

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

EMPLOYMENT, EDUCATION AND TRAINING AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Education and Training,
the Honourable Simon Crean MP)



EMPLOYMENT, EDUCATION AND TRAINING AMENDMENT BILL 1995

OUTLINE

The National Board of Employment, Education and Training (the Board) was established under the *Employment, Education and Training Act 1988* (the Principal Act) to provide the Government with independent advice on employment, education, training and research policies and programs within a single co-ordinated framework. The operation of the Board and its associated Councils and Committees was reviewed in 1993-94.

The Government's response to the review was tabled in Parliament on 30 June 1994. The Employment, Education and Training Amendment Bill 1995 proposes amendments to the Principal Act to give effect to certain aspects of the Government's response.

The amendments would:

- create two new Councils: the Australian Language and Literacy Council and the Australian International Education Foundation Council;
- streamline the arrangements to create new Councils by providing for their establishment by disallowable instrument;
- abolish the Commonwealth/State Consultative Committee which has become redundant; and
- streamline mechanisms for appointment of Board and Council members (including to provide that the Minister, rather than the Governor-General, appoints members other than the Board Chairperson, Board Deputy Chairperson and Council Chairpersons) and to provide for acting appointments of Council Chairpersons and Deputy Chairpersons.

The Bill would also make other minor and technical amendments to the Principal Act.

The two new Councils replace Committees established by the Minister under the present provisions of the Act. There would be transitional provisions for present members of those Committees to become members of the newly created Councils.

FINANCIAL IMPACT STATEMENT

The two new Councils which would be established by the Bill are now operating as Committees of NBEET. Any additional costs associated with their formal establishment as Councils will be absorbed within the operating budget of NBEET. The other provisions of the Bill have no significant financial impact.

NOTES ON CLAUSES

Clause 1 - Short Title

The Act would be cited as the *Employment, Education and Training Amendment Act 1995*.

Clause 2 - Commencement

The Act would come into operation on the day it receives the Royal Assent.

Clause 3 - Schedule

This clause would provide that the *Employment, Education and Training Act 1988* (the Principal Act) is amended in accordance with the Schedules. Other items in the Schedules, such as those relating to transitional provisions, would take effect according to their terms.

**SCHEDULE 1 - AMENDMENTS RELATING TO THE CREATION OF THE
AUSTRALIAN LANGUAGE AND LITERACY COUNCIL AND THE AUSTRALIAN
INTERNATIONAL EDUCATION FOUNDATION COUNCIL**

Item 1 - Subsection 3(1)

This item would insert into the Principal Act a definition of international education and training which is used in the descriptions of the functions of the National Board of Employment, Education and Training (NBEET) and the Australian International Education Foundation Council (AIEFC). International education means:

- education and training provided in Australia to persons who have come to Australia to receive education and training;
- education and training provided outside Australia by the Commonwealth Government, or a State or Territory government, or an institution, association or corporation, formed in Australia; or
- education and training provided (whether in or outside Australia) under an arrangement between:
 - the Commonwealth Government, or a State or Territory government, or an institution, association or corporation, formed in Australia, an Australian citizen or an individual residing permanently in Australia; and
 - a government or government agency of another country, or an institution, association or corporation, formed in another country.

Item 2 - Section 23

The introductory phrase of section 23 would be altered to state "The following Councils are established:".

Item 3 - Section 23

The Australian Language and Literacy Council and the Australian International Education Foundation Council would be added to the list of Councils established under section 23.

Item 4 - Sub-subparagraphs 24(1)(a)(i)(B), 25(1)(a)(i)(B) and 26(1)(a)(i)(C)

This item would remove from the functions of the Schools Council, the Higher Education Council and the Employment and Skills Formation Council respectively, the specific functions of inquiring into and providing information and advice on the marketing overseas of education and training. These functions would become the responsibility of the new Australian International Education Foundation Council under proposed section 27B.

Item 5 - After section 27

This item would insert new sections 27A and 27B to specify the functions of the new Australian Language and Literacy Council and the Australian International Education Foundation Council respectively.

