

# VOCATIONAL EDUCATION AND TRAINING AMENDMENT BILL 2023

## EXPLANATORY MEMORANDUM

### Overview and background

The *Vocational Education and Training Act 1996* (the VET Act) and associated Regulations provide the framework for the administration and regulation of the State's training system.

The VET Act allows for the:

- functions and powers of the Minister;
- constitution of the State Training Board (STB) and the Training Accreditation Council (the Council);
- establishment of colleges, governing councils and other VET institutions;
- regulation of registered training organisations (RTOs) by the Council; and
- regulation of training contracts.

The proposed amendments are intended to:

1. ensure persons affected by the Council's decisions have access to an effective appeal mechanism; and
2. allow proper delegation of the chief executive's functions under Part 7 of the VET Act and the Regulations made for the purposes of this Part.

## **Amendment Bill**

The Vocational Education and Training Amendment Bill 2023 (the Bill) is summarised as follows:

### **Clause 1: Short title**

This clause provides that when the Bill passes, it will be known as the *Vocational Education and Training Amendment Act 2023* (the Amendment Act).

### **Clause 2: Commencement**

This clause provides for when the provisions of the Amendment Act will become operative. Sections 1 and 2 will become operative on the day of Royal Assent; sections 3, 4, 5 and 7 on the day after assent day; and the rest of the Amendment Act on a day fixed by proclamation.

### **Clause 3: Act amended**

This clause provides that all the provisions contained in the Bill will amend the *Vocational Education and Training Act 1996* (the VET Act).

### **Clause 4: Section 58G amended**

This clause amends section 58G(2) of the VET Act, which outlines the scope of appeals against decisions made by the Training Accreditation Council. The existing section 58G(2) is being deleted and replaced with a new section 58G(2).

This amendment is proposed in response to the interpretation of existing section 58G(2) taken by the Western Australian Court of Appeal in 2021, which has resulted in the State Training Board not being able to consider any appeal on the grounds that the Training Accreditation Council failed to apply, or misapplied the relevant standards in making decisions.

The effect of the new section 58G(2) is that a person will be able to appeal against a decision of the Council if the Council made an error in applying, or failed to apply:

- guidelines issued by the Minister under section 13; or
- criteria (including standards and guidelines) that the Council was required to apply in the regulations made under section 58(c).

This amendment provides for the scope of appeal to be based on any breach of the criteria, including standards, that the Council was required to apply, as prescribed by regulations pursuant to section 58(c).

**Clause 5: Section 58 amended**

This clause amends current section 58(c) by deleting “account when deciding an application made to it” and replacing it with “account, or must apply, when making a decision”.

The amended section 58(c) provides that the regulations may prescribe criteria that would apply when the Council “is making a decision.” This means that the criteria could apply regardless of whether the matter originated through an application made to the Council or by the Council deciding a matter on its own initiative.

The amended section 58(c) also provides that, in addition to prescribing criteria that the Council must or may “take into account,” criteria that the Council must “apply” when making a decision could also be prescribed.

The purpose of this amendment is to ensure consistency between the proposed section 58(c) and section 58G(2).

**Clause 6: Section 60J inserted**

This clause introduces the power to delegate functions of the chief executive by inserting a new section 60J at the beginning of Part 7 Division 4.

This section will become operative on a date fixed by proclamation after the deletion of regulation 35 of the *Vocational Education and Training (General) Regulations 2009*, which currently provides for delegation of the chief executive’s powers.

**Clause 7: Schedule 2 amended**

A clause is inserted to Schedule 2 of the VET Act, which sets out the transitional provisions for an appeal that may be pending determination at the time when the Amendment Act comes into operation. The amended sections will apply to an appeal that commenced on or after the commencement day of the Amendment Act; or an appeal that commenced before the commencement day but not determined before that day.