

**TRAINING LEGISLATION
AMENDMENT AND REPEAL BILL 2008**

EXPLANATORY MEMORANDUM

AMENDMENTS TO
VOCATIONAL EDUCATION AND TRAINING ACT 1996

TRAINING LEGISLATION AMENDMENT AND REPEAL BILL 2008

SUMMARY OF AMENDMENTS

The amendments to the VET Act will:

- 1 Introduce a new legislative framework to modernise apprenticeships and traineeships (“apprenticeships”);
- 2 Repeal the *Industrial Training Act 1975* which currently regulates the apprenticeship system (note that currently there is minimal legislative framework for traineeships);
- 3 Implement the nationally endorsed model clauses for the registration and audit of training organisations;
- 4 Clarify and update definitions and other administrative provisions within the VET Act; and,
- 5 Provide a more coherent structure in the Act to describe the components of the State training system.

Amendments and new provisions in the VET Act have been summarised as follows:

Preliminary – VET Act Part 1 (Bill clauses 6 & 7)

New terms have been introduced into the Act to reflect the changes to the training system over the last 10 years. No terms have been introduced from Australian Quality Training Framework (AQTF) or Australian Qualification Framework (AQF) as these schemes face ongoing review and amendment. Furthermore, the definition of VET in the Act is broad and encompasses any form of training whether accredited or not, delivered by any type of training provider whether registered or not. Therefore the VET Act uses terms that are unique to Western Australia.

Please note that for the purposes of the VET Act ‘apprentice’ means any person in an employment based training scheme, such as apprentice, trainee, intern or cadet.

Coordination of the State VET system – VET Act Part 2 (Bill clauses 8 to 16)

This Part has been amended for clarity and set outs how the overall state training system works, including:

- planning through the State Training Plan;
- funding of public and private training providers; and,
- the role of the Minister.

The change in the definition of “public training provider” means that schools and universities approved by the Minister to deliver “approved VET courses” can now be funded directly. Previously the Act was not clear on funding of the system.

Also the section on the Minister as a Body Corporate has been completely changed to make it clearer. These new provisions have been recommended and approved by the Department of Treasury and Finance and are based on the *Transport Coordination Act 1966*.

State Training Board – VET Act Part 3 (Bill clauses 17 to 19)

One important new provision provides the Board with a new function in establishing apprenticeships. The Minister will seek the advice of the Board on the establishment of apprenticeships. In making their recommendation to the Minister the Board will consult with industry training advisory boards and/or industry, including employer groups and unions.

Without increasing the number of members, membership of the Board will also now include at least one member who is experienced in worker's interests and another who is experienced in employer interests.

Training Accreditation Council – VET Act Part 4 (Bill clauses 20 to 26)

This Part has been reduced in size to focus on the establishment and administrative matters relating to the Council.

A major amendment to this Part is to move provisions on the:

- registration of training providers,
- accreditation of courses and
- appeals against decisions of the Council;

to a new Part 7A which is dedicated to describing how the regulated VET sector works for training providers.

Colleges – VET Act Part 5 (Bill clauses 27 to 36)

A major amendment is the change from the old *college training profile* to a more comprehensive strategic and annual business plans. This has been introduced on the recommendation of the Department of Treasury and Finance to bring the colleges into line with other agencies such as the Zoo, Port Authorities and Swan River Trust. The governing council is responsible for strategic and business plans that require all the functions of the college be addressed for the approval of the Minister. The plans will include profile funding, fee-for-service activities and commercial activities.

Other VET institutions – VET Act Part 6 (Bill clause 37)

The only amendment to this Part is to introduce a new provision that makes it clear that other VET institutions are under the control of the Department.

Regulation of the provision of some VET – VET Act Part 7A (Bill clause 38)

This new Part, which relates to the functions of the Training Accreditation Council, introduces the national model clauses for the registration of training providers and the accreditation of courses.

This Part provides a framework for the regulated VET sector in WA and provisions on how the system interrelates with other states and providers from other states. As well as sections on registering training providers, accrediting courses and cancelling courses this Part includes sections on offences and auditing. The detail of the model clauses will be introduced through regulation.

Obtaining approved VET qualifications and prescribed VET qualifications – VET Act Part 7 (Bill clause 39)

This Part provides for the apprenticeship system. The new scheme is aimed at introducing a single system for apprenticeships and traineeships that is more flexible and responsive to industry. Only one training contract will be required and only one certificate will be issued. A person in an employment based training scheme is called an “apprentice” for the purposes of the Act but operationally could be called an apprentice, trainee, intern, cadet or any other term.

In moving to a single system, protections that were provided to traditional apprenticeships (certificate III), such as termination and dispute resolution rights, will be extended to certificate III and higher ‘traineeships’. This may improve successful outcomes for traineeships that are significantly lower than apprenticeships.

New provisions and significant amendments for this Part include:

- establishment and variation of traditional apprenticeships through gazettal rather than legislation;
- to establish an apprenticeship the Minister will seek the advice of the State Training Board who will make a recommendation based on consultation with industry, including employer groups and unions.;
- the Minister will be able to attach special conditions to individual apprenticeships;
- the chief executive will be able to refuse to register or cancel a training contract for reasons that include the employer is unsuitable or lacks the capacity to train;
- an employer can not terminate the training contract of an apprentice without the approval of the chief executive, except during the probation period;
- decisions on registration of training contracts or termination of training contracts can be appealed to the WA Industrial Relations Commission; and,
- registered training providers will be able to issue apprenticeship qualifications to people who undertake a ‘skills recognition’ process and are deemed to be competent to the same level as someone who has completed an apprenticeship.

Enforcement matters – VET Act Part 8A (Bill clause 40)

This is a new Part that has been included to support the proposed new sections in Parts 7A and 7 dealing with offences.

This Part enables the Department of Education and Training and the Department of Education Services to investigate and prosecute alleged offences. The matters that DES will investigate concern:

- the registration of training providers;
- the provision of approved VET courses; and,
- the conferring of approved VET qualifications.

The matters that DET will investigate concern the regulation of class A qualifications (apprenticeships) and breaches of training contracts.

SUBSTANTIVE CHANGES TO THE APPRENTICESHIP SYSTEM

The following matters are some of the substantive changes to the apprenticeship system in Part 7 of the VET Act.

Classification of Qualifications (Clause 39, proposed section 60C)

This new provision is intended to provide a means of regulating the awarding of certain qualifications. In particular it is intended that certain qualifications can only be achieved through an apprenticeship pathway, i.e. a qualification that can only be achieved through entering into a training contract with an employer. Qualifications in this class (class A) will not be able to be conferred if the course is undertaken through institutional delivery. Qualifications can be conferred for courses delivered under a training contract and institutionally (class B), or only institutionally (class C). See the flow chart at Attachment A for further information.

Only the qualifications that involve an employment arrangement with training contract will be classified by the Minister. Qualifications that are for institutional delivery only will not require classification and will by default become class C.

Currently apprenticeships are prescribed in regulations and there is minimal legislative framework for traineeships.

Establishment of apprenticeships (Clause 39, proposed section 60C)

To establish an apprenticeship the Minister will seek the advice of the Board who will make a recommendation to the Minister based on consultation with industry, including employer groups and unions (see also proposed sections 21(b) and (ba) in Part 3). The Board will recommend a classification for the qualification of either A or B. This will determine whether the qualification will be available exclusively under a training contract or not.

The Board, after following the prescribed process for industry and union consultation, will also be recommending to the Minister other conditions relating to the apprenticeship. For example:

- the name and occupation(s) of the apprenticeship;
- the type of apprenticeship (apprenticeship, traineeship, internship or cadetship.);
- part-time or full-time arrangements;
- school-based training arrangements;
- integration of on and off-the-job training; and,
- nominal duration.

Once approved by the Minister new apprenticeships will be gazetted. This will make the establishment process for apprenticeships quicker than under the *Industrial Training Act 1975* and more able to respond to the needs of industry (see Attachment B). For the first time there will be only one establishment process that will be consistent for all types of apprenticeship (i.e. apprenticeship, traineeship, cadetship, internship), including prescribed consultation with industry and unions.

Probation (Clause 39, proposed section 60G)

Subsection (1) of proposed section 60G allows for regulations to establish the grounds on which a party to a training contract may terminate a training contract. The only time that this is possible for an employer is during the probation period.

Each apprenticeship will have an automatic period of probation that will begin from the date of commencement of the apprenticeship as approved by the chief executive upon successful registration of the training contract. During the probation period either party may terminate the training contract without fault or blame. The length of probation periods will be calculated on the basis of one month probation per year of nominal duration up to a maximum of 3 months, with the option for the employer or apprentice to extend the probation period on application to the chief executive.

This process will be more streamlined than the current system which requires an agreement for probation and another for the apprenticeship.

Termination of training contracts (Clause 39, proposed section 60G)

Outside of the probation period an employer can only terminate a training contract with the approval of the apprentice or the chief executive. The grounds on which an employer could apply to have a training contract terminated include if:

- the employer is ceasing or has ceased business;
- there was a substantial change of circumstances that meant that the employer was unable to meet the obligations of the training contract;
- there was serious misconduct by the apprentice; or,
- or as prescribed in regulations.

Regulations would include that an employer can apply to terminate a training contract if the apprentice fails to meet the essential terms of the training contract.

There will be a fine of \$10,000 if an employer terminates a training contract without the approval of the chief executive.

The chief executive would approve an application to terminate a Certificate I or II level qualification if the mediation process was unsuccessful (see Attachment C).

Any person dissatisfied with a decision of the chief executive relating to termination of training contracts can appeal to the West Australian Industrial Relations Commission.

Currently only traditional apprenticeships have access to protection from termination under the *Industrial Training Act 1975*. This will now be extended to all people in employment based training at Certificate III level or higher.

Skills recognition (Clause 39, proposed section 60I)

Registered training providers will now be able to confer class A qualifications on people who are not employed under a training contract but can demonstrate that they are competent against the units of competency of the class A qualification.

The certificate that the person receives will certify that they have attained the class A qualification (e.g. Certificate III in Bricklaying) and will state the occupation that the class A qualification relates to (e.g. Bricklayer). Note that it will not say 'achieved through apprenticeship arrangements'.

This section also makes clear that registered training providers are not prevented from conferring class B and class C qualifications, and statements of attainment or other approved VET qualifications, on people who can demonstrate that they are competent against the units of competency of the qualification.

Currently it is only possible to issue a Certificate of Trade Equivalence for skills recognition and not the apprenticeship qualification itself.

Dispute resolution (Clause 39, proposed section 60(f))

All disputes reported to the chief executive will undergo a process of mediation by field officers of the Department of Education and Training (see Attachment C). This initial mediation phase will also determine the jurisdiction of the dispute and if the dispute remains unresolved it will be referred to the appropriate authority. Disputes relating to:

- assessment, training delivery and training plan will be referred to the appropriate registered training provider;
- wage rates will be referred to WageLine;
- health and safety will be referred to WorkSafe;
- failure to pay wages for hours worked will be investigated and prosecuted as an employment matter by Industrial Inspectors of Department of Consumer and Employment Protection;

All other matters relating to training contracts will be heard and determined by the chief executive, or a person appointed by the chief executive. This includes, but is not limited to:

- Termination of training contracts on grounds as outlined above; and,
- Variations to training contracts including suspension.

People aggrieved by a decision of the chief executive in respect of training contracts will be able to appeal to WA Industrial Relations Commission.

Single Certificate (Clause 39, proposed section 60(k))

The content and form of qualifications to be issued by registered training providers will be prescribed in regulations. This will be of particular importance to class A qualifications – the certificate that the person receives will certify that they have attained the class A qualification (e.g. Certificate III in Bricklaying) and will state the occupation that the class A qualification relates to (e.g. Bricklayer). The certificate will also say ‘achieved through an apprenticeship pathway’.

Currently there are two certificates issued, an AQF qualification by the registered training provider and a Trade Certificate by the Department of Education and Training.

BACKGROUND

The VET Act established the State training system in Western Australia with statutory TAFE colleges operating in a competitive training market. The Department of Education and Training, which was responsible for the administration of the majority of the Act, became the strategic manager of the vocational education and training (VET) sector and the function of training delivery was devolved to the colleges.

The VET Act was also intended to replace the *Industrial Training Act 1975* which regulates apprenticeships. Part 7 of the VET Act, which provided for the repeal of the Industrial Training Act, was never proclaimed and apprenticeships and traineeships continue to be predominantly administered under the *Industrial Training Act*, with some aspects covered by the VET Act.

The *Industrial Training Act 1975* is now the oldest legislation governing apprenticeships in Australia. Other states had new legislation introduced in 2000 in Queensland, 2001 in New South Wales, 2003 in South Australia and 2006 in Victoria. Western Australia also remains the only state not to have amended its legislation to accommodate the national model clauses – an obligation under Commonwealth-State funding arrangements.

The Western Australian workplace has experienced 32 years of growth and change since the Industrial Training Act was introduced in 1975 and similarly the VET sector has experienced major change in the 12 years since the VET Act was introduced - reflected in the move to a national training framework.

The proposed amendments to the VET Act respond directly to the following drivers for change:

- i) economic growth and skills shortages;
- ii) the introduction of national model clauses to implement nationally agreed policy on quality assurance and the regulation of the VET sector;
- iii) COAG skills reforms; and
- iv) updating terms and functions in the Act that are no longer relevant.

i) *Economic growth and skills shortages*

The Western Australian economy is currently experiencing severe and persistent skill shortages in a wide range of occupations, especially the traditional trade occupations supplied by the apprenticeship system. These skill shortages negatively impact on industry by increasing costs and threatening the viability of potential projects.

In late 2005 the Skills Formation Taskforce was established, chaired by the Hon Clive Brown and comprised of respected industry leaders. The Taskforce was asked to develop strategies to ease skill shortages in the trades and to increase the take up of apprenticeships and traineeships in Western Australia.