New section 27A would give the Australian Language and Literacy Council the functions of inquiring into and providing information and advice to the National Board of Employment, Education and Training on any matter referred to it by the Minister or the Board relating to the language and literacy skills of the Australian population or required in conjunction with these matters. The section lists specific matters within this subject area in relation to which the Council may perform its functions but the Council is not limited to these specific matters. The Council may undertake work in the areas covered by its functions without a reference from the Minister or the Board, but only if this does not affect its capacity to respond to references from the Minister or the Board.

New section 27B gives the Australian International Education Foundation Council the functions of inquiring into and providing information and advice to the National Board of Employment, Education and Training on any matter referred to it by the Minister or the Board relating to international education and training or required in conjunction with these matters. The section lists specific matters within this subject area in relation to which the Council may perform its functions but the Council is not limited to these specific matters. The Council may undertake work in the areas covered by its functions without a reference from the Minister or the Board, but only if this does not affect its capacity to respond to references from the Minister or the Board.

Item 6 - Transitional

The Australian Language and Literacy Committee and the Australian International Education Foundation Committee have operated as committees established under subsection 36(1) of the Principal Act pending their establishment as formal Councils. This item dissolves the Committees because of their establishment as Councils under item 1 of this Schedule.

This item also provides for continuity in the membership of the Committees which are dissolved and the two new Councils which are established. It provides that the Chairperson and members of the Australian Language and Literacy Committee and the Australian International Education Foundation Committee become the Chairperson and members of the respective replacement Councils, on their establishment, and for the remainder of the period of their appointment to the Committees.

The Chairpersons and members of the Committees will hold their appointments as members of the new Councils on the terms and conditions of their appointment to the Committees if those terms and conditions are not inconsistent with the terms and conditions that apply under the Principal Act. A Determination applying with respect to remuneration will only apply if it is more favourable.

SCHEDULE 2 - AMENDMENTS RELATING TO THE ESTABLISHMENT OF COUNCILS BY INSTRUMENT

Item 1 - Subsection 3(1) (definition of "Council")

Amends the definition of "Council" in the Principal Act to include Councils created by the Minister by instrument under the new subsection 23A(1).

Item 2 - After section 23

There is no provision under the existing legislation for the establishment of new Councils which may be required from time to time to provide specialised advice to the Board or the Minister. This item would insert a new section 23A to allow the Minister to establish new Councils and to specify functions as set out in the instrument establishing the Council. The Minister would be able to vary the functions of those new Councils by instrument in writing.

Instruments made by the Minister under the proposed new section would be disallowable by either House of Parliament.

The Minister may not abolish a Council or revoke all its functions. These powers are to reside with the Parliament.

SCHEDULE 3 - AMENDMENTS RELATING TO THE ABOLITION OF THE COMMONWEALTH/STATE CONSULTATIVE COMMITTEE

This Schedule provides for the abolition of the Commonwealth/State Consultative Committee as the Committee has become redundant.

Item 1. Subsection 3(1) (definitions of "Consultative Committee" and "State Minister")

This item would remove the definitions of "Consultative Committee" and "State Minister" from the Principal Act. These definitions are no longer required because the Committee would be abolished by the proposed amendments in item 6 of the Schedule. The only reference in the Principal Act to "State Minister" relates to appointments to the Consultative Committee.

Item 2 - Paragraph 7(7)(a)

This item would amend the paragraph to remove the reference to the Consultative Committee.

Item 3 - Paragraph 9(2)(d)

This item would omit this paragraph which relates only the Consultative Committee.

Item 4 - Subsection 9(3)

This item would amend the section to remove the reference to the Consultative Committee.

Item 5 - Paragraph 31(2)(b)

This item would amend the paragraph to remove the reference to the Consultative Committee.

Item 6 - Part V

This item abolishes the Committee by repealing that Part of the Principal Act which establishes the Committee, defines its functions and powers, and provides for its membership and procedures.

Item 7 - Subsection 63(1)

This item would remove the requirement for a review of the operations of the Consultative Committee.

SCHEDULE 4 - AMENDMENTS RELATING TO THE APPOINTMENT OF BOARD MEMBERS

Item 1 - Subsection 11(1)

The Principal Act presently provides for a Board of up to 13 members to be appointed by the Governor-General.

