

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

EMPLOYMENT, EDUCATION AND TRAINING BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment,
Education and Training, The Hon J.S. Dawkins MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF
REPRESENTATIVES TO THE BILL AS INTRODUCED

EMPLOYMENT, EDUCATION AND TRAINING BILL 1988

GENERAL OUTLINE

The main purpose of this Bill is to rationalise the advisory structures within the Ministry of Employment, Education and Training as reported in the paper Advisory Structures and the Administration of the Department of Employment, Education and Training circulated by the Minister on 23 December 1987.

The Bill will establish the National Board of Employment, Education and Training as a statutory body reporting directly to the Minister. The National Board will have four Councils (the Schools Council, the Higher Education Council, the Employment and Skills Formation Council and the Australian Research Council) reporting to it.

The Bill contains provisions setting out the functions, powers, membership and reporting requirements of the National Board and its four Councils, and enables the establishment of committees to assist these bodies in performing their functions.

There will also be established by the Bill a Commonwealth/State Consultative Committee to be comprised of Commonwealth, State and Territory representatives.

As a consequence of the establishment of the National Board and its sub-structure, the Commonwealth Tertiary Education Commission ("CTEC") and its associated Councils (the Universities Advisory Council, the Advanced Education Advisory Council and the Technical and Further Education Advisory Council) will be abolished by the Bill, as will the Commonwealth Schools Commission ("CSC") and the Curriculum Development Council ("CDC").

The National Advisory Committee on the Commonwealth Employment Service ("NACCES") also will be abolished, together with regional and local advisory committees. The facility exists in the Bill for national, regional and local committees dealing with employment service matters to be formed under the aegis of the Employment and Skills Formation Council.

The Bill incorporates provision for a Commonwealth employment service within the Department. It therefore repeals the separate Commonwealth Employment Service Act 1978.

The Bill also enables the Minister to sponsor curriculum projects and innovative projects and to delegate these powers to the National Board Chairperson in addition to Departmental officers.

Provision is made in the Bill for the new advisory structures to be reviewed within 5 years of the start of the legislation.



FINANCIAL IMPACT STATEMENT

There will be resource savings over time resulting from rationalisation by the new advisory arrangements. This rationalisation will involve the abolition of CTEC, CSC, CDC, NACCES and advisory structures related to those statutory bodies, together with non-statutory bodies like the Australian Council for Employment and Training (ACET) and the Australian Research Grants Committee (ARGC). On the basis of the new statutory arrangements coming into operation on 1 July 1988, the net savings to the Commonwealth are estimated to be in the order of \$500,000 in 1988/89.

Funding in respect of curriculum and innovative projects will be decided in the Budget context. They are not expected to lead to any additional demands for resources, with the funds becoming available from the relocation of funding for existing programs like curriculum development. The amount of \$2,345,600 was appropriated in 1987/88 for curriculum development by the Commonwealth Schools Commission, and will be available to the Department.



EMPLOYMENT, EDUCATION AND TRAINING BILL 1988

NOTES ON CLAUSES

PART 1- PRELIMINARY

Clause 1: Short title

This clause identifies the legislation as the Employment, Education and Training Act 1988.

Clause 2: Commencement

This clause provides that the Bill will come into operation on a date to be proclaimed.

Clause 3: Interpretation

Clause 3(1) defines a number of terms used in the legislation. In particular it defines the following terms:

- "curricula" and "educational materials" are defined to include curricula and educational materials prepared for use in tertiary institutions as well as in schools. These terms are used in clause 7(3)(e) dealing with specific functions of the Board. By including tertiary institutions, the Board's functions will be broader in this field than those of the Curriculum Development Council whose functions were confined to school curricula and educational materials.
- "curriculum project" is defined for the purpose of specific functions of the Board in clause 7(3)(k) and for the purpose of grants for curriculum projects in Part VII of the Bill. A curriculum project will include projects in tertiary institutions.
- "higher educational institution" is defined to mean an institution specified in Schedule 1 of the Bill. This Schedule comprises:
 - universities and colleges of advanced education currently listed in Schedules 1 and 2 of the Commonwealth Tertiary Education Commission Act 1977 ("CTEC Act");
 - institutes of tertiary education declared by the Minister under section 5A of the CTEC Act;
 - prescribed Commonwealth institutions for the purposes of the CTEC Act (only the Australian Maritime College is currently prescribed); and
 - ACT higher education institutions,

amended as necessary to take account of the latest amalgamations and name changes. The term is used in clause 25 dealing with the functions of the Higher Education Council. Clause 4 will enable Schedule 1 to be amended by ministerial determination.