The report of the Skills Formation Taskforce has recommended fundamental and systemic reform of the apprenticeship and traineeship system to respond to the dynamic changes occurring in the world of work. These recommendations were formulated following extensive State wide consultation which was attended by approximately 1 000 people. Key themes that came out of the forums were the need to streamline administration and regulation and the need for more flexibility within the apprenticeship system, such as the availability of part-time and school-based apprenticeship arrangements.

The proposed amendments will replace Part 7 of the VET Act and repeal the *Industrial Training Act 1975*. The new legislative provisions will respond directly and immediately to the recommendations of the Skills Formation Taskforce by providing for a more contemporary, flexible employment based training system that responds quickly to industry needs. The proposed amendments will also simplify the legislative framework for apprenticeships and traineeships, while supporting a strong focus on the quality of training outcomes.

More specifically, the proposed amendments will:

- Combine the apprenticeship and traineeship systems within a single legislative framework which is consistent with other States and Territories;
- Streamline the process for establishing new apprenticeship and traineeship schemes (“apprenticeships”) to ensure that industry training needs can be met in a timely fashion;
- Provide for greater flexibility in apprenticeships by allowing for variations such as nomenclature (eg. newly established apprenticeships may be called an “apprenticeship”, “traineeship”, “cadetship” or “internship” if requested by industry), part-time/full-time or school-based.
- Increase the level of protection and support for all types of apprenticeship, including traineeships, with the aim of increasing completion rates; and
- Provide for a single certificate to be issued by the Registered Training Organisation (to replace the dual certification which currently exists for apprenticeships).

ii) *National policy on quality assurance and regulation*

Since the VET Act was proclaimed, significant changes have occurred at the national level and national policy is increasingly having a strong influence on the State training system. One such national initiative is the establishment of a nationally consistent framework for the registration and audit of training organisations through the enactment of model clauses in state/territory legislation. The general aim of the model clauses is to enable Registered Training Organisations (RTOs) to operate in any state/territory through a single registration in the state of its principal place of business.

On 15 November 2002, Ministers responsible for training (ANTA Ministerial Council) agreed to seek their Cabinet’s approval to amend state and territory VET legislation to incorporate the intent of the model clauses by 1 July 2004. The resolution was to the effect that the model clauses may not need to be enacted in their precise terms, so long as the general intent was implemented, either through existing legislative provisions or by making substantially similar amendments.

A key issue is whether to give effect to the model clauses through legislative additions to the VET Act, or by regulations. On the advice of Parliamentary Counsel the approach taken is to amend the VET Act to provide for sufficient regulation-making power to include the model clauses within regulations. The following reasons are put forward for this approach:

1. The model clauses are detailed and operational and therefore do not fit with the general scheme of the existing VET Act.
2. This area of regulation is subject to frequent change through decisions of national policy forums such as COAG and the Ministerial Council for Vocational and Technical Education (MCVTE).

iii) *COAG skills reforms*

In February 2006, the Council of Australian Governments (COAG) agreed to a package of initiatives designed to address skill shortages and achieve a national approach to apprenticeships and training. These initiatives aimed to achieve more rapid skilling by fully implementing competency based training, enabling school-based apprenticeships, establishing new entry and exit points in training, enhancing skills recognition and improving the quality of training.

Western Australia committed to making the necessary legislative amendments to enable competency based completion of apprenticeships and school-based apprenticeships by December 2006. The State complied with the COAG commitments, through minor amendments to the *Industrial Training Act 1975*. The proposed amendments to the VET Act will include these important changes when the *Industrial Training Act 1975* is repealed. A provision to enable registered training providers to confer apprenticeship qualifications through skills recognition will be introduced.

iv) *Updating terminology and functions*

A range of other amendments are proposed that update the VET Act to reflect the current operating environment and terminology. These amendments include those which were recommended in the Tomlinson review and still remain relevant.

The amendments include:

- Updating TAFE college planning to reflect the requirements of other statutory authorities such as provided for under the *Port Authorities Act 1999*;
- Bringing the Act in line with financial requirements of the *Financial Management Act 2006*;
- Clarifying the role of the Minister as a body corporate;
- Allowing for the direct funding of schools and universities approved by the Minister to deliver vocational education and training;
- Provision for the remuneration of members of college governing councils to recognise the valuable contribution that governing council members make to TAFE colleges;
- Provision to allow the State Training Board and the Training Accreditation Council to delegate functions to committees; and
- Allowing members of the State Training Board and the Training Accreditation Council to participate in meetings through teleconference, videoconference or other means of communication.

NOTES ON CLAUSES

PART 1 - Preliminary

Clause 1 – Short title

1. This clause specifies the short title of the enacted Bill. When enacted it will be known as the *Training Legislation Amendment and Repeal Act 2008*.

Clause 2 – Commencement

2. This clause specifies when different Parts of the Act will come into effect. Part 1 dealing with the short title and commencement will come into effect on Royal Assent and the rest of the Act on a day fixed by proclamation with the option to fix different days for different provisions.

PART 2 – Vocational Education and Training Act 1996 amended

Clause 3 – The Act amended in this Part

3. This clause specifies the Act to which the amendments listed in this Part are to apply. The Act relevant to this Part is the *Vocational Education and Training Act 1996*.

Clause 4 – Long title amended

4. The long title has been amended to introduce apprenticeships and traineeships as a major component of the state training system, alongside the State Training Board, the Training Accreditation Council and TAFE Colleges. Acts that are no longer relevant have been deleted from the long title.

Clause 5 – Section 4 amended (Objects)

5. Clause 5(a) provides for the amendment of 'Objects' section 4(b) to reflect the introduction of national model clauses. It establishes the parameters for the regulated VET sector and sets the role for the Training Accreditation Council (TAC) in registering training providers and accrediting courses.
6. Clauses 5(b) and (c) introduce apprenticeships as a key component of the State training system.

Some notes on proposed amendments to Part 1 of the VET Act that deals with interpretation.

7. Since the VET Act was proclaimed, significant changes have occurred at the national level. National policy is increasingly having a strong influence on the State training system. One such national initiative is the establishment of a nationally consistent framework for the registration and audit of training providers through the enactment of model clauses in state/territory legislation. Accommodating these changes in the VET Act has necessitated changes in the definition of terms.

8. Terminology relating to the national training framework, such as the Australian Qualification Framework (AQF) and the Australian Quality Training Framework (AQTF), has been deliberately left out of this Act on the basis that such schemes face ongoing review and amendment.
9. Furthermore, the Western Australian VET Act has one significant difference to all the other Acts governing VET in other States – the definition of ‘vocational education and training’. In the Western Australian Act the definition is deliberately very broad and includes every type of course of training that is not delivered by a school or university. This includes courses that are accredited through TAC or that are nationally endorsed but also courses that are not accredited. Courses that are not accredited could include fee-for-service courses delivered by TAFE Colleges or any commercial course delivered by a company or sole trader in any field. In other States VET is defined much more narrowly as the *regulated sector* of registered training providers and accredited courses. The Western Australian Act acknowledges a regulated VET sector and an unregulated VET sector. The proposed amendments to the terminology in the Act reflects this situation.

Clause 6 – Section 5 amended (Interpretation)

10. Clause 6(1)(a) provides for the deletion of the following terms:

“**accredited**” has been deleted and incorporated into “approved VET course”.

“**course**” has been deleted and incorporated into “approved VET course” and “VET course”.

“**department**” has been deleted due to the split in administration for different Parts of the Act between the two different departments. See “chief executive”.

“**public training provider**” has been deleted and a new definition provided to include schools and universities approved by the Minister under section 6. This will mean that that a school or university will be treated as a public training provider for the ‘approved VET course’ that it is delivering.

“**registered training provider**” has been deleted and a new definition provided to include those training providers either registered by the Training Accreditation Council (TAC) or by another State’s registration and accreditation authority under a corresponding law. In the model clauses and operationally a registered training provider may also be called a Registered Training Organisation (RTO).

“**resource agreement**” has been deleted as it is no longer relevant and has been replaced by college strategic and annual business plans.

“**skills training programme**” has been deleted as it has been replaced by “approved VET course”.

“**State Training Profile**” has been deleted and a new term introduced for “State Training Plan”.

“**training provider**” has been deleted and a new definition provided to clarify that it relates to any provider of training operating within the Act’s broad definition of ‘vocational education and training’, including unregistered sole traders. See “registered training provider”.

“**training scheme**”, has been deleted in favour of the umbrella term of apprenticeship. Specifically ‘apprentice’ is defined in the proposed section 60A as including any person under a training contract whether they may be termed apprentice, trainee, intern, cadet or some other term.

11. Clause 6(1)(b) provides for the inclusion of the following new definitions:

“**account**” of a college has been introduced to mean the college’s account established under section 50. On the advice of the Department of Treasury and Finance section 50 has been amended to bring it into line with the *Financial Management Act 2006* and no longer requires colleges to account for commercial funds separately.

“**approved VET course**” has been introduced to distinguish between those courses which are:

- accredited by Training Accreditation Council (TAC);
- accredited by another State’s accreditation authority; or
- or as prescribed in regulations;

from those that are not. See “VET course”. Regulations will establish that courses from nationally endorsed training packages will also be regarded as approved VET courses.

“**approved VET qualification**” provides for documents that certify partial completion or completion of an approved VET course issued in the regulated VET sector, such as a ‘statement of attainment’ under the Australian Qualifications Framework (AQF). See also “prescribed VET qualification” and “VET qualification”.

“**corresponding law**” has been introduced to enable any course accredited by registration and accreditation authorities in other States (under a corresponding law) to be an “approved VET course”.

“**Minister for Training**” has been introduced to distinguish between the two different definitions of the Minister under the Act – as body corporate and as Minister of the Crown.

“**prescribed VET qualification**” has been introduced to define in regulations the eight AQF qualifications for the regulated VET sector (from *Certificate I* to *Vocational Graduate Diploma*) that only a registered training provider will be able to issue. See also “approved VET qualification” and “VET qualification”.

“**private training provider**” has been introduced to provide a term to refer to those institutions that are not ‘public training providers’.

“**public training provider**” has been deleted and a new definition provided to include schools and universities approved by the Minister under section 6. This will mean that that a school or university will be treated as a public training provider for the ‘approved VET course’ that it is delivering.

“**registered training provider**” has been deleted and a new definition provided to include those training providers either registered by the Training Accreditation Council (TAC) or by another State’s registration and accreditation authority under a corresponding law.

“**school**” has been introduced to link its definition to that in the *School Education Act 1999* and fix its meaning. Previously a number of different terms were used in the body of the Act in relation to school.

“**State Training Plan**” has been amended to clarify its scope as covering publicly funded training in the state to meet the state’s training needs but also provides for other matters to be set out by regulation. The amendment reflects a more strategic and longer term approach to training planning for the State.

“**training provider**” has been deleted and a new definition provided to clarify that it relates to any provider of training operating within the Act’s broad definition of ‘vocational education and training’, including unregistered sole traders. See “registered training provider” above.

“**university**” has been introduced to support the use of the term through the Act. It is defined as a university established under a written law.

“**VET course**” defines a any course delivering “vocational education and training” and is necessary to support the broad definition of “vocational education and training” in the Act – both the regulated and unregulated sectors.

“**VET inspector**” has been introduced to enable designated officers of the Department of Education Services or Department of Education and Training to carry out investigative functions relating to offences under the Act as set out in the proposed Part 8A of the VET Act.

12. Clause 6(1)(c) provides for an amended definition of chief executive. The term “**chief executive**” has been amended to provide for the administration of the different Parts of the Act by different departments – Education Services and Education and Training.
13. Clause 6(1)(d) provides for an amendment to the term “**vocational education and training**” to remove the words ‘post-compulsory’ from ‘post-compulsory education’ to take account of VET in schools and to delete the word ‘secondary’ from ‘secondary school’ to bring the use of the word “school” in line with the *School Education Act 1999*. Vocational education and training means any form of training not provided by a school or university – unless the school or university has been approved by the Minister to deliver ‘approved VET courses’. Please note that the school or university would also have to register as a registered training provider.
14. Clause 6(2) provides for an amendment to delete the word ‘Profile’ to bring section 5(2) in line with the new definition of State Training Plan.

Clause 7 – Section 6 replaced (Vocational education and training provided by a school or university)

15. Clause 7 provides for the section of the VET Act that deals with VET provided by a school or university to be replaced. Section 6(1) has been clarified with no change to its meaning. Terms that are no longer used in the Act have been deleted. Note that the word 'secondary' has been deleted here and where-ever it appears in the Act to bring the terminology in line with the new definition of 'school'.
16. In section 6(2) a new element has been added. Subsection (2) has always required the agreement of the Minister administering schools in the exercise of subsection (1). This arrangement is maintained in case the administration of education and training is split in the future. However, the section has never extended the arrangement to universities. Since the administration of universities could also be allocated to a different department this sub-section has been amended to include the Minister administering universities.

Clause 8 – Part 2 Division 1A inserted (VET (WA) Ministerial Corporation)

17. Division 1A has been introduced to make clear the difference between two different roles of the Minister under the Act – as body corporate and as an individual or Minister of the Crown. The name for the body corporate in the original section 7 was 'Minister for Training' which creates the potential for confusion as to which role of the Minister is intended. The new name does not borrow from the Minister's portfolio and therefore makes it clear that it is a separate body. Through the Ministerial Corporation the Minister can perform any of the Minister's functions that are conveniently dealt with by a body corporate, such as entering into contracts and dealings in land, property and other assets. The continuity of the Ministerial Corporation means that despite Ministerial or portfolio changes, contracts entered into by the Ministerial Corporation, can continue through the body.
18. Once the body corporate is established and described in proposed section 7A, the purpose and how the body corporate functions through the execution of documents are set out in proposed sections 7B and 7. The proposed sections provide greater clarity and follow a similar structure, and are similar in content, to the provisions provided for under sections 6, 6A, 7 & 7A of the *Transport Co-ordination Act 1966* as recommended by the Department of Treasury and Finance. The Department of Treasury and Finance has reviewed these proposed sections and finds them satisfactory.

Clause 9 – Section 7 repealed (Minister a body corporate)

19. This clause allows for the repeal of the original section 7 dealing with the Minister as a body corporate to introduce the new provisions outlined above.

