

PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE  
ON  
DELEGATED LEGISLATION**

**THIRTY-FIRST REPORT:**

*Vocational Education and Training Amendment Regulations 1997*

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**31  
May 1998**

## **Joint Standing Committee on Delegated Legislation**

### **Members**

Hon Bob Wiese MLA (Chairman)  
Hon Nick Griffiths MLC (Deputy Chairman)  
Hon Simon O'Brien MLC  
Hon Barbara Scott MLC  
Hon Jim Scott MLC  
Mr Ted Cunningham MLA  
Mr Norm Marlborough MLA  
Mr Iain MacLean MLA

### **Advisory/Research Officer**

Michael Smyth

### **Committee Clerk**

Jan Paniperis

### **Terms of Reference**

*It is the function of the Committee to consider and report on any regulation that:*

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

*If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.*

**ISBN No: 0 7309 8887 2**

## Report of the Joint Standing Committee on Delegated Legislation

in relation to

### Vocational Education and Training Amendment Regulations 1997

#### 1 Introduction

1.1 In the exercise of its scrutiny function the Committee reviewed the *Vocational Education and Training Amendment Regulations 1997* (“**Amendment Regulations**”) made under the *Vocational Education and Training Act 1986* (“**Act**”). A copy of the Amendment Regulations are attached and marked “Annexure A”. Under the Committee’s Joint Rules if the Committee is of the opinion that a matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation that appears not to be within power. The broad object of the Amendment Regulations is to:

- prescribe a \$100 administration fee for application for registration as a training provider
- enable colleges to enforce payment of fees from students who give undertakings to pay by instalments and then fail to comply with the agreement
- increase fees for tuition at TAFE colleges
- change the scheme under which concessions from fees are granted.

1.2 The Committee expresses concern at changes to the regulations providing for the reduction, waiver, refund or payment by instalment of fees. Previously, the regulations provided for concessions and exemptions in relation to tuition fees for categories of students specified in the regulations. The concessions and exemptions of fees were granted to students who held an entitlement to certain classes of benefits granted by another public authority. Entitlement to this benefit was evidenced by the production of a card or certificate issued by the public authority.

1.3 Regulation 20 of the *Vocational Education and Training Regulations 1996* specified the different kinds of cards or certificates issued by the public authority in question and followed the nomenclature adopted by the public authority. The Department of

Training and the respective colleges did not have to establish and fund their own administrative procedures to ascertain whether claimants were entitled to concessions but instead relied on the production of a card or certificate. As public authorities changed the nomenclature used this required frequent amendment to the regulations so that they remained consistent with the nomenclature used by the public authority in question. This assisted would-be-claimants and the administrative staff of the colleges who administer the concessions and exemptions to make and process claims.

- 1.4 The Amendment Regulations repeal the current regulation 20 which sets out the specific entitlements and substitutes it with a regulation which enables the Minister to grant reductions, waivers, refunds and deferments (in the way of payment by instalment) by notice published in the *Government Gazette*.

## 2 The Committee's Concerns

- 2.1 The Advisory Research Officer first wrote to the Acting Director for Strategic Development at the Western Australian Department of Training ("**Department**") on 15 January 1998 expressing concern at the scope of the discretion granted to the Minister under the Amendment Regulations. Attached and marked "Annexure B" is a copy of this letter. The Department responded by letter dated 24 January 1998 (which is attached and marked "Annexure C") and this response was considered by the Committee at its meeting on 5 February 1998. The Committee wrote to the Department on 13 February 1998 seeking an explanation as to why the regulation could not be framed in such a way so as to provide broad parameters for the exercise of Ministerial discretion while maintaining the flexibility sought. Attached and marked "Annexure D" is a copy of this letter. The Department replied by letter dated 25 February 1998. Attached and marked "Annexure E" is a copy of this letter. The Committee heard evidence on 23 April 1998 from two officers from the Department, Mr Neil Fernandes, Director of Strategic Development and Mr Michael Woodford, Legal Officer.
- 2.2 The Amendment Regulations were published in the *Government Gazette* on 7 November 1997 and tabled in the Parliament on 18 November 1997. Under the provisions of section 42 of the *Interpretation Act 1984* there are 14 sitting days from the date of tabling in which there is power for the Parliament to move for the disallowance for such subordinate legislation. This period ended on 2 April 1998. In the circumstances, the Committee resolved for the Deputy Chairman to table a Notice of Motion of Disallowance over the Amendment Regulations in order to protect the initial position of the Committee and to enable sufficient time for the Committee to handle the inquiry. Accordingly, a Notice of Motion was tabled in the Legislative Council on 31 March 1998 which, by virtue of the Legislative Council Standing Orders moved *pro forma* on 2 April 1998.
- 2.3 The principal concerns raised by the Committee can be summarised as follows:
- 2.4 Regulation 20 of the Amendment Regulations confers on the Minister an unfettered