- "innovative project" is defined for the purpose of specific functions of the Board in clause 7(3)(k) and for the purpose of grants for innovative projects in Part VII of the Bill.
- "school" and "school system" are defined using the definitions in the Commonwealth Schools Commission Act 1973 ("CSC Act"). These terms are used in clause 7(3)(q) dealing with the functions of the Board and in clause 24 dealing with the functions of the Schools Council.
- "technical and further education" and "technical and further education institution" are defined along the lines of the current definitions in the CTEC Act with minor changes to reflect the deletion of separate references to universities and colleges of advanced education. These terms are used in clause 26 dealing with the functions of the Employment and Skills Formation Council.
- "tertiary institution" is defined to mean a higher education institution or a technical and further education institution.

Clause 3(2) provides for residential colleges or proposed residential colleges connected with tertiary institutions to be treated as part of those institutions. This provision is drawn from the CTEC Act.

Clause 4: Variation of Schedule

This clause enables changes to Schedule 1, which specifies higher education institutions, to be made by ministerial determination. Such determinations are treated as if they were regulations and accordingly must be tabled and can be disallowed by the Parliament. This approach is adopted to enable quick administrative responses to the current fluidity with respect to amalgamations and name changes of higher education institutions.

Clause 5: Declarations in relation to technical and further education institutions

This clause is based on section 5 of the CTEC Act and provides for the continuation of the Minister's power to declare technical and further education institutions. The definition of the term "technical and further education institution" in clause 3(1) relies in part upon the provisions in clause 5.

PART II - THE NATIONAL BOARD OF EMPLOYMENT, EDUCATION AND TRAINING

Division 1 - Establishment, functions and powers of Board

Clause 6: Establishment

This clause provides for the establishment of the National Board of Employment, Education and Training.

Clause 7: Functions

This clause outlines the functions of the Board.

Clause 7(1) enables the Minister to give the Board a formal reference seeking advice from the Board in respect of any matter within the Board's functions, and for the Board to give advice of its own motion on any such matter (provided it does not act to the detriment of its prime responsibility of advising on references it receives).

Clauses 7(1)(a) and (b) set out the major functions of the Board. These functions are based upon the current Administrative Arrangements Order for the Employment, Education and Training Ministry. They are expressed as broadly as possible so that the Board can advise the Minister on all related employment, education, training and research issues. Pursuant to clause 8, the Board's recommendations must take account of the Government's broad social, economic and budgetary policies.

Clause 7(1)(c) provides for the Board to report publicly on references given by the Minister. The reporting requirements are set out in clause 9.

Clause 7(1)(d) and (e) give the Board publishing and publicity functions.

Clause 7(2) provides that the Board is able to give advice of its own motion only if this would not prejudice its responsibility for giving the Minister advice on references it receives from the Minister.

Clauses 7(3) and (4) set out examples of particular matters on which the Board can give advice. These do not restrict the broad functions set out in clause 7(1). These matters include:

- the overall allocation of Commonwealth financial assistance for higher education, technical and further education, school systems and schools, research, employment programs and services and skills formation;
- assistance to people who are participating in employment, education or training programs. This would include student assistance matters;

- . research matters like the identification of priority research areas. By virtue of clause 7(5) this function does not extend to particular research grants which, pursuant to clause 27(1)(a), is the function of the Australian Research Council. That Council reports directly to the Minister on those matters; and
- . curricula, educational materials, curriculum projects and innovative projects.

Clause 7(6) allows the Board to consult with the Commonwealth/State Consultative Committee and with other people and bodies as it thinks necessary, and requires the Board to have regard to any advice received from Counsellors appointed under clause 56.

Clause 8: Directions and guidelines in relation to performance of functions

Clause 8(1) provides that the Minister may give written directions and guidelines to the Board regarding the Government's broad social, economic and budgetary priorities which the Board must take into account in the performance of its functions. The Minister does not need to give a new set of directions or guidelines for each new reference. If the Minister does not, the previous directions or guidelines will continue to apply.

Clause 8(2) requires the Minister to table in the Parliament a copy of any directions or guidelines given to the Board as soon as practicable.

Clause 9: Reports

Clauses 9(1), (2), (3) and (8) deal with the annual reporting requirements for the Board.