Clause 10 – Section 8 amended (Functions of the Minister)

20. Clause 10(1) allows for the restructuring of section 8(1) through the addition of specific words to accommodate new provisions outlined below.
21. Clause 10(1) provides for the deletion of the original provision requiring the Minister to approve the State Training Profile and replaces it with a more comprehensive provision that makes clear the relationship between the

function of the Minister and the planning and funding of the vocational education and training system. Proposed section 8(1)(b)(i) & (ii) set out the links between approved VET, the State Training Plan and recurrent funding of public training providers, including schools and universities, and special funding under contracts for training providers. This was not clear in the original Act.

22. Clause 10(2) introduces two new subsections that make clear the function of the Minister in relation to the State Training Plan and the State Training Board.

Clause 11 – Section 9 amended (Powers of the Minister)

23. Clause 11(1)(a) provides for the deletion of section 9(2)(a) which lacks clarity in regard to enabling, planning and funding the vocational education and training system. It will also be made redundant by the proposed provisions in clause 10(1) above.
24. Clause 11(1)(b) provides for the deletion of section 9(2)(d) and for the insertion of a new provision that makes clear that it enables the funding of VET or services related to VET through tender or expressions of interest for any training provider. The words “partly fund” have been deleted from the original provision as they were regarded as superfluous – the decision to partly fund VET or services related to VET would be an administrative matter.
25. Clause 11(1)(c) provides for the section 9(2)(e) to be amended to enable funds, primarily by way of grants, to be provided to any training provider and ‘other persons’ for VET and for purposes related to VET. This provision originally only related to funding, primarily by way of grants, for purposes related to VET. This will provide greater flexibility in determining the most appropriate means of delivering VET, or services relating to VET, across the entire VET sector in response to skills shortages and training needs.
26. Clause 11(1)(d) provides for the section 9(2)(h) to be amended to take into account advice provided to Parliamentary Counsel’s Office from the State Solicitor’s Office that in the context of this paragraph ‘knowledge’ can not be subject to sale – only ‘services’ can be subject to sale.
27. Clause 11(2) amends section 9(3) to exclude funds or resources provided under clause 9(2)(e) from the *State Supply Commission Act 1991*.

Clause 12 – Section 11 amended (Minister may give directions)

28. This clause amends section 11(4)(a) and (b) to refer to the relevant Parts under the new structure of the Act.

Clause 13 – Section 12 amended (Directions to secondary schools and universities providing vocational education and training)

29. This clause proposes to amend the section 12 title, ‘Directions to secondary schools and universities providing vocational education and training’ and section 12(1) to update the terminology relating to schools. The word ‘secondary’ has been deleted with no change to the intention of the section. The word “school” has been used to link its definition to that in the *School Education Act 1999*.

Clause 14 – Section 13 amended (Minister may issue guidelines)

30. This clause amends section 13(3)(a) to refer to the relevant part under the new structure of the Act.

Clause 15 – Sections 15 and 16 repealed (Vocational education and training trust account and Application of the Financial Management Act 2006 and the Auditor General Act 2006)

31. This section dealing with the vocational education and training trust account has been deleted following advice from Department of Treasury and Finance and in direct response to the introduction of the *Financial Management Act 2006*. The *Financial Management Act 2006* allows for special purpose accounts to be established as required by the chief executive and is not required in the VET Act. Special purpose accounts allow for a special purpose statement that attaches terms and conditions to the account. This amendment will not alter the performance of the Minister under section 8 or funds directed by the Minister under section 53 or the operations of Department of Education and Training.
32. Section 16 dealing with the application of the *Financial Management Act 2006* and *Auditor General Act 2006* is superseded by the provisions relating to the *Financial Management Act 2006*. See above and below.

Clause 16 – Section 17B amended (Moneys to be credited and charged to operating account)

33. Clauses 16(1), (2) and (3) provide for the amendment of section 17B. The original subsection (1) provides that moneys are to be credited to an operating account approved by the Treasurer. Operating account is then defined in subsection (3) as an agency special purpose account established under section 16 of the *Financial Management Act 2006* (FMA). The Department of Treasury and Finance (DTF) provided advice that the approval of the Treasurer on top of complying with section 16 of the FMA adds an unnecessary administrative layer, therefore subsection (3) has been repealed. Section 17B has been be redrafted by dropping the reference to an “operating account” and “approved by the Treasurer” and refers directly to moneys being credited and charged to an agency special purpose account established under section 16 of the *Financial Management Act 2006*.

Clause 17 – Section 19 amended (Constitution of the Board)

34. This clause introduces new provisions on membership of the State Training Board to ensure there is representation on the Board for workers’ interests and employers’ interests. The total number of members remains seven. The wording of the provision is based on the *Workers Compensation and Injury Management Act 1981*.
35. Section 19(4b) has been proposed to provide the Minister with a process for seeking appropriate nominations for the member of the Board experienced in employer’s interests. The Chamber of Commerce and Industry may be approached by the Minister to nominate one or more potential members. The wording of the provision is based on the *Workers Compensation and Injury Management Act 1981*.

36. Section 19(4c) has been proposed to provide the Minister with a process for seeking appropriate nominations for the member of the Board experienced in worker's interests. UnionsWA may be approached by the Minister to nominate one or more potential members. The wording of the provision is based on the *Workers Compensation and Injury Management Act 1981*.

Clause 18 – Section 21 amended (Functions of the Board)

37. Clause 18(1)(a) proposes that section 21(1)(a) be amended for clarity by the addition of the words “as follows”.
38. Clause 18(1)(b) deletes paragraphs (a), dealing with preparation and approval of the State Training Profile, and (b), dealing with recognition of industry training advisory bodies. The clause proposes to replace these paragraphs with provisions requiring the Board to give the Minister a State Training Plan as and when required and to allow the Board to take advice from industry training advisory bodies on the establishment of apprenticeships under the proposed Part 7 if required.
39. This clause also provides for the Board to establish apprenticeships under Part 7 (see Attachment B for a flow chart of the establishment process).
40. Clause 18(1)(c) amends section 21(c)(i) into one paragraph with no addition of words or change of meaning. This amendment also has the effect of deleting sections 21(1)(c)(ii) and (iii) relating to the development of policy for accreditation of courses and prescribing of vocations have been deleted. Policy relating to the accreditation of courses, skills training programmes and qualifications, the registration of training providers and the recognition of skills is now being determined nationally rather than the State Training Board.
41. Clause 18(1)(d) provides for the updating of section 21(1)(d) relating to the performance of functions of the Board in regard to appeals on decisions of the Training Accreditation Council. The appeal provisions have moved to Part 7A.
42. Clause 18(2)(a) provides clarity to say that the Board shall provide advice to the Minister on *the following matters*. The ‘and’ at section 21(2)(d) is superfluous and is therefore deleted.

Clause 19 – Section 23 replaced (Committees of the Board)

43. Clause 19 provides new provisions to enable the Board to delegate functions to a committee who are not members of the Board, however, the proposed section will stipulate that a member of the Board must be on such a committee. The State Solicitor's Office has advised that there can be a lawful delegation to a committee.

Some notes on proposed amendments to Part 4 of the VET Act that deals with the Training Accreditation Council

44. Part 4 of the VET Act has been substantially amended to provide the Act with a more coherent structure. This Part now deals only with the establishment of the Council. The Council's functions, and appeals against its decisions, have been moved to a new Part 7A that describes how the regulated VET sector

works. It should be noted that the department responsible for administering this Part (i.e. Department of Education Services) will also be responsible for administering Part 7A.

Clause 20 – Part 4 Division 1 heading repealed (Establishment and functions of Council)

45. This clause provides for the heading for this Division to be deleted to reflect the new structure for this Part.

Clause 21 – Section 25 amended (Establishment of Council)

46. The clause amends proposed section 25(3) to remove the specific description of the Council's functions from the criteria for appointing members of the Council. This amendment was prompted by the change of functions of the Council, especially in accommodating 'model clauses'. For example members will no longer need to be appointed for their experience in skills recognition because it is proposed that registered training providers be responsible for conducting all skills recognition.

Clause 22 – Section 26 amended (Further provisions relating to Council)

47. This clause provides for proposed section 26(3) to be introduced to make clear how the Council will be able to carry out its functions – that is, through the chief executive of the department that administers this Part providing staff, services and facilities. This was not previously clear.

Clause 23 Section 27 replaced (Functions of Council)

48. Clause 23 provides for the repeal of section 27 and its replacement by a new section 27. The proposed section 27 in comparison to the original section has been shortened with the functions relating to registration and accreditation being moved to the new 'Part 7A – Regulation of the provision of some VET'. Other provisions have been deleted where they are no longer required, such as the original section 27(1)(c) relating to skills recognition which is now performed by registered training providers. Therefore section 27(1) will be shortened to read "the functions of the Council are set out in this Part and Part 7A".
49. This clause also provides for a proposed section 27(2) that makes clear the Council's role in the execution of its functions. This provides balance in the Act are there are similar provisions included for the powers of the Minister, section 9(1), powers of the Board, section 22(1) and functions of a governing council section 42(1).
50. In the VET Act the provisions that have been deleted in section 27 are:
- 27(1)(a) has been moved to Part 7A and amended to accommodate the model clauses;
 - 27(1)(b) has been moved to Part 7A and amended to accommodate the model clauses;
 - 27(1)(c) has been deleted as it is no longer required. Skills will be recognised by registered training providers under the Australian Quality Training Framework (AQTF). For apprentices without a training contract

the proposed Part 7 will allow registered training providers to grant approved VET qualifications to competent persons;

- 27(1)(d) has been deleted as it is no longer required. The definition of 'approved VET course' includes endorsed national training packages and courses accredited by other accreditation bodies. Furthermore all accredited courses must meet minimum standards through AQF;
- 27(1)(e) has been deleted as it is no longer required. The Council will not be required to provide advice to the Board on (a), (b), (c) and (d). The VET Act currently requires the Council to advise the Minister on policy relating to accreditation, registration and skills recognition matters through the Board. This is unnecessarily limiting and does not accord with current operations. Removing this provision will ensure that there is no legislative impediment to the Council providing advice directly to the Minister;
- 27(1)(f) has been deleted and as it is no longer required. This function will be carried out by the Board in consultation with industry as part of the establishment of apprenticeships;
- 27(2) has been moved to Part 7A and is incorporated in proposed section 58B on registration of training providers and 58C accreditation of courses;
- 27(3) has been moved to Part 7A proposed section 58F.

Clause 24 – Section 28 amended (Delegation by the Council)

51. This clause provides for section 28 to be amended to include delegation of the Councils functions to committees.

Clause 25 – Section 29 replaced (Committees of the Council)

52. This clause provides for section 29 to be replaced by a new section that assists with the delegation of functions to a committee, however, proposed section 29(2) makes clear that at least one member of the Council must be on a committee to ensure that the Council is not abrogating its functions. Furthermore proposed section 29(3) ensures that committees do not act contrary to the terms of delegation and directions of the Council.

Clause 26 – Part 4 Division 2 replaced by section 31 ('Appeals against decisions of the Council' replaced by 'Council may provide information to others')

53. This clause provides for the repeal of sections relating to appeals against decisions of the Council. Proposed provisions that replicate these sections have been introduced to proposed Part 7A. Since the matters relating to the regulation of the training system are in part 7A, the sections on appeals against decisions made regarding the regulation of the training system are placed there as well.
54. This clause also proposes a new section on the provision and exchange of information with other jurisdictions (States and Territories) regarding registered training providers. If for example a registered training provider has its home registration in Victoria and the Victorian RCAB is seeking information concerning its dealings in Western Australia this proposed section will allow the provision of the required information, and vice versa.

Some notes on proposed amendments to Part 5 of the VET Act that deals with colleges.

55. This Part of the VET Act has been amended to clarify the functions of the college, the function of the governing council and the college's strategic and annual business planning. In particular section 43 'Powers of the governing council' has been deleted with most of the functions listed there moved to section 37 'Functions of the college'. The result is one section that clearly states what a college does and a clearer reflection of the relationship between the college and governing council.
56. Proposed section 43 has been introduced to outline more comprehensive planning arrangements for colleges with a proposed section for a mid to long term strategic plan and another section for an annual business plan (see 'College training profile').
57. Substantial amendments have also been made to *Division 3 – Financial provisions* to simplify and clarify accounting and use of funds and to bring colleges in line with the *Financial Management Act 2006*.

Clause 27 – Section 37 amended (Functions of a college)

58. Clause 27(1) provides for the definition of 'business arrangement' and 'participate' to be introduced to section 37 on functions of a college. Provisions relating to business arrangements that were in the original section 43 are now in the proposed section 37.
59. Clause 27(2)(a) provides for amendments to wording that clarify the functions that the section is referring to are those that are 'as follows'.
60. Clause 27(2)(b) provides for the deletion of the first two functions of the college dealing with the provision of VET that is 'consistent with the College Training Profile' and the provision of fee-for-service activities. The 'College Training Profile' is deleted due to there now being proposed separate sections for strategic and business planning. The clause also provides for the replacement of these functions with a range of proposed functions as outlined below.
61. Proposed section 37(1)(a) provides for a college to provide vocational education and training. Note that this is the broad definition of VET as defined in this Act and includes both regulated VET and unregulated VET.
62. Proposed section 37(1)(ba) is the same as deleted section 43(2)(a). It has been amended for clarity with no change to the intention. Due to Ministerial approval of the college business plan the reference to Ministerial approval has been deleted.
63. Proposed section 37(1)(bb) is the same as deleted 37(1)(b) but has been amended to enable colleges to provide fee for service training without restriction as to whether it is to individuals, groups, employers or authorities. Ministerial approval for this function will now be provided through Ministerial approval of the college's strategic and annual business plans.
64. Proposed section 37(1)(b) is the same as deleted 43(2)(b). It has been amended to take into account new terminology of 'approved VET

qualifications' and 'prescribed VET qualifications'. This provision makes it clear that colleges must be registered to provide AQF qualifications.