- discretion as it does not circumscribe the matters to be taken into account by the Minister in exercising her discretion to grant reductions, waivers, refunds and deferments (in the way of payment by instalment) of fees.
- 2.5 The Amendment Regulations do not provide any parameters for the exercise of the Ministerial discretion and arguably, the Minister could grant a concession to any individual. The Committee notes that under section 10 of the Act under which the Amendment Regulations are made, the Minister may delegate to the managing director of a college or a person in charge of any other vocational education and training institution the performance of any of the Minister's functions under the Act. Accordingly, the Minister is able to delegate the discretion conferred upon her under new regulation 20.
- 2.6 Notification of the exercise of Ministerial discretion under new regulation 20 of the Amendment Regulations is by way of notice published in the *Government Gazette*. Under section 42 of the *Interpretation Act 1984*, a notice, not being included within the definition of "regulation" contained in section 42(8) of the *Interpretation Act 1984*, is not subject to parliamentary scrutiny or disallowance procedures.
- 2.7 Thus the new regulation 20 of the Amendment Regulations effectively removes the requirement of section 67 of the Act that fees and charges to be paid for or in connection with the supply of vocational education and training are to be prescribed by regulation and hence, subject to tabling in the Parliament and parliamentary scrutiny. All future changes made under the new regulation 20 will be implemented by way of notice in the *Government Gazette* which will circumvent parliamentary scrutiny.
- 2.8 The Committee accepts that the frequent change in nomenclature used by public authorities calls for some flexibility in the regulation. The Committee does not consider the granting of an absolute discretion to the Minister, the exercise of which is not subject to Parliamentary scrutiny, to be an appropriate method for dealing with this issue.
- 2.9 Section 45(1) of the *Interpretation Act 1984* enables subsidiary legislation (which is defined to include a regulation or notice) to provide for the payment of fees and charges either generally or under specified conditions or in specified circumstances and for the reduction, waiver or refund, in whole or in part, of such fees and charges.
- 2.10 Section 45(2) of the *Interpretation Act 1984* provides that any reduction, waiver or refund of any fee or charge provided by subsidiary legislation may be expressed to apply or to be applicable either generally or specifically -
- (a) in respect of certain matters or transactions or classes of matters or transactions;
  - (b) in respect of certain documents or classes of documents;

- (c) when any event happens or ceases to happen;
- (d) in respect of certain persons or classes of person; or
- (e) in respect of any combination of such matters, transactions, documents, events or persons,

and may be expressed to apply or to be applicable *subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified in the subsidiary legislation* (emphasis added).