Clause 9(1) requires the Board to prepare an annual report each financial year dealing with operations of the Board and its four Councils during the year.

Clause 9(2) requires the annual report to deal with the references made to the Board and Councils and the reports provided by them in the previous 12 months (whether pursuant to a reference or on the Board's own motion), as well as the consultative processes they adopted in the formation of their advice (including consultations with the Commonwealth/State Consultative Committee established by clause 39).

Clause 9(3) aims to ensure that the Councils and the Consultative Committee provide the Board with any information it needs to prepare its annual report.

Clause 9(8) requires the annual report to be tabled in Parliament by the Minister within 15 sitting days after receipt.

Clauses 9(4) to (11) (other than clause 9(8)) deal with periodical reports by the Board.

Clause 9(4) enables the Minister to require the Board to give the Minister reports in addition to its annual reports. Under clause 9(5) the Minister can give directions as to when and for what periods those reports must be given. Clause 9(9) requires the Minister to table these reports in the Parliament, as soon as practicable after receipt, subject to the provisions of clause 9(11). The effect of clauses 9(10) and (11) is that where the Board decides that some or all of a particular report is confidential and should not be disclosed, that confidential material is not to be included in the tabled report. It is expected that the Board would use this provision only sparingly to cover cases such as those where material would not have otherwise been provided to it without this guarantee of confidentiality.

Clause 9(4) also empowers the Board to exercise its own initiative in giving reports to the Minister. Information in respect of them is to be contained in the Board's annual report pursuant to clause 9(2)(c).

Clause 9(6) requires the Board to incorporate in its reports to the Minister advice (or a summary of the advice) it receives from its Councils in relation to those reports. Under clause 9(7) the Minister may request the Board to comment on advice received from a Council.

Clause 10: Powers

This clause gives the Board all necessary incidental powers to enable it to perform its functions effectively.

Division 2- Constitution and Meetings of the Board

Clause 11: Membership of the Board

Clause 11(1) provides for a Board of not more than 13 members of whom not more than 5 can be full-time. The Board will have interlocking membership with the Councils, with 2 members of each Council being drawn from the Board.

Clause 11(2) deals with the qualifications of the members. Two must have trade union expertise, two must have business or industry expertise and at least 7 must have expertise in the education or training fields.

Clause 11(3) provides for all appointments to the Board to be made by the Governor-General, with full-time members being appointed for terms not exceeding 5 years and part-time members for terms not exceeding 3 years. All members are eligible for re-appointment.

Clause 11 (4) provides for the appointment of a Chairperson and a Deputy Chairperson.

Clause 11(5) allows the Chairperson and the Deputy Chairperson to be appointed on either a full-time or a part-time basis.

Clause 11(6) maintains the independence of the Board by prohibiting members of the two portfolio Departments from serving as part-time members of the Board. By the nature of their duties, full-time members of the Board could not continue to perform their Departmental duties.

Clause 11(7) allows a person appointed as a Counsellor under clause 56 to be appointed as a part-time member of the Board.

Clause 12: Terms and conditions not provided for by this Act

This clause provides the authority for the Governor-General to determine terms and conditions for Board members for matters not specifically dealt with in the legislation like appropriate superannuation arrangements for full-time Board members.

Clause 13: Age qualification

This clause provides for a person to be ineligible for appointment as a full-time member of the Board beyond the age of 65 years.

Clause 14: Defective appointment not invalid

This clause provides for an appointment to remain valid in spite of any defect or irregularity such as an error in the spelling of an appointee's name in an instrument of appointment.

Clause 15: Outside employment

This clause provides for members of the Board to engage in outside paid employment subject to appropriate Ministerial controls. Full-time members have to obtain the prior approval of the Minister. If that outside employment conflicted with the proper performance of their duties, the Minister could refuse to consent to that employment. Part-time members are permitted to engage in outside employment provided the Minister is satisfied that it will not conflict with the proper performance of their public office. Sanctions against outside employment without Ministerial approval are provided by clause 20.

Clause 16: Remuneration and allowances

This clause provides for the remuneration of members of the Board to be determined by the Remuneration Tribunal. If no determination is in operation, provision is made for it to be determined by regulation. Allowances can be prescribed by regulation. Any regulations made under this clause must comply with the requirements of the Remuneration Tribunals Act 1973.

Clause 17: Leave of absence

This clause provides for the Minister to approve leave of absence. Clause 60(1) enables the Minister to delegate this power to the Board Chairperson except in the case of leave of absence for the Board Chairperson himself or herself. Sanctions against leave without approval are provided for by clause 20.

