

Vocational Education and Training Accreditation Act 1990 No 120

[1990-120]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - Apprenticeship and Traineeship Act 2001 No 80* (not commenced — to commence on 1.1.2002)
 - Higher Education Act 2001 No 102* (not commenced)

Authorisation

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Vocational Education and Training Accreditation Act 1990 No 120



New South Wales

An Act to establish the Vocational Education and Training Accreditation Board and to define its functions; to provide for the accreditation of vocational courses, the approval of providers of courses to overseas students and the registration of providers of vocational courses; and to amend the *Technical and Further Education Act 1974*.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Vocational Education and Training Accreditation Act 1990*.

2 Commencement

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

3 Objects

The objects of this Act are:

- (a) to provide for the accreditation of vocational courses conducted within New South Wales, and
- (b) to provide for the registration of persons or bodies that conduct such courses, and
- (c) to provide for the approval of persons or bodies (other than official universities) to provide courses to overseas students within New South Wales, that approval forming the basis for registration under the Commonwealth Act, and
- (d) to promote consistency of standards in vocational education and training, and
- (e) to encourage the recognition of vocational courses that are accredited under this Act.

4 Definitions

(1) In this Act:

accredited vocational course means a vocational course that is for the time being

accredited under this Act.

advisory committee means an advisory committee established under this Act.

approved provider means an education or training provider that is for the time being approved under this Act to provide courses to overseas students.

authorised accrediting body means a person or body (other than the Board) that is authorised under this Act to accredit vocational courses.

authorised registering body means a person or body (other than the Board) that is authorised under this Act to register education or training providers to conduct vocational courses or approve education or training providers to provide courses to overseas students.

authority means an authority under this Act under which a person or body is authorised:

- (a) to accredit vocational courses, or
- (b) to register education or training providers to conduct vocational courses, or
- (c) to approve education or training providers to provide courses to overseas students.

Board means the Vocational Education and Training Accreditation Board constituted by this Act.

course means a course of education or training.

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](#).

education or training provider means a person or body that conducts vocational courses or provides courses to overseas students.

General Manager means the General Manager of the Board.

inspector means an officer of the Board who is for the time being appointed as an inspector for the purposes of this Act.

official university has the same meaning as it has in section 4 of the [Higher Education Act 1988](#).

overseas student and **intending overseas student** have the same meanings as in the Commonwealth Act.

registered provider means an education or training provider that is for the time being registered under this Act to conduct vocational courses.

relevant authority, in relation to a vocational course, means a person or body prescribed by the regulations in relation to that course.

relevant guidelines means:

- (a) in relation to a vocational course—guidelines in force under this Act that apply to such a course, or
- (b) in relation to an education or training provider—guidelines in force under this Act that apply to such a provider.

the Commonwealth Act means the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* of the Commonwealth.

vocational course means a course or proposed course of vocational education or vocational training, but does not include a course that constitutes or is proposed to constitute the whole or part of a course of studies that leads to a degree:

- (a) conferred by or on behalf of an official university within the meaning of section 4 of the *Higher Education Act 1988*, or
 - (b) conferred by or on behalf of a corporation, body or institution approved by regulations made for the purposes of that section, or
 - (c) if that course of studies is an advanced education course approved under that Act.
- (2) In this Act, a reference to a course conducted, or provided, by an education or training provider includes a reference to a course to be conducted, or to be provided, by the provider.
- (3) In this Act:
- (a) a reference to a function includes a reference to a power, authority and duty, and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

4A References to courses

- (1) Registration under this Act to conduct vocational courses may (according to the terms of the registration) apply to such courses generally, to specified classes of such courses or to specified courses only.
- (2) Approval under this Act to provide courses to overseas students may (according to the terms of the approval) apply to such courses generally, to specified classes of such courses or to specified courses only.

Part 2 Constitution and functions of the Board

5 Constitution of the Board

- (1) There is constituted by this Act a body corporate under the name of the Vocational Education and Training Accreditation Board.
- (2) The Board is to comprise 11 members, being:
 - (a) the General Manager, and
 - (b) 10 part-time members appointed by the Minister.
- (3) Of the part-time members:
 - (a) one is to be a person nominated by the TAFE Commission Board, and
 - (b) one is to be a person nominated by the Minister for School Education and Youth Affairs, and
 - (c) 3 are to be persons having such qualifications or experience in the provision or accreditation of vocational education or training as the Minister considers appropriate, and
 - (d) 2 are to be persons having such qualifications or experience in the provision of vocational education or training for students with special needs as the Minister considers appropriate, and
 - (e) 2 are to be persons having such qualifications or experience in industry, commerce or industrial relations as the Minister considers appropriate, and
 - (f) one is to be a person having such qualifications or experience in the provision, accreditation or evaluation of education or training for overseas students as the Minister considers appropriate.
- (4) If a nomination referred to in subsection (3) (a) or (b) is not made within such time as the Minister allows, the Minister may appoint any person whom he or she considers to be suitably qualified in place of a person required to be so nominated.
- (5) (Repealed)
- (6) One of the part-time members of the Board is, by the instrument of his or her appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chairperson of the Board.
- (7) Schedule 1 has effect with respect to the members and procedure of the Board.