- 2.11 The Committee acknowledges that section 45(2) of the *Interpretation Act 1984* permits the conferring of a discretion on the person granting the exemption, which in this case is the Minister. However, section 45(2) of the *Interpretation Act 1984* also requires that the broad parameters for the exercise of the discretion (such as those set out in (a) to (e) in paragraph 2.10 above) are contained within the regulations to which the person so specified in the subsidiary legislation (in this case, the Minister or the Minister's delegate) must have regard to when exercising her or his discretion.
- 2.12 In evidence before the Committee, Mr Woodford advised the Committee that the Department relied on section 45 of the *Interpretation Act 1984* as the authority enabling the making of the new regulation 20 of the Amendment Regulations and the justification that the new regulation is within power. For the reason set out at paragraph 2.11 the Committee does not consider that section 45 of the *Interpretation Act 1984* contemplates the making of a regulation on the terms of the new regulation 20. Accordingly, the Committee considers the new regulation 20 to be beyond the powers provided for in section 45 of the *Interpretation Act 1984*.
- 2.13 The Committee does not consider that the *Interpretation Act 1984* enables the Minister or the Executive to remove the requirement specified in section 67 of the Act that fees and charges paid for or in connection with the supply of vocational education and training are to be prescribed by regulation, and substitute a different method of implementing amendments, namely through the use of notices in the *Government Gazette*.
- 2.14 In evidence before the Committee Mr Fernandes emphasised that the intent of new regulation 20 of the Amendment Regulations is to give effect to the concessional arrangements as quickly as possible and stressed to the Committee that there is no intent on behalf of the Department to bypass the Parliament.
- 2.15 Whilst acknowledging that there is a need for some flexibility in the exercise of the Ministerial discretion conferred under regulation 20 **the Committee does not accept the need for an absolute discretion to be provided to the Minister (or the Minister's delegate) with no ability for the Parliament to scrutinise the exercise of that discretion.**

- 2.16 The Committee considers that the publication of the exercise of the Minister's discretion by way of notice in the *Government Gazette* falls short of sufficient Ministerial accountability for the exercise of the power as there is no opportunity for parliamentary scrutiny of the exercise of the discretion.
- 2.17 In evidence to the Committee, Mr Woodford stated that the use of notice by way of publication in the *Government Gazette* was adopted by the Department to enable concessions to be granted within the spirit of the law rather than the letter of the law. This would enable additional concessions to be added without the need to amend the regulations. The use of notices in the *Government Gazette* was considered the quickest way to extend or vary the concessions.
- 2.18 The Committee accepts that the Ministerial discretion cannot be exercised to impose a burden on the public and is there for the purpose of lowering a fee that would be payable but for the grant of the exemption. Regulation 20 has to date granted exemptions to students who held an entitlement to certain classes of benefits as evidenced by the production of a card or certificate issued by the public authority.
- 2.19 The Committee further accepts that there may be grounds or a combination of grounds, other than entitlement to benefits, for which exemptions should be granted (for example, regional necessity). These will encompass grounds in addition to the existing ground of entitlement to receive certain benefits.
- 2.20 However, the Committee considers it appropriate for Parliament to scrutinise the exercise of the Minister's discretion. As notices are not included within the definition of "regulations" under section 42(8)(b) of the *Interpretation Act 1984*, they are not subject to parliamentary scrutiny.
- 2.21 Accordingly, the Committee considers the use of notices in the *Government Gazette* to be an inappropriate method of notifying would-be-claimants and the public of both the basis and exercise of the Minister's discretion.
- 2.22 The Chairman of the Committee and the Committee's Advisory Research Officer met with the Minister on 20 May 1998. One of the proposals examined by the Committee was whether the broad parameters for the exercise of Ministerial discretion could be included within the regulations (as required by section 45(2) of the *Interpretation Act 1984*) with the use of notices in the *Government Gazette* to advise of specific exercises of the Minister's discretion. This was discussed with the Minister. The outcome of this discussion was that, while such a proposal was possible, and in the opinion of the Committee within power, the Minister considered that the process would become too cumbersome and impractical to administer.
- 2.23 However, the Minister acknowledged the concerns of the Committee regarding new regulation 20 of the Amendment Regulations, and has advised the Committee that the

regulations will be amended to retain, in effect the provision for the granting of concessions by regulation which existed prior to the Amendment Regulations coming into force. This will result in the amendment of regulations 20 and 21 which are contained in clause 4 and clause 5 of the Amendment Regulations. Attached and marked “Annexure F” is a copy of the letter from the Minister to the Committee formally notifying the Committee of the Minister’s intention.

- 2.24 For the reasons given above and in light of the undertaking given by the Minister to amend the regulations to restore the previous provision for the granting of concessions by regulation, the Committee recommends the disallowance of clauses 4 and 5 only of the Amendment Regulations. The Committee does not seek to disallow the remaining clauses of the Amendment Regulations. An amendment to the Notice of Motion of Disallowance will be sought to this effect which the Committee fully supports.