Clause 18: Resignation of office

This clause provides for resignation in writing which takes effect when it is delivered to the Governor-General.

Clause 19: Retirement from office

This clause provides for the retirement of members of the Board on the grounds of invalidity, subject to their concurrence. It is a discretionary and not an obligatory power.

Clause 20: Termination of appointment

This clause is a standard one which sets out the circumstances in which the Governor-General may terminate the appointment of a member. Through the operation of clause 34, the Governor-General may also terminate the appointment of Council members.

Clause 20(1) provides that misbehaviour or physical or mental incapacity are grounds for terminating the appointment of a member.

Clause 20(2) sets out circumstances in which a member must have his or her appointment terminated, in particular in relation to the provisions in the Bill dealing with outside employment (clause 15), leave of absence (clause 17) and disclosure of interests (clause 59).

Clause 21: Acting appointments

Clauses 21(1), (2) and (3) empower the Minister to make the following acting appointments:

- . the Deputy Chairperson to act as Chairperson;
- . a member of the Board to act as Deputy Chairperson; and
- . a person to act as a member of the Board other than Board Chairperson or Deputy Chairperson.

The provision applies when the office is vacant or when the office holder is absent from duty or from Australia or is otherwise unable to perform the functions of that office. Such appointments in the case of a vacant office, are restricted to a maximum period of 12 months.

Clause 21(4) is a usual one validating actions by acting members where, for example, they are acting during the absence of a member overseas and they vote at a meeting held after the permanent member has returned prematurely and unannounced to Australia. Without the provision, the whole proceedings at that meeting could be invalid.

Through the operation of section 33A of the Acts Interpretation Act 1901 other provisions also apply to acting appointments, including:

- . the Minister may specify the circumstances in which the appointment is to have effect;
- . the Minister may determine the terms and conditions to apply during the period of the acting appointment and may terminate the appointment at any time; and
- . a person may resign by writing delivered to the Minister.

Clause 22: Meetings

Clauses 22(1) to (7) and (11) set out the requirements for the conduct of a meeting of the Board, including enabling the Deputy Chairperson to preside at a meeting where the Chairperson is not present and establishing a quorum of 7 members.

Clauses 22(8) and (9) provide a mechanism for the Board to pass a resolution without holding a formal Board meeting. Where a majority of the members sign a statement (or separate statements in identical terms) supporting the resolution, then it is treated as a resolution passed at a duly constituted meeting of the Board.

Clause 22(10) enables non-members to attend Board meetings with the approval of the Board but not to vote.

PART III- COUNCILS

Division 1- Establishment, Functions and Powers of Councils

Clause 23: Establishment

This clause provides for the establishment of the four Councils, the Schools Council, the Higher Education Council, the Employment and Skills Formation Council and the Australian Research Council.

Clause 24: Functions of the Schools Council

Clause 24(1) specifies the functions of the Schools Council. Its main function is to advise the Board about any matter referred to it by the Minister or the Board relating to schools or primary or secondary education. Specific matters on which the Council may give advice include:

- the general development of primary and secondary education in schools;
- priorities for buildings, equipment, staff and other facilities of primary and secondary schools ; and
- Commonwealth financial assistance for school systems and schools.

The Council may also address broader issues which may reasonably be required by the Minister or the Board in conjunction with the other functions of the Council.

The Council will be able to prepare draft papers and reports for public comment (clause 30) and co-operate with other Councils on particular matters (clause 28).

Clause 24(2) is based on subsection 13(4) of the CSC Act. It requires the Council, in the exercise of its functions, to have regard to such matters as are relevant. Particular matters referred to include:

- the need for providing increased and equal opportunities for education in government and non-government schools in Australia;
- the need for ensuring that the facilities provided in all schools in Australia, whether government or non-government, are of the highest standard;
- the primary obligation, in relation to education, for governments to provide and maintain government school systems that are of the highest standard and are open, without fees or religious tests, to all children; and
- the prior right of parents to choose whether their children are educated at a government school or at a non-government school.

Clause 25: Functions of the Higher Education Council

This clause specifies the functions of the Higher Education Council. Its main function is to advise the Board about any matter referred to it by the Minister or the Board relating to higher education. Specific functions include:

- . the general development of higher education in Australia and its marketing overseas;
- . priorities for buildings, equipment, staff and other facilities of higher education institutions and other institutions providing higher education; and
- . Commonwealth financial assistance for higher education institutions and other institutions offering higher education.