65. Proposed section 37(1)(ca) is the same as deleted 43(2)(e) and has not been amended.
66. Clause 27(2)(c) provides for the introduction of proposed section 37(1)(da) to achieve the aim of giving colleges a clear and primary function to deal with intellectual property to the State's advantage.
67. Clause 27(2)(d) provides for the introduction of proposed section 37(1)(ea). This function has been taken from section 37(1)(g) to give the provision of adult and community education (ACE) greater emphasis as a function of the college. In the original provision ACE was only used as an example to illustrate how colleges could support the community and was therefore not a clear function on its own.
68. Clause 27(2)(e) provides for the word 'its' to be introduced to section 37(1)(e) to reflect that the services are provided to the college's students.
69. Clause 27(2)(f) provides for the deletion of section 37(1)(f) because any initiative across the whole of the State training system can be more directly achieved through issuing directions under section 11 or guidelines under section 13.
70. The clause also provides for the introduction of a number of provisions that have been moved from deleted section 43 as outlined below.
71. Proposed section 37(1)(fa) is the same as deleted section 43(2)(d) but has been amended for clarity.
72. Proposed section 37(1)(fb) is the same as deleted section 43(2)(c).
73. Proposed section 37(1)(f) replaces deleted section 43(2)(f), however the limitations on the type of business arrangements in the original section 43(2)(f)(i) and (ii) have been removed so that colleges are able to expand their services and activities. However any business arrangement under this provision will still require the approval of the Minister on terms and conditions approved by the Treasurer.
74. Clause 27(2)(g) provides for the deletion of 'adult and community education from section 37(1)(g) to provide a separate provision for adult community education (ACE) as outlined above. Contributing to community development is maintained separately from the provision of ACE as an important function of the college.
75. Clause 27(2)(h) provides for the deletion of the original section 37(1)(h) dealing with the provision of education by colleges and the insertion of a new provision that ensures that colleges participate in the provision of education where required, pursuant to s24(1)(b) of the *School Education Act 1999*.
76. Clause 27(2)(i) provides for the deletion of the original section 37(1)(i) and the insertion of a paragraph that moves from the conferring of additional functions through gazettal, and replaces it with a power to provide colleges any other

function as prescribed through regulations. This is more appropriate as it allows for Parliament to maintain its scrutiny of the functions of a college.

77. Clause 27(3) provides for the repeal of section 37(2) and the introduction of a provision to ensure compliance and accountability through the college's strategic and annual business plans.
78. Clause 27(4) provides for amendments to section 37(3) to reflect that matters relating to business arrangements are now in section 37 and to make clear that the college is participating in a business arrangement.
79. Clause 27(5) repeals section 37(4) as it is superseded by the introduction of proposed section 37(1)(i) to allow colleges any other function as prescribed through regulations.
80. Clause 27(5) provides for the introduction of proposed section 37(4) which is the same as the deleted section 43(3) and continues the exemption to the *State Supply Commission Act 1991* for business arrangements relating to the provision of VET that are approved by the Minister, on terms and conditions approved by the Treasurer.

Clause 28 – Section 42 amended (Functions of a governing council)

81. Clause 28 provides for the deletion of section 42(2) which has been superseded by the college strategic and annual business plans (see 'College Training Profile') now in proposed sections 43 and 44A.
82. Proposed section 42(2) is the same as deleted section 43(1) and relates to the performance of functions of the governing council.
83. Proposed section 42(3) is the same as deleted 43(5) and relates to the performance of functions.
84. Proposed section 42(4) is the same as the deleted 42(2)(c) relating to the governing council performing its functions to meet the needs of students, industry and the community.

Some notes on proposed sections 43 and 44A that deal with college planning

85. The proposed section 43 that deals with college strategic planning replaces the original section 43 that deals with the powers of a governing council.
86. On the of advice of the Department of Treasury and Finance (DTF) significant amendments have been proposed for college planning. The original planning provisions relating to a 'College Training Profile' and the governing council's strategic management plan have been dropped and an annual business plan and longer term strategic plan have been introduced in their place. The amendments are aimed at:
 - properly reflecting the scope of the College Training Profile as it is currently used;
 - bringing planning requirements in line with authorities such as Port Authorities, Perth Zoo and Kings Park; and,
 - enabling more appropriate, clearer and longer term planning.

Clause 29 – Section 43 replaced (Powers of a governing council)

87. This clause provides for the deletion of the original section 43. All provisions in deleted section 43 have been moved to:
- Proposed section 37 on functions of a college (detailed above);
 - Proposed section 42 on functions of a governing council (detailed above); or
 - Proposed section 43 and 44A on the college planning.
88. Clause 29 also provides for the introduction of a proposed section on strategic plans as outlined below.
89. Proposed section 43(1) has been introduced to provide for flexibility in determining a submission date for the college's strategic plan to enable colleges to coordinate other statutory reporting requirements, while at the same time providing a 'default' submission date.
90. Proposed section 43(2) sets out the broad contents of a college's strategic plan which are primarily the college's medium to long term objectives. On the advice of the Department of Treasury and Finance any other matters that the Minister feels should be dealt with by the plan can be prescribed in regulations. The plan will incorporate the governing council's strategic management planning which has been deleted from section 43(4)(b).
91. Proposed section 43(3) coordinates a college's strategic plan and the State Training Plan and requires that they be consistent.
92. Proposed section 43(4) replaces Ministerial approval of the College Training Profile under the original section 42(2)(a).
93. Proposed section 43(5) enables a college to vary its planning.

Clause 30 – Section 44A inserted (Annual business plan)

94. This clause provides for the introduction of proposed section 44A that deals with a college's annual business plan as outlined below.
95. Proposed section 44A(1) to provide for flexibility in determining a submission date for a college's annual business plan to enable colleges to coordinate other statutory reporting requirements, while at the same time providing a 'default' submission date.
96. Proposed section 44A(2) establishes parameters for the content of a college's annual business plan.
97. Proposed section 44A(2)(a) is the same as deleted section 42(3) and refers to all vocational education and training whether accredited or not accredited, including fee for service – the meaning of this provision is unchanged.
98. Proposed section 44A(2)(b) requires the college to use the college business plan to reflect how it plans to carry out its functions, under proposed section 37, for a 12 month period, including commercial activities. This will also mean that ministerial approval can be granted for a range of functions that previously may have been dealt with separately.

99. Proposed section 44A(2)(c) is included on the advice of the Department of Treasury and Finance that any other matters that may be required to be included in the plan can be prescribed by the Minister in regulations.
100. Proposed section 44A(3) coordinates a college's business plan with its strategic plan and the State Training Plan and requires that they be consistent.
101. Proposed section 44A(4) replaces Ministerial approval of the College Training Profile under deleted section 42(2)(a).
102. Proposed section 44A(5) enables a college to vary its planning. It should be noted that the ability of colleges to respond quickly to commercial opportunities will not be impeded by the need for ministerial approval.

Clause 31 – Sections 48, 49 and 50 replaced (Funds of a college, College Trust Accounts and Use of funds)

103. Clause 31 provides for the deletion of three sections dealing with financial matters for colleges and their replacement with three new sections that amend, clarify and update how college's manage their funds.
104. Proposed section 48 deals with funds of a college and replaces the original section 48 that dealt with funds of a college. Following the advice of Department of Treasury and Finance (DTF) this section has been substantially amended as the original provisions in section 48 were regarded as unnecessarily limiting and too specific and prescriptive. The proposed section needs only to cover the following four items:
 - All monies lawfully received;
 - Monies appropriated by Parliament;
 - Monies from commercial activities; and,
 - Funds borrowed.
105. Proposed section 49 deals with use of college funds and replaces the original section 50 that dealt with college funds. This proposed section has been amended to more clearly outline how a college's funds are to be applied. The original section 50 for use of funds offered only one sentence and referred to 'college funds being applied for the purposes of this act', without any further distinction being made. The new section links the funds to the performance of the college's functions under proposed section 37; remuneration of the governing council and salaries and wages and on-costs of staff, including the managing director.
106. Proposed section 50 deals with college accounts and replaces the original section 49 that dealt with college trust accounts. The Department of Treasury and Finance (DTF) has provided advice that the section on Trust Accounts (s49) is no longer required because the original purpose for this section has been superseded by the *Financial Management Act 2006*. Under the FMA any number of Special Purpose Accounts can be created with their own terms and conditions, which achieve the same end as the Trust Account. The new arrangement takes away the need for colleges to maintain separate accounts for public funds and commercial funds.

107. Proposed sections 50(2) and (3) have been added on the advice of State Solicitor's Office to link the funds of the college (proposed section 48) to its accounts and the use of college funds (proposed section 49) to its accounts.

Clause 32 - Section 52 amended (Power to invest)

108. Clause 32 provides for an amendment to section 52 that deals with the college's power to invest funds. This follows on from the amendments to college accounts outlined above.

Clause 33 – Section 53 replaced (Minister may direct transfer of college's funds)

109. Clause 33 provides for section 53 to be deleted and replaced with the proposed section 53. Both the original and proposed sections dealt with the Minister directing the transfer of college funds. The proposed section 53 brings this provision in line with the *Financial Management Act 2006* in which the need for Trust Accounts has been removed. The wording of the proposed section has been determined following advice from Department of Treasury and Finance. The intention of the proposed section remains the same as the original section which is to provide the Minister with the ability to transfer excess funds held in an account of a college to another college account or to a VET related account such as the Department of Education and Training.

Clause 34 – Section 54 amended (Application of Financial Management Act 2006 and Auditor General Act 2006)

110. This clause provides for the repeal of section 54(4) as it refers to College Trust Accounts and is no longer relevant. See proposed sections 49 and 50 above.

Clause 35 – Section 55 amended (Minister may take action where governing council fails to operate efficiently etc.)

111. This clause provides for the deletion of section 55(b) which has been replaced by the proposed section 55(b) relating to a governing council performing its functions in accordance with the college's new strategic plan in proposed section 43 or annual business plan in proposed section 44A.

Clause 36 – Part 5 Division inserted (Closure of college, consequences of)

112. This clause provides for the insertion of proposed section 57A that deals with the consequences of closure of a college and is the same as the deleted section 66. It has been moved to Part 5 to bring it together with all other provisions relating to the establishment, functions and governance of colleges. It therefore does not need the definition of 'college' that was in section 66. The provisions have been moved without alteration, except for those outlined below.
113. Proposed section 57A(2) has been introduced to ensure that the Treasurer receives prompt notification of the closure of a college.
114. Proposed section 57A(5) relates to the final reporting upon completion of the 'winding-up' of a college. This section has been amended to bring it in line with the reporting on the abolition of agencies required under Part 5 of the

Financial Management Act 2006 (FMA). In particular, section 68(3) of the FMA provides that where an agency is abolished at a time other than at the end of its financial year, the agency is to ensure that it has prepared and submitted to the Minister an annual report for the preceding financial year, and that a final report is prepared for the period commencing from the start of the new financial year until the date of abolition.

Clause 37 – Section 57 amended (Minister may establish other vocational education and training institutions)

115. Clause 37(1) provides for the repeal of section 57(3) following the advice of the Department of Treasury and Finance. This subsection is not required as the institutions are regarded as a service under the control of the Department. It follows that the chief executive would be vested with the management and control of the Department, which would include any institution established under the section.
116. Clause 37(2) provides for the introduction of proposed section 57(5) to clarify the position of a VET institution established under this Part in relation to the *Financial Management Act 2006*. This proposed section has been worded following the advice of the Department of Treasury and Finance. The proposed section stipulates that any institution established under this Part, such as WestOne, is regarded as a service under the control of the Department of Education and Training. This means that the activities of VET institutions are to be taken to be a function of the Department.

Some notes on the proposed Parts 7A that deals with the regulation of the VET sector.

117. A new structure has been introduced that uses a new Part – Part 7A – to provide an overview of the regulation of VET and speaks to training providers on how to participate in the regulated VET sector – how it works. This Part deals with the registration of training providers, the accreditation of courses and on appealing against decisions of the Council on matters concerning registration and accreditation.
118. Part 7A includes relevant sections of the “Model clauses for training national registration and accreditation”. Those matters not included in the Act will be put in the regulations. This Part also takes sections where appropriate from Part 4 that deals with the Training Accreditation Council.
119. The regulation of apprenticeships and traineeships is in a new Part 7 and incorporates relevant provisions from the *Industrial Training Act 1975* which is to be repealed.

Clause 38 – Part 7A inserted before Part 7 (Regulation of the provision of some vocational education and training)

120. This clause provides for the repeal of Part 7 and the insertion of a proposed part that deals with the regulation of the VET sector.

Part 7A – Regulation of the provision of some vocational education and training

Offences

121. The offences are as required by clause 4 of the “Model clauses for training national registration and accreditation”. It should be noted that the model clauses are written to refer to the regulated VET sector in isolation, however, this Act defines the regulated VET sector within a broader scheme of VET, as per explanatory memo paragraph ¶9 above. Therefore, to take into account the broader definition of VET, there are some differences between the way the provisions in the model clauses and the Bill are written, however, there is no difference in intention.
122. Proposed section 58A(1)(a) corresponds to model clauses 4(2). It ensures that approved VET courses can only be delivered by registered training providers. This is a fundamental provision that defines the regulated VET sector.
123. Proposed section 58A(1)(b) has been introduced to cover circumstances when a registered training provider may be committing an offence in claiming they can provide an approved VET course or if they attempt to provide an approved VET course. The circumstances include if the course is not in the registered training provider’s scope of registration or if the Council has made an order relating to the provision of the course.
124. Proposed section 58A(1)(c) corresponds to *model clause 22 – Offence of falsely claiming to provide an accredited course* to make sure that no-one can provide or claim to provide an approved VET course unless it is an approved VET course.
125. Proposed section 58A(2) refers to auspicing arrangements between a registered training provider and a training provider. This will enable a training provider to deliver approved VET courses on terms and conditions that meet the registration standards of the registered training provider.
126. Proposed section 58A(3) ensures that approved VET qualifications and prescribed VET qualifications can only be delivered by registered training providers. This is a fundamental provision that defines the regulated VET sector. Furthermore 58A(3)(b) provides for circumstances when an approved VET qualification or prescribed VET qualification can not be conferred by a registered training provider, such as if the qualification is not in the registered training provider’s scope of registration or if the Council has made an order relating to the conferring of the qualification.
127. Proposed section 58A(4) makes it an offence for a person to claim to be providing an approved VET qualification or prescribed VET qualification if the qualification is not actually approved or prescribed.
128. Proposed section 58A(5)(a) corresponds to model clauses 4(1) making it an offence for a person to claim to be a registered training provider if they are not.
129. Proposed section 58A(5)(b) has been introduced to enable the Council to order any registered training provider operating in this State to cease operating.

