

**BOARD OF VOCATIONAL EDUCATION AND TRAINING  
ACT 1994 No. 33**

**NEW SOUTH WALES**



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**BOARD OF VOCATIONAL EDUCATION AND TRAINING  
ACT 1994 No. 33**

NEW SOUTH WALES



**Act No. 33, 1994**

An Act to establish the New South Wales Board of Vocational Education and Training and to define its objects and functions; and for other purposes. [Assented to 2 June 1994]

**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Board of Vocational Education and Training Act 1994.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

“**appointed member**” means a member of the Board appointed by the Minister as referred to in section 5 (2) (d);

“**Board**” means the New South Wales Board of Vocational Education and Training constituted by section 5;

“**Commonwealth Act**” means the Australian National Training Authority Act 1992 of the Commonwealth;

“**function**” includes a duty; “**confer a function**” includes impose a duty; “**exercise a function**” includes perform a duty;

“**National Statement**” means the statement set out in Schedule 1 to the Commonwealth Act, being the statement entitled “A National Vocational Education and Training System”, the text of which was agreed to by the Commonwealth and the States and published on 21 July 1992.

(2) In this Act, “**National Strategic Plan**”, “**state Training Agency**”, and “**State Training Profile**” have the same meanings as they have in the National Statement.

**Object of Act**

4. The object of this Act is to establish the New South Wales Board of Vocational Education and Training as the body to be nominated by the Minister as the State Training Agency for the purposes of the Commonwealth Act.

## **PART 2—THE BOARD OF VOCATIONAL EDUCATION AND TRAINING**

### **Constitution of the Board**

**5. (1)** There is by this Act constituted a corporation under the corporate name of the New South Wales Board of Vocational Education and Training.

**(2)** The Board is to consist of 9 part-time members, of whom:

- (a)** one is to be the Director-General of the Department of Industrial Relations, Employment, Training and Further Education; and
- (b)** one is to be the Managing Director of the TAFE Commission; and
- (c)** one is to be the Executive Director of the Ministry of Education and Youth Affairs; and
- (d)** six are to be persons appointed by the Minister.

**(3)** The appointed members must be persons who, in the opinion of the Minister, have the necessary expertise to enable them to make a valuable contribution to the work and activities of the Board.

**(4)** One of the appointed members is, by the instrument of the member's appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chairperson of the Board.

**(5)** Schedule 1 has effect with respect to the members and procedure of the Board.

**(6)** The Board is, for the purposes of any Act, taken to be a statutory body representing the Crown.

### **Objects of the Board**

**6.** The Board has the following objects:

- (a)** to advise the Minister on State vocational and education training policies in the context of State and national priorities and objectives;
- (b)** to promote and develop, in collaboration with other agencies, a State vocational education and training system delivering high quality and nationally recognised programs;
- (c)** to prepare, in collaboration with industry and vocational education and training providers, State Training Profiles based on the National Strategic Plan and agreed planning parameters, for approval by the Minister;

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- (d) to recommend to the Minister the allocation of resources, including funding, to achieve optimal effectiveness and efficiency in the State's vocational education and training system;
- (e) to co-ordinate the provision of data on the performance of the State vocational education and training system to the Minister as required;
- (f) to prepare such plans and reports as may be required by the Minister;
- (g) to liaise with the Australian National Training Authority and with the State Training Agencies of other States and Territories;
- (h) to commission and conduct inquiries and foster research in vocational education and training;
- (i) to promote and develop, in consultation with the Vocational Education and Training Accreditation Board, a co-ordinated and effective State system for the accreditation of courses and registration of education and training providers;
- (j) to encourage the development of innovative programs and best practices and the creation of new partnerships between the consumers of vocational education and training and public and private providers;
- (k) in collaboration with other agencies, to develop effective communication mechanisms for the dissemination of information about State and national developments in vocational education and training;
- (l) to advise and make recommendations on any matter referred to the Board by the Minister.

**Functions of the Board**

**7. (1) The Board:**

- (a) has such functions as are necessary or convenient to enable it to achieve its objects; and
- (b) has such other functions as are conferred on it by or under this or any other Act or law.

(2) In the exercise of its functions, the Board is subject to the control and direction of the Minister.

**Minister may nominate the Board to be State Training Agency**

**8.** The Minister may, by order, nominate the Board as the State Training Agency for New South Wales for the purposes of the Commonwealth Act.