The Council may also address broader issues which may reasonably be required by the Minister or the Board in conjunction with the other functions of the Council.

The Council will be able to prepare draft papers and reports for public comment (clause 30) and co-operate with other Councils on particular matters (clause 28).

Clause 26: Functions of the Employment and Skills Formation Council

This clause specifies the functions of the Employment and Skills Formation Council. Its main function is to advise the Board about any matter referred to it by the Minister or the Board relating to employment or the formation of skills. Specific functions include:

- . advice on employment and skills formation policies, programs and services; and
- . the general development of technical and further education;
- . priorities for buildings, equipment, staff and other facilities of technical and further education institutions and other institutions providing technical and further education;
- . Commonwealth financial assistance for technical and further education institutions and other institutions offering technical and further education;
- . the promotion of effective training throughout business and industry.

The Council may also address broader issues which may be reasonably required by the Minister or the Board in conjunction with the other functions of the Council.

The Council will be able to prepare draft papers for public comment (clause 30) and co-operate with other Councils on particular matters (clause 28).

Clause 27: Functions of the Australian Research Council

This clause specifies the two main functions of the Australian Research Council.

Clause 27(1)(a) deals with the first of these functions which is the power to make recommendations direct to the Minister about the allocation of funds under particular research schemes referred by the Minister in writing to the Council. The current schemes which it is expected will be referred to the Council pursuant to this provision are:

- . the Australian Research Grants Scheme
- . the Marine Sciences and Technologies Grants Scheme
- . the National Research Fellowships Scheme
- . the National Research Fellowships
 - Queen Elizabeth II Awards
- . the Postgraduate Awards Scheme, and
- . Grants to the Learned Academies.

Clause 27(1)(b) specifies the second main function of the Council. This is to advise the Board about any matter referred to the Council by the Minister or the Board relating to national research priorities or the co-ordination of national research policy. Specific functions include:

- . support for fundamental research which, in broad terms, is research carried out without looking for long-term economic or social benefits other than the advancement of knowledge;
- . support for research which directly contributes to national economic and social development;
- . research programs like those funding Special Research Centres and Key Centres of Teaching and Research;
- . the allocation of funds to achieve an appropriate concentration of research effort in institutions.

The Council may also address broader issues which may be reasonably required by the Minister or the Board in conjunction with the second main function of the Council.

Clause 27(2) requires that copies of recommendations made direct to the Minister be sent by the Council to the Board.

The Council will be able to prepare draft papers and reports for public comment (clause 30) and co-operate with other Councils on particular matters (clause 28).

Clause 28: Co-operation between Councils

This clause provides for co-operation between Councils as many of their functions overlap or are inter-related in some way.

Clause 29: Directions and guidelines etc.to Councils

This clause provides for the Board to give the Councils directions and guidelines with which the Councils must comply. The only exception is the Australian Research Council in respect of particular grants of assistance to be made under the specific research schemes on which the Council makes recommendations direct to the Minister, as provided for by clause 27 (1)(a).

This clause provides not only for the co-ordination of Council activities but also would enable co-ordination of any committee established to assist a Council pursuant to clause 35.

A Council is required by this clause to have regard to any advice received from Counsellors appointed under clause 56.

Clause 30: Powers

This clause gives Councils all necessary incidental powers to enable them to perform their functions effectively. In particular they are given specific powers to seek public submissions and comment on matters referred to them and to consult with persons, bodies and authorities. The clause also provides the power to consult with the Consultative Committee established by clause 39.

Division 2 - Constitution and Meetings of Councils

Clause 31: Membership

This clause provides for each Council to consist of not less than 9 and not more than 11 persons. All will be part-time members. The categories of Council member are:

- (i) a Chairperson, who is a member of the Board;
- (ii) another member, who is also a member of the Board;
- (iii) a member or members of the Australian Public Service where the Board considers such appointments would facilitate the work of a Council; and
- (iv) other persons who are expected to be people with expertise in the relevant sector.

All appointments to a Council are to be made by the Governor-General apart from any public servant referred to in category (iii) above who would be appointed by the Minister. The clause also provides for the appointment of a Deputy Chairperson of a Council and allows a person appointed as a Counsellor under clause 56 to be appointed as a Council member.

Other than for Board members, all Council members are appointed for terms of up to 3 years and are eligible for re-appointment. Board members remain on a Council to which they are appointed for as long as they remain on the Board. Those Board members are eligible for re-appointment to a Council if re-appointed to the Board.