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TRAINING 'ANNEXURE A'

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TB301

VOCATIONAL EDUCATION AND TRAINING ACT 1996  
VOCATIONAL EDUCATION AND TRAINING AMENDMENT  
REGULATIONS 1997

Made by the Governor in Executive Council.

**Citation**

1. These regulations may be cited as the *Vocational Education and Training Amendment Regulations 1997*.

**Principal regulations**

2. In these regulations the *Vocational Education and Training Regulations 1996*\* are referred to as the principal regulations.

[\* Published in Gazette 27 December 1996, pp. 7167-84.]

**Regulation 16A inserted**

3. After regulation 16 of the principal regulations the following regulation is inserted —

“

**Fee for applications to Council**

16A. (1) The fee for making an application to the Council for registration as a training provider is the fee specified in item 7A of Schedule 1.

(2) If an application for registration is not accompanied by a certificate of assessment in a form approved by the Council, the Council may charge the applicant for the costs and expenses incurred by the Council in considering the application.

(3) If a charge imposed under subregulation (2) is not paid within the time specified by the Council when the charge is imposed, the amount of the charge may be recovered in a court of competent jurisdiction as a debt due to the Crown.

”

**Regulation 20 amended**

4. Regulation 20 (1) and (2) of the principal regulations are repealed and the following subregulations are substituted —

“

(1) The Minister may by notice published in the *Gazette* —

- (a) reduce or waive any fee payable;
- (b) provide for the refund of all or part of any fee paid; or
- (c) allow for the payment by instalments of any fee (including a fee reduced under this regulation) payable;

under these regulations by a person specified in, or within a class of persons specified in, the notice on such conditions as are specified in the notice.

(2) The Minister may by notice in the *Gazette* specify concessional rates of fees payable by persons to whom regulation 21 applies.

(2a) The Minister may amend or revoke a notice under subregulation (1) or (2).

”

**Regulation 21 amended**

5. Regulation 21 of the principal regulations is amended by deleting “is to apply to that person for that course as if he or she were a person to whom regulation 20 (1) applies.” and substituting the following —

“

specified in a notice in force under regulation 20 (2) is to apply to that person for that course.

”

7 November 1997]

GOVERNMENT GAZETTE, WA

6151

Regulation 22 amended

6. After regulation 22 (2) of the principal regulations the following subregulations are inserted —

“

(3) If a student fails to pay an instalment when it becomes due and payable the governing council of a college may —

- (a) withdraw the allowance granted under subregulation (1) or (2) and require the student to pay the total unpaid portion of the fee by a date specified by the council; or
- (b) cancel the enrolment of a student.

(4) The governing council of a college may only exercise a power under subregulation (3) if —

- (a) the council has given the student 21 days written notice of its intention to do so; and
- (b) any instalment payable before the notice was given remains unpaid at the expiry of those 21 days.

(5) If a student fails to pay an instalment, or an amount payable under subregulation (3) (a), when it becomes due and payable the governing council of a college may recover that amount in a court of competent jurisdiction as a debt due to the college.

”

Schedule 1 amended

7. (1) Item 3 of Schedule 1 to the principal regulations is deleted and the following item is substituted —

“ 3. Fee for assessing practical experience (reg. 10) . . . . . \$70.00 ”.

(2) Item 5 of Schedule 1 to the principal regulations is deleted and the following item is substituted —

“

5. Tuition fee for a category A course (reg. 12) — 90 cents for each hour, or part of an hour, of tuition in the course.

The maximum fee under this item for all category A courses taken by a person in a semester is \$310.00

”

(3) Item 7 of Schedule 1 to the principal regulations is deleted and the following items are substituted —

“

7. Tuition fee for a category D course (reg. 15) — \$5.00 for each hour, or part of an hour, of tuition in the course.

7A. Fee for application for registration as a training provider (reg. 16A) . . . . . \$100 ”.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

" ANNEXURE B "



*Joint Standing Committee  
on Delegated Legislation*

15 January 1998

Neil Fernandes  
Acting Director/ Strategic Development  
Western Australian Department of Training  
151 Royal Street  
East Perth  
WA 6004

Our Ref: 3512/17  
Your Ref: 71502/96

Attention: M Woodford

Dear Sir

*Vocational Education and Training Amendment Regulations 1997*

I refer to the above regulations and the attached explanatory material received under cover of your letter addressed to the Committee.

