

Vocational Education and Training (Amendment) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 12 November 1991

(Brought in by the Honourable B. T. Pullen)

A BILL

to amend the **Vocational Education and Training Act 1990** and the
Industrial Relations Act 1979 and for other purposes.

Vocational Education and Training (Amendment) Act 1991

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to amend the **Vocational
Education and Training Act 1990**—

- (a) to make various amendments to the delegation powers; and
- (b) to alter the requirements for consultation; and
- (c) to recognise the Army College of TAFE as a provider of vocational education and training; and
- (d) to revise the provisions about practical placements—

and to make other minor amendments to that Act and other Acts.

Section headings appear in bold italics and are not part of the Act
(see **Interpretation of Legislation Act 1984**).

2. Commencement

- (1) Section 24 of this Act is to be taken to have come into operation on 1 January 1991.
- (2) This Act, other than section 24, comes into operation on a day or days to be proclaimed.

5

No. 45 of
1990.
Amended by
Nos 21/1990
and GG
27/2/1991,
p. 442.

3. Principal Act

In this Act, the **Vocational Education and Training Act 1990** is called the Principal Act.

PART 2—DELEGATIONS

4. Amendments to delegation powers

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(1) In section 20 (1) of the Principal Act—

- (a) for “or an officer or employee of the public service appointed pursuant to section 19” **substitute** “or an officer or employee of the public service, whether or not appointed under section 19, any person employed at a TAFE college or the Victoria University of Technology, the governing body of the Army College of TAFE or any person employed at or a member of the Australian Defence Force attached to that College”; and

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(b) omit “, except this power of delegation”.

(2) In section 20 (2) of the Principal Act—

- (a) for “or an officer or employee of the public service appointed pursuant to section 19” **substitute** “or an officer or employee of the public service, whether or not appointed under section 19, any person employed at a TAFE college or the Victoria University of Technology, the governing body of the Army College of TAFE or any person employed at or a member of the Australian Defence Force attached to that College”; and

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(b) omit “this power of delegation and”.

- 5 (3) In section 20 (3) of the Principal Act, for “any officer or employee of the public service appointed pursuant to section 19” **substitute** “any officer or employee of the public service, whether or not appointed under section 19, any person employed at a TAFE college or the Victoria University of Technology, the governing body of the Army College of TAFE or any person employed at or a member of the Australian Defence Force attached to that College”.
- 10 (4) In section 24 (1) (g) of the Principal Act, omit “(except any powers delegated to it under this Act)”.

5. Insertion of new section 20A

After section 20 of the Principal Act **insert—**

“20A. Power of further delegation

- 15 (1) If a power or function has been delegated to a person or body under section 20 (1), (2) or (3), that person or body may delegate that power or function to—
- 20 (a) any other person or body to whom that power of function may be delegated directly; or
- (b) any other person or body to whom that person or body may delegate a power or function under this Act—
- 25 if the original instrument of delegation of that power or function authorised the making of a further delegation.
- (2) An original instrument of delegation may specify any terms, conditions, limitations and restrictions on the making of a further delegation.
- 30 (3) Despite sub-section (1), if a power or function has been delegated to an industry training board under section 20 (1), that board must not delegate that power or function to another person or body.”.
- 35

PART 3—CONSULTATION

6. Consultation

- (1) In section 49 (3) of the Principal Act, for “any industry training board concerned” **substitute** “any industry training board which is, in the opinion of the Board concerned in the vocation”. 5
- (2) In section 51 (3) of the Principal Act, for “any relevant industry training board” **substitute** “any industry training board which is, in the opinion of the Board, relevant”.
- (3) In section 53 (4) and (5) of the Principal Act, for “any relevant industry training board” **substitute** “any industry training board which is, in the opinion of the Board, relevant”. 10
- (4) In section 56 (1) of the Principal Act, for “the relevant industry training board” **substitute** “any industry training board which is, in the opinion of the Board, relevant”. 15
- (5) In section 76 (4) of the Principal Act, for “any relevant industry training board” **substitute** “any industry training board which is, in the opinion of the Board, relevant”. 5

PART 4—DEFENCE FORCE TRAINING 20

7. Definitions

In section 3 of the Principal Act—

(a) before the definition of “Award” **insert—**

“Army College of TAFE” means the body of that name established by the Commonwealth.”; 25
and

(b) after the definition of “Board” **insert—**

“Defence Force” means the Defence Force of the Commonwealth.”.