6 Objects and functions of the Board

- (1) The objects of the Board are as follows:
 - (a) to accredit, and to authorise other persons and bodies to accredit, vocational courses,
 - (b) to register, and to authorise other persons and bodies to register, education or training providers to conduct vocational courses,
 - (c) to approve, and to authorise other persons and bodies to approve, education or training providers to provide courses to overseas students,
 - (d) to establish guidelines for the accreditation of vocational courses and for the registration and approval of education or training providers,
 - (e) to advise the Minister on matters concerning the accreditation of vocational courses and the registration and approval of education or training providers,
 - (f) to liaise with licensing authorities and other bodies (both in New South Wales and elsewhere) in connection with the accreditation of vocational courses and the registration and approval of education or training providers,
 - (g) to investigate, and to report on, matters concerning the accreditation of vocational courses and the registration and approval of education or training providers.
- (2) The Board:
 - (a) has such functions as are necessary or convenient to enable it to achieve its objects and to promote the objects of this Act, and
 - (b) has such other functions as are conferred or imposed on it by or under this or any other Act or law, and
 - (c) is, in the exercise of its functions, subject to the control and direction of the Minister, and
 - (d) is, for the purposes of any Act, a statutory body representing the Crown.

7 Staff of the Board

- (1) A General Manager, and such other staff as may be necessary to enable the Board to exercise its functions, are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Board may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

- (3) For the purposes of this Act, a person who is employed under this section or whose services are made use of under this section is an officer of the Board.

8 Advisory committees

- (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) Without limiting the generality of subsection (2), the membership of an advisory committee may comprise the members of any body, including any body in the nature of an industry training committee, whether established in New South Wales or elsewhere.
- (4) 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.

9 Delegation by the Board

The Board may delegate to a member of the Board, to an advisory committee or to an officer of the Board the exercise of any of its functions, other than this power of delegation.

Part 3 Accreditation of vocational courses

Division 1 Guidelines and authorities

10 Guidelines

- (1) The Board may from time to time issue guidelines as to:
 - (a) course programs, and
 - (b) course nomenclature, and
 - (c) accreditation procedures, and
 - (d) financial and ethical standards to be satisfied by education or training providers, and
 - (e) conditions to be imposed on accreditation,to be adopted in relation to the accreditation of vocational courses.
- (2) Copies of each guideline issued under this section are to be kept at the office of the Board and are to be made available for public inspection free of charge, and for

purchase, during ordinary office hours.

11 Authorities

- (1) The Board may, on the application of any person or body, grant an authority to the person or body to accredit vocational courses, whether or not those courses are conducted by that person or body.
- (2) An application for an authority must be in such form, and must be accompanied by such fee, as the Board may determine.
- (3) An authority may be granted:
 - (a) unconditionally or subject to such conditions (which may be imposed when the authority is granted or at any time thereafter) as the Board may determine, and
 - (b) in respect of vocational courses generally or in respect of specified vocational courses or specified classes of vocational courses.
- (4) Without limiting the generality of subsection (3), an authority may be granted subject to conditions:
 - (a) specifying the period for which the authority is to remain in force, and
 - (b) requiring the payment of fees to the Board in respect of the accreditation of vocational courses, and
 - (c) regulating the fees that may be charged by the holder of the authority in respect of the accreditation of vocational courses.
- (5) The Board may:
 - (a) revoke an authority, or
 - (b) revoke or vary any condition to which an authority is subject, or
 - (c) impose additional conditions on the authority.

Division 2 Accreditation by the Board

12 Accreditation

- (1) The Board may, on the application of an education or training provider, accredit any vocational course conducted by the provider.
- (2) An application under subsection (1):
 - (a) must specify the vocational course or courses to which it relates, and
 - (b) must specify the address of the premises in or from which each such course is

conducted, and

(c) must be in such form, and must be accompanied by such fee, as the Board may determine.

(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.

(3) Accreditation may be granted unconditionally or subject to such conditions (which may be imposed when accreditation is granted or at any time thereafter) as the Board may determine.

(4) Without limiting the generality of subsection (3), accreditation may be granted subject to conditions:

(a) specifying the period for which the accreditation is to remain in force, and

(b) requiring the payment of fees to the Board in respect of the accreditation, and

(c) specifying the resources that are necessary for the conduct of the course.

(5) The Board may not refuse to accredit a vocational course the subject of an application under subsection (1) except on the following grounds:

(a) that the education or training provider concerned does not have the resources to conduct the course in a competent manner,

(b) that the course is not of sufficient quality to warrant accreditation,

(c) that the course does not, or the resources of the education or training provider to conduct the course do not, comply with the relevant guidelines.