### **Advisory committees**

**9. (1)** The Board may establish advisory committees to assist it in the exercise of its functions.

**(2)** Any or all of the members of an advisory committee may be persons who are not members of the Board.

**(3)** The procedure for the calling of meetings of an advisory committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

### **Delegation by the Board**

**10.** The Board may delegate to any person or body the exercise of any of its functions, other than this power of delegation.

## **PART 3—MISCELLANEOUS**

### **Exclusion of personal liability**

**11.** A matter or thing done or omitted to be done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act or law, subject the member or a person so acting personally to any action, liability, claim or demand.

### **Amendment of other Acts**

**12.** Each Act in Schedule 2 is amended as set out in that Schedule.

### **Review of Act**

**13. (1)** The Minister is to review this Act to determine whether the policy objectives of this Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

**(2)** The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

**(3)** A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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**SCHEDULE 1—THE BOARD OF VOCATIONAL EDUCATION AND TRAINING**

(Sec. 5)

**Part 1—Members of the Board****Terms of office**

1. An appointed member of the Board holds office for such period, not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

2. A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Acting members and acting Chairperson**

3. (1) The Minister may appoint a person to act in the office of an appointed member during the illness or absence of the appointed member, and the acting member, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member.

(2) A person, in order to be appointed as an acting appointed member, must be qualified for appointment in the same way as the member for whom he or she is acting.

(3) The Minister may appoint a member of the Board to act in the office of Chairperson during the illness or absence of the Chairperson, and the acting Chairperson, while so acting, has and may exercise all the functions of the Chairperson and is taken to be the Chairperson.

(4) A person who is acting as an appointed member of the Board, or as the Chairperson, is entitled, while so acting, to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) The Minister may at any time and for any reason remove a person from office as an acting appointed member or acting Chairperson.

(6) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence from office of the member.

**Filling of vacancy in office of a member**

4. If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

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SCHEDULE 1—THE BOARD OF VOCATIONAL EDUCATION AND TRAINING—*continued*

**Casual vacancies**

5. (1) An appointed member is taken to have vacated office if the member:
- (a) dies; or
  - (b) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (d) becomes a mentally incapacitated person; or
  - (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
  - (f) resigns office by instrument in writing addressed to the Minister, or
  - (g) is removed from office by the Minister under subclause (2).
- (2) The Minister may at any time and for any reason remove a person from office as appointed member of the Board.
- (3) The Chairperson is taken to have vacated office as Chairperson if the person:
- (a) resigns office by instrument in writing addressed to the Minister; or
  - (b) ceases to be a member of the Board.

**Conflict of interests**

6. (1) If:
- (a) a member of the Board has an interest in a matter being considered or about to be considered at a meeting of the Board; and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body; or
  - (b) is a partner, or is in the employment, of a specified person; or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).



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SCHEDULE 1—THE BOARD OF VOCATIONAL EDUCATION AND  
TRAINING—*continued*

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

(4) After a member of the Board has disclosed the nature of an interest in any matter, the member must not, unless the Board otherwise determines:

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purpose of the making of a determination by the Board under subclause (4), a member of the Board who has an interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(Q) A contravention of this clause does not invalidate any decision of the Board.

**Effect of certain other Acts**

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Board and a member of the Board is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Act as a member of the Board.

**Part 2—Procedure of the Board**

**General procedure**

8. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

**Quorum**

9. The quorum for a meeting of the Board is 5 members, of whom one must be the chairperson.

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SCHEDULE 1—THE BOARD OF VOCATIONAL EDUCATION AND TRAINING—*continued*

**Presiding member**

10. (1) The Chairperson is to preside at a meeting of the Board.  
 (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

11. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Minutes**

12. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**First meeting**

13. The Minister may call the first meeting of the Board in such manner as the Minister thinks fit

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 12)

