

## **APPENDIX 3**

### **FINAL DRAFT REPORT STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW EDUCATION AND TRAINING LEGISLATION AMENDMENT AND REPEAL BILL 2008**

August 2008

## **STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW**

**Date first appointed:**

17 August 2005

**Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

**“8. Uniform Legislation and Statutes Review Committee**

8.1 *A Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 The functions of the Committee are -

- (a) to consider and report on Bills referred under SO 230A;
- (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
- (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
- (d) to review the form and content of the statute book;
- (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
- (f) to consider and report on any matter referred by the House or under SO 125A.

8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

**Members as at the time of this inquiry:**

Hon Simon O’Brien MLC (Chairman)

Hon Matt Benson-Lidholm MLC

Hon Donna Faragher MLC

Hon Sheila Mills MLC

**Staff as at the time of this inquiry:**

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES  
REVIEW**

**IN RELATION TO THE**

**EDUCATION AND TRAINING LEGISLATION AMENDMENT AND REPEAL BILL 2008**

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**1 REFERENCE AND PROCEDURE**

- 1.1 The Education and Training Legislation Amendment and Repeal Bill 2008 (**Bill**) was introduced into the Legislative Council on 26 June 2008 by Hon Ljiljanna Ravlich, Minister for Local Government representing the Minister for Education and Training (**Minister**).
- 1.2 Following its Second Reading by the Minister, the Bill stood referred to the Uniform Legislation and Statutes Review Committee (**Committee**) pursuant to Standing Order 230A, as it ratifies or gives effect to a bilateral intergovernmental agreement to which the Government of the State is a party.
- 1.3 The Committee is required to report to the Legislative Council on its inquiry into the Bill pursuant to Standing Order 230A(4) which reads:

*The Uniform Legislation and Statutes Review Committee, or other committee, receiving a Bill under subclause (3) is to present its final report not later than 30 days of the day of the reference (exclusive of the referral day) or such other period as may be ordered by the House.*

**2 INQUIRY PROCEDURE**

- 2.1 The Committee's inquiry into the Bill proceeded by way of a hearing on 15 July 2008 with representatives from the Department of Education and Training (**DET**).<sup>1</sup> The Committee extends its appreciation to the witnesses for their attendance and assistance. A transcript of the hearing is provided at **Appendix 1**.
- 2.2 The Committee did not advertise or invite submissions but published details of the inquiry on its website.

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<sup>1</sup> Mr Andrew Wotherspoon, Senior Project Officer, Mr Robert Player, Deputy Director General, Education and Training and Mr Bill Swetman, Director, Education, Training & Regulation, Department of Education Services.

### **3 UNIFORM LEGISLATION**

- 3.1 National legislative schemes implementing uniform legislation take a variety of forms. Nine different structures, each with a varying degree of emphasis on national consistency or uniformity of laws and adaptability, have been identified. The structures are summarised in **Appendix 2**. The Bill most closely resembles the legislative structures referred to as 'Structure 8' with Western Australia implementing a nationally agreed legislative framework.
- 3.2 When examining uniform legislation, the Committee considers proposed provisions against various 'fundamental legislative scrutiny principles'. Although not formally adopted by the Legislative Council as part of the Committee's terms of reference, the Committee applies the principles as a convenient framework for the scrutiny of uniform legislation.<sup>2</sup> These principles are set out in **Appendix 3**.

### **4 DOCUMENTATION SUPPORTING THE BILL**

- 4.1 DET advised of three items. These are:

(1) the Australian National Training Authority Ministerial Council (**MINCO**) resolution number (ii) at a meeting on 15 November 2002. The resolution stated that in relation to the legislative framework for a fully integrated national vocational education and training system it was:

*agreed that Ministers will seek their Cabinets' approval to amend State and Territory vocational education and training legislation by 1 July 2004, using the model clauses ...noting that the model clauses may not need to be enacted in their precise terms where the same effect for any given clause can be achieved through existing legislative provisions or by making substantially similar amendments ...*

(2) the 2005-2008 Commonwealth State Agreement for Skilling Australia's Workforce.<sup>3</sup> Clause 40(iv) provides that States and Territories agree to:

*implement model clauses in order to achieve nationally consistent legislation underpinning vocational education and training quality assurance and regulation; and*

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<sup>2</sup> Further background on fundamental legislative principles can be found in a report by the predecessor Committee, the Standing Committee on Uniform Legislation and General Purposes. Refer to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 23, *The Work of the Committee During the Second Session of the Thirty-Sixth Parliament - August 13 2002 to November 16 2004*, November 2004, pp4-9.

<sup>3</sup> Mr Robert Player, Deputy Director General, Training, Department of Education and Training, said in evidence, "*the Act is the overarching legislation. Part of the provision is in the Act for the establishment of the agreement both at a multilateral level and also bilaterally.*" *Transcript of Evidence*, 15 July 2008, p2.

(3) the Bilateral Funding Agreement between Western Australia and the Australian Government under the 2005-2008 Commonwealth-State Agreement for Skilling Australia's Workforce.<sup>4</sup>

## **5 BACKGROUND TO THE BILL**

- 5.1 Amongst other things, the Bill reflects Western Australia's commitment to the MINCO resolution and intergovernmental agreements by overcoming the current, major difficulty DET experiences - its inability to place conditions upon registration of registered training providers, whereas:<sup>5</sup>

*... in other states there is a middle ground in terms of amending their registration, suspending their registration and so on. At the moment in Western Australia, we can only deregister or register—that is it. That makes it particularly difficult and that is a particularly important aspect in looking after the welfare of students and their protection. In summary, the [model] clauses are a very practical approach to achieve national consistency in VET legislation whilst maintaining control here in WA.*

## **6 OVERVIEW OF THE BILL**

- 6.1 The Bill makes significant amendments to the *Vocational Education and Training Act 1996 (VET Act)*, repeals the *Industrial Training Act 1975* and makes consequential amendments to 11 other Acts. The Minister stated the following in her Second Reading Speech:<sup>6</sup>

*The drive for reform comes from a number of different sources, including the Council of Australian Governments.*

*The streamlined apprenticeship system will combine apprenticeships and traineeships within a single legislative framework, consistent with other states and territories.*

*Beyond apprenticeships, further amendments will enable the...Training Accreditation Council ... to ...operate on the basis of the national model clauses, the introduction of which will bring Western Australian legislation into line with legislation in other*

<sup>4</sup> This agreement applies in respect of the period 1 January 2006 to 31 December 2008.

<sup>5</sup> Mr Robert Player, Deputy Director General, Training, Department of Education and Training, *Transcript of Evidence*, 15 July 2008, p2.

<sup>6</sup> Hon Ljiljanna Ravlich MLC, Minister for Local Government representing the Minister for Education and Training, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 26 June 2008, pp4465-6.

*states. The model clauses deal primarily with the establishment of a nationally consistent framework for the registration and audit of training providers.*

6.2 Of the Model Clauses, DET said they:<sup>7</sup>

*... enable registered training organisations to operate in any state and territory through a single registration with that state or territory being its place of principal business...*

*The benefits of these nationally consistent arrangements that will come forth through the model clauses include—in our situation we have more and more of our Western Australian industries that are operating across borders and they operate with both local and interstate RTAs. Therefore...consistency of registration and regulation is critical for us in terms of quality and administration.*

## 7 THE MODEL CLAUSES

7.1 In order to assist the House, these are reproduced at **Appendix 4**.

### Model Clauses as Subsidiary Legislation

7.2 DET explained that the MINCO resolution of 15 November 2002 did not require the Model Clauses to be strictly enacted in primary legislation. Intent was the key to the exercise.<sup>8</sup> The decision to draft the Model Clauses as subsidiary legislation was based on the following considerations:

- *the bulk of the model clauses are operational by nature and thereby would not necessarily fit specifically within the legislation part of the Act.*<sup>9</sup>
- *the ability later on, as things change, (because it is quite a dynamic environment we are working in), to be able to change, through parliamentary processes, the regulations to reflect any changes in the model clauses, particularly when it is more into a national system.*<sup>10</sup>

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<sup>7</sup> Mr Robert Player, Deputy Director General, Training, Department of Education and Training, *Transcript of Evidence*, 15 July 2008, p2.

<sup>8</sup> Ibid, p3.

<sup>9</sup> Mr Bill Swetman, Director Education and Training Regulation, Department of Education Services, *Transcript of Evidence*, 15 July 2008, p6.

<sup>10</sup> Mr Robert Player, Deputy Director General, Training, Department of Education and Training, *Transcript of Evidence*, 15 July 2008, p6.



- *more flexibility for the State ... is that from time to time there could well be amendments that could take place as a consequence of national forums, through things like COAG, the Ministerial Council for Vocational Education and Training, for instance, that may bring through national amendments to the guidelines for registered training organisations and/or the management of conditions for registration. Therefore, it was thought administratively it would provide more flexibility to manage the bulk of the model clauses through the regulations.*<sup>11</sup>

## Omitted Model Clauses

7.3 DET explained that Model Clauses 12(4), 12(5) and 12(6) were not enacted:<sup>12</sup>

*Clause 12(4) makes specific registration to the local registering body imposing restrictions under subsection (2) unless the registering body that registered the [registered training organisation] fails to make any attempt to deal with the grounds that relate to the matter. Clause 12(5) does not apply if the local registering body relies upon a ground established under a compliance section. Clause 12(6) states that subsection (4) does not stop the local registering body, before the end of the 30-day period mentioned in the subsection, taking all steps necessary to impose a restriction immediately after the period has ended.*

7.4 DET did not agree with their implementation:<sup>13</sup>

*It was not that they could not be accommodated. We believe that, in terms of the overall intent of how we apply the model clauses for the management of regulation in Western Australia, they are unnecessary because we already manage the registration details of an organisation through the amendments to the regulations through the model clauses. Once the regulations were to go through, we would be able to impose conditions upon registration and there would be a duplication.*

## 8 SELECTED CLAUSES OF THE BILL

8.1 The Bill has 60 clauses in three Parts. The following clauses are highlighted:

<sup>11</sup> Mr Bill Swetman, Director Education and Training Regulation, Department of Education Services, *Transcript of Evidence*, 15 July 2008, p7.

<sup>12</sup> Ibid, p3.

<sup>13</sup> Ibid, pp3-4.

## Long Title

- 8.2 In part, the Long Title states that it is “*A Bill for An Act ... to repeal the Industrial Training Act 1975 ...*”. The Committee queried how the Bill can repeal that Act given that the VET Act purported to repeal it over 12 years ago. Section 2 of the VET Act states: “*the provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.*”
- 8.3 On 12 November 1996 a proclamation was gazetted bringing the VET Act into operation<sup>14</sup>. However, it expressly excluded Part 7 and Schedule 2 of the Act. Part 7 of the VET Act included section 61, the section that proposed to repeal the *Industrial Training Act 1975*<sup>15</sup>. As section 61 never came into operation, the *Industrial Training Act 1975* was never repealed.
- 8.4 Mr Robert Player, Deputy Director General, Training, Department of Education and Training said:<sup>16</sup>

*My understanding is that there was not support as there is at the moment for the changes that have been brought forward so it was not proclaimed. There was not what I consider the unanimous support that we have at the moment.*

## Commencement provisions generally in a bill

- 8.5 In the absence of an express commencement provision, a bill will commence operation as an Act on the 28<sup>th</sup> day after the day on which it receives the Royal Assent, per section 20(2) of the *Interpretation Act 1984*.
- 8.6 Generally, there are four methods by which bills can be expressly drafted to commence. These are:
- on Royal Assent;<sup>17</sup>
  - on a specific date declared in the legislation<sup>18</sup> (the date may be in the future or in the past (that is, retrospective)). There may be multiple commencement

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<sup>14</sup> Western Australian Government Gazette, No. 172, 12 November 1996, p6301 - AA201

<sup>15</sup> *Vocational Education and Training Act 1996*, section 61.

<sup>16</sup> Mr Robert Player, Deputy Director General, Training, Department of Education and Training, *Transcript of Evidence*, 15 July 2008, p9.

<sup>17</sup> For example, *Reserves (Reserve 43131) Act 2003*, Higher Education Bill 2003; Genetically Modified Crops Free Areas Bill 2003, Industrial Hemp Bill 2003: “*This Act comes into operation on the day it receives the Royal Assent.*”.

<sup>18</sup> For example, *Interpretation Act 1984*: “*This Act shall come into operation on 1 July 1984.*”.

dates - that is, different sections of a the bill may be expressed to come into operation at different times;<sup>19</sup>

- on the commencement of a related piece of legislation; or
- on proclamation.

### *The Proclamation Method*

- 8.7 Proclamations are reserved for announcements made by or under authority of the Crown.<sup>20</sup> They are issued by the Governor as a single ‘one off’ document usually used for matters such as the commencement of Acts or particular parts of Acts.
- 8.8 The ultimate discretion of whether to prepare a proclamation is left to the minister. After ministerial approval, a draft proclamation is sent to the Executive Council. In consultation with the Executive Council, the Governor would then make the proclamation through the *Government Gazette*.
- 8.9 Commonly, bills that come before the Parliament provide that the Act (or specific provisions) is to commence on proclamation (usually in clause 2), for example: “*This Act comes into operation on a day to be fixed by proclamation*”.<sup>21</sup> This means that the Parliament gives the Executive discretion to indefinitely suspend the operation of laws passed by the Parliament.<sup>22</sup> This occurred with the VET Act and meant that its final approval had been delegated from the Parliament to the Executive. The Executive had final control over what parts of the VET would be declared and when, if ever, such proclamation would occur.

### *Does the Bill have sufficient regard for the institution of Parliament?*

- 8.10 Whether a bill has sufficient regard for the institution of Parliament itself is a fundamental legislative principle the Committee considers during scrutiny. Generally, commencement provisions in bills rarely attract debate in the House or scrutiny. However, commencement by proclamation does attract the fundamental legislative principle by the Committee, its task being to draw to the attention of the Parliament, the inappropriateness of delegating legislative power to the Executive. The Committee noted that where unfettered control is given to the Executive to decide the

<sup>19</sup> One way to make provision for multiple commencement dates is by directly stating that different commencement dates apply to different provisions.

<sup>20</sup> Francis Bennion, *Statutory Interpretation, A Code*, 4<sup>th</sup> edition, 2002, p223.

<sup>21</sup> Note sections 22 and 23 of the *Interpretation Act 1984*. Section 22 essentially provides that although the Act may come into operation on a date fixed by proclamation, the short title of the Act (clause 1) and the commencement provision itself (clause 2) come into operation of the day on which the Act receives the Royal Assent.

<sup>22</sup> Discussions between Legislative Council Committee Office staff with the former Clerk, Mr Marquet indicate that it is quite common and has been the case for some time.

commencement of a particular Act, this can usurp the power that lies at the heart of the role of the Western Australian Parliament.