(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.

13 Withdrawal of accreditation

- (1) The Board may, on its own motion or on the application of any person or body:
 - (a) withdraw accreditation from any vocational course (whether accreditation has been granted by the Board or by an authorised accrediting body), or
 - (b) revoke or vary any condition to which the accreditation of such a vocational course is subject, or
 - (c) impose additional conditions on the accreditation of such a vocational course.
- (2) 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 (1) or 15 (1)) except on the following grounds:
 - (a) that the course is no longer of sufficient quality to warrant accreditation,
 - (b) that the course no longer complies, or the resources of the education or training provider to conduct the course no longer comply, with the relevant guidelines,
 - (c) that the education or training provider concerned:
 - (i) requests accreditation to be withdrawn in respect of the course, or
 - (ii) no longer exists, or
 - (iii) no longer has the resources to conduct the course in a competent manner, or
 - (iv) has contravened this Act, the regulations or a condition to which accreditation of the course is subject, or
 - (v) has contravened a code of practice, in force under Part 7 of the *Fair Trading Act 1987*, relevant to the conduct of the course.
- (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.

14 Decisions generally

- (1) Before the Board makes a decision under this Division:
 - (a) it must cause notice of the proposed decision to be served on the person or body (if any) on whose application accreditation is sought or was granted and on any relevant authority, and

- (b) it must give the person or body and any relevant authority a reasonable opportunity to make representations to the Board in relation to the proposed decision.
- (2) In making a decision under this Division, the Board must have regard to any relevant guidelines and to any representations made under this section in relation to the proposed decision.
- (3) The Board must cause notice of any decision made by it under this Division, together with its reasons for the decision, to be served on the person or body (if any) on whose application accreditation is sought or was granted and on any relevant authority.

Division 3 Accreditation by authorised accrediting bodies

15 Accreditation

- (1) An authorised accrediting body may, on the application of an education or training provider, accredit any vocational course conducted by the provider.
- (2) An application under subsection (1):
 - (a) must specify the vocational course or courses to which it relates, and
 - (b) must specify the address of the premises in or from which each such course is conducted, and
 - (c) must be in such form, and must be accompanied by such fee, as the authorised accrediting body may, in accordance with its authority, determine.
- (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.
- (3) Accreditation may be granted unconditionally or subject to such conditions (which may be imposed when accreditation is granted or at any time thereafter) as the authorised accrediting body may, in accordance with its authority, determine.
- (4) Without limiting the generality of subsection (3), accreditation may be granted subject to conditions:
 - (a) specifying the period for which the accreditation is to remain in force, and

- (b) requiring the payment of fees to the authorised accrediting body in respect of the accreditation, and
 - (c) specifying the resources that are necessary for the conduct of the course.
- (5) An authorised accrediting body may not refuse to accredit a vocational course the subject of an application under subsection (1) except on the following grounds:
- (a) that the education or training provider concerned does not have the resources to conduct the course in a competent manner,
 - (b) that the course is not of sufficient quality to warrant accreditation,
 - (c) that the course does not, or the resources of the education or training provider to conduct the course do not, comply with the relevant guidelines,
 - (d) that the accreditation of such a course is beyond the body's authority to accredit courses.
- (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.
- (6) If the conditions of its authority so permit, an authorised accrediting body that is also an education or training provider may, in accordance with this section, accredit vocational courses conducted by it.

16 Withdrawal of accreditation

- (1) An authorised accrediting body may, on its own motion or on the application of any person or body:
- (a) withdraw accreditation from any vocational course in respect of which it has granted accreditation, or
 - (b) revoke or vary any condition to which the accreditation of such a vocational course is subject, or
 - (c) impose additional conditions on the accreditation of such a vocational course.
- (2) 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 (1)) except on such of the grounds referred to in section 13 (2) as are specified in its authority.
- (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.

- (3) Nothing in this section prevents an authorised accrediting body that is also an education or training provider from withdrawing accreditation from a vocational course conducted by it on any ground it considers appropriate.

17 Decisions generally

- (1) Before an authorised accrediting body makes a decision under this Division:
- (a) it must cause notice of the proposed decision to be served on the person or body (if any) on whose application accreditation is sought or was granted, on the Board and on any relevant authority, and
 - (b) it must give the person or body, the Board and any relevant authority a reasonable opportunity to make representations to the body in relation to the proposed decision.
- (2) In making a decision under this Division, an authorised accrediting body must have regard to any relevant guidelines and to any representations made under this section in relation to the proposed decision.
- (3) An authorised accrediting body must cause notice of any decision made by it under this Division, together with its reasons for the decision, to be served on the person or body (if any) on whose application accreditation is sought or was granted, on the Board and on any relevant authority.