8. Amendment of definition of training

In section 46 of the Principal Act, in the definition of “**Training**”, for “industry or commerce” substitute “industry, commerce or government service”.

5 9. Insertion of New Division 6

After Division 5 of Part 5 insert—

“Division 6—Defence Force training programs

72A. Recognition of Defence Force training programs

10 (1) The Board may determine that an apprenticeship course or other training program conducted in the Defence Force is such that a person—

(a) who satisfactorily completes the course or program; and

15 (b) who complies with any further conditions as to experience or otherwise determined by the Board—

is to be taken to have completed an approved training program, or a part of an approved training program, as specified in the determination, for a vocation.

20 (2) The Board may confer with members or representatives of the Defence Force on any matter concerning an apprenticeship or other training program conducted in the Defence Force so as to ensure that, that apprenticeship or training program can be accorded recognition under sub-section (1).

25 (3) The Board must send a copy of the determination under this section, under the seal of the Board, to the relevant Defence Force authority.”.

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10. Amendments to Part 6

- (1) In section 77 of the Principal Act—
 - (a) in sub-section (1), after “TAFE institution” insert “or the Army College of TAFE”; and
 - (b) in sub-section (2), after “TAFE institution” insert “or the Army College of TAFE”. 5
- (2) In section 78 of the Principal Act, for “or TAFE institution” substitute “,TAFE institution or the Army College of TAFE”.
- (3) In section 80 of the Principal Act— 10
 - (a) in sub-section (1), at the end of paragraph (e) insert—
 - “; or
 - (f) is the Army College of TAFE.”; and
 - (b) in sub-section (2), at the end of paragraph (e) insert— 15
 - “; or
 - (f) is the Army College of TAFE.”.
- (4) In section 82 of the Principal Act, at the end of paragraph (e) insert— 20
 - “; or
 - (f) the person or body is the Army College of TAFE.”.
- (5) In section 85 (10) of the Principal Act, in the definition of “education institution”, after “any course” insert “and the Army College of TAFE”. 25

PART 5—NATIONAL STANDARDS

11. National standards for training programs

- (1) In section 4 (e) of the Principal Act, after “those courses” insert “and to ensure that those courses are consistent with national accreditation standards”. 30
- (2) In section 51 of the Principal Act, after sub-section (2) insert—

“(2A) A determination may make a specification under sub-section (2) by adopting the standards fixed in another document with respect to training programs for vocations.”.

5 **12. Amendment of section 73**

In section 73 of the Principal Act, for the definition of “Accreditation” **substitute—**

10 “**Accredited course**” means a course which is registered on the State Register of Accredited Courses maintained under section 36 of the **Post-Secondary Education Act 1978**.”.

13. Insertion of new section 73A

After section 73 of the Principal Act **insert—**

“**73A. Accreditation of courses**

15 A course may be accredited under this Part if—
(a) the contents and standards of the course are appropriate to the award (if any) to which it leads; and
20 (b) the course and the methods adopted in delivering it are likely to achieve the purposes of the course; and
(c) the contents and standards of the course and the methods adopted in delivering it are consistent with relevant national
25 standards.”.

14. Amendment of VETAB functions

In section 75 (2) (b) of the Principal Act, after paragraph (vi) **insert—**

30 (vii) the co-ordination of Victorian accreditation standards and processes with the accreditation standards and processes of the Commonwealth or

any other State or Territory of the Commonwealth; and”.