8.11 The legislative process is designed to be transparent. When an Act's commencement is subject to proclamation, it may enter an unpredictable phase. The Act may only partially emerge, or may never emerge at all. It can be difficult to resurrect an Act if this occurs, unless the Act is prominent enough to gain enough parliamentary interest. According to Hansard records, a partially proclaimed VET Act has been brought to the attention of the Legislative Council on three occasions in 12 years. Each time it was raised, the answer reflected discussions between interested parties and no decision on the issue settled:

- In March 1999, three years after assent, Hon Ljiljanna Ravlich put a question to Hon Norman Moore about when the VET Act would be fully proclaimed. The answer given was that "*no decision has been made.*"<sup>23</sup>
- In June 2000, four years after assent, Hon Ljiljanna Ravlich put a question to Hon Norman Moore about the status of the VET Act given that Part 7 had not been proclaimed.<sup>24</sup>
- In April 2006, ten years after assent, Hon Norman Moore put the same question to Hon Ljiljanna Ravlich, who was now the Minister for Education and Training. The answer given was that the VET Act had "*not been proclaimed due to industry opposition.*"<sup>25</sup>.

8.12 A further check of Hansard in 2003 found several other Acts had been only partially proclaimed.<sup>26</sup> These normally occurred because of a difficulty with finalising regulations, an Act becoming redundant or administrative arrangements related to the relevant Act. In other cases proclamation did not occur because a change of situation made proclamation undesirable.<sup>27</sup>

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<sup>23</sup> Answer to Question on Notice 1018 asked in the Legislative Council by Hon Ljiljanna Ravlich and answered by Hon Norman Moore, *Parliamentary Debates (Hansard)*, 23 March 1999, p6843.

<sup>24</sup> Answer to Question on Notice 1061 asked in the Legislative Council by Hon Ljiljanna Ravlich and answered by Hon Norman Moore, *Parliamentary Debates (Hansard)*, 20 June 2000, p7789.

<sup>25</sup> Answer to Question on Notice 1052 asked in the Legislative Council by Hon Norman Moore and answered by Hon Ljiljanna Ravlich, *Parliamentary Debates (Hansard)*, 11 April 2006, p1392.

<sup>26</sup> Various Answers to Questions on Notice asked in the Legislative Council by Hon George Cash and answered by Hon Tom Stephens, Hon Kim Chance and Hon Ken Travers, *Parliamentary Debates (Hansard)*, 11 December 2003, pp14800-14801 and 12 December 2003, pp14860-14861.

<sup>27</sup> Answer to Question on Notice 1440 asked in the Legislative Council by Hon George Cash and answered by Hon Ken Travers, *Parliamentary Debates (Hansard)*, 12 December 2003, pp14860- p14861.

- 8.13 The issue of ‘partial proclamation’ was canvassed in the Legislative Council by Hon Tom Stephens in May 1997.<sup>28</sup> A proposed solution to insert a sunset clause in the commencement section of a bill to ensure the Act’s activation (or repeal) if a proclamation did not occur within a certain time, was not progressed.
- 8.14 The Committee observes that the failure to proclaim the provisions repealing the *Industrial Training Act 1975* for over 12 years, has frustrated the will of the Parliament. The Committee is concerned that employing the same method in clause 2 of this Bill may have the same result.

## Clause 2

- 8.15 Clause 2(b) of the Bill states:

*“This Act comes into operation - on a day fixed by proclamation, and different days may be fixed for different provisions”.*

- 8.16 Given the potential (noted above) for clause 2(b) to result in partial proclamation, the Committee explored solutions, including the Commonwealth’s approach to overcoming this problem. The *Office of Parliamentary Counsel Drafting Directions*<sup>29</sup> refers to two standard policies:
- that a commencement provision should only defer commencement when absolutely necessary; and
  - that commencement provisions which rely on proclamations must contain a sunset clause. These clauses are drafted to automatically commence or repeal an Act if it is not proclaimed within a certain time.
- 8.17 The Committee sees merit in such an approach and therefore makes the following recommendation with respect to clause 2.

<sup>28</sup> Western Australia, *Parliamentary Debates*, in relation to the Labour Relations Legislation Amendment Bill, Legislative Council, 13 May 1997, pp2816-2821.

<sup>29</sup> Parliamentary Counsel Drafting Direction No. 1.3: Commencement provisions, p6.

**Recommendation 1: The Committee recommends that clause 2 of the Education and Training Legislation Amendment and Repeal Bill 2008 be amended to provide a sunset provision. This may be effected in the following manner:**

**Clause 2**

**Page 2, after line 10 - To insert -**

**“(c) If a provision of this Act does not commence under section (2)(b) within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.”**

**Clause 8**

8.18 Clause 8 provides for the insertion of a proposed new ‘ministerial corporation’ to repeal section 7 of the VET Act where currently, the Minister is a body corporate, consisting of a Minister.

*What is a Ministerial Corporation?*

8.19 This term is not found in any legal encyclopaedias. There is no specific reference to the term in the State Law Publisher’s list of Western Australian Acts. However, several Western Australian Acts make reference to a ‘Ministerial Body’, including the *Transport Co-ordination Act 1966*.<sup>30</sup>

8.20 A ‘Ministerial Body’ is defined in section 6 of the *Transport Co-ordination Act 1966* as a body corporate with perpetual succession. It also states that the Ministerial Body is governed by the Minister and is an agent of the State. Section 6A(1) states that the purpose and nature of a Ministerial Body is to “*to provide a body corporate through which the Minister can perform ... functions ... that can more conveniently be performed by a body corporate than an individual.*”

8.21 A search of the *Austlii* database reveals that the term ‘Ministerial Corporation’ is a term mainly used in NSW legislation. It is used as a descriptor for a body corporate, established by statute and under some form of ministerial control. In most cases, a ‘Ministerial Corporation’ is governed by a Minister.<sup>31</sup> In others, the corporation is

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<sup>30</sup> *Transport Co-ordination Act 1966*, sections 6 and 6A.

<sup>31</sup> One example being the *State Development and Industries Assistance Act 1966 (NSW)*, section 34H.

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governed by a subordinate of the Minister, who governs the corporation under the Minister's directions.<sup>32</sup>

- 8.22 The term 'Ministerial Corporation' refers to an artificial legal entity, formed around the position of a Minister. It is a statutory corporation in which the Minister (or a subordinate) makes up the entirety of that corporation. This approximates the legal concept of a 'Corporation Sole' defined in the *Encyclopaedic Australian Legal Dictionary* as:<sup>33</sup>

*A corporation consisting of one person only, and that person's successors to a particular position, where that person constitutes an artificial legal person in which title to property could be vested.*

- 8.23 The term 'Ministerial Corporation' is based on two fundamental legal concepts. First, the idea of a corporation existing as an individual legal entity, which remains separate from its controllers. Second, that a corporation can consist of a single person, who acts as the sole controller of that corporation.

*'Ministerial Corporation' versus the 'Minister a Body Corporate'*

- 8.24 There does not appear to be any legal difference between the terms 'Ministerial Corporation' in the Bill and 'Minister a Body Corporate' in section 7 of the VET Act aside from the name used in the legislation to describe the body corporate. Section 7 established a body corporate with perpetual succession, governed by the Minister and named "Minister for Training". Clause 8 of the Bill proposes to continue this same body corporate under the new name "VET (WA) Ministerial Corporation".<sup>34</sup>
- 8.25 A body corporate is capable of holding property in its own name. The body corporate has perpetual succession. The minister's control would be passed to his or her successor. If the minister resigns or dies without an immediate replacement, the body corporate would continue to exist independently.
- 8.26 As a separate legal entity, the body corporate has the same legal capacity as an individual. It may enter into contracts in its own name, institute legal actions, sue and be sued. The minister will be separate from these actions, even though the minister has effective control. The minister will be able to use the body corporate as a vehicle to carry out duties or actions.

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<sup>32</sup> Such as the *General Liability Management Fund Act 2002 (NSW)*, section 8.

<sup>33</sup> *Encyclopaedic Australian Legal Dictionary* Electronic Lexisnexis.

<sup>34</sup> *Education and Training Legislation Amendment and Repeal Bill 2008 (WA)*, clause 8.

8.27 A ‘Ministerial Corporation’ does not appear to fall under the *Corporations Act* (Cth). This is because it does not fall under the meaning of “corporation” in section 57A<sup>35</sup> of that Act for two reasons.

- A statutory corporation is likely to be an ‘exempt public authority’.<sup>36</sup>
- A corporation consisting of one person is exempt from the *Corporations Act*.

8.28 This is because the *Corporations Act* was designed to protect the shareholders of public and private companies. In either of the above situations, there are no ‘shareholders’ at risk.

8.29 If the Ministerial Corporation does not come under the *Corporations Act*, it will not be subject to the scrutiny of the Australian Securities and Investment Commission. However, the Ministerial Corporation would fall under the *Statutory Corporations (Liability of Directors) Act, 1996*<sup>37</sup> This Act would establish additional duties on the Minister, similar to the duties on a director established by the *Corporations Act*.<sup>38</sup>

8.30 Thus the Bill will continue the existence of the body corporate established by the VET Act but under a different name and this body corporate is solely composed of the minister, but is separate from the minister. This allows the Minister’s position to gain the advantages of a corporation, even though the minister is the only controller of the corporation.

## Clause 38

*Does the Bill have sufficient regard to the institution of Parliament?*

8.31 This clause, which proposes a new section 58 and regulations to house the majority of the Model Clauses, raises the Committee’s fundamental legislative principle - *Does the Bill have sufficient regard to the institution of Parliament by sufficiently subjecting the exercise of a proposed delegated legislative power to the scrutiny of the Legislative Council?*<sup>39</sup>

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<sup>35</sup> *Corporations Act 2001* (Cth), section 57A.

<sup>36</sup> The factors making up a public authority is set out in *Commissioner of Taxation v Bank of Western Australia Ltd* (1995) 133 ALR 599 at 618.

<sup>37</sup> *Statutory Corporations (Liability of Directors) Act 1996*. This is “An Act to declare the duty that persons who control the affairs of a statutory corporation owe to the corporation ... and for the recovery of compensation for breaches ...”. The duties are to act honestly; to exercise reasonable care and diligence; not to make improper use of information; and not to make improper use of position.

<sup>38</sup> *Corporations Act 2001* (Cth), Part 2D.

<sup>39</sup> Appendix 3, Item 13.



- 8.32 The Committee concurs with DET's view that the Model Clauses be housed in regulations for operational reasons<sup>40</sup> and provides the following matrix matching the proposed new section with its counterpart Model Clause.

<b>Clause 38, proposing new section:</b>	<b>Model Clause Number (See Appendix 4)</b>
58(a)	6(1), 7(3) and 23(1)
58(b)	6(2), 6(3), 23(2) and 23(3)
58(c)	7(2), 7(3)(c), 7(4), 7(5), 18(1), 18(2), 24(1-5)
58(d)	5(1), 5(2), 7(6-10), 8(1-5)
58(f)	9 and 25
58(h)	2, 3, 11, 15 and 24
58(i)	10, 12(1-3), 13, 14, 26 and 27
58(k)	8(2)
58(n)	6(2)

- 8.33 The Committee noted that proposed new section 58 is drafted as "*regulations may provide for*" (various subject matters), rather than "*regulations may prescribe for*" (various subject matters). Other verbs used in the proposed new section are "confer" and "require".
- 8.34 The Committee has concerns that the Model Clauses when drafted in regulations under the expression "*regulations may provide for*" may not be capable of disallowance by the Legislative Council. For example, that the fees in proposed new section 58(n) may not be subject to disallowance through parliamentary review by the Joint Standing Committee on Delegated Legislation. The fees could be referred to in the instrument (itself authorised by the empowering enactment) but the quantum contained in some other non disallowable instrument such as a departmental circular or memorandum.

<sup>40</sup> Mr Bill Swetman, Director Education and Training Regulation, Department of Education Services, *Transcript of Evidence*, 15 July 2008, pp6-7.

- 8.35 The use of different language in a bill's regulation making power was raised in 2006 when this Committee scrutinised the Industrial Training Amendment Bill 2006. There the Committee said:

*Regulations are generally expressed to "prescribe" a matter. The Committee notes that it is a basic principle of statutory interpretation that the Parliament's use of different words in the same Act implies that a different meaning is intended for each word.*

*The Committee queries whether the use of the word "provide" is an attempt to avoid parliamentary scrutiny. The word "prescribe" is well understood to require the relevant matter that is to be so prescribed to be clearly designated in the text of the regulations. However, the Committee notes that there may be an argument that where a matter may be "provided for" in regulations, that the subsequent regulations may simply provide that the relevant matter is to be dealt with elsewhere, in a separate, non-disallowable, document such as an internal departmental policy or decision of the Minister.*

- 8.36 The Standing Committee on Legislation also commented on this conundrum during its scrutiny of the Biosecurity and Agriculture Management Bill 2006.<sup>41</sup> That committee said:

*The Committee understands that 'prescribe', when used in the context of providing a subsidiary legislation-making power, requires the matter which is to be prescribed to appear in, and be dealt with by, the text of that subsidiary legislation.*

*For example, where an Act provides that a matter is to be prescribed by regulations, the resulting regulations would be exceeding their legislative power if they delegated the matter to the decision of a public servant. While the regulations would be disallowable and subject to publication and tabling requirements, the decision of that public servant (made under delegated legislative authority) would not normally be required to be tabled in Parliament, nor would it normally be disallowable.*

- 8.37 The Joint Standing Committee on Delegated Legislation raises the ramifications of primary legislation requiring matters to be "specified" or "provided for" (or other

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<sup>41</sup> Western Australia, Legislative Council, Standing Committee on Legislation, Report 7, *Biosecurity and Agriculture Management Bill 2006, Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Bill 2006 and Biosecurity and Agriculture Management Rates and Charges Bill 2006*, 3 April 2007.

similar term), rather than “*prescribed*”, when scrutinising subsidiary legislation against the need for effective parliamentary control.<sup>42</sup>

- 8.38 The Committee asked DET the rationale for using the verb “*provide*” rather than “*prescribe*” in the Bill. DET said that this was on the advice of the Parliamentary Counsel and that DET has no particular view on the matter.<sup>43</sup> Parliamentary Counsel said<sup>44</sup>:

*Aside from whether an Act says so, the verb “prescribe” is used for sums of money and listing the names of people.*

*With respect to the Model Clauses, the term ‘provide’ is better, given the complexity of the national initiative. It will allow freedom to achieve national consistency.*

*Grammatically, “prescribe” cannot always be used, for example in proposed s 58(j) & (m) and 60 (e)- (i).<sup>45</sup>*

*To provide as flexible a regulation-making power... because VET is a complex and changing area.<sup>46</sup>*

- 8.39 Parliamentary Counsel justifies the use of the term “provide” on the grounds that it is necessary for the flexible implementation of the Model Clauses. However, it is the Committee’s view that because “prescribe” has a particular meaning, some of the proposed regulation making power provisions in the Bill should utilise the verb “prescribe” rather than “provide” so that for example, with respect to proposed new section 58(n) the quantum of fees will be within the substantive text and not elsewhere.
- 8.40 Given the policy decision to place many Model Clauses in regulations as per a ‘spirit and intent’ approach rather than replication; and the fact that the regulations have not yet been drafted,<sup>47</sup> parliamentary scrutiny of the detail of the national initiative is paramount.<sup>48</sup>

<sup>42</sup> Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 22, *Annual Report 2006*, 28 March 2007, p36.