Division 4 General

18 Advertising etc

- (1) A person must not advertise or otherwise represent:
- (a) that a particular vocational course that is, has been or is to be conducted by that or any other person or body is, has been or is to be accredited, endorsed or otherwise approved (however expressed), or
 - (b) that vocational courses generally that are, have been or are to be conducted by that or any other person are, have been or are to be so accredited, endorsed or approved,

unless the person includes in the advertisement or representation the name of the person or body by which the accreditation, endorsement or approval has been or is to be given.

Maximum penalty: 10 penalty units.

(2) A person must not falsely advertise or otherwise falsely represent:

- (a) that a particular vocational course that is, has been or is to be conducted by that or any other person or body is, has been or is to be accredited under this Act, or
- (b) that vocational courses generally that are, have been or are to be conducted by that or any other person or body are, have been or are to be so accredited.

Maximum penalty: 10 penalty units.

19 Notification of change of name or address

An education or training provider that conducts an accredited vocational course in respect of which the provider is accredited or registered under this Act is to cause notice to be given to the Board of any change in the name under which, or in the address of the premises in or from which, it conducts any such course.

20 Register of accredited courses and education or training providers

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.

21 Evidentiary certificates

A certificate that is signed by the General Manager and that certifies that on a specified date or during a specified period:

- (a) a specified person or body was or was not the holder of an authority, or
- (b) a specified vocational course was or was not accredited, or
- (c) a specified authority, or the accreditation of a specified vocational course, was or was not subject to specified conditions,

is admissible in any proceedings and is evidence of the fact or facts so certified.

22 Transitional provisions

- (1) A vocational course to which accreditation is given is an accredited course (in respect of any person who was undertaking the course immediately before accreditation was given) even though the course was not an accredited course when the person began the course.
- (2) A vocational course from which accreditation is 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 accreditation was withdrawn) until the person completes, fails or withdraws from the course.

- (3) A vocational course that has been accredited by an authorised accrediting body does not cease to be an accredited course merely because the body's authority to accredit courses is subsequently revoked.
- (4) A vocational course does not cease to be an accredited course merely because there is a change in the name of the course or in the name of the education or training provider by which the course is conducted.
- (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.

Part 3A Registration and approval of education or training providers

Division 1 Guidelines and authorities

22A Guidelines as to registration and approval

- (1) The Board may from time to time issue guidelines to be adopted in relation to the registration or approval of education or training providers. The guidelines may relate to matters including the following:
 - (a) registration or approval procedures,
 - (b) the resources required to conduct a vocational course, or to provide a course to overseas students, in a competent manner,
 - (c) the financial requirements and ethical standards to be satisfied by education or training providers,
 - (d) the conditions to be imposed on the registration or approval of education or training providers.
- (2) Copies of each guideline issued under this section are to be kept at the office of the Board and are to be made available for public inspection free of charge, and for purchase, during ordinary office hours.

22B Authorised registering bodies

- (1) The Board may, on the application of any person or body, grant an authority to the person or body to register education or training providers to conduct vocational courses or approve education or training providers to provide courses to overseas

students.

- (2) The application must be in such form, and must be accompanied by such fee, as the Board may determine.
- (3) An authority may be granted:
 - (a) unconditionally or subject to such conditions (which may be imposed when the authority is granted or at any later time) as the Board may determine, and
 - (b) authorising the registration or approval of providers generally or of specified providers or of specified classes of providers.
- (4) Examples of the conditions that may be imposed include the following:
 - (a) conditions specifying the period for which the authority is to remain in force,
 - (b) conditions requiring the payment (including periodic payment while the authority remains in force) by the authorised registering body of fees to the Board in respect of the authority or in respect of registrations or approvals granted by that body,
 - (c) conditions regulating the fees that may be charged by the authorised registering body in respect of registrations or approvals,
 - (d) conditions that restrict the functions of the authorised registering body to particular functions, or to a class of functions,
 - (e) conditions that limit the conditions that may be imposed by the authorised registering body on registrations or approvals,
 - (f) conditions that specify the conditions that must be imposed by the authorised registering body on registrations or approvals.
- (5) The Board may:
 - (a) revoke an authority, or
 - (b) revoke or vary any condition to which an authority is subject, or
 - (c) impose additional conditions on the authority.
- (6) An authorised registering body cannot register itself to conduct vocational courses or approve itself to provide courses to overseas students.

Division 2 Registration and approval by the Board

22C Registration or approval

- (1) The Board may, on the application of an education or training provider, register the provider to conduct vocational courses or approve the provider to provide courses to

overseas students.