A new subsection would be substituted in the Principal Act to provide that the Board consists of the following members:

- a Chairperson
- any person holding office or acting as a Chairperson of a Council (see Schedule 5), and
- not more than 7 persons appointed by the Minister.

This would increase the size of the Board to 14 (or more if additional Councils are created at a later date. See Schedule 2).

The new structure will streamline the appointment process.

Item 2 - Subsections 11(3), (4) and (5)

This item would omit subsections 11(3), (4) and (5) and replace them with new subsections 11(3), 11(3A), 11(4) and 11(5).

A new subsection 11(3) would provide for the Governor-General to appoint as Chairperson of the Board a person who is not at that time either a Chairperson of a Council (and thus an ex-officio Board member) or a member of the Board who has been appointed by the Minister. The Chairperson may be appointed on either a full-time or a part-time basis.

A new subsection (3A) would provide that the Governor-General must appoint the Deputy Chairperson of the Board from one of the other members of the Board. A Deputy Chairperson who is a Council Chairperson may be appointed on either a full-time or a part-time basis. A Deputy Chairperson who is a Board member appointed by the Minister may only be appointed on a part-time basis.

A new subsection (4) would provide that the Chairperson and Deputy Chairperson of the Board would hold office for a maximum period of three years and would be eligible for re-appointment. The prohibition on reappointment of a full-time Chairperson would be removed.

A new subsection (5) would provide that a member of the Board who is appointed by the Minister under paragraph 11(1)(c) must be appointed on a part-time basis for up to three years and would be eligible for reappointment. At present, up to 5 Board members may be appointed on a full-time basis. The proposed amendments would limit the members that may be full-time appointees to the Chairperson and the Deputy Chairperson. Council Chairpersons, who are ex officio Board members, may hold office as Council Chairperson on a full-time basis. To provide for greater flexibility in the making of appointments, the maximum term of appointment for members is to be reduced from 5 years to 3 years.

Item 3 - Section 12

A new section 12 of the Principal Act would be substituted with the effect that:

- the Chairperson and Deputy Chairperson of the Board would each hold office on terms and conditions other than those provided by the Principal Act determined by the Governor-General, and
- other members of the Board would each hold office on terms and conditions other than those provided by the Principal Act determined by the Minister.

This amendment is required to take account of the altered appointment arrangements proposed under item 1 of this Schedule.

Item 4 - Section 13

Section 13 would be repealed to remove the age limitation for members of the Board as this limitation is no longer consistent with Government policy.

Item 5 - Subsection 18(2)

A technical amendment is required to subsection 18(2) of the Principal Act to the effect that Board members, previously appointed by the Governor-General but now to be appointed by the Minister, may resign in writing delivered to the Minister.

Item 6 - Section 19

A new section 19 would be substituted with the effect that the Governor-General may retire a person from the office of Chairperson or Deputy Chairperson, on the grounds of invalidity, with the consent of that office-holder. On the grounds of invalidity, the Minister would be able to retire a member of the Board appointed by the Minister, with the consent of that member.

Item 7 - Section 20

A new section 20 would be substituted in the Principal Act to provide for the termination of the appointment of the Chairperson of the Board by the Governor-General.

The clause sets out the grounds which will invoke automatic termination of the appointment of the Chairperson. The clause also provides for termination of the appointment of the Chairperson at the discretion of the Governor-General where the Chairperson misbehaves or is incapacitated.

A new section 20A would be substituted in the Principal Act to provide for the termination of the appointment of a member of the Board by the Minister.

The clause sets out the grounds which will invoke automatic termination of the appointment of the member. The clause also provides for termination of the appointment of the member at the discretion of the Minister where the member misbehaves or is incapacitated.

The amendments are required to take account of the new provisions that some members of the Board are now to be appointed by the Minister.

Item 8 - Paragraph 22(6)(a)

A technical amendment would be made to this paragraph to take account of altered appointment arrangements for Board members.

Item 9 - Transitional

The transitional provisions would provide that the appointments of the existing members of the Board would continue for the remainder of the period of those appointments.

The present terms and conditions of appointment of the existing members of the Board are to continue subject to terms and conditions which apply under the Principal Act as amended.

SCHEDULE 5 - AMENDMENTS RELATING TO THE APPOINTMENT OF COUNCIL MEMBERS

Item 1 - Subsections 32(1) and (2)

Item 1 would omit subsections 32(1) and 32(2) of the Principal Act and replace them with new subsections 32(1) and 32(2). A new subsection 32(1) would provide for the membership of all the Councils except the Australian International Education Foundation Council to consist of the following members:

- a Chairperson; and
- not less than 8 and not more than 10 other persons appointed by the Minister on a part-time basis.

The subsection would retain the same numbers of Council members as are currently provided for in the Principal Act (ie not less than nine and not more than eleven members). This subsection would also apply to new Councils created under the proposed subsection 23A(1).

New subsection 32(2) would provide for the membership of the Australian International Education Foundation Council. The Australian International Education Foundation Council would consist of:

- a Chairperson; and
- not less than 6 and not more than 8 other persons appointed by the Minister on a part-time basis.

This Council would have in total not less than 7 and not more than 9 members.

The proposed new subsections would change the current provisions by allowing the Minister to appoint Council members (ordinary members) other than the Chairperson, rather than the Governor-General as is provided currently in the Principal Act. Council Chairpersons continue to be appointed by the Governor-General (see Item 2 below). It also would remove the requirement in current subsections 31(1) and (2) for certain members of the Board to be included in the membership of the Councils as these have been replaced by the proposed subsection 11(1) (see Schedule 4) which makes the Chairpersons or acting Chairpersons of Councils ex officio members of the Board.

Item 2 - Subsection 32(4)

Item 2 would omit subsection 32(4) of the Principal Act and replace it with new subsections 32(4) and 32(4A).

New subsection 32(4) continues the existing arrangement that the Governor-General appoint a Chairperson of each Council. The new provisions would provide that the Council Chairpersons may be appointed on a full-time or part-time basis. The effect of omitting the present subsection 32(4) would be to remove the current requirements that Council Chairpersons be first drawn from members of the Board and also allow Council Chairpersons to be re-appointed to the same office.

New subsection 32(4A) would give the Minister a discretionary power to appoint a Deputy Chairperson of a Council on a part-time basis. This replaces the current paragraph 32(4)(c) which requires the Governor-General to appoint a Deputy Chairperson for each Council.

Item 3 - Subsection 32(5)

Item 3 would omit the words "who is not a member of the Board" from the subsection. The effect of this amendment would be to provide that all members of a Council can be appointed for a period up to three years and also be eligible for re-appointment. This would include the Council Chairperson. The same provisions in respect of the term of appointment and eligibility for re-appointment would apply to all Council members.

Item 4 - Subsection 32(6)

Item 4 would omit the subsection 32(6). This is a technical amendment as the subsection is redundant, given changes to the appointment mechanisms for the Board and Council.

Item 5 - Subsection 33(1)

The effect of this amendment would be to allow the Minister to appoint any person to act as a member of a Council (other than as a Chairperson) during a vacancy in the office or the absence of a member. Section 33A of the *Acts Interpretation Act 1901* would have the effect that a person appointed to act in a vacancy is not to continue to act for more than 12 months.

Item 6 - Subsection 33(2)

Item 6 would omit subsection 33(2) of the Principal Act and replace it with new subsections 33(2) and 33(2A). The Principal Act currently has no provision for the appointment of acting Chairpersons or Deputy Chairpersons of Councils but does have such provisions in respect of the Board. Proposed new subsection 33(2) would allow the Minister to appoint the Deputy Chairperson of a Council (or a member appointed to act as a Deputy Chairperson) to act as Chairperson of a Council where the Chairperson's office is vacant or the Chairperson is absent from duty or unable for any reason to perform his or her duties.

Proposed new subsection 33(2A) would allow the Minister to appoint a member of a Council to act as Deputy Chairperson of a Council in similar circumstances other than by reason of a vacancy in that office.

Item 7 - Subsection 33(3)

Item 7 would be a technical amendment to subsection 33(2) that flows from the amendments in item 6 above.

Item 8 - After section 33

Item 8 would insert new subsections 33A and 33B after section 33 of the Principal Act. These amendments are technical amendments that flow from the repeal of section 35 (see item 9 below). These proposed new subsections replicate provisions that are presently applied to the operation of Councils by virtue of the present section 35. Subsection 33A would provide a

mechanism for dealing with defective appointments of Council members and replicates the provisions of section 14 of the Principal Act. Proposed subsection 33B provides rules for meetings of Councils and substantially replicates section 22 of the Principal Act.

Item 9 - Section 35

Item 9 would repeal section 35 and substitute new sections 35, 35A, 35B, 35C, 35D, 35E, 35F and 35G. These amendments are technical amendments that flow from the repeal of section 35.

The main effect of the repeal of the section would be to remove the application of the rules for the Board contained in Division 2 Part II to the operation of Councils. The present section 35 applies to the Councils a range of provisions in Division 2 of Part II concerning the operation of the Board relating to outside employment, remuneration and allowances, leave of absence, resignation, retirement, and termination of appointment. Given other proposed changes to the Principal Act it is considered more convenient to provide distinct provisions to apply to the operations of the Councils. Item 9 would also repeal subsection 35(2) relating to the termination of appointment of Council members who are public servants, but this subsection would be replaced by new subsection 35G(3).

A new section 35 would provide that the Governor-General may determine in writing the terms and conditions of the Chairperson of a Council other than those provided for by the Principal Act. The Minister would be able to determine the terms and conditions, other than those provided for by the Principal Act, of members other than the Chairperson.

New sections are to be inserted to apply provisions to Councils which currently apply by virtue of the present subsection 35(1). These sections are technical amendments that flow as a consequence of the repeal of section 35. New sections 35A, 35B, 35C, 35D, 35E, 35F and 35G respectively relate to outside employment, remuneration and allowances, leave of absence, resignation from office, retirement from office, and termination of appointment by either the Governor-General (s. 35F) or the Minister (s. 35G).

Item 10 - Transitional

Item 10 would provide transitional arrangements for members of Councils. It provides that the amendments in the Schedule do not affect the appointment, term of appointment or terms and conditions of appointment of anyone who was a Council member (including Chairperson and Deputy Chairperson) immediately prior to the amendments having effect. It further provides that all the members are taken to have been appointed under the relevant sections of the Principal Act. Subject to subitem 10(4), subitem 10(3) provides that any terms and conditions that applied by virtue of section 12 of the Principal Act continue to apply. Subitem 10(4) provides that those conditions apply except where they are inconsistent with any new terms and conditions determined by the Minister under new section 35.

SCHEDULE 6 - AMENDMENTS RELATING TO CHANGES IN FUNCTIONS OF THE BOARD AND OF SOME COUNCILS

Item 1 - Sub-subparagraph 7(1)(a)(i)(A)

Sub-subparagraph 7(1)(a)(i)(A) currently prohibits the Board from examining or advising the Minister on migrant adult education. The effect of omitting the sub-subparagraph would be to remove the prohibition.

Item 2 - Sub-subparagraph 7(1)(a)(i)(B)

Item 2 would be a technical amendment. The word "or" would be added at the end of sub-subparagraph 7(1)(a)(i)(B).

Item 3 - Subparagraph 7(1)(a)(i)(D)

Item 3 would omit the sub-subparagraph and replace it with four new sub-subparagraphs. The item would add a new sub-paragraph 7(1)(a)(i)(D) which substantially replicates the current sub-subparagraph. New sub-subparagraphs 7(1)(a)(i)(E) and (F) would be added and recognise the creation of two new Councils by allowing the Board to examine and advise on language and literacy and international education and training respectively. Sub-subparagraph 7(1)(a)(i)(G) would provide that the Board could inquire into and advise on adult and community education. The Government's response to the review of the Board and its Councils acknowledged the need for the Board to give attention to issues which cross the education and training sectors. The Board is able to do so under existing provisions of the Principal Act.