<sup>43</sup> Discussion between the Chairman and the witnesses, *Transcript of Evidence*, 15 July 2008, p14.

<sup>44</sup> Telephone discussion between Mr Patrick Tremlett, Senior Parliamentary Counsel and the Committee’s Adviser, 16 July 2008.

<sup>45</sup> Letter from Mr Patrick Tremlett, Senior Parliamentary Counsel, received 23 July 2008, p2.

<sup>46</sup> Ibid.

<sup>47</sup> Confirmed in a letter from Mr Patrick Tremlett, Senior Parliamentary Counsel, received 23 July 2008, p2, para 10.

<sup>48</sup> And any future amendments or repeals.

8.41 The Committee is of the view that not all of the proposed new subsections in clause 38 need to be “prescribed” and has isolated those for which it considers the text of the regulations should contain substantive material capable of disallowance. These are clause 38, proposed new subsections 58(c), (d), (i) and (n). The Committee considers the subject matter of these to be in the public interest and will give regard to the institution of Parliament.

- Proposed new section 58(c) which deals with the criteria (including standards) that the Training Accreditation Council must or may take into account when deciding an application made to it for a person to become a registered training provider.
- Proposed new section 58(d) which deals with the conditions that the Training Accreditation Council may impose when registering a training provider.
- Proposed new section 58(i) which deals with the circumstances that justify the Training Accreditation Council varying, suspending or cancelling the registration of a training provider.
- Proposed new section 58(n) which imposes fees.

8.42 The Committee recommends that, where it occurs, the phrase “provide for” be replaced with the term “prescribe” in the subsections of proposed new section 58.

**Recommendation 2: The Committee recommends that clause 38 of the Education and Training Legislation Amendment and Repeal Bill 2008 proposing new sections 58(c), (d), (i) and (n) be amended by replacing the words “provide for” where they occur with the word “prescribe”. This may be effected in the following manner:**

**Clause 38**

**Page 32, Line 27 - To delete “provide for” and insert “prescribe”;**

**Page 33, Line 1 - To delete “provide for” and insert “prescribe”;**

**Page 33, Line 23 - To delete “provide for” and insert “prescribe”; and**

**Page 34, Line 16 - To delete “provide for” and insert “prescribe”.**

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**Clause 39**

*Does the legislation have sufficient regard to the rights and liberties of individuals?*

- 8.43 Proposed new section 61B gives significant powers to VET inspectors to enter premises, search and seize documents. This raises the Committee’s fundamental legislative principle - *Does the legislation have sufficient regard to the rights and liberties of individuals by conferring power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?*<sup>49</sup> Proposed new section 61B does not provide for either a warrant or consent to enter.
- 8.44 The Explanatory Memorandum states that power of entry provisions are “*necessary where there are offences*” and that these have been based on Queensland and South Australia.<sup>50</sup> The fine is significant - \$10,000. DET gave the following justification:<sup>51</sup>

*A number of reasons underpin the inclusion of such clauses. Primarily, from our perspective in terms of regulating, it is for the protection of students. We have a number of occasions whereby if an organisation was at risk in terms that it was audited and found to be critically non-compliant—and may well be at the stage where it could be deregistered—a similar example may well be a business that is not travelling well and about to wind up—we want the ability to be able to go into the organisation and access student records. If the organisation closed suddenly, we would have copies of the students’ qualifications and assessments of statements of attainment up to that period of time. If the organisation closes down, it may well not issue those qualifications or statements of attainment to the students, thereby disadvantaging those students if they were to try to conclude their studies elsewhere or need have proof that they have completed this stage of their studies.*

*The second example we are going through at the moment is a deregistration process. If we were able to enter the premises prior to the deregistration process and apply conditions and say to the organisation, “These records are missing; we would like to be able to conclude the quantum of records that we have for the students” then,*

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<sup>49</sup> See Appendix 3, Item 5.

<sup>50</sup> Explanatory Memorandum paragraph 241, p45. South Australia’s equivalent is section 52 of the *Training and Skills Development Act 2003*. Queensland’s legislation is different; see sections 263-266 of its *Vocational Education, Training and Employment Act 2000*.

<sup>51</sup> Mr Bill Swetman, Director Education and Training Regulation, Department of Education Services, *Transcript of Evidence*, 15 July 2008, pp11-12.

*as a result, students would have a permanent ongoing record documenting that they were up to a certain stage of their qualifications or statements of attainment. If those students were to come back at a later time and after the organisation has closed down, [the Training Accreditation Council] would have a copy of those records to assist the students.*

8.45 The Committee does not doubt that VET inspectors require the power to enter premises for the reasons explained by DET. However, proposed new section 61B fails to require an inspector to either obtain consent from the registered training provider or apply for a warrant for the purposes of entering, searching and seizing. This may be contrasted with Queensland's equivalent legislation (upon which the Explanatory Memorandum states that the Bill was based<sup>52</sup>) where it provides for:<sup>53</sup>

- entry with consent;<sup>54</sup>
- application for a warrant;<sup>55</sup>
- the issue of warrant;<sup>56</sup> and
- warrants and procedures before entry.<sup>57</sup>

8.46 The Committee noted that the Queensland legislation is also consistent with the approach taken to powers of inspection and search in the *Road Traffic Act 1974* package of legislation that the Committee recently scrutinised in its Report Number 31 where an inspector or police officer could enter a business with consent, during business hours or with a warrant.<sup>58</sup>

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<sup>52</sup> Explanatory Memorandum paragraph 241, p45. South Australia's equivalent is section 52 of the *Training and Skills Development Act 2003*. Queensland's legislation is different; see sections 263-266 of its *Vocational Education, Training and Employment Act 2000*.

<sup>53</sup> *Vocational Education, Training and Employment Act 2000 (Qld)*. In contrast, South Australia's model does not provide for a warrant to enter.

<sup>54</sup> Section 263.

<sup>55</sup> Section 264.

<sup>56</sup> Section 265.

<sup>57</sup> Section 266.

<sup>58</sup> Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, Report 31, Road Traffic (Administration) Bill 2007; Road Traffic (Vehicles) Bill 2007; Road Traffic (Authorisation to Drive) Bill 2007; Road Traffic (Consequential Provisions) Bill 2007; and Road Traffic (Vehicles) (Taxing) Bill 2007, 29 May 2008. Especially clauses 54 and 55 of the Road Traffic (Administration) Bill 2007.

8.47 The Committee noted that for centuries the power to exclude strangers from one's property has been regarded at common law as an inviolable principle.<sup>59</sup> At common law every unauthorised entry onto private property is a trespass.<sup>60</sup>

8.48 These principles remain central to our jurisprudence and the High Court of Australia (**High Court**) has, in recent years, expressly relied on them. For example, in *Halliday v Nevill*<sup>61</sup> Brennan J. followed the old authorities and observed:<sup>62</sup>

*The principle applies alike to officers of government and to private persons. A police officer who enters or remains on private property without the leave and licence of the person in possession or entitled to possession commits a trespass and acts outside the course of his duty unless his entering or remaining on the premises is authorized or excused by law.*

8.49 Similarly in *Plenty v Dillon*<sup>63</sup> the court demonstrated its commitment to protection of the privacy and security of householders in the face of police arguments concerning the need to effectively carry out their duty. In that case Gaudron and McHugh JJ cited with approval a passage from academic writer Geoffrey Samuel<sup>64</sup> who noted in another context:

*If the courts of common law do not uphold the rights of individuals by granting effective remedies, they invite anarchy, for nothing breeds social disorder as quickly as the sense of injustice which is apt to be generated by the unlawful invasion of a person's rights, particularly when the invader is a government official.*

8.50 In *Coco v the Queen*<sup>65</sup> the High Court specifically looked at the issue of powers of entry in the context of the installation and use of a listening device on premises under the *Invasion of Privacy Act 1971 (Qld)*. The High Court held that, although the legislation expressly empowered the use of such devices by law enforcement officers in specified circumstances, in the absence of an express authorisation to enter upon

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<sup>59</sup> For example, Semayne's case (1604) 5 Co Rep 91a; 77E.R. 194 at 195.

<sup>60</sup> Entick v Carrington (1765) 19 St Tr 1029. "By the laws of England, every invasion of private property, is it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing....If he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him."

<sup>61</sup> (1984) 155 CLR 1.

<sup>62</sup> (1984) 155 CLR 1 at 10.

<sup>63</sup> (1991) 171 CLR 635.

<sup>64</sup> "The Right Approach?" (1980) 96 *Law Quarterly Review* 12, at p14 cited by Lord Edmund-Davies in *Morris v. Beardmore* [1981] AC 446 at p 461.

<sup>65</sup> (1994) 179 CLR 427.

premises to install such a device, such a power of entry could not be implied. In other words, the right to exclude others from entering private property is so fundamental and well established at common law that any statutory diminution of such a right must be in the most unambiguous of terms.

- 8.51 Proposed section 61B clearly abrogates the common law right to exclude others from the registered training provider's place of business and its inclusion has been justified by DET. Nevertheless, the Committee prefers an amendment to require consent to enter and in the absence of consent, the obtaining of a warrant prior to entry in a manner similar to that provided for in section 264 of Queensland's *Vocational Education, Training and Employment Act 2000*. Section 264 states:

***264 Application for warrant***

*(1) An inspector may apply to a magistrate for a warrant for a place.*

*(2) The application must be sworn and state the grounds on which the warrant is sought.*

*(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.*

*Example--*

*The magistrate may require additional information supporting the application to be given by statutory declaration.*

- 8.52 The Committee makes the following recommendation:

**Recommendation 3: The Committee recommends that clause 39 of the Education and Training Legislation Amendment and Repeal Bill 2008 be amended so that proposed new section 61B includes a requirement for VET inspectors to seek consent for their activities and in the absence of consent, obtain a warrant to enter, search and seize.**

**Clause 48**

- 8.53 This clause repeals Schedules 3 and 4 that do not appear in the current version of the VET Act as published by the State Law Publisher. Both Schedules were present in earlier versions of the VET Act up until December 2005 when they were omitted under section 7(4)(e) of the *Reprints Act 1984*.<sup>66</sup> The purpose of clause 48 is to 'tidy' the statute book.

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<sup>66</sup> "An authorised officer may omit — a provision that has expired or become spent or had its effect."



## Other Matters

8.54 The Committee noted that the 2005-2008 Commonwealth-State Agreement for Skilling Australia's Workforce proposed a joint funding pool to improve education and training outcomes for indigenous Australians, particularly those in regional and remote locations.<sup>67</sup> The details were to be specified in each State or Territory's consequent bilateral agreements.

8.55 The Committee asked DET to comment on how, to date, the provision of funding under the agreement has improved outcomes for indigenous Western Australians. DET said:<sup>68</sup>

*A number of programs have been put in place.... They vary from direct funding for particular programs of delivery for Aboriginal people to programs for non-delivery, which are wraparound services—for instance, mentoring, pastoral care and so on. At the moment the participation rate of Aboriginal people in vocational education and training in Western Australia is significant.*

*In 2007 there were 9 053 enrolments for Aboriginal people, which constitutes 7.2 per cent of the total enrolments. The total enrolments are 125 713—that is, enrolments in terms of activity—which constitutes 5.9 per cent of activity. You can see that it is quite high. The benefits are coming through in that respect.*

8.56 The Committee noted the Bilateral Funding Agreement between Western Australia and the Australian Government under the 2005-2008 Commonwealth-State Agreement for Skilling Australia's Workforce contains seven specific strategies for improving outcomes for indigenous Australians. DET provided a progress report on each of the seven strategies for the attention of the House. (See **Appendix 5**.)

## 9 AMENDMENTS TO THE BILL

9.1 The Committee was advised that the Government did not propose to put forward any amendments to the Bill in the Legislative Council.<sup>69</sup>

<sup>67</sup> At clause 37(iv).

<sup>68</sup> Mr Robert Player, Deputy Director General, Training, Department of Education and Training, *Transcript of Evidence*, 15 July 2008, p4.

<sup>69</sup> Ibid, p2.

**10 IS THE BILL CONSISTENT WITH ITS SUPPORTING DOCUMENTATION?**

10.1 The Committee makes the following finding:

**Finding: The Committee finds that the Education and Training Legislation Amendment and Repeal Bill 2008 is consistent with the Australian National Training Authority Ministerial Council resolution of November 2002 and the two subsequent intergovernmental agreements.**

10.2 The Committee commends its report to the House for consideration.

**7 August 2008**

**APPENDIX 1**  
**TRANSCRIPT OF EVIDENCE**



**APPENDIX 1**  
**TRANSCRIPT OF EVIDENCE**

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**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**EDUCATION AND TRAINING LEGISLATION AMENDMENT AND  
REPEAL BILL 2008**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
TUESDAY, 15 JULY 2008**

**Members**

**Hon Simon O'Brien (Chairman)**  
**Hon Matthew Benson-Lidholm**  
**Hon Sheila Mills**  
**Hon Donna Faragher**

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**Hearing commenced at 1.06 pm**

**PLAYER, MR ROBERT**

**Deputy Director General, Training, Department of Education and Training,  
sworn and examined:**

**SWETMAN, MR BILL**

**Director Education and Training Regulation, Department of Education Services,  
sworn and examined:**

**WOTHERSPOON, MR ANDREW**

**Senior Project Officer (Legislation), Department of Education and Training,  
sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome our witnesses to our hearing this afternoon. Before we proceed, I must ask our clerk to administer the oath or affirmation.

[Witnesses took the oath or affirmation.]

**The CHAIRMAN:** Thank you. You will all have signed a document entitled "Information for Witnesses". Have all witnesses read and understood the document?

**The Witnesses:** Yes.

**The CHAIRMAN:** Thank you. These proceedings are being reported by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document that you refer to during the course of the hearing—if any—to identify it for the record. Please be aware of the microphones and talk into them and do not cover them up with papers or make a noise near them apart from speaking. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Perhaps, Mr Player, I indicate the committee has noted the EM and the second reading speech, and I ask whether there is anything else you would like to add, by way of an opening statement, to our consideration of the bill?

**Mr Player:** Yes, I would, Mr Chair.

**The CHAIRMAN:** Please proceed.

**Mr Player:** As you said, as outlined in the explanatory memorandum to the bill and also in the second reading speech, there has been extensive consultation prior to the introduction of this bill into Parliament. All stakeholders, including unions, employers and peak groups have been absolutely unanimous in their support for the bill, particularly regarding apprenticeships and traineeships and the apprenticeship and traineeship system. As a result of this bill, the system will be streamlined, responsive and fairer. There has also been no opposition to the inclusion of the model clauses. It is recognised that within the framework of the national vocational education and

training system, there is, in fact, a guiding principle for the process to be simplified, streamlined and based on national consistency.