- (2) An application for registration or approval must:
 - (a) specify the name of the provider, and
 - (b) specify the address of the premises in or from which the courses are conducted, and
 - (c) be in such form, and must be accompanied by such fee, as the Board may determine, and
 - (d) specify the courses and the details of any accreditation or approval obtained in respect of the courses.
- (3) The Board may require an applicant to furnish further information in relation to the application.
- (4) Registration or approval may be granted unconditionally or subject to such conditions (which may be imposed when the registration or approval is granted or at any later time) as the Board determines.
- (5) Examples of the conditions that may be imposed include the following:
 - (a) conditions specifying the period for which the registration or approval is to remain in force,
 - (b) conditions specifying the premises in or from which the courses are to be conducted,
 - (c) conditions requiring the payment (including periodic payment while the registration or approval remains in force) of fees to the Board in respect of the registration or approval.
- (6) The Board must not refuse to register or approve an education or training provider except on one or more of the following grounds:
 - (a) that the provider has not furnished such further information in relation to the provider's application as the Board requires,
 - (b) that the provider does not have the resources to conduct the relevant courses competently,
 - (c) that the provider's financial arrangements or ethical standards do not warrant the registration or approval of the provider,
 - (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,

(d) that the provider or the provider's resources do not comply with the relevant guidelines.

(7) Subject to section 22P, an official university may not be registered as an education or training provider.

22D Variation, suspension or withdrawal of registration or approval

(1) The Board may, on its own motion or on the application of any person or body, do any of the following in relation to a registered or approved provider (whether the provider's registration or approval was granted by the Board or otherwise):

(a) vary the registration or approval so that it applies to different courses,

(b) revoke or vary any condition to which the registration or approval is subject,

(c) impose additional conditions on the registration or approval,

(d) withdraw or suspend the registration or approval.

(2) The suspension of a provider's registration or approval may be lifted at any time by the Board (whether or not it was imposed by the Board). Before lifting the suspension, the Board may require the payment of a fee determined by the Board.

(3) The Board must not withdraw or suspend a registration or approval except on one or more of the following grounds:

(a) the provider requests the withdrawal or suspension,

(b) the provider is not conducting courses,

(c) the provider has ceased to exist,

(d) the provider does not comply with the relevant guidelines,

(e) the provider's financial arrangements or ethical standards are such that they would not warrant the registration or approval of the provider if it were now to apply for registration or approval,

(f) a reasonable doubt exists as to the provider's financial capacity to continue to meet its contractual obligations to its students, staff or other persons,

(g) the provider does not have the resources competently to conduct or provide the courses in respect of which it is registered or approved,

(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,

(h) the resources of the provider do not comply with the relevant guidelines,

- (i) the provider has engaged in misleading or deceptive conduct in connection with the recruitment of intending overseas students,
- (j) in the case of an approval—the provider has failed to comply with a requirement of the Commonwealth Act, or of a regulation under that Act, in relation to a course to which the approval relates,
- (k) the provider has contravened this Act, the regulations or a condition to which the provider's registration or approval is subject,
- (l) the provider has contravened a code of practice in force under Part 7 of the *Fair Trading Act 1987* which relates to the conduct of any vocational course conducted by the provider or to the provision of any course provided by the provider to overseas students.

22E Notice and considerations

- (1) Before the Board makes any decision under this Division (other than a decision to require an education or training provider to furnish further information in relation to an application or a decision to grant an application unconditionally):
 - (a) it must cause notice of the proposed decision to be served on the education or training provider concerned, and
 - (b) it must give the provider a reasonable opportunity to make representations to the Board in relation to the proposed decision.
- (2) Before the Board makes any decision under this Division (other than a decision to require an education or training provider to furnish further information in relation to an application):
 - (a) it must cause notice of the proposed decision to be served on any person or body prescribed by the regulations for the purposes of this section, and
 - (b) it must give the prescribed person or body (if any) a reasonable opportunity to make representations to the Board in relation to the proposed decision.
- (3) In making a decision under this Division, the Board must have regard to any relevant guidelines and to any representations made under this section in relation to the proposed decision.
- (4) The Board must cause notice of any decision made by it under this Division, together with its reasons for the decision, to be served on the provider and the prescribed person or body (if any).

Division 3 Registration and approval by authorised registering body

22F Registration or approval

- (1) An authorised registering body may, on the application of an education or training provider, register the provider to conduct vocational courses or approve the provider to provide courses to overseas students.
- (2) An application for registration or approval must:
 - (a) specify the name of the provider, and
 - (b) specify the address of the premises in or from which the courses are conducted, and
 - (c) be in such form, and must be accompanied by such fee, as the body may determine, and
 - (d) specify the courses and the details of any accreditation or approval obtained in respect of the courses.
- (3) The authorised registering body may require an applicant to furnish further information in relation to the application.
- (4) Registration or approval may be granted unconditionally or subject to such conditions (which may be imposed when the registration or approval is granted or at any later time) as the authorised registering body determines.
- (5) Examples of the conditions that may be imposed include the following:
 - (a) conditions specifying the period for which the registration or approval is to remain in force,
 - (b) conditions specifying the premises in or from which the courses are to be conducted,
 - (c) conditions requiring the payment (including periodic payment while the registration or approval remains in force) of fees to the authorised registering body in respect of the registration or approval,
 - (d) conditions specified in the authority granted to the authorised registering body under this Act as conditions that may be imposed by the body.
- (6) The authorised registering body must not refuse to register or approve an education or training provider except on one or more of the following grounds:
 - (a) that the provider has not furnished such further information in relation to the provider's application as the body requires,

- (b) that the provider does not have the resources to conduct the relevant courses competently,
 - (c) that the provider's financial arrangements and ethical standards do not warrant the registration or approval of the provider,
 - (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,
 - (d) that the provider or the provider's resources do not comply with the relevant guidelines,
 - (e) that the body has no authority to register or approve the provider.
- (7) Subject to section 22P, an official university may not be registered as an education or training provider.