Council may register training providers

130. Proposed section 58B(a) corresponds with *model clause 5 – Registration and scope of registration* and *model clause 8 – Registration conditions* and relates to the conditions under which a training provider may be registered – including whether a registered training provider can provide assessment only or the qualifications, statements of attainment and units of competency that they can provide. Examples of other conditions include the need to submit to compliance audits; to comply with the standards; and, to inform the Council on significant changes to operational and management matters.
131. Proposed section 58B(b) corresponds with the following model clauses, each of which will be set out in the regulations:
- *model clause 12 – Amending, suspending or cancelling registration without application on particular grounds;*
 - *model clause 13 – Cancelling registration on change of business operations;*
 - *model clause 14 – Effect of suspension of registration of RTO; and,*
 - *model clause 15 – Registering body to register amendment, suspension or cancellation.*
132. Proposed section 58B(c) corresponds with elements of *model clause 12* that relate to cancelling or restricting the operations of a training provider that is registered in another state. The detail for how this will happen will be set out in the regulations, however, this provision makes it clear that the Council will be able to act to prevent or restrict the operations of a training provider that is registered in another state.

Council may accredit courses

133. Proposed section 58C(a) corresponds to the following model clauses that set out processes for accreditation of courses in this State:
- *model clause 23 – Applying in this jurisdiction for accreditation;*
 - *model clause 24 – Decision about accreditation; and,*
 - *model clause 25 – Term of accreditation.*
134. Proposed section 58C(b) corresponds to *model clause 26 – Cancellation of accreditation* which allows the Council to cancel a course that it has accredited on grounds and in circumstances prescribed for this State. Furthermore the Council will be able to vary or suspend the accreditation of a course that it has accredited.

Council may inquire into training providers and courses

135. Proposed section 58D gives the Council the necessary powers to ensure that the registration of training providers and accreditation of courses results from appropriate inquiry. This includes the registration of a training provider that has been registered, or the accreditation of any course accredited by registration and course accrediting bodies, in other States (under a corresponding law).
136. In this context, note that proposed Part 8A also contain relevant provisions with respect to conducting investigations.

Council may cancel certain qualifications

137. Proposed section 58E has been introduced to allow the Council to cancel qualifications that have been awarded to an individual by a registered training provider in certain circumstances. It reflects a deleted function of the Council to cancel qualifications in section 27(1)(b) but is expanded to reflect circumstances and processes. It should be noted that there are similar provisions in section 32 of *Training and Skills Development Act 2003* (SA).
138. Proposed section 58E(1)(b) refers to cancelling a qualification awarded to an individual if it has been awarded in contravention of this Act. This is to ensure that all circumstances would be covered that are not covered by 58E(1)(a) and could include matters relating to registration or proposed section 58A on offences.
139. Proposed section 58E(2) provides for a process for the Council to follow in cancelling a qualification including written notice of their intentions and an opportunity for people affected by the cancellation to make representations that must be considered by the Council.
140. Proposed section 58E(3) commits the Council to writing to the person who conferred the qualification and the person who received the qualification to inform them that the qualification has been cancelled.

When Council's decisions have effect

141. Proposed section 58F has been moved from section 27(3) in Part 4 of the Act relating to the Council. It has not been amended, except where it has been necessary to make reference to the appropriate section number to which the provisions relate. The proposed section has been moved to this Part to make clear when a decision of the Council regarding registration or accreditation, made under proposed sections 58B to 58E in this Part, takes effect. The next proposed sections introduce the appeal process if a training provider has reason to be dissatisfied with the decision that has been made by the Council.

Some notes on proposed section 58G that deals with appeals against decisions of the Council

142. This division has been moved in its entirety from Part 4, Division 2. It consists of each of the sections from that division and has been moved with no amendments except where there are references to proposed new sections in the Act and one proposed amendment to section 58G(1) outlined below. The sections in Part 4 that have been moved to Part 7A are:
 - *section 31 – Appeals against decisions of the Council;*
 - *section 32 – Board to establish review panels;*
 - *section 33 – Reference back to Council; and,*
 - *section 34 – Determination of appeal.*
143. This division has been moved to Part 7A as it further describes how the regulated VET sector works. Where appropriate there have been amendments for clarity throughout this division. The only amendment of intent is as follows:

Appeals against decisions of the Council

144. Proposed section 58G(1) has been amended to allow appeals against decisions of the Council by third parties affected by a decision rather than just the person who made the application to the Council.

Some notes on proposed section 58 that deals with regulations for this Part

145. The purpose of this proposed section is to provide a framework that incorporates the intent of the model clauses. The general aim of the model clauses is to enable registered training providers to operate in any state/territory through a single registration in the state of its principal place of business. The model clauses provide for a level of consistency in regulatory arrangements between jurisdictions. The scheme of the regulations will give effect to the intent of the model clauses to the extent necessary. These regulations need to be made before the Act is commenced.

Regulations for this Part

146. Proposed section 58(a) gives effect to the intent of Model Clauses 6(1), 7(3) and 23(1). The regulation will specify that with respect to registration of training providers:
- a person may apply to the local registering body for registration as a training provider.
 - the Council must not grant the application unless on registration under the application, the applicant will not otherwise be registered as a training provider by any registering body; and the Council considers that the applicant's principal place of business is, or all or most of its operations will be conducted, in Western Australia.
147. The regulation will also specify that with respect to the accreditation of courses a person may apply to the Council to have a course accredited.
148. Proposed section 58(b) will be used to give effect to the general intent of Model Clauses 6(2), 6(3), 23(2) and 23(3). Regulations made will specify that with respect to applications for registration of training providers and accreditation of courses:
- the application must be in the approved form and accompanied by the prescribed fee; and
 - the applicant must give the Council any information required by it to decide the application.
149. Proposed section 58(c) will give effect to the intent of Model Clauses 7(2), 7(3)(c), 7(4), 7(5), 18(1), 18(2), 24(1), 24(2), 24(3), 24(4) and 24(5). Regulations made will specify that with respect to registration of training providers:
- without limiting the grounds on which the Council may decide not to grant an application, in deciding the application, the Council may apply the 'RTO standards' and a compliance audit of the applicant is to be conducted that shows the applicant complies with the standards;
 - there will not be a need for a compliance audit if the application is made by an provider registered by another registering body, the registered

training provider has received a notice from the other registering body under a corresponding law (for clause 13 of the Model Clauses) and the application does not ask for an amendment of the registered training provider's existing scope of registration or registered conditions; and

- a compliance audit (mentioned in clauses 7(3)(c), 8(2)(c), 8(2)(d), 16 or 17 of the Model Clauses) may comply with the standards for State and Territory registering and course accrediting bodies. However, a failure to comply with this will have effect if the failure does not substantially affect the outcome of the audit; or it arises out of inconsistency between the standards and the legislation of the particular jurisdiction in relation to which the failure arises.

150. The regulations will also specify that with respect to the accreditation of courses:

- on an application to have a course accredited, the Council must grant, or refuse to grant, the accreditation;
- in deciding the application, the Council must apply the standards for accreditation of courses (without limiting the grounds on which the local course accrediting body may decide not to grant the application);
- if the Council decides to grant the application, it must immediately register the course as an accredited course; and
- if the Council decides not to grant the application, it must immediately give the applicant a notice of its decision.

151. Proposed section 58(d) will give effect to the intent of Model Clauses 5(1), 5(2), 7(6), 7(7), 7(8), 7(9), 7(10), 8(1), 8(2), 8(3), 8(4) and 8(5). Regulations made will specify that with respect to registration of training providers:

- a person may be registered as a training provider that provides, within its scope of registration training and assessments resulting in the issue of qualifications or statements of attainment by the organisation; or assessments resulting in the issue of qualifications or statements of attainment by the organisation;
- a training provider's scope of registration consists of the training or assessments the organisation is registered to provide; and the qualifications, statements of attainment or units of competency for which the organisation is registered to provide training or assessments;
- the Council may impose reasonable conditions on the registration of the training provider to take effect for the period of registration. Such a condition must apply for all jurisdictions, that is, it may not be limited in effect to a particular place or jurisdiction; and must be consistent with the model clauses and the RTO standards;
- if the Council decides to grant the application, then it must, immediately after granting the application, register the applicant as a training organisation and the applicant's scope of registration; and if the local registering body imposes a condition give the applicant a notice of the decision and register the condition for the applicant. If the application is a transfer application (mentioned in clause 13 of the Model Clauses) this must happen immediately after the existing registration of the training organisation is cancelled (in keeping with the intent of clause 15 of the Model Clauses); and
- if the Council decides not to grant the application, it must immediately give the applicant a notice of its decision.

152. The regulations will also provide for conditions of registration.
153. Proposed section 58(e) provides for conditions that the Council may impose when accrediting a VET course. No regulations with respect to this will need to be made before the Act is commenced.
154. Proposed section 58(f) will give effect to the intent of Model Clauses 9 and 25. The regulations will specify that with respect to registration of training providers, registration may be for a term up to 5 years and may be renewed, if application for renewal is made at least (a period prescribed for this jurisdiction) before the registration expires. The regulations will also specify that with respect to the accreditation of courses, accreditation may be for a term up to 5 years and may be renewed if application for renewal is made at least (a period prescribed for this jurisdiction) before the accreditation expires.
155. Proposed section 58(g) will be used to import into regulations guidelines on transition arrangements with respect to the expiry of the accreditation of VET courses.
156. Proposed section 58(h) will give effect to the intent of Model Clauses 2, 3, 11, 15 and 24. The regulations will specify that with respect to registration of training providers, certain information will be recorded on the Council's register of decisions. Amendments and suspensions of registration are to be recorded on the register. The details of an RTO are to be removed if its registration expires or is cancelled. The Council's register will, in turn, interface with a national register.
157. They will also specify that with respect to the accreditation of courses, if the Council decides to grant an application, it must immediately register the course as an accredited course.
158. Proposed section 58(i) will give effect to the intent of Model Clauses 10, 12(1), 12(2), 12(3), 13, 14, 26 and 27. The regulations will specify that with respect to registration of training providers:
- the Council may, on application of a provider that was registered by it, amend the provider's registered details;
 - amend, suspend or cancel registration without application on the grounds that the registration, or part of the scope of the registration was obtained because of incorrect or misleading information or the provider contravened a condition of its registration;
 - the Council may cancel the provider's registration because Western Australia is not the provider's principal place of business; and
 - the effect of a suspension of a provider's registration.
159. The proposed regulation will also import into regulations, the grounds for cancelling registration under existing Ministerial Guidelines.
160. The regulation will also specify the grounds on which the Council may decide to exercise the powers contained in proposed section 58(i).

161. The regulations will also specify the Council's responsibilities when a course's accreditation is cancelled or expires, including removal of the course's details from the national register.
162. Proposed section 58(j) provides for a discretion to be conferred on the Council. No regulations with respect to this will need to be made before the Act is commenced.
163. Proposed section 58(k) will give effect to the intent of Model Clause 8(2). The regulations will specify that with respect to registration of training providers, a provider must give to the Council any information reasonably required by the Council about the provider's operations. The regulations will also specify that with respect to the accreditation of courses:
164. Proposed section 58(l) will be used to provide for registered training providers to keep records relevant to vocational education and training and will reflect conditions of registration within the RTO standards.
165. Proposed section 58(m) will be used to provide for the nature of records to be provided to the Council when a registered provider ceases to be a registered provider.
166. Proposed section 58(n) will be used to provide for fees for registration and accreditation. It is intended that the fee structure will follow the existing fee structure. In addition, provision will be made for fees to be paid with respect to a Council inquiry under s 58D and for persons applying for a copy of a record of the Council.

Clause 39 – Part 7 replaced (Obtaining approved VET qualifications and prescribed VET qualifications)

Part 7 - Obtaining approved VET qualifications and prescribed VET qualifications

167. Proposed Part 7 title is 'Obtaining approved VET qualifications and prescribed VET qualifications' is primarily concerned with the regulation of apprentices.
168. Proposed section 60A deals with the terms used in this Part and provides the following definition of terms:

“apprentice” has been used in this Part as an umbrella term for a person who will be trained under a training contract. It is intended to provide one overall term in the Act for what in the workplace are a number of different terms related to the types of training schemes – such as “trainee”, “apprentice”, “intern” or “cadet”.

“Class” has been introduced to enable the classification of qualifications to restrict the ways in which certain qualifications can be delivered. For example qualifications that currently can only be achieved through indenture with an employer will be classified so that they can not be delivered without a training contract.

“training contract” has been introduced to mean a specific type of contract that complies with the provisions set out in proposed section 60E.

Inconsistency with industrial relations laws, awards etc.

169. Proposed section 60B deals with 'Inconsistency with *Industrial Relations Act 1979*, awards etc' and provides for this Part and the regulations for this Part to have precedence over the *Industrial Relations Act 1979* or any awards where there is inconsistency.