The new regulation 20 provides a discretion to the Minister to grant reductions, waivers, refunds and deferments of any fee payable or paid by notice published in the *Gazette*. There is no specification of the parameters of this discretion in the regulation. The authority for the regulation is alleged to be derived from section 45 of the *Interpretation Act 1984*. Is there any legal authority that the words "provide for" in section 45 authorise an unfettered discretion of the type under consideration?

A further concern is that the regulation gives the Executive a discretion to grant dispensations from the operation of subordinate laws in favour of individuals and this amounts to a partial abrogation of the *Bill of Rights 1688*, which declared illegal the exercise of a power of dispensation by the Crown. It is accepted that the *Bill of Rights 1688* may be overridden by a later inconsistent Act of the WA Parliament and this may well be the case in respect of section 45 of the *Interpretation Act 1984*, however the Bill is an important part of the legal heritage of the state which expresses the principle that it is for Parliament and not the Executive to declare the legal obligations of the community. Of course Parliament does not have the resources to legislate completely for the state and hence it delegates many legislative powers to the Executive. However the principle expressed in the *Bill of Rights 1688* is usually satisfied, in the case of subordinate legislation, by providing for parliamentary scrutiny and disallowance of the subordinate instrument. A notice published in the *Gazette* pursuant to regulation 20 will not be

subject to parliamentary scrutiny or disallowance. In failing to set any parameters for the exercise of the discretion and providing for it to be exercised without any means for Parliament to scrutinise or disallow it is arguable that the principle established in the *Bill of Rights 1688* is being subverted.

It is accepted that the frequent change in nomenclature used by public authorities calls for some flexibility in the regulation. However it is not accepted that due to this it is necessary to provide such an absolute discretion as is provided. For instance the regulation could provide that the Minister has a discretion to grant reductions, waivers, refunds and deferments to persons who receive benefits under certain statutes leaving the notice to specify the nomenclature ascribed to the benefit and any other necessary matters. Alternatively the regulation could refer generically to the unemployed, pensioners and those in receipt of government benefits as specified in the notice. As the regulation stands it provides an unfettered discretion to the Minister and the Committee is likely to have concerns in respect of such a regulation.

Your comments in relation to the above would be appreciated. The Committee will be meeting on 5 February 1998 where the regulation will be considered.

Yours sincerely



Andrew Mason  
Advisory Research Officer

## " ANNEXURE C "

Your ref  
Our ref F71502/96  
Enquiries : 9235 6153

WESTERN  
AUSTRALIAN  
DEPARTMENT  
OF TRAINING

Mr Andrew Mason  
Advisory Research Officer  
Joint Standing Committee  
on Delegated Legislation  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Mr Mason

*Vocational Education and Training Amendment Regulations 1997*

I refer to your letter of 15 January 1998 relating to new regulation 20 as inserted by these regulations.

You appear to have two concerns about the scheme of new regulation 20. These are the discretion it confers on the Minister and that the regulation gives the Executive a discretion to grant dispensations from the operation of subordinate laws in favour of individuals. In your view the latter amounts to an abrogation of the *Bill of Rights 1688* which is an important part of the heritage of the State of Western Australia. The principle involved is that it is right of the Parliament and not the Executive to declare the legal obligations of the community.

Taking the latter concern first, in order to place the regulation in its proper context. Historically, it was the abuse of the prerogative power to grant suspensions or dispensations of the laws notwithstanding anything to the contrary in a statute, before the commission of an offence, that brought the use of the power into disrepute. In other words, suffering a person to commit a breach of the laws with impunity, by rendering the person unpunishable. It was always regarded with jealousy, and being carried by the Judges in the reign of James the Second to an extent which placed the King above the laws. The consequence was that after the Glorious Revolution the passage of the *Bill of Rights 1688* provided that no dispensation was to be allowed, unless the same is allowed for in such statute. This enacted the common law doctrine that the Crown had no legal right to dispense with laws respecting offences. It is to be noted that the intention was to prevent the Crown from granting dispensation from the commission of offences. In this case however, the only exemption is from the payment of fees by persons who come within the exemption notice.