22G Variation, suspension or withdrawal of registration or approval

- (1) An authorised registering body may, on its own motion or on the application of any person or body, do any of the following in relation to an education or training provider registered or approved by it:
- (a) vary the registration or approval so that it applies to different courses,
 - (b) revoke or vary any condition to which the registration or approval is subject,
 - (c) impose additional conditions on the registration or approval,
 - (d) withdraw or suspend the registration or approval.
- (2) The suspension of a provider's registration or approval may be lifted at any time by the authorised registering body that imposed the suspension. Before lifting the suspension, the authorised registering body may require the payment of a fee determined by the Board.
- (3) The authorised registering body must not withdraw or suspend the registration or approval except on one or more of the grounds set out in section 22D (3).

22H Limits of authority

An authorised registering body must exercise its functions under this Division in accordance with its authority and must observe any conditions to which that authority is subject.

22I Notice and considerations

- (1) Before an authorised registering body makes any decision under this Division (other

than a decision to require an education or training provider to furnish further information in relation to an application or a decision to grant an application unconditionally):

- (a) it must cause notice of the proposed decision to be served on the education or training provider concerned, and
 - (b) it must give the provider a reasonable opportunity to make representations to the authorised registering body in relation to the proposed decision.
- (2) Before an authorised registering body makes any decision under this Division (other than a decision to require an education or training provider to furnish further information in relation to an application):
- (a) it must cause notice of the proposed decision to be served on the Board and on any person or body prescribed by the regulations for the purposes of this section, and
 - (b) it must give the Board and the prescribed person or body (if any) a reasonable opportunity to make representations to the authorised registering body in relation to the proposed decision.
- (3) In making a decision under this Division, the authorised registering body must have regard to any relevant guidelines and to any representations made under this section in relation to the proposed decision.
- (4) The authorised registering body must cause notice of any decision made by it under this Division, together with its reasons for the decision, to be served on the provider, the Board and the prescribed person or body (if any).

Division 4 General

22J Advertising

- (1) A person must not advertise or otherwise represent that an education or training provider is or has been registered, endorsed or otherwise approved (however expressed) to conduct a vocational course or to provide a course to overseas students unless the advertisement or representation specifies the name of the person or body by which the registration, endorsement or approval has been given.
- (2) A person must not advertise or otherwise represent that an education or training provider may, will or is to be registered, endorsed or otherwise approved (however expressed) to conduct a vocational course or to provide a course to overseas students.
- (3) A person must not falsely advertise or otherwise falsely represent that an education or training provider is or has been registered, endorsed or otherwise approved

(however expressed) to conduct a vocational course or to provide a course to overseas students.

Maximum penalty: 10 penalty units.

22K Effect of suspension

For the purposes of section 22J only, a registration or approval granted under this Part is taken not to be in force during any period of suspension under this Part.

22L Notification of change of name or address

A registered provider or approved provider is to cause notice of any change in the name or the address of the provider to be given to the Board and, if the registration or approval was granted by an authorised registering body, also to that body.

22M Register of providers and courses

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

- (a) the name and address of each registered provider and each approved provider,
- (b) the titles of the courses in respect of which the provider is registered or approved,
- (c) the addresses of the places in or from which the courses are conducted,
- (d) such other matters as the Board may determine.

22N Evidentiary certificates

A certificate that is signed by the General Manager and that certifies that:

- (a) on a specified date or during a specified period a specified person or body was or was not a registered provider or an approved provider, or
- (b) as such a provider, was or was not registered or approved to conduct or provide courses generally, a specified class of courses or a specified course,

is admissible in any proceedings and is evidence of the fact or facts so certified.

22O Saving of registration or approval

- (1) An education or training provider that has been registered or approved by an authorised registering body does not cease to be a registered or approved provider (as appropriate) just because the body can no longer grant the registration or approval or the body has ceased to exist.
- (2) An education or training provider does not cease to be a registered or approved provider just because there is a change in the name of the provider.

22P Universities taken to be registered providers in relation to certain vocational courses

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.

Part 4 Enforcement

23 Inspectors

- (1) The Board may appoint any of its officers to be inspectors for the purposes of this Act.
- (2) A certificate of identification, in such form as may be approved by the Minister, is to be issued to each inspector.