Classification of approved VET qualifications

170. Proposed section 60C deals with the classification of prescribed VET qualifications. This proposed section is intended to provide a means of regulating the awarding of certain qualifications. In particular it is intended that certain qualifications can only be achieved through an apprenticeship pathway, i.e. a qualification that can only be achieved through entering into a training contract with an employer. Qualifications in this class will not be able to be achieved through institutional delivery. Other classes will allow qualifications to be delivered under a training contract and/or institutionally, or just institutionally (see flow chart at Attachment A).
171. Proposed section 60C(1) makes clear the Minister's role in the establishment of an apprenticeship. The Minister will seek the advice of the Board who will make a recommendation to the Minister based on consultation with industry, including employer groups and unions. The Board will recommend a classification for the qualification of either A or B. This will determine whether the qualification will be available for institutional delivery or not. See 'establishment process' flow chart at Attachment B.
172. Proposed section 60C(2) has been introduced to ensure that the establishment of new apprenticeships will be in writing and then gazetted. This will make the establishment process for apprenticeships quicker than under the *Industrial Training Act 1975*.
173. Proposed section 60C(3) is a means of determining which qualifications will be available for an apprenticeship pathway and/or institutional delivery. The Minister will classify prescribed VET qualifications that are relevant to 'occupations, businesses, employments or trades'. Only the qualifications that involve an employment arrangement with a training contract will be classified by the Minister. The bulk of qualifications that are for institutional delivery only will not require classification by the Minister and will by default become class C.
174. Proposed section 60C(3)(a) has been introduced to ensure that some qualifications can only be obtained through entering into a training contract with an employer. A registered training provider will not be able to offer this qualification unless it is to a person who has the appropriate training contract with an employer.
175. Proposed section 60C(3)(b) has been introduced for those qualifications that can be obtained through entering into a training contract with an employer and also can be obtained directly through a registered training provider without the need for a training contract. Even though these qualifications can be obtained through an institutional pathway it is important to note that the reason they need to be in this class is that each and every qualification in this class has been declared by the Minister as being obtainable through a training contract.

176. Proposed section 60C(3)(c) has been introduced to distinguish those qualifications that can not be obtained through a training contract. The qualifications in this class are for an institution only pathway and will be classified by default as class C – in that the Minister has not classified them as either class A or class B.
177. Proposed section 60C(4) is included to clarify that a qualification's classification does not prevent a person getting the qualification through skills recognition. In the case of a class A qualification it will be possible for a person to demonstrate that they are competent through skills recognition even though they have not entered into a training contract.
178. Proposed section 60C(5) will allow the Minister to impose conditions and requirements on the prescribed VET qualifications where a training contract is required. Paragraph (a) enables the Minister to impose conditions that allow flexibility in the delivery of apprenticeships – on the recommendation of the Board and following the prescribed process for industry and union consultation. An example is to add conditions to a class A qualification so that it could be delivered by certain registered training providers through an institutional pathway for a certain period of time. This provision could also be used for allowing particular cohorts of people, such as people on student visas who are not Australian citizens, to undertake particular class A qualifications without having to enter into employment or a training contract.
179. Proposed section 60C(5)(b)(i) and (ii) will allow the Minister, on the recommendation of the Board and following the prescribed process for industry and union consultation, to determine the elements of each apprenticeship. For example:
- the name and occupation(s) of the apprenticeship;
 - the type of apprenticeship (apprenticeship, traineeship, internship or cadetship.);
 - part-time or full-time arrangements;
 - school-based training arrangements;
 - integration of on and off-the-job training; and,
 - any specific terms that may need to be included in the training contract.
180. For further information please see Attachment B on establishment of apprenticeships.
181. Proposed section 60C(6) will enable the Minister, on the recommendation of the Board and following the prescribed process for industry and union consultation, to initiate a change in classification of a qualification. An apprenticeship pathway could be changed to an institutional pathway or institutional to apprenticeship by changing the class of the qualification.
182. Proposed section 60C(7) will ensure that information specifying which qualifications are obtainable through training contracts, any conditions applicable to them under 60C(5)(a) and the elements of each apprenticeship determined under 60C(5)(b) are consistently and accurately available to the public.

Offences

183. Proposed section 60D deals with offences. The offences in this proposed section serve to define apprenticeships as training that must be undertaken

through training contracts with an employer to obtain prescribed VET qualifications that have been classified by the Minister.

184. Proposed section 60D(1) has been introduced to ensure that a class A qualification is only issued by registered training providers when it has been properly undertaken and completed – by a person under a training contract with an employer. For example it would be an offence for a registered training provider to issue a class A qualification to a person who has undertaken the qualification through an institutional only pathway. The exception is for skills recognition in proposed section 60C(3)(a)(ii) which provides the opportunity for a person to obtain a qualification in this class by demonstrating that they are competent as a result of having been in appropriate employment, though without a training contract.
185. Proposed section 60D(2) makes it an offence for an employer to enter a training contract with an employee to obtain a prescribed VET qualification unless the qualification is class A or B. This proposed section restricts apprenticeships to only those prescribed VET qualifications that have been classified by the Minister.
186. Proposed section 60D(3) makes it an offence for the employer to train an employee in the situation where the employee is to obtain a class A or B qualification if there is no training contract. It should be noted that a class B qualification can be obtained through an institutional pathway, however, it is assumed that this pathway would not involve an employer or employee and therefore would not require a training contract. On this basis a person who obtains a class B qualification through an institutional only pathway would not be committing an offence.
187. Proposed Division 2 title ‘qualifying by doing an apprenticeship’ indicates the start of provisions that relate specifically to apprenticeships.

Training contracts

188. Proposed section 60E describes what a training contract is, what it does and what the obligations of the parties to the contract are.
189. Proposed section 60E(1)(a) sets out fundamental principles of the relationship between the employer and the apprentice. Firstly (i) makes it clear that to obtain a class A or B qualification through a training contract that the apprentice must be employed. This establishes the fundamental relationship between training and employment for an apprentice.
190. Proposed section 60E(1)(a) also requires that the employer agrees to train the apprentice in accordance with the contract. Though it is not an offence, the Act makes it clear that the employer must meet the obligations of the training contract which includes releasing apprentices to attend training and assessment activities with their registered training provider.
191. Proposed section 60E(1)(a)(iv) is an important principle in that it makes clear that an apprentice must be paid for the time that they spend in training and assessment. Any time spent in training and assessment activities must be deemed to be time spent working and is therefore to be paid by the employer. An employer who breaches this provision can be investigated and prosecuted

by industrial inspectors of the Department of Consumer and Employment Protection.

192. Proposed section 60E(1)(b) establishes that the apprentice also has to meet the obligations that they, and their employer, have agreed to in the training contract.
193. Proposed section 60E allows an apprentice to have a training contract with two different employers, each on a part-time basis. This would enable an apprentice to undertake two different qualifications at the same time.
194. Proposed section 60E(3) makes clear that any training contract must state the prescribed VET qualification that the apprentice is training for as well as must comply with requirements as determined in proposed section 60C(4) above.
195. Proposed section 60E(3)(b) will allow for other related matters that are required in relation to the training contract to be set out in regulations. These may include:
 - 60(a) under which any pre-conditions may be considered prior to entering a training contract; and,
 - 60(b) which prescribes the general content and/or form of the training contract.
 - 60(c) which allows a person under 18 years of age to enter into a training contract.
196. Proposed section 60E(4) establishes that training contracts can be varied, suspended and assigned to another employer. Circumstances and processes for variations to contracts will be set out in regulations. Even though parties to the training contract can agree variations under 60E(4)(a), it is intended that variations will require re-registration so the chief executive is able to determine the appropriateness of the variation including considering employer suitability, see proposed section 60F(4).
197. Proposed section 60E(4)(a) will provide for the circumstances in which mutually agreed variations to contracts can be made, including but not limited to:
 - i) change of qualification;
 - ii) part time to full time or vice-versa;
 - iii) change of registered training provider;
 - iv) title of apprenticeship; and,
 - v) nominal duration.
198. Proposed section 60E(4)(b) will provide for the suspension of training contracts by a party to the contract subject to regulations. It is intended that the regulations will make clear that a training contract can only be suspended on the following grounds:
 - by mutual agreement to a maximum of 12 months unless otherwise agreed by the chief executive;
 - by an employer who is party to the training contract on the grounds of alleged serious misconduct by the apprentice. Note that:

- i. the apprentice must receive full pay while suspended until or unless determined otherwise by the chief executive;
- ii. the apprentice must not attend the workplace while suspended;
- iii. the apprentice may participate in training and assessment activities while suspended;
- iv. the notice of suspension to the apprentice should be in writing;
- v. the employer must apply to the chief executive in writing for a formal hearing or cancellation/termination of the training contract within 7 working days from the time of the suspension taking effect;
- vi. the employer and the apprentice must abide by the decision of the chief executive.

199. Proposed section 60E(4)(c) will allow an employer to assign the apprentice to another employer subject to the regulations. It is intended that the assignment to another employer will be by mutual agreement and require the approval of the chief executive and in particular will require re-registration so the chief executive is able to determine the appropriateness of the variation including considering employer suitability, see proposed section 60F(3)

Some notes on the proposed section 60F that deals with registration of training contracts.

200. The basic principles for the registration of training contracts can be described in the following manner (see also the flow chart provided at Attachment D):

- The general content of the training contract will be prescribed in regulations.
- Employers will be able to employ a person under a training contract and will be able to begin the employment relationship immediately at their own risk.
- Training contracts will only come into effect once they have been approved by the chief executive, as is required under the current national training contract.
- If a training contract is not approved for registration on the grounds set out in this Act then the training contract, and therefore the apprenticeship, will not come into effect.
- When the training contract is approved it will become a registered training contract and the date on which the apprenticeship begins will be backdated to the date of commencement on the training contract.
- Employers will have a limited period of time to lodge training contracts for registration.
- If a training contract is lodged late the employer may face a penalty and also may not have the date on which the apprenticeship began backdated to match the date of commencement on the training contract.
- The maximum period of time that the training contract will be backdated will be prescribed in regulations, however, it will be the same period as will be allowed for lodging training contracts for registration, e.g. 21 days.
- The probation period will begin from the date on which the apprenticeship began.
- During the probation period either party to the training contract will be able to terminate the training contract without fault or blame.
- The probation period will be able to be extended on application to and with the approval of the chief executive.

Registration of training contracts

201. Proposed section 60F(1) has been introduced to state the effect of the chief executive's refusal to register a training contract. The training contract will not commence until it is registered.
202. Proposed section 60F(2) has been introduced to protect employees and motivate employers to register training contracts by making it an offence not to – as per *Training and Skills Development Act 2003 (SA)*. The regulation will deal with the period of time within which training contracts should be lodged and the maximum period for backdating the start date of the apprenticeship.
203. Proposed section 60F(3) sets out the circumstances in which the chief executive may refuse to register a training contract.
204. Proposed section 60F(3)(a) requires the training contract to be lodged with the chief executive in accordance with the regulations for registration in 60F(2) above – which will set a limit on the time within which a training contract must be lodged.
205. Proposed section 60F(3)(c) means that the registration of the training contract could be refused if it does not meet the content or form that will be in regulations.
206. Proposed section 60F(3)(d) has been introduced to cover two aspects of employer suitability. One is whether the employer is deemed to have the resources, business capacity or the skilled workforce to successfully and safely train the apprentice. The other aspect is whether the employer is a fit and proper person and whether they have treated previous and/or current apprentices appropriately. This could relate to physical abuse, bullying or demonstrating a poor record of contract completion.
207. Proposed section 60F(3)(e) relates to eligibility of the apprentice to enter into the contract. This is for the instance where a pre-requisite may be required to begin a qualification.
208. Proposed section 60F(3)(e) relates to refusing to register a training contract if any standards or guidelines that the chief executive may develop to determine whether to register or cancel a training contract under regulation 60(d) or matters such as if a minor does not have the capacity under regulation 60(c) to enter a contract.
209. Proposed section 60F(4) means that any variation to a training contract needs to follow the same process of consideration and judgement for registration as set out in 60F(2) and (3).
210. Proposed section 60F(5) allows the chief executive to cancel the registration of a training contract, and in effect cancel the training contract, for reasons that will be set out in regulation 60(d).
211. Proposed section 60F(6) makes clear that if the chief executive cancels the registration of a training contract that it ceases to have effect. If the employer persisted in continuing the training arrangement, the employer could be committing an offence under 60D(3).

212. Proposed section 60F(7) ensures that the chief executive of the Department will maintain a register of all registered contracts. As well as being an administrative tool for the Department the register will also provide evidence of the apprenticeship employment history of employers and assist in determining employer suitability.
213. Proposed section 60F(8) allows any person dissatisfied with a decision of the chief executive relating to registration of training contracts to appeal to the West Australian Industrial Relations Commission.
214. Proposed section 60F(9) establishes the basis on which the West Australian Industrial Relations Commission will consider an appeal.

Some notes on the proposed section 60G that deals with terminating training contracts

215. The general intent of this proposed section is to say that an employer can not terminate the training contract of an apprentice without first seeking and gaining the approval of the chief executive.

Terminating training contracts

216. Proposed section 60G(1) allows for regulations to establish the circumstances on which a party to a training contract may terminate a training contract. Outside of the probation period an employer can only terminate a training contract with the approval of the apprentice or the chief executive.
217. Regulations will make clear that each apprenticeship will have an automatic period of probation that will begin from the date of commencement of the apprenticeship as approved by the chief executive upon successful registration of the training contract. During the probation period either party may terminate the training contract without fault or blame. The length of probation periods will be calculated on the basis of one month probation per year of nominal duration up to a maximum of 3 months, with the option for the employer or apprentice to extend the probation period on application to the chief executive.
218. Proposed section 60G(2) makes clear that a training contract can not be terminated unless the apprentice consents or the chief executive has approved the termination. There will be a fine of \$10,000 if an employer terminates a training contract without the approval of the chief executive.
219. Proposed section 60G(3) serves to limit the ability of the chief executive to refuse an application to terminate a training contract. The grounds on which an employer could apply to have a training contract terminated include if:
- the employer ceased or is ceasing business;
 - there was a substantial change of circumstances that meant that the employer was unable to meet the obligations of the training contract; or,
 - there was serious misconduct by the apprentice.
220. Other matters that would be considered as grounds for the termination of a training contract will be prescribed in regulations. This includes but is not

limited to the apprentice failing to meet the essential terms of the training contract.