**Industrial and Commercial Training Act 1989 No. 77**

- (1) Long title:  
 (a) Omit “the Industrial and Commercial Training Council and”.  
 (b) Omit “those bodies”, insert instead “that body”.
- (2) Section 4 (**Definitions**):  
 (c) From section 4 (1), omit the definitions of “advisory committee”, “Council” and “recognised educational establishment”.  
 (d) After the definition of “Department” in section 4 (1), insert:  
     **“Director-General”** means the Director-General of the Department;
- (3) Part 2, Division 1:  
 Omit the Division.
- (4) Section 22 (**Vocational training orders**):  
 Omit “Council” wherever occurring, insert instead “Director-General”.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (5) Section 23 (**Vocational training guidelines**):  
From section 23 (1), omit “Council”, insert instead “Director-General”.
- (6) Section 37 (**Courses of studies**):  
(a) Omit section 37 (1).  
(b) From section 37 (2), omit “any such”, insert instead “a required”.
- (7) Section 55 (**Courses of studies**):  
(a) Omit section 55 (1).  
(b) From section 55 (2), omit “any such”, insert instead “a required”.
- (8) Part 6, Division 1:  
Omit the Division.
- (9) Section 86 (**Appeals**):  
(a) From section 86 (i), omit “trade; or” insert instead “trade.”.  
(b) Omit section 86 (k).
- (10) Section 98 (**Liability**):  
(a) Omit section 98 (a).  
(b) From section 98 (e), omit “the Council,”.  
(c) From section 98, omit “any member of the Council,”.
- (11) Section 99 (**Reports**):  
Omit the section.
- (12) Schedules 1, 2:  
Omit the Schedules.
- (13) Schedule 6 (**Savings, transitional and other provisions**):  
(a) At the end of clause 1 (1), insert:  
Board of Vocational Education and Training Act 1994.  
(b) From clause 1 (2), omit “this Act”, insert instead “the Act concerned”.  
(c) After Part 2, insert:  
**Part 3—Provisions consequent on the enactment of the Board of Vocational Education and Training Act 1994**  
**Definitions**  
15. In this Part:  
“**amending Act**” means the Board of Vocational Education and Training Act 1994.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

**Dissolution of the Council**

16. (1) The Industrial and Commercial Training Council is dissolved.  
 (2) The assets and liabilities of the Council become the assets and liabilities of the Crown.  
 (3) A reference in any Act or instrument to the Industrial and Commercial Training Council is taken to include a reference to the Director-General.

**Vocational training orders and guidelines**

17. A vocational training order or vocational training guideline that was in force immediately before the commencement of this clause is taken to be a vocational training order or vocational training guideline in force under this Act, as amended by the amending Act.

**Public Finance and Audit Act 1983 No. 152**

Schedule 2 (**Statutory bodies**):

Insert, in alphabetical order:

New South Wales Board of Vocational Education and Training.

**Vocational Education and Training Accreditation Act 1990 No. 120**

(1) Section 4 (**Definitions**):

- (a) In section 4 (1), insert in alphabetical order.

“**declared calling**” has the same meaning as it has in the Industrial and Commercial Training Act 1989;

“**declared trade**” has the same meaning as it has in the Industrial and Commercial Training Act 1989;

“**official university**” has the same meaning as it has in section 4 of the Higher Education Act 1988;

- (b) From the definition of “education or training provider” in section 4 (1), omit “(other than an official university within the meaning of section 4 of the Higher Education Act 1988)”.

- (c) From section 4 (1), omit the definition of “relevant authority”, insert instead:

“**relevant authority**”, in relation to a vocational course, means a person or body prescribed by the regulations in relation to that course;

(2) Section 5 (**Constitution of the Board**):

Omit section 5 (5).

(3) Section 12 (**Accreditation**):

- (a) From section 12 (2), omit “for accreditation”, insert instead “under subsection (1)”.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) After section 12 (2), insert:
- (2A) The Board may, on the application of any person, accredit a vocational course relating to a declared trade or declared calling, whether or not the applicant is an education or training provider and whether or not the course is currently being conducted by an education or training provider.
- (2B) An application under subsection (2A):
- (a) must specify the vocational course or courses to which it relates; and
- (b) must be in such form, and must be accompanied by such fee, as the Board may determine.
- (c) At the end of section 12 (4), insert:
- ; and
- (c) specifying the resources that are necessary for the conduct of the course.
- (d) In section 12 (5), after “vocational course”, insert “the subject of an application under subsection (1)”.
- (e) After section 12 (5), insert:
- (6) The Board may not refuse to accredit a vocational course the subject of an application under subsection (2A) except on the following grounds:
- (a) that the course is not of sufficient quality to warrant accreditation; or
- (b) that the course does not comply with the relevant guidelines.
- (4) Section 13 (**Withdrawal of accreditation**):
- (a) From section 13 (1) (a), omit “conducted by an education or training provider”.
- (b) In section 13 (2), after “vocational course”, insert “(being a course in respect of which accreditation has been granted on the basis of an application under section 12 (1) or 15 (1))”.
- (c) After section 13 (2), insert:
- (3) The Board may not withdraw accreditation from a vocational course (being a course in respect of which accreditation has been granted on the basis of an application under section 12 (2A) or 15 (2A)) except on the following grounds:
- (a) that the course is no longer of sufficient quality to warrant accreditation; or
- (b) that the course no longer complies with the relevant guidelines,

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(5) Section 14 (**Decisions generally**):

- (a) From section 14, omit “the education or training provider concerned” wherever occurring, insert instead “the person or body (if any) on whose application accreditation is sought or was granted”.
- (b) From section 14 (1)(b), omit “the education or training provider”, insert instead “the person or body”.