24 Powers of inspectors

- (1) An inspector:
 - (a) may enter the premises of any education or training provider in respect of which a vocational course is accredited under this Act or the office or business premises of a registered provider or an approved provider, and
 - (b) may inspect the premises, any documents found on the premises and the conduct of any vocational course at the premises,

for the purpose of ascertaining whether or not the provisions of this Act are being complied with.
- (2) The powers conferred by this section may be exercised only during the ordinary operating hours of the education or training provider concerned and may not be exercised in any part of premises that is used for residential purposes.
- (3) In exercising the powers conferred by this section, an inspector:
 - (a) must, if requested to do so by any person on the premises, produce his or her certificate of identification for inspection by that person, and
 - (b) must avoid, as far as practicable, doing anything that is likely to impede the conduct of any vocational course at the premises.

25 Obstruction of inspectors

A person must not assault, delay, obstruct, hinder or impede an inspector in the exercise of the inspector's functions under this Act.

Maximum penalty: 10 penalty units.

26 False or misleading information

A person must not, in or in connection with any application under this Act, make any

statement that the person knows to be false or misleading.

Maximum penalty: 10 penalty units.

Part 5 Miscellaneous

27 Service of documents

- (1) A document may be served on the Board by leaving it at, or by sending it by post to:
 - (a) the office of the Board, or
 - (b) if it has more than one office—any one of its offices.
- (2) A document required or permitted by or under this Act to be served on a person may be served:
 - (a) on a natural person—by delivering it to the person personally or by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document, or
 - (b) on a corporation—by leaving it at, or by sending it by post to, the head office, a registered office or a principal office of the corporation.
- (3) Nothing in this section:
 - (a) affects the operation of any other Act or law that authorises the service of a document in any other way, or
 - (b) affects the power of a court to authorise service of a document in any other way.

28 Limitation of liability

No matter or thing done or omitted by the Board, by any member of the Board, by any officer of the Board or by any person acting under the direction of the Board subjects a member of the Board, an officer of the Board or a person so acting personally to any action, liability, claim or demand if the matter or thing was done or omitted in good faith for the purpose of executing this Act.

28A Accounts

There is to be established in the Special Deposits Account in the Treasury a Vocational Education and Training Accreditation Board Account:

- (a) into which is to be deposited all money received by the Board, and
- (b) from which is to be paid all amounts required to meet expenditure incurred in the administration of this Act.

28B Investment

The Board may invest money held by it:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power to invest money so held, in any other manner authorised for the time being for the investment of trust funds and in any other manner approved by the Minister with the concurrence of the Treasurer.

29 Reviews by the Administrative Decisions Tribunal

A person or body may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a decision of the Board under section 11:
 - (i) refusing an authority to the person or body, or
 - (ii) imposing or varying conditions on an authority of the person or body, or
 - (iii) revoking an authority of the person or body,
- (b) a decision of the Board under section 12:
 - (i) refusing to accredit a vocational course conducted by the person or body, or
 - (ii) imposing or varying conditions on the accreditation of a vocational course conducted by the person or body,
- (c) a decision of the Board under section 13 withdrawing the accreditation of a vocational course of the person or body or imposing or varying conditions on any such accreditation,
- (d) a decision of an authorised accrediting body under section 15:
 - (i) refusing to accredit a vocational course conducted by the person or body, or
 - (ii) imposing or varying conditions on the accreditation of a vocational course conducted by the person or body,
- (e) a decision of an authorised accrediting body under section 16 withdrawing the accreditation of a vocational course of the person or body or imposing or varying conditions on any such accreditation,
- (f) a decision of the Board under section 22B:
 - (i) refusing an authority to the person or body, or
 - (ii) imposing or varying conditions on an authority of the person or body, or

- (iii) revoking an authority of the person or body,
- (g) a decision of the Board under section 22C:
 - (i) refusing to register or approve the person or body, or
 - (ii) imposing or varying conditions on the registration or approval of the person or body,
- (h) a decision of the Board under section 22D:
 - (i) varying the registration or approval of the person or body, or
 - (ii) varying any condition to which the registration or approval is subject, or
 - (iii) imposing additional conditions on the registration or approval, or
 - (iv) withdrawing or suspending the registration or approval,
- (i) a decision of an authorised registering body under section 22F:
 - (i) refusing to register or approve the person or body, or
 - (ii) imposing or varying conditions on the registration or approval of the person or body,
- (j) a decision of an authorised registering body under section 22G:
 - (i) varying the registration or approval of the person or body, or
 - (ii) varying any condition to which the registration or approval is subject, or
 - (iii) imposing additional conditions on the registration or approval, or
 - (iv) withdrawing or suspending the registration or approval.

30 Recovery of fees

Any fee payable to the Board under this Act may be recovered, as a debt, in any court of competent jurisdiction.