221. Proposed section 60G(4) allows any person dissatisfied with a decision of the chief executive relating to termination of training contracts to appeal to the West Australian Industrial Relations Commission.
222. Proposed section 60G(5) establishes the basis on which the West Australian Industrial Relations Commission will consider an appeal.

Some notes on the proposed section 60H that deals with consequences of training contracts ceasing to have effect

223. There is an expectation in Western Australia that employment for apprentices lasts only for the term of the training contract. This has been established historically, through common law and through the *Industrial Training Act 1975* (IT Act). NSW, South Australia and Queensland also make it clear that employment ceases at the end of the training contract. Consideration has been given to the most appropriate way to deal with this matter without disrupting current industry practice.

Consequences of training contracts ceasing to have effect

224. This proposed section makes it clear that when the training contract ceases so does employment, unless the employer and apprentice have come to some other arrangement. A training contract ceases when:
- it is agreed by the employer, apprentice and registered training provider to be successfully completed;
 - it is terminated by mutual agreement or with the approval of the chief executive;
 - it is cancelled by the chief executive;
 - the term expires.

Granting prescribed VET qualification to competent persons

225. Proposed section 60I(1) allows skills recognition for apprenticeships. It enables registered training providers to confer class A qualifications on people who are not employed under a training contract but can demonstrate that they are competent against the units of competency of the qualification.
226. Proposed section 60I(2) makes clear that registered training providers may also confer class B qualifications on people who can demonstrate that they are competent against the units of competency of the qualification.
227. Proposed section 60I(3) makes clear that registered training providers may also confer class C qualifications on people who can demonstrate that they are competent against the units of competency of the qualification.
228. Proposed section 60I(4) makes clear that registered training providers may confer an approved VET qualification – such as a statement of attainment – on people who can demonstrate that they are competent against some, but not all, of the units of competency of the qualification.
229. Regulations will deal with matters such as:

- exemptions from skills recognition as an assessment pathway in approved VET courses where skills recognition is deemed to be not appropriate, such as for 'Safety Awareness';
- the appropriate certificate to be issued for a class A or class B qualification gained through skills recognition.

Regulations for this Part

230. Proposed section 60(a) will make clear any pre-conditions that may be considered prior to entering a training contract;
231. Proposed section 60(b) will be used to set the general content and/or form of training contracts.
232. Proposed section 60(c) will be used in the circumstance where a person under 18 years of age proposes to enter a training contract and does not have a parent or guardian or does not have a parent or guardian in this State. A regulation will be developed requiring the apprentice to prove to the chief executive that they are an independent minor at which point the chief executive will register the training contract.
233. Proposed section 60(d) relates to registration of training contracts and the criteria including guidelines and standards that the chief executive may require in making a decision in relation to refusing or cancelling registration. The grounds on which a registration could be cancelled will include:
- if the registration was obtained by fraud or misrepresentation;
 - if all parties mutually agree in writing to cancel;
 - if the employer is deemed to not have the resources, business capacity or the skilled workforce to successfully and safely train the apprentice; and,
 - if the employer is not a fit and proper person and has not treated apprentices, including the apprentice who is part to the training contract, appropriately.
234. Proposed section 60(e) is to provide for the registration of training contracts, including for backdating registration. The regulation will deal with the period of time within which training contracts should be lodged and the maximum period for backdating the start date of the apprenticeship, e.g. 21 days from the commencement date in the training contract.
235. Proposed section 60(f)(i) relates to the dispute resolution process. All disputes reported to the chief executive will undergo a process of mediation by field officers of the Department of Education and Training (see the flow chart provided at Attachment C). This initial mediation phase will also determine the jurisdiction of the dispute and if the dispute remains unresolved it will be referred to the appropriate authority. Disputes relating to:
- assessment, training delivery and training plan will be referred to the appropriate registered training provider;
 - wage rates will be referred to WageLine;
 - health and safety will be referred to WorkSafe;
 - failure to pay wages for hours worked will be referred to Industrial Inspectors of Department of Consumer and Employment Protection;

All other matters relating to training contracts will be heard and determined by the chief executive, or a person appointed by the chief executive. This includes, but is not limited to:

- Termination of training contracts;
- Suspension of training contracts due to misconduct;
- Variations to training contracts; and,
- Other matters relating to training contracts and employer and apprentice obligations under the Act.

A process will be prescribed for dispute resolution in regulations. This will include that:

- In reaching a decision on the disputed matter the chief executive may or may not decide to conduct a hearing involving the parties;
- Representation at a hearing is to be determined on case by case basis;
- Chief executive may appoint a delegate;
- Chief executive or delegate may seek advice from, or refer to, other agencies such as TAC, DoCEP or Worksafe.

236. Proposed section 60(f)(ii) allows appeals to the WA Industrial Relations Commission by people aggrieved by a decision of the chief executive in respect of training contracts.
237. Proposed section 60(g) is required to make parties to training contracts, and registered training providers named in training contracts, give the chief executive information relevant to the carrying out of the contracts. If the chief executive issues a notice for further information relating to training contracts the parties to the training contract or the registered training provider named in the training contract must provide that information within a reasonable time.
238. Proposed section 60(h) will enable the chief executive to request additional information relevant to training contracts that would assist with any matter under consideration by the chief executive. This is especially relevant to any matters that might arise under proposed section 60E – *Training contracts* and proposed section 60F – *Registration of training contracts*.
239. Proposed section 60(i) will require registered training providers named in a training contract to undertake functions such as:
- report to the chief executive, within a prescribed period, the outcome of the training contract, such as failure to complete or successful completion, and the completion date;
 - notify the chief executive if poor progression of the apprentice is likely to affect the apprentice's ability to successfully complete the apprenticeship, including matters such as if the apprentice:
 - has a poor record of attendance;
 - is having academic difficulty;
 - is not receiving adequate training from the employer.
 - issue the agreed form of qualification for class A and class B qualifications within a prescribed period from completion.

240. Proposed section 60(j) relates to appeals on assessment. It is envisaged that the appeal process for employers and apprentices will follow the AQTF standards (AQTF Standard 2, Element 2.6), including “access to an independent arbiter if required”. This regulation allows for guidelines to support or reinforce that process. It is not intended that a separate and/or independent appeal process be established under this regulation. There will be no further avenue of appeal beyond that offered under AQTF.
241. Proposed section 60(k) will prescribe the content and form of approved VET qualifications and prescribed VET qualifications to be issued by registered training providers. This will be of particular importance to class A qualifications in which case the certificate that the person receives will certify that they have attained the class A qualification (e.g. Certificate III in Bricklaying) and will state the occupation that the class A qualification relates to (e.g. Bricklayer). The certificate will also say ‘achieved through an apprenticeship pathway’. Note that this does not relate to the content of ‘approved VET courses’.
242. Proposed section 60(l) will provide the Minister with the power to make a decision where the choice of whether to make a decision is that of the Minister.

Clause 40 – Part 8A inserted (Enforcement matters)

243. This clause provides for the insertion of a new Part on enforcement matters. This is a new Part and relates directly to the proposed new sections in Parts 7A and 7 of this Act dealing with offences. This Part enables the Department of Education and Training and the Department of Education Services to investigate and prosecute alleged offences. The matters that DES will investigate (see also *proposed section 58A – Offences*), concern:
- the registration of training providers;
 - the provision of approved VET courses; and,
 - the conferring of approved and prescribed VET qualifications.
244. The matters that DET will investigate concern the regulation of class A qualifications and breaches of training contracts (see proposed section 60D on offences and proposed section 61A(2)(b)).
245. This proposed Part is structured to make clear how the Minister will appoint ‘VET inspectors’, what the inspector’s powers will be, how the investigation will proceed and what constitutes ‘evidence’ in the matters that may be investigated. The Minister who has the power to appoint the inspectors as this Part is relevant to both departments. It would be inappropriate for one department to administer this Part and then be responsible for appointing inspectors for both departments.
246. It should be noted that this Part includes a number of fines and penalties. A person under investigation can face a penalty of \$10,000 if they lie or refuse to cooperate with the VET inspector. Also a VET inspector can be fined for not returning his or her certificate of authority back to the Minister within 21 days.

247. These types of provisions are necessary where there are offences. Similar already existing powers and processes can be found in the Queensland and South Australian acts upon which these proposed sections are based.
248. The conferring of certificates on officers of the two Departments to act as VET inspectors reflects the intention that no new positions be created to enact this Part.

Clause 41 – Section 63 amended (Remuneration of members of Board, Council etc.)

249. This clause provides for the remuneration of members of governing councils, except where the member is a member of college staff.

Clause 42 – Section 65 and 66 deleted (Falsely claiming accreditation or registration and Further provision relating to closure of college)

250. This clause provides for the deletion of section 65 dealing with falsely claiming accreditation or registration as it is made redundant by the insertion of the proposed section 58A on offences.
251. This clause also provides for the deletion of section 66 dealing with further provision relating to the closure of colleges as it is made redundant by the insertion of the proposed section 57A on closure of colleges.

Clause 43 – Section 67 amended (Regulations)

252. This clause provides for the deletion of section 67(2)(c) that deals with amending the transitional arrangements as it is spent. It has been replaced with a new provision enabling the further creation of offences if required, however, a maximum limit of \$5,000 has been placed on any fine. It should be noted that the *Industrial Training Act 1975* also allowed for the making of regulations for offences. Any regulation made in relation to a new offence would be disallowable.

Clause 44 – Section 68 replaced (Provisions relating to the Commonwealth Act)

253. This clause provides for the deletion of section 68 which deals with provisions relating to the Commonwealth Act. Rather than update references to a new Commonwealth Act which may in turn also be repealed it has been decided to delete this section and use Ministerial directions under s11 to achieve the same result.
254. This clause also provides for proposed section 68 to be inserted dealing with transition provisions in Schedule 2.

Clause 45 – Section 69 replaced (Review of Act)

255. This clause provides for the deletion of the section dealing with the review of the Act which will now be at proposed section 70.
256. The clause also provides for the insertion of proposed section 69 on transitional regulations. These are standard provisions that have been introduced by the Parliamentary Counsel's Office to allow the making of regulations to deal with any issues that may arise due to the implementation

of this Act. However, the making of regulations under this section is limited to the first 12 months of operation of this Act.

Clause 46 – Sections 70, 71 and 72 replaced (Appeals)

257. This clause provides for the deletion of sections 70, 71 and 72. Only section 70 on repeal of Acts relevant to the introduction of the VET Act is still included in the Act, however, it is now spent.
258. The clause provides for the insertion of a proposed section 70 on the review of the Act. Following the advice of the Department of Treasury and Finance this provision has been amended to bring it in line with current practice. The proposed section requires this Act to be reviewed, and a report tabled in Parliament, every five years.

Clause 47 – Schedule 1 amended

259. This clause provides for the insertion of a proposed section 3(5) to enable members of the Council, Board, governing councils or committees to participate in meetings by teleconference or video-link or any other form of ‘instantaneous communication’. Previously members were required to attend in person.

Clause 48 – Schedule 2 replaced

260. This clause provides for the repeal of Schedule 2 and the insertion of a proposed Schedule 2 relating to transition provisions and the repeal of the *Industrial Training Act 1975*.

Clause 49 – Schedules 3 and 4

261. This clause provides for the repeal of schedules 3 and 4.

PART 3 – Industrial Training Act 1975 repealed

Clause 50

262. This clause repeals the *Industrial Training Act 1975*.

Clause 51

263. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 52

264. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 53

265. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 54

266. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 55

267. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 56

268. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 57

269. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 58

270. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 59

271. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 60

272. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

Clause 61

273. This clause deals with consequential amendments to a relevant Act. No issues have arisen with the proposed amendments.

CLASSIFICATION OF QUALIFICATIONS FOR APPRENTICESHIPS*

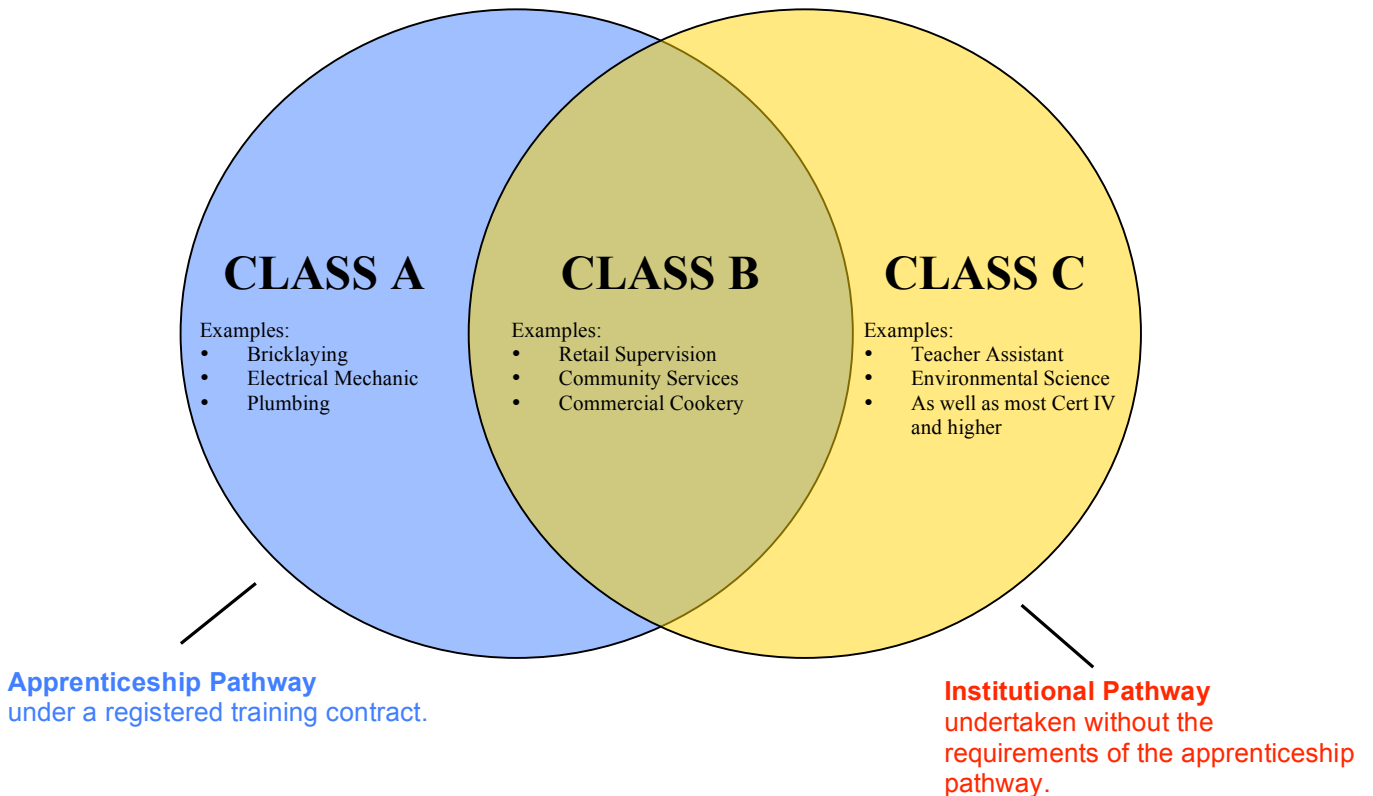
The establishment of “apprenticeships” is based on the classification of qualifications by the Minister into either Class A or Class B.