As explained in the explanatory memo and the other submitted documents that we have tabled, the model clauses themselves are actually designed to achieve consistent legislation underpinning vocational education and training quality assurance and regulation. The general aim is to enable registered training organisations to operate in any state and territory through a single registration with that state or territory being its place of principal business; hence it was agreed in November 2002 by all states to implement these model clauses by July 2004. The clauses have actually become a condition of funding under the skilling Australia's workforce agreement 2005-2008, and non-compliance may result in the commonwealth withholding funds from the state. All other states in Australia other than Western Australia have finalised their legislative arrangements. The benefits of these nationally consistent arrangements that will come forth through the model clauses include—in our situation we have more and more of our Western Australian industries that are operating across borders and they operate with both local and interstate RTOs. Therefore, you can see that consistency of registration and regulation is critical for us in terms of quality and administration. The model clauses also allow our Western Australian registered training organisations to operate more readily interstate. They now do not have to go through a full registration process in those states, so this will save them time and cost.

As more interstate registered training operations operate in this state, we will need consistency, again, particularly in the area of protection for our students. Therefore, if we are to offer more choice for industry and students in terms of training providers and improve the responsiveness and the flexibility of our system, overcoming inconsistencies between jurisdictions in vocational education and training legislation administration is particularly critical to us. Not having the model clauses in place over the past few years has created a number of difficulties for us. The major difficulty that I could bring to your attention is that we have been unable to place conditions upon registration of registered training organisations. We can only register or deregister, whereas in other states there is a middle ground in terms of amending their registration, suspending their registration and so on. At the moment in Western Australia, we can only deregister or register—that is it. That makes it particularly difficult and that is a particularly important aspect in looking after the welfare of students and their protection. In summary, the clauses are a very practical approach to achieve national consistency in VET legislation whilst maintaining control here in WA.

**The CHAIRMAN:** Thanks for that, Mr Player. We will now proceed to some of our questions. Are any further amendments contemplated to this bill during its passage?

**Mr Player:** No.

**The CHAIRMAN:** I want to turn now to the "2005-2008 Commonwealth-State Agreement for Skilling Australia's Workforce". Firstly, the committee did not receive a signed copy of the agreement. Can you confirm for the public record that it was actually signed by Western Australia?

**Mr Player:** Yes.

**The CHAIRMAN:** I wonder whether you could give us some explanation as to how the agreement interconnects with the commonwealth's Skilling Australia's Workforce Act 2005.

**Mr Player:** The act is the overarching legislation. Part of the provision is in the act for the establishment of the agreement both at a multilateral level and also bilaterally.

**The CHAIRMAN:** Let us turn now to the model clauses contained within the agreement. I will ask generally firstly: what challenges did the department encounter in implementing those clauses in our legislation—was it a straightforward exercise?

**Mr Player:** The key to the exercise is that it is the intent of the clauses that has to be enacted not specifically word-for-word, so it is the intent that is the crucial element. The department through the



Training Accreditation Council has actually done a mapping of all the model clauses so that, in fact, the intent is covered and all aspects are covered.

**The CHAIRMAN:** Is there a specific provision in the agreement that articulates that—that is, that it is the spirit and intent and substance of the model clauses that is required, rather than the strict wording?

**Mr Player:** Within the agreement clause 40—which I will go to first—clause 40(iv) is the actual clause where it says —

Implement model clauses in order to achieve nationally consistent legislation underpinning vocational education and training quality assurance and regulation;

The agreement itself—I just have to get you a reference on this—but there was resolution at the ANTA Ministerial Council on 15 November 2002 that the resolution at that point in time was to effect the model clauses, and they do not need to be enacted in the precise terms so that was at the 15 November 2002 ANTA Ministerial Council.

[1.15 pm]

**The CHAIRMAN:** Were you able to implement all the model clauses in the legislation before us, or were there some that were not capable of being incorporated?

**Mr Player:** No, they were all implemented.

**Mr Swetman:** The general intent of the model clauses was picked up through the regulations. However, there were a number of model clauses, when they were first put down in 2002, that Western Australia did not support specifically because they were not relevant to the context of our training environment. Therefore, on page 4 of our mapping exercise, we have noted that model clauses 12(4), 12(5) and 12(6) should be omitted, as we did not agree with the implementation of the first part of the national amendments of the model clauses. They are the only elements that were omitted in operational clauses because other elements covered them.

**Mr Player:** Overall, the intent is in the act.

**The CHAIRMAN:** Those clauses were 12(4) —

**Mr Swetman:** Clauses 12(4), 12(5) and 12(6). Clause 12(4) makes specific registration to the local registering body imposing restrictions under subsection (2) unless the registering body that registered the RTO fails to make any attempt to deal with the grounds that relate to the matter. Clause 12(5) does not apply if the local registering body relies upon a ground established under a compliance section. Clause 12(6) states that subsection (4) does not stop the local registering body, before the end of the 30-day period mentioned in the subsection, taking all steps necessary to impose a restriction immediately after the period has ended.

**The CHAIRMAN:** Can you indicate for the record why those subclauses could not be accommodated?

**Mr Swetman:** It was not that they could not be accommodated. We believe that, in terms of the overall intent of how we apply the model clauses for the management of regulation in Western Australia, they are unnecessary because we already manage the registration details of an organisation through the amendments to the regulations through the model clauses. Once the regulations were to go through, we would be able to impose conditions upon registration and there would be a duplication.

**The CHAIRMAN:** Will the absence of these subclauses from our model legislation in any way endanger commonwealth funding?

**Mr Swetman:** No. We believe that not to be the case because when we have undertaken our mapping exercise, the original treatise was to impose the intent of the model clauses with respect to



the legislation of each jurisdiction, and we believe that that intent has been fully encapsulated by the mapping exercise of the model clauses back to our regulations.

**The CHAIRMAN:** I turn now to the bilateral funding agreement between Western Australia and the Australian government under the “2005-08 Commonwealth-State Agreement for Skilling Australia’s Workforce”. Do you have that document in front of you?

**Mr Player:** Yes.

**The CHAIRMAN:** Page 22 of that document refers to improving outcomes for Indigenous Australians. The copy of the draft that I have is dated April 2006, so it proposed in 2006 strategies to improve outcomes. Can you explain how the provision of funding under the agreement to date has improved outcomes for Indigenous young people in Western Australia?

**Mr Player:** A number of programs have been put in place since the signing of the agreement. They vary from direct funding for particular programs of delivery for Aboriginal people to programs for non-delivery, which are wraparound services—for instance, mentoring, pastoral care and so on. At the moment the participation rate of Aboriginal people in vocational education and training in Western Australia is significant. Roughly, it is double the population percentage; the participation rate is well over six per cent. It is particularly good. I could give you some more accurate figures if you wish.

**The CHAIRMAN:** Could we ask for that question to be taken on notice? We would like some more figures.

**Mr Player:** I can give you some figures now if you wish. In 2007 there were 9 053 enrolments for Aboriginal people, which constitutes 7.2 per cent of the total enrolments. The total enrolments are 125 713—that is, enrolments in terms of activity—which constitutes 5.9 per cent of activity. You can see that it is quite high. The benefits are coming through in that respect.

**Hon MATT BENSON-LIDHOLM:** Mr Player, perhaps you can come back to us at a later date on this point, but I have looked at the proposed strategies from 2006, which is when this bilateral funding agreement was put together, to improve outcomes for Indigenous Australians in Western Australia. Given the sort of work I do for the minister, there are many things in here that I would like some follow-up on. I note the development of sustainable strategies to improve career pathways for the Aboriginal school-based traineeship initiative. I also link into this the Follow the Dream project and things of that nature. Would it be possible for you to address in the not-too-distant future the seven dot points of the strategies for improving outcomes for Indigenous Australians and provide a bit of fill-in information to give us some indication of how the system is travelling for Indigenous Australians in Western Australia?

**Mr Player:** For each of these specific points?

**Hon MATT BENSON-LIDHOLM:** Those dot points refer to proposed strategies to improve outcomes. I would like to know how we are going with those proposed strategies and whether they have been implemented. You could use some of the statistics that you have outlined to address some, if not all, of those particular proposed strategies. Is that possible?

**Mr Player:** Yes, that is possible. I could give you some of them now if you want.

**Hon MATT BENSON-LIDHOLM:** Just for the ease of Hansard, because there will be a lot of statistics and some tables, I would not mind if you were able to do that for us.

**Mr Player:** To make sure that I have it clear, we will report against each of these seven strategies and give an update of the progress and the numbers involved.

**Hon MATT BENSON-LIDHOLM:** Yes. I have an interest in rural and remote education, as some of you may know. That is my question in that regard.

**The CHAIRMAN:** I thank you, Mr Player, for taking that on notice. We look forward to receiving the information, because of course the bill deals with the implementation of agreements upon which hinges the receipt of moneys under the bilateral funding agreement, which of course now dates back a few years. It would be very useful if we could examine the usefulness of that funding as opposed to these professed outcomes that have been in place for a couple of years.

**Mr Player:** Yes. Can I add that we report back on the agreement so that I can pass on that information?

**Hon MATT BENSON-LIDHOLM:** That would be much appreciated. I am certainly very keen to look at the outcomes for Indigenous Australians.

**The CHAIRMAN:** If it already substantially exists, that would be good.

**Hon SHEILA MILLS:** The explanatory memorandum states that the new provisions and significant amendments include enabling registered training providers to issue apprenticeship qualifications to people who undertake a skills-recognition process and are deemed competent to the same level as someone who has completed an apprenticeship. How many employers are also training providers in the industry in which they are employers?

[1.30 pm]

**Mr Player:** Employers as training providers? We have a number of specific enterprise registered training providers in this state. I can give you examples of them. I do not know that I can give you the definitive list, but McDonald's, Coles, Woodside. When I say that, it depends on their scope of registration. When I say Woodside, it is their scope for a particular area not right across their complete occupational categories. Off the top of my head —

**Hon SHEILA MILLS:** Could you take that on notice? Could you provide us with those?

**Mr Swetman:** Would it be of assistance perhaps if I augmented Robert's answer by providing specific examples of industry groups which also undertook skills recognition for the provision of trades qualifications?

**Hon SHEILA MILLS:** Yes.

**Mr Swetman:** The present legislation enables the Training Accreditation Council to bestow trades qualifications under the skills recognition process. We have agreements in place currently with a number of ITCs—Industry Training Council groups—whereby we can, through a skills recognition process, bestow trades qualifications. At the moment we have arrangements in place through automotive electrical, mechanical, hairdressing, hospitality areas, for instance. In all those areas we also have been in negotiation with the Department of Education and Training whereby we are going to increase the distribution of that process whereby currently a number of other registered training organisations, including TAFE colleges, will be able to also undertake the skills recognition process on behalf of industry groups and employers. We have a very active process—I think a very good process—at the moment undertaking that process. One of the issues, however, with the current arrangements is that when a person is issued with a trade skills qualification through the skills recognition process they are unable to be awarded a certificate. They only receive the trade qualification. However, amendments to the current legislation, which will be managed in the Department of Education and Training, will overcome that difficulty, so the single qualification will bestow on the person that outcome, so there will be an advantage in terms of skills recognition for trade qualifications in that process. Currently, we would receive, on average, through the Training Accreditation Council, half a dozen a week over the past six to 12 months. That has been quite beneficial in increasing the number of qualified people for trade qualifications for the skills shortage process.

**Hon SHEILA MILLS:** I am particularly interested in a specific employer who does the training and then does the assessing.



**Mr Swetman:** I do not have an example of one of those, but I can certainly research that.

**Mr Player:** We will give you a listing of the enterprise based.

**Hon SHEILA MILLS:** If that is the case, if the employer is also the training provider and then does the assessment, could you see the possibility of a conflict of interest in that?

**Mr Player:** All registered training organisations, whether they are an employer or just a pure training organisation, are subject to compliance as part of their registration with the Australian quality training framework. There are very strict standards on which registration is granted. Audits are periodic in terms of registration and reregistration and also there is the ability for the Training Accreditation Council to conduct periodic audits on the basis of strategic interest to the states. One of the areas could in fact be if there was doubt as to the integrity of the assessment. It could be a TAFE college granting recognition to its own staff members or, likewise, an employer, but there is provision there for strict adherence to the standards and for the Accreditation Council, if there is any doubt whatsoever, to audit, so, no, I think there are enough checks and balances in place to do that.

**The CHAIRMAN:** Is the question taken on notice clear?

**Mr Player:** As I understand it, it is a list —

**Hon SHEILA MILLS:** I am not talking specifically about TAFE. I am talking about —

**Mr Player:** The examples I gave before—Coles, Woolworths. We could supply a list of enterprise-based RTOs.

**Hon SHEILA MILLS:** Could you also indicate whether they do their own assessments or there is a skills assessor from outside that particular body to do the assessment? Would you be able to indicate that from your records?

**Mr Swetman:** Not from our records, but we can certainly make inquiries with the organisation whether they have employed external assessment personnel.

**The CHAIRMAN:** Thanks for taking that question on notice. Moving along, model clause 28 provides a regulation-making power in respect of the registration of details not otherwise expressly provided for under other model clauses. I think the agreements we have been discussing clearly contemplate that the model clauses would be replicated in an act rather than in regulations. Can you explain how many of the model clauses are going to be reflected in regulation in Western Australia?

**Mr Player:** I can start off and get Mr Swetman to fill in. The intent of the clauses is to a large degree covered within the act. By putting a number of them in regulation, it does give us the ability later on, as things change, because it is quite a dynamic environment we are working in, to be able to change, through parliamentary processes, the regulations to reflect any changes in the model clauses, particularly when it is more into a national system.

**Mr Swetman:** By way of augmentation, Mr Chairman, the decision recommended that the bulk of the model clauses be enacted through the regulations, because, in effect, the bulk of the model clauses are operational by nature and thereby would not necessarily fit specifically within the legislation part of the act. However, it would give us more flexibility of an operational nature to enact the bulk of the model clauses through regulations. Secondly, the other area which was considered would provide more flexibility for the state in terms of bringing these is that from time to time there could well be amendments that could take place as a consequence of national forums, through things like COAG, the Ministerial Council for Vocational and Technical Education, for instance, that may bring through national amendments to the guidelines for registered training organisations and/or the management of conditions for registration. Therefore, it was thought administratively it would provide more flexibility to manage the bulk of the model clauses through the regulations.

**The CHAIRMAN:** As the other party to the agreement, what is the commonwealth's reaction to this going down this route, because at face value it would be seeing a bill that leaves a lot of model provisions reliant on something else happening by way of subsidiary legislation?

**Mr Swetman:** I can honestly say I do not know what exactly the reaction will be. However, through the discussions we have had with our colleagues in other jurisdictions, my understanding is that Western Australia is the only state to date that has not enacted the model clauses through legislation. However, when we attend frequent meetings, other jurisdictions have also undertaken the intent of the model clauses through a variety of mechanisms, including through legislation and/or regulations associated with legislation. Prima facie my objective view would be that there would not be any objection to managing it that way. However, that would need to be verified.

**The CHAIRMAN:** If other states are incorporating most of the model provisions in an act, why is it necessary for us not to?

**Mr Swetman:** Sorry, I may not have answered the question clearly before, Mr Chairman. It is not just that the other states have not enacted the model clauses just through legislation. It is through a balance of both through an act and through regulations associated with the act.