The membership structure provides for interlocking membership between the Board and each Council by having the Chairperson of a Council and one other member drawn from the Board. Those Board members could be either full-time or part-time members of the Board. Interlocking membership between the Councils and the Department is available by the appointment of members of the Department to those Councils, if considered desirable by the Board.

Clause 32: Acting Appointments

This clause reinforces the interlocking Board/Council membership by automatically appointing an acting Board member to be an acting Council member where a person is acting in the office of a Board member on a Council.

The clause also provides for the Minister to appoint other persons to act as Council members, except where membership of the Board is a pre-requisite for appointment. Cases where such acting appointments can be made include when an office is vacant or the occupant is absent from duty or from Australia.

The standard acting appointment provisions of section 33A of the Acts Interpretation Act 1901, which cover such matters as remuneration, termination of office and resignation, also apply.

Clause 33: Powers of Chairperson of the Board with respect to meetings

This clause provides for the Board Chairperson to attend a meeting of a Council of which he or she is not a member, but not to vote.

Clause 34: Application of Division 2 of Part II to Councils

Clause 34(1) provides, subject to the other provisions in the clause, for the following provisions in Division 2 of Part II to apply to Councils:

- . terms and conditions of appointment not provided for by the Bill (clause 12);
- . age qualification (clause 13);
- . defective appointments not being invalid (clause 14);
- . outside employment which does not conflict with the performance of the functions of a member (clause 15(2));
- . remuneration and allowances (clause 16);

- . leave of absence (clause 17);
- . resignation from office (clause 18);
- . retirement from office (clause 19);
- . termination of appointment (clause 20); and
- . meetings other than for quorum (clause 22).

Clause 34(2) permits the Minister to terminate the appointment of a member of the public service appointed under clause 31(2) at any time.

Clause 34(3) sets out the quorum requirements for meetings of Councils.

PART IV- COMMITTEES

Clause 35: Establishment etc of committees

This clause provides a general power for the establishment of committees to assist the Board and/or a Council or Councils. Such committees are to be established by the Minister at the written request of the Board. Provision is also made for the Minister to dissolve a committee.

Clause 36: Membership

This clause provides for the Board to determine the number of members of a committee and appoint those members with the approval of the Minister. The members of a committee need not come from its parent body (a parent body is defined in clause 3(1)). Provision is also made for committee members to resign and for the termination of appointments.

Clause 37: Functions

This clause provides that the functions of a committee are to make inquiries and give reports on such matters as its parent body requires.

Clause 38: Terms and conditions of appointment

This clause empowers the Minister to set terms and conditions of appointment (including remuneration and allowances) for matters not specified in the Bill.

PART V- THE COMMONWEALTH/STATE CONSULTATIVE COMMITTEE

Division 1- Establishment, Functions and Powers of Consultative Committee

Clause 39: Establishment of Consultative Committee

This clause provides for the establishment of the Commonwealth/State Consultative Committee.

Clause 40: Functions of the Committee

This clause specifies the functions of the Commonwealth/State Consultative Committee. They are the provision of information and advice to the Board and the Councils on the policies and priorities of the Commonwealth and each State and the Northern Territory in the fields of employment, education, training and research.

The Consultative Committee can act on its own initiative or upon a request of the Board or a Council. Under clause 7(6) the Board, and under clause 30 the Councils, are able to consult with the Consultative Committee.

Clause 41: Powers

This clause gives the Consultative Committee the necessary incidental powers for it to perform its functions.

Division 2 - Constitution and Meetings of Consultative Committee

Clause 42: Membership

Clauses 42(1), (2), (3) and (5) deal with for the membership of the Commonwealth/State Consultative Committee. It is to comprise the Secretary of the Department of Employment, Education and Training (who will chair the Committee), an appointee of the Minister responsible for the Australian Capital Territory and one Ministerial appointee from each State and the Northern Territory.

Clause 42(4) prevents a Board member from concurrently being a member of the Board and the Consultative Committee. This is to ensure that there is no conflict of roles as the Consultative Committee is a body for Government to Government consultation while the Board's role is to give independent, impartial advice to the Minister.

A State Minister is defined in clause 3(1) for the purpose of these provisions.

Clause 43: Termination of Appointment

This clause provides for the termination of the appointment of a member appointed by a Minister, by the Minister who appointed that member.