The other concern is that the regulation allows the Minister an unfettered discretion as it does not circumscribe the circumstances to be taken into account by the Minister in exercising the discretion. First, there is no doubt that the power to grant exemption is conferred by section 45 of the *Interpretation Act 1984*. The means by which this may be effected is to "provide for" - not to prescribe - the grounds on which the exemption may be claimed. The regulation may, therefore, incorporate in its terms, reference to another document. This would meet any requirement that the grounds for claiming the exemption should be identifiable and are not uncertain. In fact, the regulation does not impose requirements but only exemptions which are available on the grounds set out in the notice (see *Wright v TIL Services Pty Ltd (1956) SR (NSW) 413*).

The other question is that the regulation confers too wide a discretion on the Minister. The framing of the limits of the power to grant concessions is a continuing problem. If the power is drawn too narrowly the notice is subject to questions of validity. There would therefore be a constant concern about the validity of the exercise of the power before the concessions are granted. In fact, the technique of the notice is to draw on the means tests administered by other authorities and adopt those tests for the purposes of assessing the means of persons who apply for concessions. The notice merely sets out the evidentiary requirements to be met by persons who claim the concessions.

Finally, the discretion is exercised in a public manner by notice in the *Government Gazette*. Thus it is public to all would-be claimants. The notice is amenable to quick response to changing nomenclature and will not involve scarce drafting time at the Parliamentary Counsel's Office. This in itself will enable the Department to meet requirements that the concessions are properly granted when claimed and not have to rely on some later amendment of the regulations as now is the case.

Thank you for your consideration of these comments.

Yours sincerely

  
Neil Fernandes  
DIRECTOR  
STRATEGIC DEVELOPMENT

24 January 1998

" ANNEXURE D "

LEGISLATIVE COUNCIL

Joint Standing Committee  
on Delegated Legislation

13 February 1998

Neil Fernandes  
Director Strategic Development  
Western Australian Department of Training  
151 Royal Street  
East Perth  
WA 6004

Our Ref: 3512/17  
Your Ref: F71502/96

Dear Sir

*Vocational Education and Training Amendment Regulation 1997*

I refer to the above matter and your letter addressed to Andrew Mason dated 24 January 1998.

In respect of the potential abrogation of the *Bill of Rights 1688* you have stated that the intention of the removal of the power to grant dispensation was to prevent the Crown from granting dispensations from the commission of offences. On this basis since the regulation only grants an exemption from the payment of fees it is arguably a dispensation that the Crown can make. However, the few matters in which this power has been litigated in Commonwealth countries reflect that the Executive cannot dispense with the operation of penal and non-penal statutes alike - eg. *Fitzgerald v. Muldoon* [1976] 2 NZLR 615: where the NZ Prime Minister was held to be unable to suspend a statutory obligation to contribute to a state pension plan.

Despite the above comments the Committee will not be pursuing this question of whether the regulation amounts to an abrogation of the *Bill of Rights 1688* as it is accepted that section 45 of the *Interpretation Act 1984* represents a partial amendment of the *Bill of Rights 1688*. The Committee however continues to take issue with the discretion that the new regulation 20 confers on the Minister. The Committee is of the view that the regulation could be drafted in such a manner that the parameters of the exercise of the discretion can be defined with the notice to provide the specifics as to the nomenclature of the benefit that will give rise to an entitlement to a concession. If the regulation makes reference to the relevant Commonwealth legislation or makes reference to generic types of benefits such as "unemployment benefits" then the Committee does not envisage that there will be questions concerning the validity of a notice which then specifies the name of the particular benefit under that legislation at the time. This



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would provide the flexibility sought as well as satisfy the Committee that the discretion is not too wide.

Your further comments are now sought. The relevant regulations were gazetted on 7 November 1997 and tabled in the Parliament on 18 November 1997. Under the provisions of section 42 of the *Interpretation Act 1984* there are 14 sitting days from the date of tabling in which there is power for the Parliament to move for the disallowance of such subordinate legislation. This period ends on 26 March 1998. Under the Committee's Terms of Reference if the Committee is of the opinion that a regulation ought to be disallowed it is required to report that opinion and the grounds thereof to each House before the end of the period during which any motion for disallowance of those regulations may be moved in either House. Accordingly it is necessary for the Committee in the performance of its functions to finalise its inquiries on this matter before 26 March 1998.