**The CHAIRMAN:** You mean along a similar line to what we are contemplating in Western Australia?

**Mr Swetman:** Correct, and that was done for the specific reason for providing greater flexibility should there be amendment in the background, which could be managed through regulations.

**The CHAIRMAN:** I am glad you have clarified that. Obviously, it is easier to change regulations than an act. Just before we get on to the bill itself, is the scheme contemplated by the agreements we have been discussing provide for commonwealth and state reviews; and, if so, what form will they take?

**Mr Player:** Of the model clauses?

**The CHAIRMAN:** No, but the overall scheme, to see how it is working in due course.

**Mr Player:** The overall scheme is the national training framework, and this particular aspect of the Australian quality training framework. If I can just give you the history to show you how it is reviewed regularly: it started off as—I have got to get the right terminology here—the Australian recognition framework—the ARF. Following revision and review of its effectiveness, in around about 2004—I cannot be precise, but after several years—it was reviewed and the Australian quality training framework was brought into being to basically raise the bar. This comes back to the question about the integrity of the assessments and so on. The bar was raised and lifted to make it a more stringent procedure. Most recently, there has been another review and AQTF 2007 was brought in, as it indicates, in 2007. Again, the bar was raised, but at the same time the process was streamlined and, to some degree, made more responsive to the growing and constant fluidity of the situation. That is three times it has been reviewed since around about 2000, so there are constant reviews of this, and hence the model clauses in 2002.

**Hon MATT BENSON-LIDHOLM:** I was just going to follow that up, Mr Chair. Simply, given that I know for a fact that with many of the high schools around Western Australia, and particularly country senior high schools where staff are an issue, we are seeing an increasing reduction in the number of schools that are registered as RTOs, is that correct?

**Mr Player:** Yes, that is right.

**Hon MATT BENSON-LIDHOLM:** Would that be due in some way to these stringent standards that you are talking about of the bar being raised or do you see it as being symptomatic of a broader problem in relation to skilled staff?

**Mr Player:** It is a combination of issues. For school students at the moment in years 11 and 12, one in two students undertakes a vocational education and training program, which leads along the



pathway to a vocational award. The majority of that training is conducted by TAFE colleges or by training organisations. The number of schools that are registered training organisations has decreased. There are a number of reasons for that. The bar has been raised, but also it is an onerous task to take on the role of a registered training organisation to meet those requirements.

**Hon MATT BENSON-LIDHOLM:** I understand that.

**Mr Player:** Most of the schools in Western Australia are indeed working in partnership with TAFE colleges, private providers and so on. There is a partnership arrangement. It is far more effective in most cases for the schools to do that rather than to take on becoming a registered training organisation and guaranteeing that they will have the staff there for the long-haul, that they have the resources and so on and that they can meet all the requirements with the AQTF. There are exceptions to that where many have said, "Yes, we want to be a registered training organisation. We have the ability", particularly agricultural colleges.

[1.45 pm]

**Hon MATT BENSON-LIDHOLM:** Could that stem from the fact that frequently for a lot of the more rural and regional senior high schools and agriculture colleges TAFEs are either not available or have limited offerings in terms of the sort of traineeships and apprenticeships and so on that are on offer?

**Mr Player:** I think that is a different question to the question of schools becoming RTOs. Before schools can become RTOs they must meet the requirements. In terms of working with TAFE colleges and the challenges that arise in rural and regional areas, TAFE colleges are not the only providers that provide a service to the schools. In fact, private organisations run vocational programs in many schools. A lot of it is being done in different modes of delivery—it could be a mixed mode of distance and so on, albeit we must overcome problems when servicing particular communities.

**The CHAIRMAN:** The long title of the bill on page 1 states that the bill will produce an act to amend the Vocational Education and Training Act 1996, which is the current VET act in force, and that it will repeal the Industrial Training Act 1975, and that it is for other purposes. However, we also understand that the current VET act states in its long title that it was an act to repeal the 1975 act. Can you explain for the record how that has come about?

**Mr Player:** Part 7 of the Vocational Education and Training Act 1996 was to repeal the Industrial Training Act. However, that part was never proclaimed. It did not happen.

**The CHAIRMAN:** So a bill that would do a number of things, including repeal the Industrial Training Act 1975, was passed in 1996. However, the part to repeal that act was never proclaimed.

**Mr Player:** That is right.

**The CHAIRMAN:** Why was the part to repeal the Industrial Training Act never proclaimed?

**Mr Player:** I am not a real historian on that.

**The CHAIRMAN:** I understand that it is ancient history.

**Mr Player:** My understanding is that there was not support as there is at the moment for the changes that have been brought forward so it was not proclaimed. There was not what I consider the unanimous support that we have at the moment.

**The CHAIRMAN:** I turn to page 7 of the bill, which deals with clause 8 and the concept of a ministerial corporation. Can you explain that concept and its origins?

**Mr Wotherspoon:** My understanding of the ministerial corporation is that it is used for the minister to enter contracts and for that ability to enter contracts to be delegated to officers of the department. It might be used, for example, when a contract for overseas training is entered into. This provision enables the minister to enter contracts. The name has been changed as you can see. The name has

been changed from Minister for Training as the name of the corporation to what is now proposed as the VET (WA) Ministerial Corporation. We made that change on advice from parliamentary counsel and the Department of Treasury and Finance, the main reason being for clarity because the corporation name Minister for Training obviously shares the same name as the old portfolio Minister for Training. There would be confusion if we used the same title Minister for Training and Minister for Training as the ministerial corporation name. Parliamentary counsel and DTF advised that we change it to a new title. They also advised on the new provisions, which they felt also offer clarity to the establishment of the corporation and the process.

**The CHAIRMAN:** I want to establish whether that is providing clarity or whether it is a change. Correct me if I am wrong, but I think section 7 of the VET act refers to the minister being a body corporate whereas now we are talking about a ministerial corporation. Is there a significant difference between the two?

**Mr Wotherspoon:** My understanding is that there is not and that proposed section 7A(1) offers continuity. The VET (WA) Ministerial Corporation is body corporate.

**The CHAIRMAN:** Is the corporate entity the minister or some other body reporting to the minister?

**Mr Wotherspoon:** I am not sure exactly of the technical set-up for that, but my understanding is that the corporation exists separately from the individual, the Minister for Training who is the individual, and then the corporation exists separately to enable the minister to conduct business or enter into contracts.

**Hon MATT BENSON-LIDHOLM:** So it is a legal construct. That is all it is.

**Mr Wotherspoon:** Yes.

**Hon SHEILA MILLS:** Is it unique to this department or is it across government?

**Mr Wotherspoon:** It is my understanding that it is across government. The new provisions have been taken from the Transport Coordination Act 1966 which, on advice from parliamentary counsel and DTF, offers a clearer definition of a "corporation".

**The CHAIRMAN:** Perhaps that is something for further examination by the house if it chooses in due course.

I refer to page 13 of the bill. Clause 18(1)(b) proposes to amend section 21(1) by inserting —

to recognise various industry training advisory bodies as bodies from which the Board takes advice for the purpose of drafting a State Training Plan or making recommendations to the Minister under part 7;

The part I want to query is the portion that refers to "bodies from which the Board takes advice". The clause does not state that the board must take advice or, conversely, that it may take advice. What is the intention of the amended section?

**Mr Player:** The intent is for the board to take advice from ITAB for the purposes of drafting the state training plan. Previously, there was a state training profile. The state training plan is a far more comprehensive document. The advice of the Industry Training Advisory Bodies is one source of advice that goes into that plan. There are many other sources of advice, including the advice of the Department of Education and Training. There are also regional development strategies and so on, which are taken on board. At times one could envisage that there might be a conflict in the advice or a difference in the priority settings. Therefore, the provision is worded "to take" advice and is not worded "must take" advice.

**The CHAIRMAN:** Clause 18(1)(c) seeks to insert new wording to delineate the functions of the board, in particular—



to prepare, for consideration by the Minister, policy which aims to improve the links between specific industry developments and vocational education and training so as to gain optimum employment opportunities for people, . . .

Why does the minister need a board to provide policy? Is that not a function of his or her department or office?

**Mr Player:** It is a function of the department to provide policy. This is another source of advice on policy in relation to the specific areas of industry developments and vocational education and training as they relate to employment. The board represents industry in those areas.

**The CHAIRMAN:** Page 26 of the bill deals with part 7A. There are model clauses contained within part 7A. Is that the only part of the bill that contains uniform scheme model clauses?

**Mr Wotherspoon:** Yes.

**The CHAIRMAN:** So the other parts of the bill are other initiatives?

**Mr Wotherspoon:** Yes.

**The CHAIRMAN:** We had better have a look at those so we focus on our terms of reference. The heading to part 7 reads "Regulation of the provision of some vocational education and training". Does the use of the term "some" imply that other vocational education and training is not being regulated?

[2.00 pm]

**Mr Player:** The definition of "vocational education and training" in this legislation is a broad definition that includes accredited training and non-accredited training. This particular part—part 7(a)—refers to and is applicable in the accredited area for registered training providers under the AQTF and leading to accredited awards.

**The CHAIRMAN:** We note also that the model clauses that we have already discussed do not provide for penalties. However, clause 38(4) on page 27 of this bill introduces, for example, a penalty of \$10 000. How have other jurisdictions dealt with this question of penalties?

**Mr Swetman:** Other jurisdictions have imposed penalties. It would be dependent upon, first of all, the training environment in that jurisdiction and also on the current legislation within that jurisdiction. It is important that in the amendments to this legislation, both through the act and the regulations, that there is an ability to impose restrictions otherwise it would be difficult in terms of the regulator being unable to undertake any incentive for people to stick to the regulations and the requirements.

**The CHAIRMAN:** Is this going back to what Mr Player referred to in his opening remarks about we have either got the extreme options of register or deregister and nothing in between?

**Mr Player:** Yes.

**Mr Swetman:** Correct. This is an ability to apply conditions. We can also vary, suspend or amend registration and also have some backing through legislative framework to enact that.

**The CHAIRMAN:** How does this quantum of penalty compare with other jurisdictions? How did we arrive at it here?

**Mr Swetman:** It does vary from jurisdiction to jurisdiction. It is pretty much on par; however it is slightly, I think, higher than it was before. However, it is fairly consistent.

We also had to strike a balance in the imposition of penalties with this legislation because the training market is quite broad; there are some very small training providers and some very large providers. Trying to strike a balance in terms of a penalty which is manageable and at the same time sends the message was also high in the minds of those trying to impose a condition or a penalty.

**The CHAIRMAN:** Are there any other penalties or sanctions available under the regime that you propose?

**Mr Swetman:** Yes; there is a raft of examples that will be of great benefit to the management of RTO registration in Western Australia. A couple of examples perhaps may assist the committee's understanding of the process. At the moment, for instance, if the Training Accreditation Council were to audit an organisation and found the organisation to be non-compliant against the standards—in other words, it did not meet the audit standards—we have only a couple of options available to us. Those options were clearly outlined in Robert's opening address; that is, the option to register or deregister. However, there may be circumstances whereby it might not be appropriate to completely deregister an organisation if it were non-compliant only in particular industry-specific areas. Therefore, these amendments will give us the ability to apply conditions to vary the scope of the organisation's registration by asking them to not deliver training and assessments in specific industry areas. A good example might be apprentices in the electrical field whereby if the training and assessment for those apprentices was substandard, you would not want them delivering training. Rather than close down the whole organisation it could be given an opportunity to amend and rectify the non-compliances while still operating the business in compliant areas. That ability is not available at the moment.

**Mr Player:** So, we either deregister—we cannot amend.

**The CHAIRMAN:** Clause 39 on page 44 of the bill will insert new section 61B—VET inspectors' powers. This will give significant powers to enter, inspect and search any place and to seize records and so on. Why are these powers necessary under the legislation?

**Mr Swetman:** Mr Chairman, perhaps I could, by way of explanation, cite a specific type of example that we have had to deal with on a number of occasions when managing registered training organisations. A number of reasons underpin the inclusion of such clauses. Primarily, from our perspective in terms of regulating, it is for the protection of students. We have a number of occasions whereby if an organisation was at risk in terms that it was audited and found to be critically non-compliant—and may well be at the stage where it could be deregistered—a similar example may well be a business that is not travelling well and about to wind up—we want the ability to be able to go into the organisation and access student records. If the organisation closed suddenly, we would have copies of the students' qualifications and assessments of statements of attainment up to that period of time. If the organisation closes down, it may well not issue those qualifications or statements of attainment to the students, thereby disadvantaging those students if they were to try to conclude their studies elsewhere or need have proof that they have completed this stage of their studies. That is the first example.

The second example we are going through at the moment is a deregistration process. If we were able to enter the premises prior to the deregistration process and apply conditions and say to the organisation, "These records are missing; we would like to be able to conclude the quantum of records that we have for the students" then, as a result, students would have a permanent ongoing record documenting that they were up to a certain stage of their qualifications or statements of attainment. If those students were to come back at a later time and after the organisation has closed down, TAC would have a copy of those records to assist the students. There also may well be an occasion, for instance, in which the premises or the training facilities are substandard in terms of meeting electrical or mechanical industry requirements and so forth. We need to ensure that the training facilities used to train the students are to industry standards. It may well be also the training accreditation —

**The CHAIRMAN:** Is that the department's role? Is that not an occupational, health and safety specific role?

**Mr Swetman:** There are a number of crossovers in terms of responsibility. We work closely with, for instance, Worksafe, and closely with the department. There are also industry regulator



requirements that we work closely with; for instance, the Office of Energy, the Hairdressers Registration Board, the Builders' Registration Board, Worksafe etc. Yes, we do have an industry regulator engagement program as well.

**The CHAIRMAN:** Do you expect VET inspectors who visit vocational education and training premises to use this power to enter as a matter of course for routine visits?

**Mr Swetman:** No; it is in everybody's best interest to undertake this process in a conciliatory consultative process. The normal *modus operandi* would be to ensure that the organisation is aware of the fact that we need to collect this information or that this is going to take place. However, there are instances where organisations either do not return phone calls or, after repeated requests to provide information, do not provide that information, and a point is reached in which—under the normal communications and consultation process—the required information is not forthcoming. At that point, we need some ability to be able to first of all protect the interests of both the students and the state in terms of the investment that has been made in the training.

**The CHAIRMAN:** But if it gets to that stage why would we not have legislation that required an inspector to get a judicial warrant—if we have already got a situation in which it is clear that we have got problems?

**Mr Swetman:** Correct. But it may not get to that period. For instance, if we are trying to manage the organisation through difficult times, the fact that the inspector is able to go in and verify the information or collect the information may make the next step unnecessary. It may well be resolved at that particular stage.

**The CHAIRMAN:** So, are you talking about a VET inspector perhaps just visiting the premises but not exercising powers of examination or seizure or —

**Mr Swetman:** I think the other important issue about this clause is that it also gives the legislation a bit of teeth. Organisations are well aware that it is important that they are consultative and that they are conciliatory in the way that they manage their VET requirements and the way they work together with the regulator to ensure they are undertaking the requirements to meet AQTF. In this instance the ability to inspect does give a bit of teeth to the legislation.