Clause 44: Resignation

This clause provides for an appointed member to resign.

Clause 45: Substitute members

This clause provides for the Minister who appointed a member or the Secretary of the Department in the case of the Commonwealth member, to appoint other people to attend different Consultative Committee meetings or to exercise the rights of the member on different items at the same meeting. Thus, for example, a State Minister could appoint the State Director-General of Education to exercise the rights of the member for consideration of matters relating to schools, and a Chairperson of a State higher education authority for consideration of matters relating to higher education.

Clause 46: Meetings

This clause provides for the convening and conduct of meetings of the Consultative Committee.

PART VI- COMMONWEALTH EMPLOYMENT SERVICE

Clause 47: Commonwealth Employment Service

This clause establishes a Commonwealth employment service within the Department. This is consistent with Australia's obligations under ILO Convention 88. As a consequence of provisions being included in the Bill dealing with the Commonwealth employment service, the Commonwealth Employment Service Act 1978 is to be repealed by clause 66.

Clause 48: National Director

This clause provides for the Secretary of the Department of Employment, Education and Training to be the National Director because the Commonwealth employment service is a part of the Department.

Clause 49: Advisory committees

This clause empowers the Minister to establish a national, regional or local committee to advise the Employment and Skills Formation Council or the National Director of the Commonwealth employment service on the operations of the Commonwealth employment service.

Provision is made for the Minister to appoint members to a committee, specify the term of appointment and terminate any appointment. Members of a committee are eligible for re-appointment and may resign in writing delivered to the Minister.

PART VII- GRANTS FOR INNOVATIVE PROJECTS AND CURRICULUM PROJECTS

Clause 50: Approval of projects

This clause provides for the Minister to approve innovative and curriculum projects. Definitions of the terms "innovative projects" and "curriculum projects" are contained in clause 3(1).

Clause 51: Grant of financial assistance

This clause provides for the Minister to make grants for innovative and curriculum projects and to determine terms and conditions for those grants. Under clause 60(2) the Minister is able to delegate the Minister's powers relating to the making of grants to the Chairperson of the Board or the Secretary or an officer of the Department.

Clause 52: Advances

This clause empowers the Minister to make an advance on account of a grant payable for an innovative or curriculum project, and to determine terms and conditions for such advances.

Clause 53: Moneys to be appropriated

This clause provides for the appropriation by the Parliament of moneys for innovative and curriculum projects.

PART VIII- STAFF

Clause 54: Director

This clause provides for the appointment of a Director (who will be an member of the public service) by the Secretary of the Department of Employment, Education and Training after consultation with the Chairperson of the Board. The Director is to be responsible for providing the Board and Councils with the necessary administrative services to enable them to perform their functions. The Director is required to act in accordance with the Board's policies and directions.

Clause 55: Staff

This clause provides for the staff required to provide the necessary administrative services to the Board and Councils to consist of persons appointed or employed under the Public Service Act 1922.

PART IX - COUNSELLORS

Clause 56: Appointments of Counsellors

Clause 56(1) empowers the Minister to appoint up to 4 Counsellors to give advice to the Minister, the Board or a Council on matters relating to the functions of the Board or a Council, as the case may be. The Minister will make these appointments only after consultation with the Board Chairperson.

The Government's agenda for reform in the fields of employment, education and training requires wide ranging and sensitive negotiations with State Governments, industry, unions and others. As it is expected that these negotiations will be complex and time-consuming, this clause gives the Minister the capacity to appoint Counsellors to support the formal Board structures, particularly during the early, sensitive period where fundamental reforms are being pursued.

Clause 56(2) empowers the Minister to specify in writing the matters on which a Counsellor is to give advice.

Clause 56(3) requires the Minister to consult with the Board Chairperson about the reporting arrangements for Counsellors before referring matters to them for advice.

Clause 56(4) provides for appointments of Counsellors not to exceed a term of 3 years but allows Counsellors to be re-appointed.

Clause 56(5) allows the Minister to terminate the appointment of a Counsellor at any time.

Under clauses 7(6)(b) and 29(4) the Board and Councils are required to have regard to any advice received from Counsellors.

Clause 57: Remuneration and allowances

This clause provides for remuneration for Counsellors to be determined by the Remuneration Tribunal, in line with normal practice for statutory office-holders. Allowances may be determined by regulation, subject to the provisions of the Remuneration Tribunals Act 1973.

Clause 58: Terms and conditions of appointment

This clause empowers the Minister to determine terms and conditions of appointment for Counsellors for matters not dealt with in the Bill.

PART X- MISCELLANEOUS

Clause 59: Disclosure of interests

This clause is the standard disclosure of interests clause. It applies to Board, Council and committee members appointed pursuant to clauses 11, 31, 35 and 49. Such a provision would also normally be applied to acting appointments made pursuant to clauses 21 and 32. The sanction for failure to comply without reasonable excuse with the requirements of this clause is termination of appointment pursuant to clauses 20 and 34.

Clause 60: Delegation by Minister

Clause 60(1) provides for the Minister to delegate to the Chairperson of the Board the Minister's powers to grant leave of absence (clauses 17 and 34) other than leave of absence to the Chairperson of the Board.

Clause 60(2) provides for delegation to the Chairperson of the Board, the Secretary of the Department or an officer of the Department, all or any of the Minister's powers relating to the making of grants of financial assistance for innovative and curriculum projects under Part VII.

Clause 61: Review

This clause provides for a review of the advisory structures established by this Act within 5 years of the start of the legislation. Any report on the findings of the review are to be tabled in Parliament.

Clause 62: Regulations

This clause empowers the Governor-General to make regulations.

PART XI - AMENDMENT AND REPEAL OF CERTAIN ACTS AND REGULATIONS

Clause 63: Interpretation

Clause 63(1) defines the following terms used for the purposes of this Part:

- . "commencement day" is defined to mean the date on which the Bill comes into operation. The savings and transitional arrangements in this Part are linked to that date.
- . "defunct body" is defined to mean the Commonwealth Schools Commission, the Curriculum Development Council and the Commonwealth Tertiary Education Commission. Those bodies will be abolished by virtue of the repeal of the Acts listed in Clause 66.

Clause 63(2) is a machinery provision.

Clause 64: Amendments of Acts

This clause provides for the consequential amendment of the Acts specified in Schedule 2 of the Bill, as a result of the repeal of the Acts listed in clause 66.

Clause 65: Amendments of Regulations

This clause provides for the consequential amendment of the Regulations specified in Schedule 3 of the Bill, as a result of the repeal of the Acts listed in clause 66.

Clause 66: Repeal

This clause will repeal the following Acts:

- . Commonwealth Employment Service Act 1978;
- . Commonwealth Schools Commission Act 1973; and
- . Commonwealth Tertiary Education Commission Act 1977.

Clause 67: Reports to be prepared and laid before Parliament

Clause 67(1) requires the Minister to have annual reports prepared for the defunct bodies covering the period from when the last annual report was furnished in respect of the defunct body to when the body was abolished.

Clause 67(2) places a similar obligation on the Secretary of the Department in respect of the annual report formerly prepared by the National Director of the Commonwealth Employment Service, and in respect of committees established under Part IV of the CES Act. This report is to be included in the Department's annual report.

Clause 67(3) requires the Minister to table the reports in the Parliament within 15 sitting days of receipt.

Clause 68: Winding up of defunct bodies

Clause 68(1) provides for all assets and liabilities of the defunct bodies to be vested in the Commonwealth on the commencement day.

Clause 68(2) substitutes on the commencement day the Commonwealth as a party to any contract to which a defunct body was a party and translates references in such contracts to a defunct body to read the Commonwealth.

Clause 68(3) substitutes on the commencement day the Commonwealth as a party to any legal proceedings to which a defunct body was a party.

Clause 69: Appropriation

This clause appropriates to the Department:

- any moneys vested in the Commonwealth on the commencement day by virtue of clause 68(1)(a); and
- any moneys appropriated before that date for purposes related to a defunct body which was not paid to that body and had not lapsed before that date.

The Department is empowered to use that money to discharge any liabilities vested in the Commonwealth on the commencement day by virtue of clause 68(1) or to make payments under contracts to which a defunct body was a party.

Clause 70: Exemption from taxation

This clause exempts from taxation certain instruments or documents related to the operation of this Part.

Schedule 1: Higher Education Institutions

This Schedule specifies those institutions which are to be treated as higher education institutions for the purposes of the definition of that term in clause 3(1).

Schedule 2: Amendments of Acts

This Schedule details the amendments to be made to various Acts pursuant to clause 64, as a result of the repeal of the Acts listed in clause 66.

Schedule 3: Amendments of Regulations

This Schedule details the amendments to be made to various Regulations pursuant to clause 65, as a result of the repeal of the Acts listed in clause 66.