The intent of having a classification of qualifications is to ensure that some qualifications are protected and can **only** be undertaken through an apprenticeship under a training contract that must be registered with the Department of Education and Training.

Class A qualifications are those that **must only** be undertaken through an apprenticeship;

Class B qualifications are those that may be undertaken either through an apprenticeship
OR
an institutional pathway without the requirements of an apprenticeship;

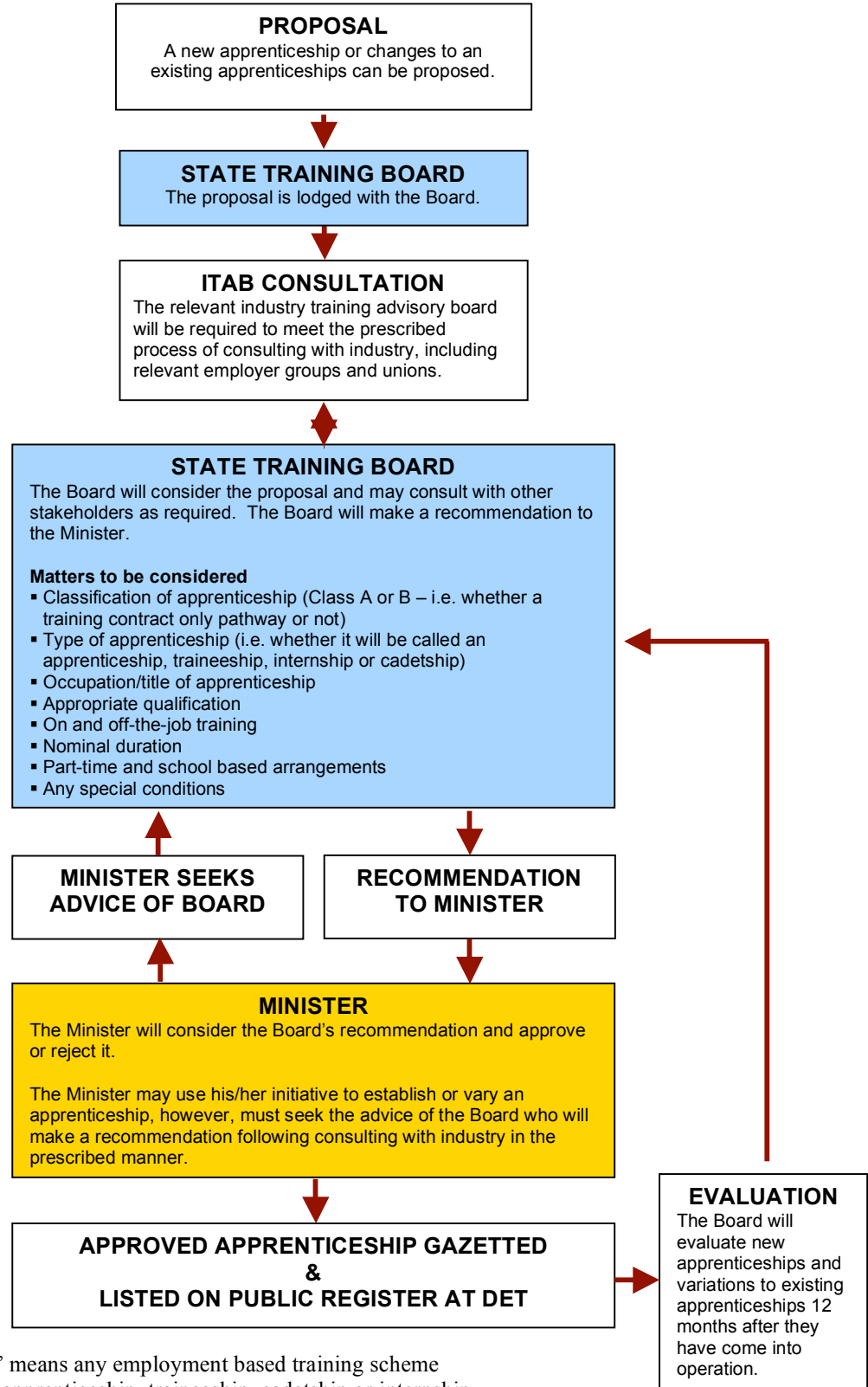
Class C qualifications are those undertaken through an institutional pathway only without the requirements of an apprenticeship.



* “Apprenticeship” means any employment based training scheme whether termed an apprenticeship, traineeship, cadetship or internship.

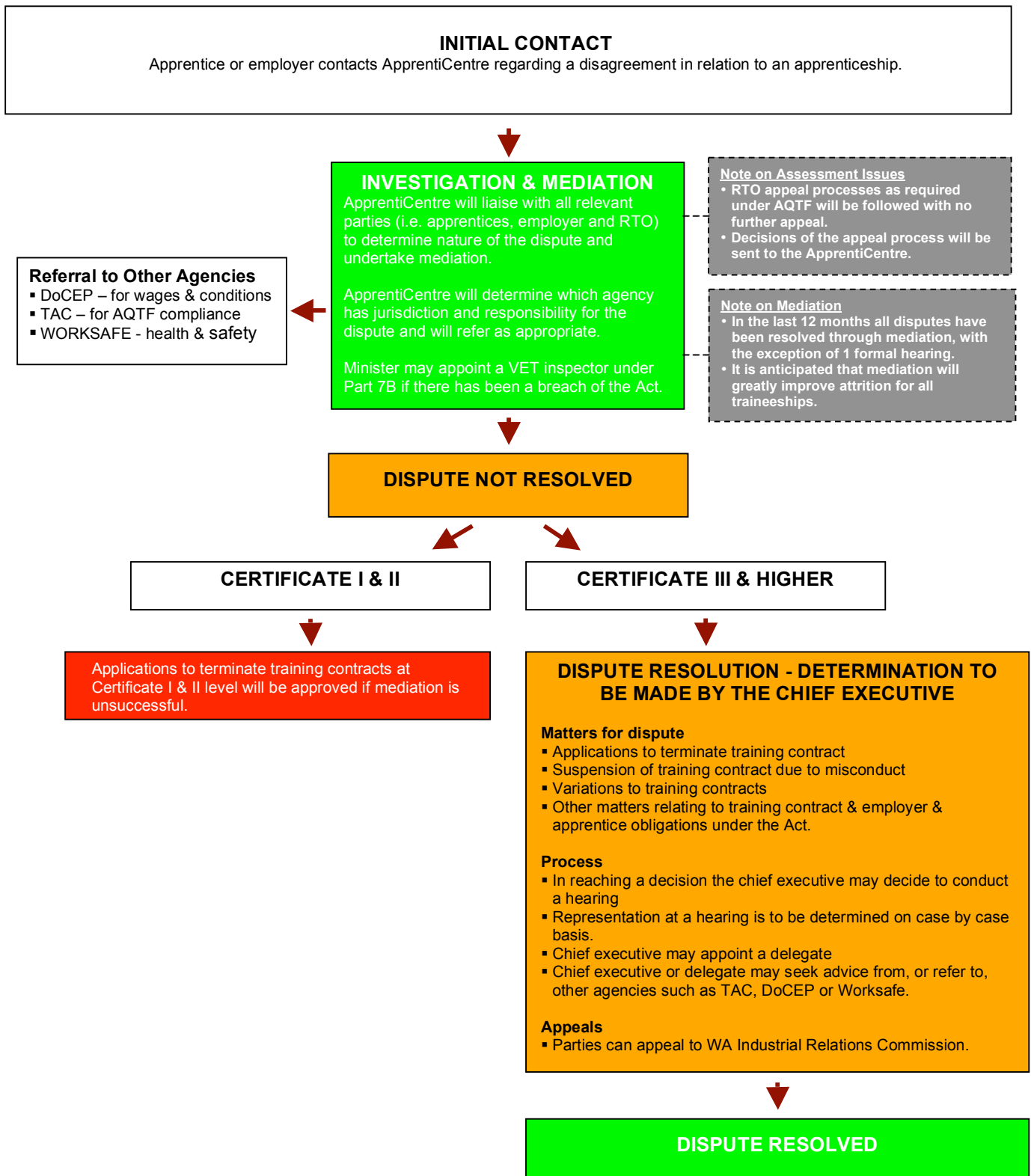
ESTABLISHMENT PROCESS FOR APPRENTICESHIPS*

The establishment of “apprenticeships”, or variations to existing apprenticeships, can be initiated from industry or by the Minister, however, both must follow the same consultation process.



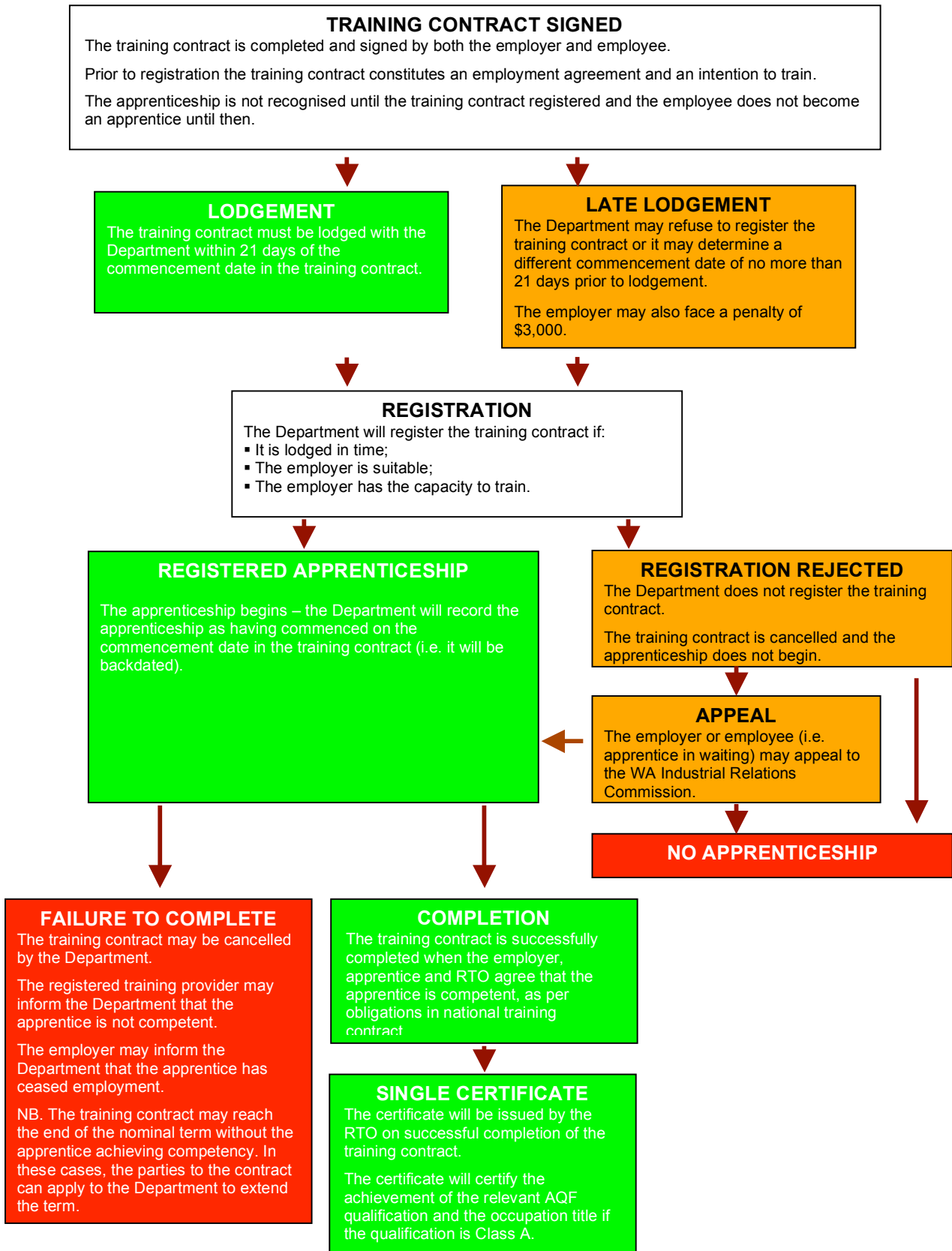
* “Apprenticeship” means any employment based training scheme whether termed an apprenticeship, traineeship, cadetship or internship.

DISPUTE RESOLUTION PROCESS FOR APPRENTICESHIPS*



* “Apprenticeship” means any employment based training scheme whether termed an apprenticeship, traineeship, cadetship or internship.

REGISTRATION OF TRAINING CONTRACTS FOR APPRENTICESHIPS*



* “Apprenticeship” means any employment based training scheme whether termed an apprenticeship, traineeship, cadetship or internship.