**The CHAIRMAN:** Is there any equivalent power that currently exists for vocational education and training?

**Mr Swetman:** Not principally—just to go in at the moment—no. Andrew?

**Mr Wotherspoon:** Not that I am aware of—no.

**The CHAIRMAN:** What has changed that we now need this power?

**Mr Swetman:** Although we are the last state to enact the model clauses, it has enabled us to look very clearly at what is being done in other jurisdictions around Australia, including how they have managed their model clauses and what strategies they have put in place in terms of managing them. We have been able to learn a great deal in terms of applying conditions and how conditions can work in putting together both the legislation amendments and the model clauses for regulations. I think this has given us the ability to have some flexibility—if required. Ordinarily this would not be the case; this would be a step that you would get to right at the end. Ordinarily, you would not do any of it as a matter of course but if required it is important to have it there in legislation—particularly in the instance I cited earlier; that is, to protect student interests. An organisation closed its doors very suddenly last year. We were not aware that it had closed down because it did not report the closure to us as required under the legislation. Unless we are out constantly auditing, we would not have been aware. We became aware of the closure after we had received complaints. We go through a specific complaints management process. We could not enter the premises and collect the student records—we asked them to provide them but they did not provide them. We now have a raft of students who do not have verification of their qualifications, do not have verification of their

statements of attainments, and who will now have to go to other registered training organisations to take a skills recognition process at their own cost to verify their statements of attainment and competencies. This amendment will enable us to collect such records.

**Hon SHEILA MILLS:** But if you had been receiving complaints; that is, if you received complaints now, and you knew something was going to happen, because of the process, would that not give you plenty of time to seek a warrant rather than just go in? The problem for this committee is that a lot of the legislation that comes through now seeks to do exactly the same thing no matter what area of government it is: it is people being able to go into premises and private houses without seeking a warrant. That is a recurring theme that we notice with uniform legislation.

**Mr Swetman:** I am sorry; I cannot answer the question whether it would be available through a warrant process because I am not familiar with that process.

**Hon MATT BENSON-LIDHOLM:** The point I was simply going to make earlier when I interjected was about financial insolvency issues. Obviously in this day and age, in this economic climate, those sort of things are going to be more and more common—one would imagine that to be the case given the current world credit crisis. Following on from that, there are also issues—and this is a little bit of a sidetrack, Mr Chairman—for RTOs. Is the financial insolvency of privately owned RTOs a concern given the proliferation of privately owned and operated RTOs? Is the capacity of these particular businesses to stay afloat a concern? Could there be issues in that regard for this particular piece of legislation?

**Mr Swetman:** Apart from the three essential standards for registration under the AQTF, there is also another series of conditions of registration. One of the audited registration conditions is the financial viability of the organisation; that is part of our audit process up front. Secondly, in terms of an ongoing basis, we have an ability at the Training Accreditation Council presently—and it would be sustained under the current amendments—to undertake audits if required based upon an RTO's application to extend its scope of registration to look at delivering in other industry areas. If we determined that, based upon complaints about the organisation, it was moving into new areas of industry development, we would go in and do another audit. At that time we can undertake an audit of any of those standards plus any of the conditions of registration. There is an ability to check on financial viability. Thirdly—and this is not something that happens a lot, but when it has happened in other jurisdictions it causes a lot of grief, particularly for students; Western Australia, I must say, has been somewhat fortunate—there has been some very large training providers on the eastern states which have closed their doors, in one example disadvantaging more than 1 000 students. All the students—it was a private training provider, not a public training provider—were left high and dry. In those instances, the state steps in and assists the students to be placed in another training organisation. We would probably do the same here from a student welfare perspective.

[2.15 pm]

**Hon MATT BENSON-LIDHOLM:** That is a point I was going to follow up. I am pleased to hear you say that.

**The CHAIRMAN:** How many VET inspectors will we see created at any one time?

**Mr Swetman:** I do not know the answer to that because, to be quite honest, we have not worked out the operational details of that. I do not imagine there will be a lot, but we will be sitting down together with the Department of Education and Training, should this bill be passed, to work out the operational requirements of that.

**The CHAIRMAN:** Are we talking about full-time VET inspectors or other officers who will occasionally exercise the powers under a certificate given under proposed section 61A?

**Mr Swetman:** I do not think we need full-time inspectors, to be quite honest.



**Mr Player:** No, they will not. We currently have within the Training Accreditation Council a panel of auditors, who actually perform the functions of audit in relation to registration, deregistration complaints and so on.

**The CHAIRMAN:** How many are involved there?

**Mr Swetman:** At the moment we have a panel of seven auditors, who manage our 440 active RTOs in the state.

**The CHAIRMAN:** From time to time will they actually go into the field, as it were?

**Mr Swetman:** At the moment, their function is purely on a contract basis to undertake audits for assessment against the Australian Qualifications Training Framework. However, it is not envisaged that they will necessarily be the people; it would be the inspectors because I believe there will be a clear separation of process and role. Other individuals might be required to undertake that role.

**The CHAIRMAN:** A number of provisions are set out in the bill to implement model clauses through regulation. We touched on this earlier in the hearing. For an example of that, I refer to page 32 of the bill. I notice you have a blue bill there, which reads quite differently from our bill. I am referring here to proposed section 58 contained in clause 38 of the bill. Those are the regulations for that part. Have witnesses got the part I am talking about?

**The Witnesses:** Yes.

**The CHAIRMAN:** We are looking at proposed section 58 of the principal act. There are numerous examples in which power is created for regulations to "provide for". Usually, the term used in principal legislation that creates regulation-making power is the term "prescribe". Why is there a difference in terminology?

**Mr Player:** Essentially, this was on the basis of the advice of parliamentary counsel. Whether it is "prescribed" or "provide", we have been advised of the wording we have there.

**The CHAIRMAN:** Perhaps we should address that question to parliamentary counsel. Do our witnesses, as relevant officers of the authority, have any particular view about whether it needs to be "provide for" or "prescribe"?

**The Witnesses:** No.

**The CHAIRMAN:** That is a matter that we will pursue as a committee. Can you perhaps take the point on notice and provide feedback to the committee, having consulted your parliamentary counsel, whether there is any material difference between the two terms or what is the reason for using the term "provide for" rather than "prescribe". By way of brief explanation, the committee and other committees of the Legislative Council are concerned that any subsidiary legislation should fall within a capacity for disallowance by the house in future. We are concerned that the term "provide for" could mean legislation that is subsidiary to subsidiary legislation, which would be out of the immediate reach of either house. That is the reason for the inquiry and we invite your response to that, in due course, after this hearing.

**Mr Player:** Yes.

**The CHAIRMAN:** Thank you, Mr Player if you can take that on board.

**Hon SHEILA MILLS:** You can take this question on notice. Proposed section 60C(3)(a) is to ensure that some qualifications will be obtained through entering into a training contract with the employer. Can you provide a list of the qualifications that will require a training contract only? You can take it on notice.

**Mr Player:** By way of explanation, we have moved into the area now that refers to apprenticeships in the act. However, when we talk apprenticeships we are talking apprenticeships, traineeships, cadetships and internships whereby a training contract is needed to be entered into. In round figures,

there are approximately 70 or so apprenticeships in Western Australia and significantly more traineeships. We could provide you with a list of those.

**Hon SHEILA MILLS:** If would you not mind.

**Mr Player:** They are apprenticeships and traineeships.

**The CHAIRMAN:** Thank you; that is taken on notice. I am never one to introduce any flippancy into these proceedings, but it gives me great pleasure as a former student of the Western Australian school system to give a director general of the department some homework!

To you, Mr Player, and your colleagues, thank you very much for the assistance you have provided us today with the course of our hearing, which I think has gone very well. We look forward to receiving that further information and bid you a very good afternoon.

**The Witnesses:** Thank you.

**Hearing concluded at 2.22 pm**

**APPENDIX 2**  
**IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION**



## APPENDIX 2

### IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

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The former Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements identified and classified nine legislative structures relevant to the issue of uniformity in legislation which were endorsed by the 1996 Position Paper entitled *Scrutiny of National Schemes of Legislation*. A brief description of each is provided below.

**Structure 1:** *Complementary Commonwealth-State or Co-operative Legislation.* The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers.

**Structure 2:** *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division of constitutional powers, essentially identical legislation is passed in each jurisdiction.

**Structure 3:** *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own.

**Structure 4:** *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51 (xxxvii) of the Australian Constitution.

**Structure 5:** *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.

**Structure 6:** *Mutual Recognition.* Recognises the rules and regulations of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

**Structure 7:** *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

**Structure 8:** *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

**Structure 9:** *Adoptive Recognition.* A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.





**APPENDIX 3**  
**FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES**



## **APPENDIX 3**

### **FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES**

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<b>Does the legislation have sufficient regard to the rights and liberties of individuals?</b>
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1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons? Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

<b>Does the Bill have sufficient regard to the institution of Parliament?</b>
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12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?



## **APPENDIX 4**

### **MODEL CLAUSES**



## APPENDIX 4

### MODEL CLAUSES

#### MODEL CLAUSES FOR TRAINING NATIONAL REGISTRATION AND ACCREDITATION

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## PRELIMINARY

### 1 Application

[*These model clauses*] only apply to the provision of training and assessments for qualifications and statements of attainments in relation to vocational education and training.

## NATIONAL REGISTRATION

### 2 National register

For (*these model clauses*), the “**national register**” is the ANTA service to the extent it consists of registered matters.

### 3 Registration and national effect of registration

For (*these model clauses*), a matter is registered to the extent details of the matter are recorded on the ANTA service—

- (a) for the purposes of (*these model clauses*)—by the local registering body or course accrediting body; or
- (b) for the purposes of a corresponding law—by another registering body or course accrediting body; or
- (c) for the purposes of (*these model clauses*), a corresponding law or a regulation made under either of the laws—by ANTA or another entity.

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**REGISTERED TRAINING ORGANISATIONS**

*Requirement for registration*

**4 Offence to falsely claim to be an RTO**

(1) A person who is not an RTO must not claim to be an RTO.

*[Contravention of this subsection is to be offence.]*

(2) A person who is not, or not acting for, an RTO operating within the scope of registration of the RTO must not—

- (a) issue, or claim to be able to issue, a qualification or statement of attainment; or
- (b) claim to be able to provide training or assessments resulting in the issue of a qualification or statement of attainment.

*[Contravention of this subsection is to be offence.]*

(3) A person must not claim to be able to provide training resulting in the issue of a qualification or statement of attainment by another person knowing that the other person is not lawfully able to issue the qualification or statement of attainment.

*[Contravention of this subsection is to be offence.]*

(4) For subsections (1) to (3), a person claims to be an RTO or claims to be able to do a particular thing if the person—

- (a) makes that claim; or
- (b) purports to be an RTO or to be able to do the particular thing; or
- (c) does any act likely to induce someone else to believe the person is an RTO or is able to do the particular thing.

(5) This section does not apply to a registering body.

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***Registration activities in this jurisdiction***

**5 Registration and scope of registration**

(1) A person may be registered (*under these model clauses*) as a training organisation that provides, within its scope of registration—

- (a) training and assessments resulting in the issue of qualifications or statements of attainment by the organisation; or
- (b) assessments resulting in the issue of qualifications or statements of attainment by the organisation.

(2) A training organisation's scope of registration consists of—

- (a) the training or assessments the training organisation is registered to provide; and
- (b) the qualifications, statements of attainment or units of competency for which the training organisation is registered to provide training or assessments.

**6 Applying in this jurisdiction for registration**

(1) A person may apply to the local registering body for registration as a training organisation.

(2) The application must be in the approved form and accompanied by the prescribed fee.

(3) The applicant must give the local registering body any information required by it to decide the application.

**7 Decision about registration**

(1) On an application for registration, the local registering body may register the applicant as a training organisation, or refuse to do so.

(2) In deciding the application, the local registering body must apply the RTO standards.

(3) The local registering body must not grant the application unless—

- (a) on registration under the application, the applicant will not otherwise be registered as a training organisation by any registering body; and

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- (b) the local registering body considers that the applicant's principal place of business is, or all or most of its operations will be conducted, in this jurisdiction; and
- (c) a compliance audit has been conducted of the applicant that shows the applicant complies with the RTO standards (other than the legislative compliance standard).

Note—

Section 18 prescribes a requirement for an audit mentioned in subsection (3)(c).

(4) Subsection (3)(c) does not apply to an application, if—

- (a) the application is made by an RTO registered by another registering body; and
- (b) the RTO has received a notice from the other registering body under a corresponding law for section 13; and
- (c) the application does not ask for an amendment of the RTO's existing scope of registration or registered conditions.

(5) Subsections (2) and (3) do not limit the grounds on which the local registering body may decide not to grant the application.

(6) The local registering body may impose reasonable conditions on the registration of the training organisation to take effect for the period of registration.

(7) A condition imposed under subsection (6)—

- (a) must apply for all jurisdictions, that is, it may not be limited in effect to a particular place or jurisdiction; and
- (b) must be consistent with *(these model clauses)* and the RTO standards.

Note—

All the conditions to which an RTO is subject under *(these model clauses)* are listed in section 8.

(8) If the local registering body decides to grant the application, the registering body must—

- (a) register the applicant as a training organisation and the applicant's scope of registration; and
- (b) if the local registering body imposes a condition under subsection (6)—

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- (i) give the applicant a notice of the decision; and
  - (ii) register the condition for the applicant.
- (9) The local registering body must comply with subsection (8)—
- (a) immediately after granting the application; or
  - (b) if the application is a transfer application mentioned in section 13—immediately after the existing registration of the training organisation is cancelled under section 15.
- (10) If the local registering body decides not to grant the application, the registering body must immediately give the applicant a notice of its decision.

## **8 Registration conditions**

- (1) Registration of an RTO under section 7 is subject to—
- (a) conditions imposed under subsection (2); and
  - (b) registered conditions imposed—
    - (i) under section 7(6) or 12(2); or
    - (ii) by another registering body under a corresponding law for section 12(2)(a).
- (2) For an RTO registered under section 7, the following conditions are imposed for the RTO's period of registration—
- (a) the RTO must comply with requirements stated to apply to an RTO under the RTO standards;
  - (b) the RTO must give notice to the local registering body of the following matters immediately after they happen—
    - (i) any substantial change to the RTO's control, management or operations;
    - (ii) any matter the RTO standards states the RTO must give notice of to the local registering body;
  - (c) the RTO—
    - (i) must submit to any compliance audit conducted by the local registering body under section 16; and

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- (ii) if a particular compliance audit shows the RTO does not comply with the RTO standards (other than the legislative compliance standard), must take all necessary steps to comply with the standards;
- (d) the RTO must submit to any compliance audit conducted by another registering body under a corresponding law for section 17;

Note—

Section 18 prescribes a requirement for a compliance audit mentioned in subsection (2)(c) and (d).

