absence, by the deputy chairperson or, in the absence of both the chairperson and deputy chairperson, by a member chosen to preside by a majority of the members present.

(2) A quorum of a statutory body (including ARC) consists of one half of the total number of its members (ignoring any fraction resulting from the division) plus one.

(3) In the case of ARC, the quorum must include—

- (a) the chairperson or the deputy chairperson; and
- (b) one or more members appointed to represent the interests of employers and employees respectively; and
- (c) at least one other member.

(4) A decision carried by a majority of the votes cast by members present at a meeting of a statutory body is a decision of the body.

(5) Each member present at a meeting of a statutory body has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(6) A telephone or video conference between members of a statutory body will, for the purposes of this clause, be taken to be a meeting of the body at which the participating members are present.

(7) A proposed resolution of a statutory body becomes a valid decision of the body despite the fact that it is not voted on at a meeting of the body if—

- (a) a notice of the proposed resolution is given to all members of the body in accordance with procedures determined by the body; and
- (b) a majority of the members of the body expresses concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) A statutory body must have accurate minutes kept of its proceedings.

(9) Subject to this Act, a statutory body may determine its own procedures.

(10) Subject to the directions of the statutory body, this clause applies to a committee of a statutory body (other than the Disputes Resolution Committee) in the same way as to the statutory body.

Disclosure of interest

4. (1) A member of a statutory body who has a direct or indirect pecuniary interest in a matter under consideration by the body—

- (a) must disclose the nature of the interest to the body; and
- (b) must not take part in any deliberations or decision of the body in relation to that matter.

Penalty: Division 5 fine or division 5 imprisonment.

(2) A member of a committee of a statutory body who has a direct or indirect pecuniary interest in a matter under consideration by the committee—

- (a) must disclose the nature of the interest to the statutory body; and
- (b) must not take part in any deliberations or decision of the committee in relation to that matter.

Penalty: Division 5 fine or division 5 imprisonment.

(3) It is a defence to a charge of an offence against this clause to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(4) A disclosure under this clause must be recorded in the minutes of the relevant body and reported to the Minister.

Validity of acts

5. An act or proceeding of a statutory body or a committee of a statutory body is not invalid by reason only of a vacancy in its membership.

Immunity

6. (1) A member of a statutory body or a committee of a statutory body incurs no liability for anything done honestly in the performance or exercise, or purported performance or exercise, of functions or powers under this Act.

- (2) A liability that would, but for this clause, attach to a member attaches instead to the Crown.

SCHEDULE 2*Repeal and Transitional Provisions***Repeal**

1. (1) The *Industrial and Commercial Training Act 1981* is repealed.

(2) The *Tertiary Education Act 1986* is repealed.

Transitional provisions

2. (1) A contract of training in force under the *Industrial and Commercial Training Act 1981* immediately before the commencement of Part 4 continues in force as a contract of training under Part 4.

(2) An approval, determination or requirement of the Industrial and Commercial Training Commission in force under the *Industrial and Commercial Training Act 1981* immediately before the commencement of Part 4 continues in force as an approval, determination or requirement of ARC under Part 4.

(3) A suspension or order of the Disputes and Disciplinary Committee in force under the *Industrial and Commercial Training Act 1981* immediately before the commencement of Part 4 continues in force as a suspension or order of the Disputes Resolution Committee under Part 4.

(4) A reference in an Act or an instrument or document to an apprentice is to be read as a reference to a trainee under a contract of training for a trade and a reference to apprenticeship is to be construed accordingly.

(5) A reference in an Act or an instrument or document to the Industrial and Commercial Training Commission is to be read as a reference to ARC.

(6) Despite the repeal of the *Tertiary Education Act 1986*—

(a) the South Australian Institute of Languages will continue in existence; and

(b) for that purpose, the provisions of Part IV of that Act will continue in force,

until a day fixed by the Governor by proclamation.

(7) The Governor may, in a proclamation made for the purposes of subclause (6), dispose of the assets and liabilities of the South Australian Institute of Languages.

APPENDIX
DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|----------|----------------------|--------------|---------------|
| 1 | 15 years | \$60 000 | — |
| 2 | 10 years | \$40 000 | — |
| 3 | 7 years | \$30 000 | — |
| 4 | 4 years | \$15 000 | — |
| 5 | 2 years | \$8 000 | — |
| 6 | 1 year | \$4 000 | \$300 |
| 7 | 6 months | \$2 000 | \$200 |
| 8 | 3 months | \$1 000 | \$150 |
| 9 | — | \$500 | \$100 |
| 10 | — | \$200 | \$75 |
| 11 | — | \$100 | \$50 |
| 12 | — | \$50 | \$25 |

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor