

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN NATIONAL TRAINING AUTHORITY BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Employment, Education and Training,
the Honourable Kim C. Beazley MP)

AUSTRALIAN NATIONAL TRAINING AUTHORITY BILL 1992

OUTLINE

The purpose of this Bill is to establish the Australian National Training Authority (the Authority). Heads of Government agreed in July 1992 to the establishment of the Authority as part of a National Vocational Education and Training System. The matters agreed by Heads of Government are reflected in the statement entitled 'A National Vocational Education and Training System' (the Statement). A copy of the Statement is included as a schedule to the legislation.

The legislation sets in place the framework under which the Authority will operate. The Authority will be established by Commonwealth legislation as an independent statutory authority responsible to a Ministerial Council, in accordance with the arrangements described in the Statement.

The functions of the Authority are set out in the legislation. The Authority will assist the Ministerial Council in the performance of its functions and administer national programs as required by the Ministerial Council. The Authority's functions will also include the allocation and payment of funding for vocational education and training, within principles or guidelines determined by the Ministerial Council.

The legislation provides for a Chairperson, Deputy Chairperson and three other members of the Authority to be appointed by the Governor-General for terms of up to three years. Appointment of members will be on the nomination of the Ministerial Council.

Provision has been made for the appointment by the Authority of a Chief Executive Officer and for other staff to assist the Authority. Remuneration for members and the Chief Executive Officer will be subject to a determination by the Remuneration Tribunal or by the Ministerial Council. Other staff can be employed under a range of conditions depending on whether they are appointed under the Public Service Act or employed under written agreement(s), seconded to the Authority or engaged as consultants.

FINANCIAL IMPACT STATEMENT

The establishment and running costs of the Authority will be funded by the Commonwealth. The amount of the Authority's annual operating budget will be determined when the Authority's size and structure have been settled by the Ministerial Council, probably early in 1993.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

The short title of the proposed Act will be the *Australian National Training Authority Act 1992*.

Clause 2 - Commencement

2. The proposed Act will commence on the day on which it receives royal assent.

Clause 3 - Objects

3. The Bill provides for the Commonwealth to establish the Australian National Training Authority (the Authority) as a part of a National Vocational Education and Training System. The primary objectives of the Bill are consistent with those detailed in the Statement entitled 'A National Vocational Education and Training System', a copy of which is set out in the Schedule.

Clause 4 - Interpretation

4. This clause defines a number of terms for purposes of the proposed Act.

PART 2 - ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUSTRALIAN NATIONAL TRAINING AUTHORITY

5. Part 2 of the Bill (clauses 5 - 10) provides for the establishment, functions and powers of the Authority.

Clause 5 - Establishment of the Authority

6. The Authority will be a body corporate with the usual attributes (perpetual succession, a common seal, capacity to acquire and dispose of property and capacity to sue and be sued in its corporate name). The Authority will be responsible for its common seal.

7. Courts, judges and other persons acting judicially must:

- (a) take judicial notice of the common seal of the Authority; and
- (b) presume that any imprint of the seal was properly affixed.

Clause 6 - Functions of the Authority

8. The Authority's primary functions are to assist the Ministerial Council in the performance of its functions; to do anything required by Commonwealth legislation to be done by the Authority; and to administer a national program if required to do so by the Ministerial Council.

9. Subclause 6.(2) sets out the Authority's main functions but does not limit those functions.

10. Subclause 6.(3) provides for the Authority to have any functions that are, with the agreement of the Ministerial Council, conferred on the Authority by or under a law of a State; by the Minister in writing; or by a State Minister in writing.

11. Subclause 6.(4) requires the Authority to perform its functions in accordance with the Statement.

Clause 7 - Powers of the Authority

12. The Authority will have the powers needed to perform its functions.

Claus 8 - Ministerial Council Directions to the Authority

13. The Authority must perform its functions in accordance with any general directions from the Ministerial Council.

Clause 9 - Consultation

14. The Authority may consult with other bodies as appropriate to perform its duties. The Authority must consult with a body if directed to do so by the Ministerial Council.

Claus 10 - Committees

15. The Authority may form committees to help it perform its functions and exercise its powers. The committees may comprise members of the Authority or non-members or a combination of both.

16. Any remuneration or allowance of a member of a committee who is not a member of the Authority would be determined as though the committee member were a part-time member of the Authority.

PART 3 - ALLOCATION AND PAYMENT OF FUNDS

17. Part 3 of the Bill (clauses 11 - 16) sets out the arrangements for the payment of funds to the Authority by the Commonwealth and by the States; the Authority's allocation of those funds among the States or for expenditure on national projects or national programs; and the payment by the Authority of the funds so allocated.

Clause 11 - Payments to the Authority by the Commonwealth

18. This clause provides for the payment of Commonwealth funds to the Authority.

19. The *Vocational Education and Training Funding Act 1992* will provide for Commonwealth funds to be passed to the Authority for expenditure on national projects or for payment to the States for expenditure on vocational education and training. In addition to those funds, the Commonwealth will pass to the Authority money appropriated by the Parliament for payment to the Authority for expenditure on national programs.

Clause 12 - Payments to the Authority by States

20. The Authority may receive money paid to it by a State.

Clause 13 - Allocation of funds by the Authority

21. The Authority must allocate available funds in respect of each year for payment to States or, in the case of funds for expenditure on national projects or national programs, to States or to other parties. 'Available funds' means the money payable to the Authority under Part 3 of the *Vocational Education and Training Funding Act 1992*; the money payable to the Authority for the purposes of national programs; and money paid to the Authority by States.

22. The Authority may make more than one allocation in respect of the same year but may not allocate more than the amount of available funds. The Authority may vary an allocation in respect of a year.

23. The Authority must allocate funds in accordance with the national allocation principles, which are defined in clause 4. This provision is subject to any direction by the Ministerial Council that part of the funding payable to the Authority under the *Vocational Education and Training Funding Act 1992* is to be allocated by the Authority for expenditure of a capital nature.

24. The allocation of funds by the Authority must give effect to any requirement that funds be spent specifically for capital purposes or for a national program.

25. This clause is subject to the payment arrangements set out in clause 14.

Claus 14 - Payment of funds by the Authority

26. The Authority must make payments to give effect to its allocation decisions, subject to the requirement that part of the funds allocated to a State may be paid only if the Ministerial Council has approved a State training profile for that State (see paragraph 30. below).

27. Funds allocated by the Authority for expenditure of a capital nature, on national projects or on national programs are to be paid by the Authority under arrangements that accord with guidelines approved by the Ministerial Council. In addition to any such funds, the Authority must pay to each State a minimum amount in respect of each year. The minimum amount must be not less than the sum of two components:

- (a) the amount paid to the Authority by the State in respect of the year; and
- (b) the amount of funds appropriated under the *Vocational Education and Training Funding Act 1992* and payable by the Authority to the State as base funding for that year.

28. The clause defines the meaning of 'base funding'. In the case of 1994, 'base funding' refers to an amount equal to the amount of funds paid to the State in 1993 under subsection 10.(1) of the *States Grants (TAFE Assistance) Act 1989*.

29. In the case of 1995 or any later year, 'base funding' equals the amount paid by the Authority to the State in respect of the preceding year from the funds payable to the Authority under the *Vocational Education and Training Funding Act 1992*. However, the definition of 'base funding' excludes any amount that was (in respect of the preceding year) paid by the Authority to the State specifically for expenditure on a national project or for capital purposes.

30. The Authority must not pay to a State an amount that exceeds the sum of the amounts specified in subclause 14.(3) (that is, the minimum amount payable to the State plus any payments for expenditure on national projects, national programs or capital projects) unless the Ministerial Council has agreed to a State training profile for that year or, if the profile covers more than one year, for a period beginning with that year.

31. The clause also provides for the recovery of any amount that is paid to a State in excess of the amount properly payable to the State.

Clause 15 - Benefits of allocations to be available without discrimination

32. The national allocation principles must ensure that the benefits of the money allocated by the Authority are, as far as practicable, equally available to all students or trainees without discrimination. This requirement does not apply if the object of the expenditure is to help persons requiring special assistance.

Clause 16 - Arrangements regarding payments to and by the Authority

33. The payments to the Authority by the Commonwealth or by a State, and money paid by the Authority under Part 3, are to be paid in accordance with arrangements approved by the Ministerial Council.

PART 4 - REPORTING REQUIREMENTS

34. Part 4 of the Bill (clauses 17 - 18) provides for States to submit audit reports to the Authority and for the Authority to submit a draft annual national report to the Ministerial Council.

Clause 17 - Annual audit reports to ANTA by States

35. Each State that has received funds from the Authority is to provide the Authority with a written audit report as to the amount of funds spent. The report must also certify that the funds were spent for the purposes for which they were allocated by the Authority. States are to provide the audit report by 30 September in the year following the program year.

Clause 18 - Annual National Report

36. The Authority is to submit a draft annual national report to the Ministerial Council. The draft report must incorporate any input received from a State training agency and must be in a form approved by the Ministerial Council. Once approved (or amended and approved), the annual report would be tabled in each House of the Parliament.

PART 5 - FINANCE

37. Part 5 of the Bill (clauses 19 - 23) deals with the finance provisions of the Authority.

Clause 19 - Interpretation

38. This clause defines, for the purposes of Part 5, the Authority's operating expenditure and operating receipts.

Clause 20 - Money of the Authority

39. The Authority's money consists of money paid to the Authority under Part 3 of the *Vocational Education and Training Funding Act 1992*; money paid to the Authority under clause 11 of the Bill for expenditure on national programs; money received by the Authority from a State under clause 12 of the Bill; money paid to the Authority to meet its operating expenditure; and any other money paid to the Authority.

Clause 21 - Application of the Authority's money

40. The Authority may spend only in accordance with Part 3 of the Bill money paid to it under Part 3 of the *Vocational Education and Training Funding Act 1992*; money paid to it under clause 11 of the Bill for expenditure on national programs; and money received by the Authority from a State under clause 12 of the Bill. The Authority's operating receipts are to be spent only to meet its operating costs, including the remuneration of members and staff.

Clause 22 - Estimates of operating receipts and expenditure

41. The Authority is to submit to the Ministerial Council estimates of the Authority's operating receipts and expenditure. The Authority's operating receipts are to be spent only in accordance with these estimates, unless the Ministerial Council agrees otherwise.

Clause 23 - Application of Division 3 of Part XI of the Audit Act

42. The Authority will be a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies. That Division requires an authority to:

- . open bank accounts with approved banks;
- . keep proper accounts and records of its transactions and its affairs;
- . have those accounts audited by the Auditor-General; and
- . submit an annual report and financial statement to the responsible Minister.

PART 6 - ADMINISTRATIVE PROVISIONS RELATING TO THE AUTHORITY

Division 1 - Membership etc

43. Division 1 of Part 6 (clauses 24 - 34) deals with provisions relating to members of the Authority.

Clause 24 - Membership of the Authority

44. The Authority is to comprise a Chairperson, a Deputy Chairperson and 3 other members. The Authority may perform its functions and exercise its powers provided that there are not more than 2 vacancies in the Authority's membership.

Clause 25 - Appointment of members

45. Members are to be appointed by the Governor-General on the nomination of the Ministerial Council.

Clause 26 - Membership to be full-time or part-time

46. Members may be appointed full-time or part-time.

Clause 27 - Term of appointment

47. A member will hold office for such period not exceeding 3 years as is specified in the instrument of his or her appointment. A member may be reappointed.

Claus 28 - Remuneration and allowances of Authority members

48. A member's remuneration is to be determined by the Remuneration Tribunal or, if no such determination is in force, by the Chairperson of the Ministerial Council, who would also determine the payment of a member's allowances.

49. A determination of remuneration or allowances by the Chairperson of the Ministerial Council may only be made with the approval of the Ministerial Council; must be in writing; and is a disallowable instrument. Remuneration and allowances to members are to be paid out of the Authority's money.

50. Clause 28, other than subclause (5), is to have effect subject to the *Remuneration Tribunal Act 1973*.

Clause 29 - Other benefits

51. The Chairperson of the Ministerial Council may determine additional benefits to be provided to a member of the Authority. These benefits will be benefits that, in the opinion of the Ministerial Council, are necessary or desirable to assist members in, or place members in a position that will facilitate, the performance of their functions.

52. A determination of other benefits may only be made with the approval of the Ministerial Council; must be in writing; and is a disallowable instrument.

Claus 30 - L av of absenc

53. The Remuneration Tribunal is to determine the recreation leave entitlements of any full-time member of the Authority. This provision is subject to section 87E of the *Public Service Act 1922*.

54. The Ministerial Council may grant leave of absence (other than recreation leave) to the Chairperson of the Authority, or to any member appointed full-time, on terms and conditions decided by the Ministerial Council. Leave of absence for a part-time member (other than the Chairperson) may be granted by the Chairperson of the Authority, on terms and conditions decided by the Chairperson.

Clause 31 - Resignation

55. A member may resign in writing to the Governor-General.

Clause 32 - Termination of appointment

56. The Governor-General may, on the recommendation of the Ministerial Council, terminate the appointment of an Authority member because of misbehaviour or for physical or mental incapacity or where the member:

- . is absent without leave under clause 30 from 3 consecutive meetings of the Authority; or
- . fails, without reasonable excuse, to comply with his or her duty to disclose pecuniary interests as required by clause 39.

Clause 33 - Terms and conditions not provided for by Act

57. The Ministerial Council may determine any terms and conditions of a member's appointment that are not provided for by the Act.

Clause 34 - Acting Appointments

58. The Deputy Chairperson is to act as the Chairperson when the office of Chairperson is vacant or when the Chairperson is absent from duty or otherwise unable to perform the duties of Chairperson.

59. The Ministerial Council may appoint an acting member if there is a vacancy or if a member is absent from Australia or otherwise unable to perform the duties of a member.

60. An acting appointment under this clause is not to continue for more than 12 months. The actions of acting appointees would not be invalid on the grounds that:

- . the occasion for the person's appointment to act had not arisen; or
- . there is a technical defect or irregularity in connection with the person's appointment; or
- . the person's appointment had ceased to have effect; or
- . the occasion for the person to act had not arisen or had ceased.

Division 2 - Convening of meetings

61. Division 2 of Part 6 of the Bill (clauses 35 - 39) deals with provisions for meetings of the Authority.

Clause 35 - Convening of meetings

62. The Authority is to hold such meetings as are required for the efficient performance of its functions. The Chairperson may convene a meeting at any time and must do so if requested in writing by two other members or if the Ministerial Council so directs the Chairperson.

Clause 36 - Procedure at meetings

63. The Chairperson is to preside at all Authority meetings at which he or she is present. If the Chairperson is not present, the Deputy Chairperson is to preside. A quorum for a meeting will be 3 members. Questions arising at a meeting will be determined by a majority of votes of members present and voting, provided that the majority consists of at least 3 members.

Clause 37 - Conduct of meetings

64. The Authority may, subject to this Division, regulate its meetings as it considers appropriate. The Authority may permit a member to take part in a meeting by telephone, closed-circuit television or by any other means of communication. The Authority is to keep minutes of the proceedings of its meetings.

Claus 38 - Resolutions without formal meetings

65. The Authority may decide that a resolution has been carried where at least 3 members have, without a meeting, indicated their agreement with the resolution.

Claus 39 - Disclosure of interests

66. Where a member has a pecuniary interest in a matter that is being considered, or is about to be considered, by the Authority, the member is to disclose the interest at a meeting of the Authority. The disclosure is to be recorded in the minutes of the meeting and, unless

otherwise determined by the Ministerial Council, the member is not to take part in any deliberation or decision of the Authority in relation to the matter.

PART 7 - CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 1 - Chief Executive Officer

67. Division 1 of Part 7 of the Bill (clauses 40 - 44) deals with the provisions for the Chief Executive Officer of the Authority.

Clause 40 - Appointment and functions of the Chief Executive Officer

68. After consultation with the Ministerial Council, the Authority will appoint a Chief Executive Officer to manage its affairs according to directions and policies of the Authority. All undertakings by the Chief Executive Officer in the name of, or on behalf of, the Authority will be taken to have been done by the Authority.

Clause 41 - Remuneration and allowances

69. The Chief Executive Officer will be paid such remuneration as is determined by the Remuneration Tribunal or if no Tribunal determination is operative, such remuneration as is determined by the Chairperson of the Ministerial Council. The Chairperson of the Ministerial Council will also determine such allowances as are to be paid to the Chief Executive Officer. A determination of remuneration or allowances by the Chairperson of the Ministerial Council may only be made with the approval of the Ministerial Council; must be in writing; and is a disallowable instrument.

70. Remuneration and allowances to the Chief Executive Officer are to be paid out of the Authority's money.

71. Clause 41, other than subclause (5), is to have effect subject to the Remuneration Tribunal Act 1973.

Clause 42 - Other benefits

72. The Chairperson of the Ministerial Council may determine additional benefits to be provided to the Chief Executive Officer. These benefits will be benefits that, in the opinion of the Ministerial Council, are necessary or desirable to assist the Chief Executive Officer in, or place the Chief Executive Officer in a position that will facilitate, the performance of his or her functions.

73. A determination of other benefits may only be made with the approval of the Ministerial Council; must be in writing; and is a disallowable instrument.

Clause 43 - Leave of absence

74. The Remuneration Tribunal is to determine the recreation leave entitlements of the Chief Executive Officer. This provision is subject to section 87E of the Public Service Act 1922.

75. The Authority may grant leave of absence (other than recreation leave) to the Chief Executive Officer on terms and conditions decided by the Authority.

Clause 44 - Terms and conditions not provided for by Act

76. The Ministerial Council may determine any terms and conditions of the Chief Executive Officer's appointment that are not provided for by the Act.

Division 2 - Staff and consultants

77. Division 2 of Part 7 of the Bill (clauses 45 - 47) deals with provisions for staff and consultants.

Clause 45 - Staff of the Authority

78. This clause provides for the Authority to be assisted by a staff constituted in accordance with Division 2.

79. The Authority may employ persons under written agreement(s) on terms and conditions that are consistent with any guidelines determined by the Ministerial Council.

80. The Authority's staff may also include persons appointed or employed under the Public Service Act 1922. The Chief Executive Officer will have the same powers as a Secretary of a Commonwealth Department over staff appointed or employed under the Public Service Act.

81. A person who is an officer of the Australian Public Service and is selected to become a member of the staff of the Authority may inform the Authority in writing that he or she elects to become a member of the Authority's staff as an officer of the Australian Public Service. As far as possible, the Authority must give effect to such an election.

Clause 46 - Staff seconded to the Authority

82. The Authority may make arrangements with Commonwealth Departments and authorities or with State/Territory Departments and authorities to have their staff seconded to the Authority.

Clause 47 - Consultants

83. The Authority may engage consultants to assist it in accordance with terms and conditions (if any) determined by the Ministerial Council.

PART 8 - MISCELLANEOUS

84. Part 8 of the Bill (clauses 48 - 51) deals with various miscellaneous matters.

Clause 48 - No payment without appropriation

85. The Authority is not authorised to pay to a State an amount of the money appropriated under the *Vocational Education and Training Funding Act 1992* unless money has been appropriated under that Act for allocation by the Authority to that State.

Clause 49 - Delegation by the Authority

86. The Authority may delegate all or any of its functions to a member of the Authority or of the Authority's staff; to an officer of the Commonwealth or of a State; or to an authority of the Commonwealth or of a State. A delegation must be approved by the Ministerial Council or be in accordance with Ministerial Council guidelines.

Clause 50 - Change of name of the Authority

87. The name of the Authority may be changed by regulations.

Clause 51 - Regulations

88. The Governor-General may make regulations for the purposes of the proposed Act. The regulations must be in accordance with a recommendation of the Ministerial Council.



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