PART 6—PRACTICAL PLACEMENTS

15. *New Part 7 substituted*

For Part 7 of the Principal Act **substitute—** 5

“PART 7—PRACTICAL PLACEMENT

86. *Definitions*

In this Part—

“**College year**” in respect of any college, means that portion of the year beginning with the first day in which the college is open in that year and ending on the last day on which the college is open in that year. 10

“**Disabled student**” means a student who is suffering from— 15

- (a) total or partial loss of bodily function; or
- (b) total or partial loss of a part of the body; or
- (c) a mental or psychological disease or disorder; or 20
- (d) a condition or malfunction as a result of which a person learns more slowly than persons who do not have that condition or malfunction. 25

“**Employer**” includes a department of the Commonwealth Government or a body established under a Commonwealth Act.

“**Law**” includes an award, industrial agreement and any provision which restricts the employment of persons who are not trainees in declared vocations. 30

“**Post-secondary student**” means a student who is enrolled in a post-secondary education course at a TAFE provider.

5 “**Secondary student**” means a student at a TAFE provider who is in a course of study which is or is equivalent to the eleventh or twelfth year of secondary education.

10 “**TAFE Provider**” means a TAFE institution, the Army College of TAFE or any person or body who has approval to provide a vocational education and training course under section 83.

87. Practical placement agreements

15 (1) A student at a TAFE provider may be placed with an employer for work experience or training if the governing body of the TAFE provider has entered into an agreement with the employer about the placement of that student.

20 (2) An agreement—
(a) must be in writing; and
(b) may be varied or amended by another agreement; and
25 (c) must be consistent with any determination of the Board about placements of that kind; and
(d) may be cancelled at any time by notice in writing—
(i) given by the employer to the governing body; or
30 (ii) given by the governing body to the employer.

88. Determination about the placement of post-secondary students

35 (1) The Board may make a determination about the placement of post-secondary students or any class

Vocational Education and Training (Amendment)

of post-secondary students with an employer for work experience or training.

- (2) The determination may—
 - (a) subject to section 89, fix the period of the placements to which the determination relates; and 5
 - (b) specify the number of students any employer or class of employers may take; and
 - (c) specify that the Board retain the power to cancel or vary any placement; and 10
 - (d) specify any other conditions which are to apply to those placements.
- (3) The Board must consult with any industry training board which is, in its opinion, relevant before making a determination under this section. 15

89. *Conditions on the placement of post-secondary students*

If a post-secondary student is placed with an employer under an agreement, the period of the placement must not be more than 3 months and taken together with any other placement that student has had must not be more than 6 months under the relevant determination. 20

90. *Determination about the placement of secondary students* 25

- (1) The Board may make a determination about the placement of secondary students or any class of secondary students with an employer for work experience. 30
- (2) The determination may—
 - (a) subject to section 91, fix the period of the placements, to which the determination relates; and

- (b) specify the number of students any employer may take; and
- (c) specify any other conditions which are to apply to the placements.

5 **91. *Conditions on the placement of secondary students***

If a secondary student is placed with an employer under an agreement—

- 10 (a) the period of the placement taken together with any other placement that student has had must not be more than 30 days during any college year; and
- (b) the student must not have been previously employed by the same employer in respect of the same type of employment; and
- 15 (c) the period of the placement must not exceed a total of ten consecutive days; and
- (d) the period of the placement must fall within the college year.

91A. *Suspension of conditions for disabled students*

- 20 (1) The Board may suspend the operation of all or any of the conditions of employment fixed by or under this Part for any disabled student or class of disabled students.
- 25 (2) A suspension under sub-section (1) may operate for a specified time or indefinitely.

91B. *Consultation about industrial awards/agreements*

30 A determination about the placement of students in employment which is affected by an award or industrial agreement made under the Industrial Relations Act 1988 of the Commonwealth, as amended from time to time, must not be made until the secretary of the Victorian Trades Hall Council and the secretary of the Victorian

Congress of Employer Associations have first been consulted.