(6) Section 15 (**Accreditation**):

- (a) From section 15 (2), omit “for accreditation”, insert instead “under subsection (1)”.
- (b) After section 15 (2), insert:
  - (2A) An authorised accrediting body may, on the application of any person, accredit a vocational course relating to a declared trade or declared calling, whether or not the applicant is an education or training provider and whether or not the course is currently being conducted by an education or training provider.
  - (2B) An application under subsection (2A):
    - (a) must specify the vocational course or courses to which it relates; and
    - (b) must be in such form, and must be accompanied by such fee, as the authorised accrediting body may, in accordance with its authority, determine.
- (c) At the end of section 15 (4), insert:
  - ; and
  - (c) specifying the resources that are necessary for the conduct of the course.
- (d) In section 15 (5), after “vocational course”, insert “the subject of an application under subsection (1)”.
- (e) After section 15 (5), insert:
  - (5A) An authorised accrediting body may not refuse to accredit a vocational course the subject of an application under subsection (2A) except on the following grounds:
    - (a) that the course is not of sufficient quality to warrant accreditation; or
    - (b) that the course does not comply with the relevant guidelines.

(7) Section 16 (**Withdrawal of accreditation**):

- (a) In section 16 (1), after “person”, insert “or body”.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(b) In section 16 (2), after “vocational course”, insert “(being a course in respect of which accreditation has been granted on the basis of an application under section 15 (1))”.

(c) After section 16 (2), insert:

(2A) An authorised accrediting body may not withdraw accreditation from a vocational course (being a course in respect of which accreditation has been granted on the basis of an application under section 15 (2A)) except on such of the grounds referred to in section 13 (3) as are specified in its authority.

(8) Section 17 (**Decisions generally**):

(a) From section 17, omit “the education or training provider concerned” wherever occurring, insert instead “the person or body (if any) on whose application accreditation is sought or was granted”.

(b) From section 17 (1) (b), omit “the education or training provider”, insert instead “the person or body”.

(9) Section 19 (**Notification of change of name or address**):

After “vocational course”, insert “in respect of which the provider is accredited or registered under this Act”.

(10) Section 20:

Omit the section, insert instead:

**Register of accredited courses and education or training providers**

20. The Board is to maintain a register in which the following particulars are recorded:

(a) the title of each vocational course that is accredited under this Part;

(b) the name and address of each education or training provider in respect of which a vocational course is accredited under this Part;

(c) such other matters as the Board may determine.

(11) Section 21 (**Evidentiary certificates**):

From section 21 (b), omit “in relation to a specified education or training provider”.

(12) Section 22 (**Transitional provisions**):

After section 22 (4), insert:

(5) A vocational course that is conducted by a registered education or training provider whose registration is suspended or withdrawn continues to be an accredited course (in respect of any person who, in the opinion of the Board, had substantially completed the course before the registration was suspended or withdrawn) until the person completes, fails or withdraws from the course.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (13) Section 22C (**Registration or approval**):
- (a) After section 22C (6) (c), insert:
- (cl) in the case of a course that includes matter the subject of proprietary rights (such as copyright), that the provider is not lawfully entitled to the benefit of those rights;
- (b) After section 22C (6), insert:
- (7) Subject to section 22P, an official university may not be registered as an education or training provider.
- (14) Section 22D (**Variation, suspension or withdrawal of registration or approval**):
- After section 22D (3) (g), insert:
- (g1) in the case of a course that includes matter the subject of proprietary rights (such as copyright), that the provider is not lawfully entitled to the benefit of those rights;
- (15) Section 22F (**Registration or approval**):
- (a) After section 22F (6) (c), insert:
- (c1) in the case of a course that includes matter the subject of proprietary rights (such as copyright), that the provider is not lawfully entitled to the benefit of those rights;
- (b) After section 22F (6), insert:
- (7) Subject to section 22P, an official university may not be registered as an education or training provider.
- (16) Section 22P:
- After section 22O, insert:
- Universities taken to be registered providers in relation to certain vocational courses**
- 22P. An official university is taken to be a registered provider of the vocational courses conducted by it in connection with declared trades and declared callings.
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*[Minister's second reading speech made in—  
Legislative Assembly on 3 May 1994  
Legislative Council on 12 May 1994]*