- (e) the RTO must not contravene a provision of [*these model clauses*] or a corresponding law;
- (f) the RTO must give to the local registering body any information about any of its operations reasonably required by the local registering body;
- (g) the RTO must give to the local registering body any information reasonably required by it relating to a registered condition imposed by the local registering body under section 12;
- (h) the RTO must give to another registering body any information reasonably required by the other registering body relating to a registered condition imposed by the registering body under a corresponding law for section 12(2)(a).

(3) Conditions mentioned in subsections (1) and (2) to which an RTO is subject apply in relation to the operations of the RTO in every jurisdiction, unless the contrary intention appears.

(4) An RTO must not contravene a condition of its registration.

Note—

For effect of non-compliance with a condition, see section 12(2).

(5) It is declared that a condition to which an RTO registered by another registering body is expressed to be subject in this jurisdiction under a corresponding law for subsection (3) has effect for this jurisdiction.

## 9 Term of registration

Registration may be for a term up to 5 years and may be renewed, if application for renewal is made at least (*a period prescribed for this jurisdiction*) before the registration expires.

**10 Amending registration on application by registered training organisation**

(1) The local registering body may, on application by an RTO that was registered by it, amend the RTO's registered details.

(2) If the application is to amend the RTO's scope of registration or registered conditions—

- (a) the application must be in the approved form and accompanied by the prescribed fee; and
- (b) the RTO must give the local registering body any information reasonably required by it to decide the application.

(3) For an application mentioned in subsection (2), section 7 applies as if it were an application under the section, subject to the following—

- (a) section 7(3)(a) is not relevant;
- (b) section 7(3)(b) applies in relation to the scope of registration or registered conditions as amended in accordance with the application;
- (c) section 7(3)(c) only requires a compliance audit to the extent an audit is relevant to the amendment.

**11 Removal of registered details on registration expiry or on application**

The local registering body must remove from the national register the details of an RTO registered by it—

- (a) if the RTO's registration expires; or
- (b) if the RTO applies to the local registering body to have its registration cancelled and the local registering body grants the application.

**12 Amending, suspending or cancelling registration without application on particular grounds**

(1) An object of this section is to ensure that, of all registering bodies, the registering body that registers an RTO has the primary responsibility to take action against the RTO if a ground mentioned in subsection (3) arises.

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(2) On 1 or more of the grounds mentioned in subsection (3), the local registering body may on its own initiative—

- (a) amend the scope of registration or registered conditions of an RTO that was registered by another registering body, but only to impose a restriction applying in this jurisdiction; or
- (b) amend the scope of registration or registered conditions of an RTO that was registered by it, including by imposing a restriction applying in this or another jurisdiction; or
- (c) suspend the registration, or part of the scope of registration, of an RTO that was registered by it, by imposing a prohibition applying in this or another jurisdiction while the suspension is in force; or
- (d) cancel the registration of an RTO that was registered by it.

(3) The grounds are as follows—

- (a) the registration, or the part of the scope of registration, was obtained because of incorrect or misleading information;
- (b) the RTO has contravened a condition of its registration.

(4) The local registering body may not impose a restriction under subsection (2)(a) unless the registering body that registered the RTO—

- (a) fails to take any step to deal with the matter to which the grounds relate within 30 days after the matter comes to its attention; or
- (b) fails, after taking any step to deal with the matter to which the grounds relate, to take another step within 30 days.

(5) Subsection (4) does not apply if the local registering body is relying on a ground established by a compliance audit under section 17.

(6) Also, subsection (4) does not stop the local registering body, before the end of a 30 day period mentioned in the subsection, taking all steps necessary to impose a restriction immediately after, or at any time after, the period has ended.

(7) A restriction imposed under subsection (2)(a), (b) or (c) may, but need not, relate to a particular place or jurisdiction, but if it does so, it may only be imposed because of a particular fact situation that has arisen in the place or jurisdiction.

(8) Also, a restriction imposed under subsection (2)(a), (b) or (c) must be consistent with *(these model clauses)* and the RTO standards.



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(9) For subsection (2)(c), in exceptional circumstances, the registering body may direct the RTO to immediately stop conducting operations continued under section 14(3).

*Example of exceptional circumstance—*

Danger of injury to anyone's health or safety

(10) Before cancelling the registration of an RTO under subsection (2)(d), the local registering body must consult the registering bodies of each of the other jurisdictions where the RTO is operating.

(11) Failure to comply with subsection (10) does not affect a cancellation of the registration of an RTO.

### **13 Cancelling registration on change of business operations**

(1) This section applies to an RTO registered by the local registering body.

(2) On the grounds that the RTO does not have its principal place of business, and does not conduct all or most of its operations, in this jurisdiction, the local registering body may cancel the RTO's registration—

- (a) on application by the RTO; or
- (b) on its own initiative.

(3) The local registering body must give notice to the RTO at least (*a period prescribed for these model clauses*) before cancelling the registration.

(4) If, before the end of the period mentioned in subsection (3), the RTO makes an application to another registering body for registration as a training organisation (the “**transfer application**”), the local registering body must not cancel the registration of the RTO until the transfer application is decided.

### **14 Effect of suspension of registration of RTO**

(1) This section applies if a prohibition is imposed on an RTO under section 12(2)(c).

(2) A person must not, for training or an assessment provided or to be provided in operations the subject of the prohibition, do anything for any of the following purposes—

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- (a) recruiting or enrolling anyone;
- (b) soliciting or accepting any consideration from anyone for anyone's recruitment or enrolment;
- (c) starting anyone's training or assessment;
- (d) if the operations have been directed to immediately stop under section 12(9)—training or assessing anyone.

*[Contravention of this subsection is to be offence.]*

(3) If the RTO, before the prohibition took effect, entered into an agreement to provide training or an assessment to a person, subsection (2)(a) to (c) does not prohibit anyone from relying on the agreement—

- (a) to provide the training or assessment; or
- (b) to solicit or accept consideration for the provision of the training or assessment.

**15 Registering body to register amendment, suspension or cancellation**

If, in relation to an RTO, the local registering body decides to do anything under section 12(2) or section 13(2), it must, on the national register—

- (a) for an amendment of the scope of registration or registered conditions—amend the scope of registration or registered conditions in accordance with its decision; or
- (b) for a suspension of the registration or part of the scope of registration—register the suspension; or
- (c) for a cancellation of the registration—remove the registered details of the RTO.

*Audit powers*

**16 Audit of RTO registered by the local registering body**

(1) This section applies in relation to—

- (a) an RTO registered by the local registering body; and

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(b) any of the RTO's operations.

(2) The local registering body may at any time conduct a compliance audit of the RTO.

## **17 Audit of RTO registered by another registering body**

(1) This section applies in relation to—

- (a) an RTO registered by a registering body other than the local registering body (the “**other registering body**”); and
- (b) any of the RTO's operations in this jurisdiction.

(2) Subsection (3) applies if—

- (a) the local registering body—
  - (i) suspects on reasonable grounds that the RTO may have contravened the RTO standards; and
  - (ii) has advised the other registering body of the suspected contravention; and
- (b) the other registering body—
  - (i) within 30 days after receiving the advice, fails to take steps to deal with the suspected contravention to the satisfaction of the local registering body; or
  - (ii) at any time advises the local registering body that it does not propose to take any step or further step to deal with the suspected contravention.

(3) The local registering body may conduct a compliance audit of the RTO.

## **18 Conduct of audit**

(1) A compliance audit mentioned in sections 7(3)(c), 8(2)(c), 8(2)(d), 16 or 17 must comply with the standards for State and Territory registering and course accrediting bodies.

(2) A failure to comply with subsection (1) is of no effect if the failure—

- (a) does not substantially affect the outcome of the audit; or

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- (b) arises out of inconsistency between the standards mentioned in the subsection and the legislation of the particular jurisdiction in relation to which the failure arises.

**19 Powers not limited by compliance audit provisions**

A provision of (*these model clauses*) that makes provision for a compliance audit does not limit the power of any registering body to inquire into the activities of an RTO or training organisation.

*Other powers*

**20 Function or power may be used to support national scheme**

(1) This section applies to a person who, apart from this section, may exercise a power or perform a function under [*these model clauses*] in relation to an RTO or an applicant for registration under section 7.

(2) The person may also perform the same kind of function or exercise the same kind of power in this jurisdiction—

- (a) at the request of the local registering body—for inquiries into whether an RTO registered by another registering body is complying with (*these model clauses*) or a corresponding law; or
- (b) at the request of another registering body—for a compliance audit that is being conducted under a corresponding law for (*these model clauses*) in relation to—
  - (i) an RTO registered by the other registering body; or
  - (ii) an applicant for registration by the other registering body under a corresponding law for section 7.

(3) Subsection (2) does not limit the person's functions or powers.

**21 Information may be made available to other registering bodies**

(1) The local registering body may disclose to another registering body information it has about, or arising from, the following—

- (a) an application by anyone for registration as a training organisation;

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- (b) an RTO's registration;
- (c) a compliance audit conducted for *[these model clauses]*;
- (d) action taken by the local registering body in relation to an RTO;
- (e) the performance of a function, or the exercise of a power, by a person at the request of another registering body.

(2) A person disclosing information under subsection (1) or under a corresponding law for subsection (1) does not contravene an obligation not to disclose the information, whether imposed by an Act or by another rule of law.

## ACCREDITED COURSES

### *Requirement for accreditation*

#### 22 Offence of falsely claiming to provide an accredited course

(1) A person must not claim to provide an accredited course unless the course is an accredited course.

*[Contravention of this subsection is to be offence]*

(2) For subsection (1), a person claims to provide an accredited course if the person—

- (a) makes that claim; or
- (b) claims to provide a course that purports to be an accredited course; or
- (c) does any act likely to induce someone else to believe a course the person is providing is accredited.

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*Course accreditation activities in this jurisdiction*

**23 Applying in this jurisdiction for accreditation**

(1) A person may apply to the local course accrediting body to have a course accredited.

(2) The application must be in the approved form and accompanied by the prescribed fee.

(3) The applicant must give the local course accrediting body any information required by it to decide the application.

**24 Decision about accreditation**

(1) On an application to have a course accredited, the local course accrediting body must grant, or refuse to grant, the accreditation.

(2) In deciding the application, the local course accrediting body must apply the standards for accreditation of courses.

(3) Subsection (2) does not limit the grounds on which the local course accrediting body may decide not to grant the application.

(4) If the local course accrediting body decides to grant the application, it must immediately register the course as an accredited course.

(5) If the local course accrediting body decides not to grant the application, it must immediately give the applicant a notice of its decision.

**25 Term of accreditation**

Accreditation may be for a term up to 5 years and may be renewed if application for renewal is made at least (*a period prescribed for this jurisdiction*) before the accreditation expires.

**26 Cancellation of accreditation**

(1) This section applies to a course that has been accredited on an application to the local course accrediting body.

(2) The local course accrediting body may cancel the accreditation [*on the grounds and in the circumstances prescribed for this jurisdiction*].

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(3) The local course accrediting body must—

- (a) immediately give notice of its decision [*as prescribed for this jurisdiction*]; and
- (b) remove the registered details of the accredited course from the national register.

## **27 Expiry of accreditation**

(1) This section applies to a course that has been accredited on an application to the local course accrediting body.

(2) If the accreditation of the course expires, the local course accrediting body must remove the registered details of the accredited course from the national register.

## **GENERAL**

## **28 Regulation-making power**

A regulation may provide for—

- (a) the registration of details not otherwise expressly provided for under (*these model clauses*); and
- (b) the prescription of a law of another jurisdiction as the corresponding law for [*these model clauses*] or a provision of [*these model clauses*].

## **TRANSITIONAL PROVISIONS**

## **29 Details on register on commencement**

(1) The following details recorded on the ANTA service at the commencement of section 3 are taken to have been registered under (*these*



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*model clauses*) or a corresponding law by the entity that recorded the detail—

- (a) a training organisation's registration;
- (b) a training organisation's scope of registration and term of registration;
- (c) registered conditions of an RTO;
- (d) registration of an accredited course;
- (e) an accredited course's term of registration;
- (f) a qualification registered for a nationally endorsed training package.

(2) On the commencement of section 3, a condition of an RTO taken to be registered under subsection (1) (a **"recorded condition"**) is taken to be a condition imposed under a section of (*these model clauses*) or a corresponding law under which a similar condition may be imposed in similar circumstances to those applying when the recorded condition was imposed.

## DEFINITIONS

**"accreditation"** includes renewed accreditation.

**"accredited"**, for a course, means registered.

**"amended"** includes varied, altered and replaced.

**"ANTA"** means the Australian National Training Authority established under the Commonwealth Act.

**"ANTA agreement"** means the 'Agreement' as defined in section 4(1) of the Commonwealth Act.

**"ANTA service"** means the National Training Information Service maintained by ANTA.

**"AQF"** means the policy framework entitled 'Australian Qualifications Framework' that defines all qualifications (whether as defined under (*these model clauses*) or otherwise) recognised nationally in education and training within Australia, endorsed by the Ministerial Council on

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Education, Employment, Training and Youth Affairs so as to commence on 1 January 1995 and that policy framework as amended 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 organisations and the accreditation of courses in the vocational education and training sector endorsed by the ministerial council on 8 June 2001, and that policy framework as amended from time to time.

**“Commonwealth Act”** means the *Australian National Training Authority Act 1992* of the Commonwealth (*as amended from time to time*).

**“compliance audit”** means an audit establishing whether the subject of the audit complies with the RTO standards, other than the legislative compliance standard.

**“condition”** means any of the following—

- (a) a condition on all or some of the operations of an RTO;
- (b) a restriction.

**“corresponding law”** for [*these model clauses*] or a provision of [*these model clauses*], means—

- (a) if a regulation prescribes a law of another jurisdiction as the corresponding law for this definition—the law prescribed under the regulation; or
- (b) otherwise—a law of another jurisdiction that corresponds to [*these model clauses*] or the provision of [*these model clauses*].

**“course accrediting body”** means the local course accrediting body or a body equivalent to the local course accrediting body in another jurisdiction responsible for the administration of the accreditation of courses under that jurisdiction’s legislation relating to vocational education and training.

**“jurisdiction”** means (*name of this State*) or, if it has enacted a corresponding law for (*these model clauses*), another State, the Australian Capital Territory or the Northern Territory.

**“legislative compliance standard”** is the standard included in the RTO standards requiring that an RTO ensures that compliance with Commonwealth, State and Territory legislation and regulatory

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requirements relevant to its operations is integrated into its policies and procedures and that compliance is maintained.

*Note—*

On enactment of this definition, the relevant standard was standard 2 of the RTO standards.

**“local course accrediting body”** means [*name of course accrediting body of this jurisdiction*].

**“local registering body”** means [*name of registering body of this jurisdiction*].

**“ministerial council”** means the Council consisting of the Ministers from each State and the Commonwealth responsible for vocational education and training operating in accordance with the ANTA Agreement.

**“nationally endorsed”**, for a training package, means endorsed by a committee established by ANTA’s members.

**“national register”** see section 2.

**“notice”**, of a decision of the local registering or course accrediting body, means a signed written notice of the body stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) the day the decision has effect.