It has been the Committee's practice in the past that if matters such as this have not been finalised within the time allowed it will move for disallowance of the regulations in order to protect the initial position taken by the Committee. This is obviously a course which both the Committee the agency and the affected Minister are anxious to avoid. In the circumstances the Committee would appreciate your response as soon as possible.

Yours sincerely

f.p. Andrew Mason

Hon R L (Bob) Wiese MLA  
Chairman

## " ANNEXURE E "

Your ref :  
F71502/96  
Our ref :  
9235 6153  
Enquiries :

WESTERN  
AUSTRALIAN  
DEPARTMENT  
OF TRAINING

Hon R L Wiese MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Mr Wiese

***VOCATIONAL EDUCATION AND TRAINING AMENDMENT REGULATIONS  
1997***

Thank you for your letter of 13 February 1998 in which you indicated the Committee's view on certain aspects of these regulations.

I am pleased that the Committee agrees that under section 45 of the *Interpretation Act 1984* a valid regulation may be made exempting persons from the effect of a regulation. The only points now are whether the *Interpretation Act 1984* will enable the exemption to be expressed in general terms so as to confer a discretion and the vehicle to be used to effect that purpose.

In our view section 45(1) of the *Interpretation Act 1984* enables the making of a regulation that "provides for" the reduction of fees and charges either generally or under specified conditions or in specified circumstances (paragraph (e)). Section 45(2) enables the reduction to be expressed either generally or specifically and "may be expressed to apply or to be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified in the subsidiary legislation.

Generally, the authorities agree that "provide for" confers power to list in another document other than the regulations in question. There is no doubt that the *Interpretation Act 1984* section 45(2) confers power to confer a discretion on the person granting the exemption. In this case, the Minister's discretion is bound to be expressed in a notice published in the *Government Gazette* and is to be made known to the public. The Minister will therefore be accountable for the exercise of the power.



The question then is whether the parameters of the discretion should be prescribed in the regulations. There are 2 aspects to this question. The moment the discretion is confined to fixed parameters questions of the validity of the notice becomes a question. It must be remembered that in this case the discretion is not to impose a burden on the public but for the purposes of lowering a fee that would be payable but for the grant of the exemption. Current policy is to grant exemptions according to means in some cases the exemption could be granted according to regional necessities or any other combination. If the power conferred on the person to grant exemption is limited to fixed parameters arguments on merit become confused with arguments of validity resulting in waste of time and resources which inevitably bring questions of law and legal opinions. It is for these reasons that the Department prefers the approach taken in the current regulation.

I wish to reassure you that there it is not an attempt to escape scrutiny of the Parliament. It is because of this that we have preferred to use the technique of a notice in the *Government Gazette*.

I would be pleased to have a favourable reply to this submission if the Committee agrees with these submissions.

Yours sincerely



Neil Fernandes  
DIRECTOR  
STRATEGIC DEVELOPMENT

25 February 1998



MINISTER FOR THE ENVIRONMENT;  
EMPLOYMENT AND TRAINING

Hon R L Wiese, MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Parliament House  
PERTH WA 6000

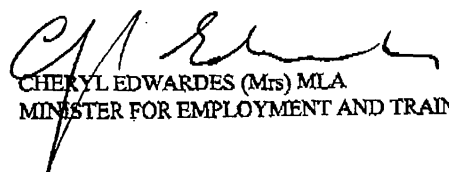
Dear Mr Wiese

**VOCATIONAL EDUCATION AND TRAINING AMENDMENT REGULATIONS 1997**

I am writing in regard to the Committee's recent deliberations on the above Regulations, and specifically in relation to Clauses 4 and 5 which amend Regulations 20 and 21.

I understand the Committee's concerns regarding these Clauses and wish to advise that I will have them amended immediately to retain, in effect, the existing provision for the granting of concessions by regulation.

Yours sincerely



CHERYL EDWARDES (Mrs) MLA  
MINISTER FOR EMPLOYMENT AND TRAINING