Item 4 - Subparagraph 7(4)(g)(ii)

Item 4 would omit the subparagraph 7(4)(g)(ii) which referred to "technical and further education" and replace it with "vocational education and training". This is a technical amendment that follows from amendments to the Employment and Skills Formation Council's functions as set out in items 7 and 9 of this Schedule.

Item 5 - Paragraph 24(1)(c)

Item 5 would omit the paragraph. It would remove the provision for the Schools Council to report on funding under the *States Grants (Schools Assistance) Act 1988*. This recognises the changes in Commonwealth arrangements in respect of school funding since the enactment of the Principal Act.

Item 6 - Sub-subparagraph 25(1)(a)(i)(C)

Item 6 would remove the words "in respect of buildings, equipment, staff and other facilities". It would clarify that the functions of the Higher Education Council permit it to deal with priorities for all the needs of higher education institutions, not just in respect of buildings, equipment, staff and other facilities.

Item 7 - Subparagraph 26(1)(a)(i)

Item 7 would omit the words "technical and further education" from the functions of the Employment and Skills Formation Council (note the proposed change of name of the Council in Schedule 7) and replace it with "vocational education and training". The provision would align the terminology used in the functions of the Employment and Skills Formation Council with terminology now in wide use.

Item 8 - Sub-subparagraph 26(1)(a)(i)(A)

This would be a technical amendment. It would add an "or" at the end of the sub-subparagraph.

Item 9 - Sub-subparagraph 26(1)(a)(i)(B)(D)(E) and (F)

Item 9 would omit the sub-subparagraphs 26(1)(a)(i)(B), (D), (E) and (F) and replace them with new sub-subparagraphs 26(1)(a)(i)(B), (C), (D) and (E). Item 4 of Schedule 1 would have already omitted sub-subparagraph 26(1)(a)(i)(C). These proposed changes are largely technical changes that flow from the update in terminology outlined in item 7 above. Generally, the changes would replicate the previous functions of the Employment and Skills Formation Council but the words "vocational education and training" will replace "technical and further education".

Item 10 - Paragraph 26(1)(c)

Item 10 would omit paragraph 26(1)(c). This would remove the provision for the Employment and Skills Formation Council to have the function of inquiring into and reporting on the operations of Commonwealth-State funding arrangements for technical and further education. This function is no longer required in the light of the creation of the Australian National Training Authority under the *Australian National Training Authority Act 1992*.

SCHEDULE 7 - MISCELLANEOUS AMENDMENTS

Item 1 - Subsection 9(8)

This item would provide that any reports provided by the Board to the Minister under section 9 of the Principal Act would be required to be tabled in each House of the Parliament within 15 sittings days. This time limit currently does not apply to reports provided under section 9 (including reports in response to references from the Minister) other than the Board's annual report.

Item 2 - Subsection 9(9)

This item would omit subsection 9(9) as a consequence of the amendment to subsection 9(8).

Item 3 - Subsection 11(6)

This technical amendment would remove the reference to the Department of Aboriginal Affairs as this department no longer exists.

Item 4 - Paragraph 16(3)

This technical amendment corrects an error in the citation of the *Remuneration Tribunal Act 1973*.

Item 5 - Paragraph 23(c)

This item would alter the name of the "Employment and Skills Formation Council" to the "Employment and Skills Council" to better reflect the breadth of matters dealt with by this Council by removing the limitation to skills formation.

Item 6 - Paragraph 23(c)

This is a technical drafting amendment.

Item 7 - Subsection 26(1)

This item is consequential on the change in the name of "Employment and Skills Formation Council" to the "Employment and Skills Council".

Item 8 - Subsection 57(1)

This item would remove the limitation on the number of Counsellors the Minister may appoint.

Item 9 - Subsection 63(1)

This item would provide for a further review of the Board and its Councils by 30 June 2000.

**SCHEDULE 8 - AMENDMENT TO SUBSTITUTE NEW SCHEDULE OF HIGHER
EDUCATION INSTITUTIONS**

Item 1 - Schedule 1

This item would update Schedule 1 to the Principal Act which lists the higher education institutions for the purposes of the definition in section 3.