31 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

32 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

33 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) the custody and use of the seal of the Board, and
 - (b) applications under this Act, and
 - (c) fees payable under this Act, and
 - (d) forms to be used under this Act, and
 - (e) notices to be served under this Act, and
 - (f) information to be supplied to the Board by education or training providers, and
 - (g) records to be kept by education or training providers in relation to persons undertaking accredited vocational courses, and
 - (h) certificates to be issued under this Act to education or training providers that conduct accredited vocational courses, and
 - (i) certificates to be issued under this Act to persons who undertake or complete accredited vocational courses, and
 - (j) records to be kept by registered providers and approved providers, and
 - (k) certificates to be issued under this Act to registered providers and approved providers.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

34 (Repealed)

35 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Provisions relating to the members and procedure of the

Board

(Section 5)

Part 1 The members of the Board

1 General Manager may appoint deputy

- (1) The General Manager may, by instrument in writing, appoint a person to act as his or her deputy.
- (2) A deputy appointed under this clause, while so appointed, has all the functions of the General Manager and is to be taken to be the General Manager.
- (3) The appointment of a deputy under this clause does not prevent the General Manager from exercising his or her functions as General Manager.

2 Acting members and acting Chairperson

- (1) The Minister may, from time to time, appoint a person to act in the office of a part-time member of the Board during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is to be taken to be a member of the Board.
- (2) The Minister may, from time to time, appoint a part-time member of the Board to act in the office of Chairperson of the Board during the illness or absence of the Chairperson, and the member, while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.
- (3) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.
- (4) A person while acting in the office of a part-time 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 person.
- (5) For the purposes of this clause, a vacancy in the office of a part-time member of the Board or of the Chairperson of the Board is to be taken to be an absence from office of the member or Chairperson.

3 Terms of office

Subject to this Schedule, a part-time member of the Board is to hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration of part-time members

A part-time 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.

5 Vacancy in office of part-time member

- (1) The office of a part-time member of the Board becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) 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 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
 - (f) 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
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more 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.
- (2) The Minister may remove a part-time member of the Board from office at any time.

6 Filling of vacancy in office of part-time member

If the office of a part-time member of the Board becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Vacancy in office of Chairperson

- (1) The office of Chairperson of the Board becomes vacant if the Chairperson:
 - (a) is removed from office by the Minister, or
 - (b) resigns the office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member of the Board.
- (2) The Minister may remove the Chairperson of the Board from office at any time.

8 Disclosure of pecuniary interests

(1) A member of the Board:

- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

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 of the Board 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 this clause.

(3) Particulars of any disclosure made under this clause are to be recorded by the members of the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the members of the Board.

(4) After a member of the Board has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the other members of the Board otherwise determine:

- (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 purposes of the making of a determination by the members of the Board under subclause (4), a member of the Board who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

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

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

- (7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to the appointment of a part-time member of the Board.
- (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,
- the provision does not operate to disqualify the person from holding that office and also the office of a part-time member of the Board or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of a part-time member of the Board is not, for the purposes of any Act, an office or place of profit under the Crown.

10 Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Board, or
- (b) any resolution of the Board, or
- (c) the appointment of, or holding of office by, any member of the Board, or
- (d) the presence or nature of a quorum at any meeting of the Board.

Part 2 The procedure of the Board

11 General procedure

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.

12 Quorum

The quorum for a meeting of the Board is 6 members.

13 Presiding member

- (1) The Chairperson of the Board (or, in the absence of the Chairperson, another part-time member of the Board elected to chair the meeting by the members of the Board

present) is to preside at a meeting of the Board.

- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

14 Voting

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.

15 Transaction of business outside meetings or by telephone etc

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is to be regarded as a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members of the Board (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson of the Board and each member of the Board have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among members of the Board for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

16 Minutes

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

17 First meeting of the Board

The Minister is to call the first meeting of the Board at such time, and in such manner, as the Minister considers appropriate.

Schedule 2 Savings and transitional provisions

(Section 35)

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Vocational Education and Training Accreditation (Amendment) Act 1993*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Vocational Education and Training Accreditation (Amendment) Act 1993

2 Deemed approval

- (1) An education or training provider registered or purportedly registered under the Commonwealth Act immediately before the commencement of Schedule 1 (11) to the *Vocational Education and Training Accreditation (Amendment) Act 1993* in respect of one or more courses in respect of New South Wales is taken to have been approved under this Act to provide those courses to overseas students.
- (2) The approval under this Act is taken to be subject to a condition that the approval expires:
 - (a) in the case of registration, or purported registration, under the Commonwealth Act which has also been approved by the Executive Director of the Ministry of Education and Youth Affairs—on the date or after the period when the approval by the Executive Director is expressed to expire, or
 - (b) in other cases—12 months after the commencement of Schedule 1 (11) to the *Vocational Education and Training Accreditation (Amendment) Act 1993*.

3 Members of Board

The amendment made by Schedule 1 (5) to the *Vocational Education and Training Accreditation (Amendment) Act 1993* does not affect the continuity of the office of a member of the Board.