**“prohibition”** means a prohibition on all or some of the operations of an RTO.

**“qualification”** means formal certification in the vocational education and training sector by an RTO and under the AQF that a person has achieved all the units of competencies or modules comprising learning outcomes stated for the qualification in—

- (a) a nationally endorsed training package for which details of the qualification have been registered by ANTA; or
- (b) an accredited course that provides training for the qualification.

**“registered”** means registered as prescribed under section 3.

**“registered training organisation”** means a person whose details as a training organisation are registered.

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**“registering body”** means the local registering body or a body equivalent to the local registering body in another jurisdiction responsible for the registration of training organisations under that jurisdiction’s legislation relating to vocational education and training.

**“registration”** includes renewed registration.

**“restriction”** means a restriction on all or some of the operations of an RTO or a prohibition.

**“RTO”** means a registered training organisation.

**“RTO standards”** means the standards for registered training organisations.

**“scope of registration”**, of a training organisation, means its scope of registration as prescribed under section 5(2).

**“standards for accreditation of courses”** means the standards for accreditation of courses adopted on 8 June 2001 by the ministerial council under the AQTF, as amended from time to time.

**“standards for registered training organisations”** means the standards for registered training organisations adopted on 8 June 2001 by the ministerial council under the AQTF, as amended from time to time.

**“standards for State and Territory registering and course accrediting bodies”** means the standards for State and Territory registering bodies /course accrediting bodies adopted on 8 June 2001 by the ministerial council under the AQTF, as amended from time to time.

**“statement of attainment”** means formal certification in the vocational education and training sector by an RTO under the AQF that a person has achieved—

- (a) part of a qualification; or
- (b) one or more units of competency from a nationally endorsed training package; or
- (c) all the units of competency or modules comprising learning outcomes for an accredited course that does not meet the requirements for a qualification.

**“this jurisdiction”** means *[the State or Territory in which a Bill for these model clauses is enacted]*.

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**“training package”** means an integrated set of competency standards and assessment guidelines leading to a qualification for a particular industry, industry sector or enterprise.

**“unit of competency”** means a specification of knowledge and skill and their application to a specified standard of performance.

**“vocational education and training”** means the education and training and qualifications and statements of attainment under the vocational education and training provisions of the AQF.

**OTHER MODEL CLAUSES RELATING TO  
APPRENTICESHIPS AND TRAINEESHIPS**

**30 Form of training contract**

(1) The *(registering/approving body of this jurisdiction for traineeship contracts)* may *(register/approve)* a training contract for an apprenticeship or traineeship only if the contract conforms with the form and contents of the nationally agreed training contract.

(2) In this section—

**“nationally agreed training contract”** is the training contract agreed by the ministerial council *(as defined above)*.

**31 Training contracts for registered qualification**

(1) An employer and another person may enter into a training *(apprenticeship/ traineeship)* contract to provide training resulting in a qualification being issued to the person to be trained under the contract.

(2) A contract mentioned in subsection (1) can not be entered into if the *(body responsible for regulating such matters in this jurisdiction)* decides that a training contract can not be entered into for the qualification.

(3) In this section—

**“qualification”** *(as defined above)*.

**APPENDIX 5**

**PROGRESS REPORT ON STRATEGIES FOR IMPROVING  
OUTCOMES FOR INDIGENOUS AUSTRALIANS**





# APPENDIX 5

## PROGRESS REPORT ON STRATEGIES FOR IMPROVING OUTCOMES FOR INDIGENOUS AUSTRALIANS

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ATTACHMENT A

**Hearing of Standing Committee on Uniform Legislation and Statutes Review  
Education and Training Legislation Review and Repeal Bill 2008  
15 July 2008**

**Question on Notice**

*Report on progress against indigenous strategies in Bilateral Agreement between the Australian Government and Western Australia under the 2005-2008 Commonwealth-State Agreement for Skilling Australia's Workforce.*

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In the 2006 Bilateral Agreement between Western Australia and the Australian Government, under the 2005-2008 Commonwealth-State Agreement for Skilling Australia's workforce, Western Australia outlined seven strategies that it would initiate to improve outcomes for Indigenous clients.

This paper provides an update as to how these strategies have progressed since 2006; and provides 2007 participation rates for Indigenous clients in the VET system.

1. Progressing best practise models of training delivery and student support to enhance outcomes for Indigenous students training at AQF level III and above (Best practice models identified in the recently completed WA project into Indigenous Students in Higher Level Training 2005).

Focus on Aboriginal VET has been enhanced through the development of a Strategic Indigenous Steering Committee (SISC). The committee is comprised of senior executives from the Department of Education and Training and managing directors of TAFEWA colleges. SISC coordinates and fosters initiatives to improve delivery of training for Aboriginal people. Increasing participation rates of Aboriginal students in AQF level III and above courses has been a strong focus of the committee. Key performance indicators for Aboriginal training are now embedded in the performance management agreements of all managing directors. Results from the research undertaken by Challenger TAFE into best practice in higher level training for Aboriginal students commissioned by SISC have been widely disseminated amongst colleges.

SISC has initiated an Indigenous lecturer cadetship program to increase the number of Aboriginal lecturers in the TAFEWA system. This includes formal training in through the Certificate IV in Training and Assessment as well as much informal mentoring and support through college staff to enable eventual progression of cadets to full lecturer status. There have also been many local initiatives amongst TAFEWA colleges to use Recognition of Prior Learning as a strategy to expand the numbers of local Aboriginal people completing the Certificate IV in Training and Assessment qualification and subsequently gaining experience as lecturers.

The Indigenous Aerospace Initiative prepares talented young Aboriginal people with high aspirations the opportunity to undertake training to prepare them to be pilots in the aviation industry. Students complete a Diploma in Aeronautics and a Commercial Pilot Licence and other aviation industry qualifications through the Western Australian Aviation College at Jandakot Airport.

The Department completed a major mapping exercise in 2008 to examine training provisions and funding in the VET sector for Aboriginal people in Western Australia. Planning has commenced to develop a response which will substantially address areas identified for improvement.

Significant improvements over recent years have been made to the participation rates of Aboriginal students in higher level VET courses. Indigenous enrolments in all publicly funded VET courses at or above AQF Certificate III level have risen from 2,828 in 2003 to 3,294 in 2007.

2. Developing and implement an innovative and progressive school-based traineeship program for Indigenous female 'at-risk' students commencing in Year 10.

Refer to strategy 7 below.

3. Working with the resources sector to establish partnerships that improve opportunities for indigenous people to access training pathways to employment.

SISC has actively promoted resource sector partnerships, recently inviting a representative from Rio Tinto to address the committee to explore avenues and strategies for mutually productive collaboration. There are many examples, especially in the Pilbara and the Kimberley, of TAFEWA colleges, and private registered training organisations, forging strong partnerships with industry that include commitment from companies for Aboriginal trainees to be able to take up employment upon successful completion of training. Kimberley TAFE is currently implementing an innovative case management approach to closely support students as they progress through courses developed in consultation with local industry groups.

The Aboriginal Education, Training and Employment Officer (AETEO) program employs eight staff based in regional Aboriginal community organisations or other agencies, including TAFEWA colleges, to promote initiatives that increase training and employment opportunities for local Aboriginal people. A key strategy of the AETEO program is the development of productive partnerships with local industry groups and other stakeholders to meet program goals. The program was reviewed and subsequently adjusted to improve accountability and performance.

4. Funding will support programs that increase the number of Indigenous adults undertaking higher level VET courses.

### **CAT Access program**

In addition to the mainstream funding for TAFEWA colleges, funding is available through the Competitive Allocation of Training (CAT) program for TAFEWA colleges and private registered training organisations. The 'Access' element of the program provides targeted funding for accredited training initiatives designed to increase



opportunities for Aboriginal people to participate in training and assist them to access pathways to further training or employment. Refer also to strategy 1 above.

#### 2007 CAT Access program (Indigenous component)

The 2007 CAT Access program was advertised in May 2006; the enrolment period began on 1<sup>st</sup> January 2007 and concluded on 31<sup>st</sup> December 2007. Training for students enrolled throughout 2007 may continue into 2008.

Funding Agreements were issued to 22 RTOs to deliver 78 training programs. The 78 training programs offered:

- 1,153 student places; 432,651 hours of training delivery; with \$5,842,791 allocated to achieve the training delivery.
- Of the training programs offered 20 were higher levels qualifications (Cert IV and above)

#### 2008 CAT Access program (Indigenous component)

The 2008 CAT Access program was advertised in July 2007; the enrolment period began on 1<sup>st</sup> January 2008 and concludes on 31<sup>st</sup> December 2008. Training for student enrolled throughout 2008 may continue into 2009.

To date:

- Funding Agreements have been issued to 17 RTOs to deliver 58 training programs. The 58 training programs offer:
  - 763 student places;
  - 290,603 hours of training delivery;
  - with \$4,809,378 allocated to achieve the training delivery.
- Of the training programs offered 12 were higher level qualifications.

### **Joint Indigenous Funding Pool (JIFP) Program**

The Joint Indigenous Funding Pool (JIFP) is a program funded jointly by the Commonwealth Department of Education, Science and Training (DEST) and the Western Australian Department of Education and Training. The JIFP program funds Registered Training Organisations (RTOs) to deliver nationally and State recognised training programs to Indigenous clients. Training programs delivered under the JIFP program must be customised to meet the specific needs of Indigenous clients and must have a high degree of community involvement and support. The final year of the joint funding agreement is 2008. Allocations under the JIFP program are made using the same processes outlined for the Access program.

#### 2007 JIFP program

The 2007 JIFP program was advertised in May 2006; the enrolment period began on 1<sup>st</sup> January 2007 and concluded on 31<sup>st</sup> December 2007. Training for students enrolled throughout 2007 may continue into 2008.

- Funding Agreements were issued to 7 RTOs to deliver 20 training programs. The 20 training programs offered:
  - 364 student places
  - 91,083 hours of training delivery
  - with \$1,764,983 allocated to achieve the training delivery.
- The training programs offered comprised:

- 9 AQF Certificate I courses
- 7 AQF Certificate II courses
- 4 AQF Certificate III courses

#### 2008 JIFP program

The 2008 JIFP program was advertised in July 2007; the enrolment period began on 1<sup>st</sup> January 2008 and concludes on 31<sup>st</sup> December 2008. Training for student enrolled throughout 2008 may continue into 2009.

To date:

- Funding Agreements have been issued to 5 RTOs to deliver 15 training programs. The 15 training programs offer:
  - 164 student places;
  - 37,996 hours of training delivery;
  - with \$809,360 allocated to achieve the training delivery.
- The training programs offered comprise:
  - 6 AQF Certificate I courses
  - 3 AQF Certificate II courses
  - 4 AQF Certificate III courses
  - 2 AQF Certificate IV courses

5. Development of sustainable strategies to improve career pathways for the Aboriginal School Based Traineeship (ASBT) Initiative.

The ASBT program commenced in 1998 and was subject to a review in 2007 aimed at significantly increasing the participation rate and improving the outcomes for Aboriginal students. As a result of this review, changes have been made to the initiative, now to be known as the Aboriginal School Based Training (ASBT) program, and these changes will be introduced in 2009. The revised ASBT program is expected to significantly improve career pathways for young Aboriginal students in Western Australia.

The new program consists of a number of certificate 1 preparatory programs which aim to get Year 10 Aboriginal students work ready and competitive. Following an assessment of their work readiness, Aboriginal students will be offered one of four options consisting of a school based traineeship, a school based apprenticeship, a full time traineeship or a full time apprenticeship. Group training organisations will offer these employment pathways and will also play a significant role in coordinating the year 10 Certificate 1 programs. Funding for group training organisations to mentor and support students in the ASBT program has now been introduced which is expected to significantly enhance the success rate of students. Group training organisations will also receive wage subsidy funding which will be passed on to host employers to encourage their participation.

6. Training Indigenous Teaching Assistants through the Aboriginal and Torres Islander Education Officer Existing Worker Traineeship Program.

The Aboriginal & Islander Education Officer (AIEO) Existing Worker Traineeship enables AIEOs to have their current skills recognized and progress to higher level

qualifications. They will complete the combined Certificate III & IV Teachers Assistant (Indigenous) traineeship. Since 2005 there have been 162 expressions of interest in participating with 77 commencements.

7. Implementation of improved indigenous female participation in all apprenticeships and traineeships through the Ricki Grace Clontarf Girls Foundation.

The pilot program targeting young Indigenous girls 'at risk' of disengaging from education was delivered in 2006 and 23 Year 10 students commenced the program at the Certificate 1 level. An evaluation of the program resulted in the pilot not proceeding and students being accepted into the Aboriginal School Based Traineeships program.

A number of programs for girls have been developed at the local district and school level (see below). These programs focus on a key area such as sport, and also support other important elements such as academic support, mentoring and life skills. The Kalgoorlie model has two elements, one focussing on sport and another on life skills and academic support for those girls willing to be involved but not in a sports focussed program.

Programs to improve attendance and engagement of Aboriginal Girls are:

School or District	Program	Program Focus
North Albany SHS	<b>Karnitj Kadadjiny</b> (True learning)	Academic support, mentoring, homework classes, vocational work experience, life-skills, sports,
Belmont City College	<b>Girls Basketball Program</b>	Sports program achieving improved attendance, on-field achievements, fitness and self-esteem.
	<b>Modeling Program</b>	Personal development program achieving improved attendance, enhanced self-esteem and increased family support.
Broome SHS	<b>Jija Program</b> (Sisters Program)	Sports focus incorporating twice-weekly training, interschool and community competitions, a camp every term, inclusion of an Aboriginal and Islander Education Officer (AIEO) and 'go to' school based support teachers.
Geraldton Senior College	<b>Warlugarra Walgamanyulu</b> (Meeting Place for Women)	Program focusing on mainstream curriculum with TAFE component aiming for year 12 graduation
John Willcock College	<b>Mid-West Netball Academy</b>	Sports program resulting in improved attendance, less behavioural issues and enhanced academic performance

Halls Creek DHS	<b>Girls Academy</b>	Sports, life-skills, literacy, numeracy, cooking and cultural activities.
Kalgoorlie Boulder Community High School	<b>Kalgoorlie Girls Academy</b>	Sports program with focus on life-skills, transition to year 12, individual pathways and career development,
Kununurra DHS	<b>Bridging Program for Girls</b>	Sports, life-skills, literacy, numeracy, cultural activities, health and drug education.

There are other programs that aim to improve the engagement and attendance of students at risk of leaving school early. Since the change to the school leaving age, Senior School Engagement Programs have been implemented in regional and metropolitan senior high schools. These programs are designed to cater for students who are disengaged or at risk of disengagement from senior schooling, including Aboriginal girls and boys. In addition, *Follow the Dream* supports high achieving Aboriginal students to achieve their career aspirations by completing high school and entering university.

**Additional Information – Participation rates – Enrolment Statistics for Indigenous Clients in 2007 (AVETMISS VET Enrolment Report)**

Course Enrolments	% of total number of enrolments	Hours of training	% of total number of hours	Clients	% of total number of clients
9,053	7.2%	1,630,229	5.9%	6,790	6.7%