91c. *Exemption of practical placement from laws prohibiting or regulating employment of young persons* 5

(1) Any Act or law relating to the prohibition of or regulation of the employment of persons of or over the age of 15 years and under the age of 21 years does not apply to the employment of such a person who is— 10

- (a) a student at a TAFE provider; and
- (b) employed under an agreement.

(2) If any Act or law prohibits the employment or regulates the working conditions in any specified trade of persons of less than or not more than a specified age expressed as a number of years then sub-section (1) is not to be taken to permit the employment of any person contrary to that Act or law. 15

91d. *Payment* 20

(1) Despite anything to the contrary in any Act or law, the minimum rate of payment to a secondary student employed under an agreement is the minimum rate of payment as fixed by Order of the Governor in Council, upon the recommendation of the Board, and published in the Government Gazette. 25

(2) A department of the Commonwealth Government or a body established under a Commonwealth Act that employs a student under an agreement is not required to make any payment to the student despite anything to the contrary in this or any other Act or in any law, award or industrial agreement. 30

(3) In such a case, for the purposes of the **Accident Compensation Act 1985**, payment at the 35

minimum rate under sub-section (1) is to be taken to be payable to the pupil.

5 (4) The Board may approve of a student or any class of students giving any payment made to that student or class of students back to the employer where—

10 (a) the employer is an organisation which is engaged wholly or mainly in educational, charitable or community welfare service and is not conducted for profit; and

(b) the student or class of students has determined to make the gift.

91E. Duty of care

15 (1) A duty which any person has relating to the care or control of a student at a TAFE provider as a student at that provider is to be taken not to apply while that student is employed under an agreement and an action does not lie against that person because of a breach of that duty.

20 (2) Sub-section (1) does not extend to a duty which a person has as occupier of the premises of the TAFE provider.”.

16. Practical placements—miscellaneous amendments

25 (1) In section 1 of the Principal Act, at the end of paragraph (e) insert—

“; and

30 (f) to provide for and regulate the practical placements of students of TAFE providers so as to enable those students to obtain general work experience or to receive workplace training.”.

(2) In section 51 (2) of the Principal Act, after paragraph (b) insert—

“(ba) a requirement that any person undertaking the program must also undertake a placement under

an agreement under Part 7, or a number of such placements; and”.

17. Amendment of the Industrial Relations Act 1979

In section 108 (2) of the **Industrial Relations Act 1979**—

- (a) for “a university in Victoria or the Victoria Institute of Colleges or an affiliated college of the Victoria Institute of Colleges or any student taking full day courses of technological study at any school for technical education in Victoria” **substitute** “a post-secondary education institution or the Army College of TAFE”; and 5 10
- (b) for “any student taking full day courses of technological study” **substitute** “any student enrolled in a course of technological study” and for “in which he is taking full day courses” **substitute** “in which he is enrolled”. 15

18. New section 93A inserted

After section 93 of the Principal Act **insert**—

“93A. Supreme Court—Limitation of jurisdiction

It is the intention of this section to alter or vary the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 91E.”. 20

PART 7—MISCELLANEOUS PROVISIONS 25

19. Council membership

In section 28 (1) of the Principal Act, for “A council established under section 24 consists of” **substitute** “An Order in Council under section 24 must provide for”.

20. *Contracts of training*

In section 51 (1) (h) of the Principal Act, for “before” substitute “as part of”.

21. *Amendment of section 57*

5 In section 57 (2) of the Principal Act, after “under” insert “a”.

22. *Amendment of section 70*

In section 70 (2) of the Principal Act, after “(a)” insert “a”.

10 **23. *Repeal of certain provisions***

Part 9 of the Principal Act, other than section 96, is repealed.

24. *Coming into operation of Principal Act*

15 The following provisions of the Principal Act as enacted as at 19 June 1990 are to be taken to have come into operation on 1 January 1991—

(a) Part 3;

(b) Part 6, other than sections 80 to 84;

(c) Part 7;

20 (d) section 95 (4) and (6) and section 96;

(e) Division 2 of Part 9, other than section 98 (3) (f) (ii);

(f) sections 118 and 119;

25 (g) the Schedule.

