THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN TECHNICAL COLLEGES (FLEXIBILITY IN ACHIEVING AUSTRALIA'S SKILLS NEEDS) BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Vocational and Technical Education the Honourable Gary Hardgrave MP)
The purpose of the Bill is to implement the Government’s election commitment to establish Australian Technical Colleges for years 11 and 12 students in 24 regions throughout Australia. These Colleges will offer high quality training and facilities that will further strengthen Australia’s vocational education and training system and promote pride and excellence in the acquisition of trade skills. Establishment of these Colleges is a vital step in addressing the skills needs that Australia is experiencing in a number of traditional nation building trades.

The Bill provides for funding agreements between the Australian Government and the Colleges that can be tailored to the needs and challenges of each region. While some governance and administrative requirements will be set as standard conditions in each funding agreement, the Bill does not prescribe any particular model of operation. This means that each College will be able to operate in a manner that best meets the needs of industry and students in the region in which it is established.

The Bill secures supplementary funding to support the Australian Technical College initiative. Appropriations totalling $343.6 million over five years will provide for the allocation of funds to the Colleges to support infrastructure development as well as the additional costs associated with the delivery of the specialised services that the Colleges will provide. The Bill is complementary to the Schools Assistance (Learning Together-Achievement Through Choice and Opportunity) Act 2004 through which the Colleges may receive general recurrent grant funding, in addition to the supplementary funding.

The supplementary funding will enable the Colleges to have access to high quality facilities and offer appealing working conditions through Australian Workplace Agreements to attract and retain the best available staff. Colleges will have a governing body, chaired by a local business person and consisting of local industry and community representatives that will ensure that the skills taught to students will be directly relevant to the needs of local industry. Each College which is a non-government school will have to be registered as a school in the State or Territory in which it operates and accredited to deliver curriculum leading to achievement of the senior secondary certificate of education. These features will allow the Colleges to establish themselves as centres of excellence and raise the profile and status of vocational pathways in schools.

As with other school based programs, the legislative base for the Australian Technical Colleges will be underpinned by funding agreements with either State or Territory Governments or the ATC authority of the College. The funding agreements will contain the conditions under which funding will be allocated to Colleges and include a schedule of the payments to be made to each College over the term of the agreement. Ongoing funding may also be contingent on Colleges meeting specified eligibility criteria.

This Bill includes, as a condition of funding, a requirement for all Colleges to provide reports covering financial expenditure and performance outcomes. This information, to be specified in
the funding agreement, will include such information as the vocational education and training options being offered, academic outcomes, school leaver destinations and retention rates.

FINANCIAL IMPACT

The Bill provides for an appropriation of $343.6 million over the period 2005 to 2009 to support the establishment and operation of the Colleges.
Part 1—Preliminary

Clause 1 - Short title

Provides for the Act to be cited as the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Act 2005.

Clause 2 - Commencement

Provides for the Act to commence on the day on which it receives the Royal Assent.

Clause 3 - Definitions

Contains definitions of the terms and expressions used in the Act.*

*Note: The clauses in the Bill will become sections of the Act on Royal assent. In this Explanatory Memorandum only the first reference to a clause or subclause uses that terminology. Subsequent references use the terms “section” or “subsection” as appropriate.

Clause 4 Principal object of Act

Provides that the principal object of the Act is to provide for the establishment and operation of Australian Technical Colleges in order to provide trade skills training, education and mentoring for young Australians through:

- promoting pride and excellence in trade skills training for young people; and
- providing skills and education in a flexible learning environment to build a solid basis for secure and rewarding careers; and
- adopting a new industry-led approach to providing education and training in partnership with local communities; and
- establishing an industry-led governing council for each Australian Technical College that is to set out strategic directions and performance objectives for the College and select the principal of the College; and
- providing trade training that is relevant to industry and that leads to nationally recognised qualifications through School-Based New Apprenticeships, and academic and vocational education that is relevant to trade careers and that leads to a Year 12 Certificate; and
- ensuring the autonomy of the principal of each Australian Technical College to manage the College, to select the best staff and to meet the targets and performance measures set by the governing council of the College; and
- encouraging an environment of freedom and reward for effort for the staff of Australian Technical Colleges through flexible employment arrangements which provide rewards linked to excellent performance.
Subsection 7(5) of the Act provides that the Minister must have regard to this object in determining eligibility criteria.
Part 2—General provisions relating to grants

Division 1—Agreements

Clause 5  Minister may make agreements

Provides that the Minister may (on behalf of the Commonwealth) make an agreement under Division 1 of Part 2.

Clause 6  Agreements with States for ATCs

Provides for the form of agreements between the Commonwealth and States for the establishment or operation of Australian Technical Colleges (ATCs) as government schools.

Subclause 6(1) has the effect of providing that the Minister must not authorise a payment of financial assistance under the Act to a State for the establishment or operation of an ATC as a government school unless a written agreement is in force between the State and the Commonwealth that sets out the following conditions:

- a condition that the payments received under the agreement be spent for the establishment or operation of the ATC;
- the conditions mentioned in Division 2 of Part 2 (other than section 11).

Subclause 6(2) provides that an agreement may also specify other conditions and that the payments under the Act are made on those conditions.

Clause 7  Agreements with ATC authorities for ATCs

Provides for the form of agreements between the Commonwealth and ATC authorities (as defined in section 3) for the establishment or operation of ATCs as non-government schools.

Subclause 7(1) has the effect of providing that the Minister may determine that a body is the ATC authority for an ATC.

Subclause 7(2) has the effect of providing that the Minister must not authorise a payment of financial assistance under the Act to an ATC authority for the establishment or operation of an ATC as a non-government school unless a written agreement is in force between the ATC authority and the Commonwealth that sets out the following conditions:

- either a condition that (while the agreement is in force) the ATC is a school of a kind in respect of which financial assistance is payable under Part 6 of the Schools Assistance (Learning Together-Achievement Through Choice and Opportunity) Act 2004 (the Schools Assistance Act); or that if, when the agreement commences financial assistance is not payable, a condition that the ATC is a school of a kind in respect of which financial assistance will be payable under that Part by the date specified in the agreement and for the remainder of the period that the agreement is in force;
• a condition that the payments received under the agreement be spent for the establishment or operation of the ATC; and
• the conditions mentioned in Division 2 of Part 2 (other than subsection 8(2)).

Subclause 7(3) has the effect of providing that an agreement may also specify other conditions and that the payments under the Act are made on those conditions.

Subclause 7(4) has the effect of providing that, in addition to the conditions specified in the agreement, the Minister may determine eligibility criteria for the payment of financial assistance under the Act to the ATC authority.

Subclause 7(5) has the effect of providing that, in determining eligibility criteria, the Minister must have regard to the object of the Act.
Division 2—Other conditions of agreements

Clause 8  Certifying that payments duly spent or committed

Subclause 8(1) has the effect of providing that there must be a condition in Part 2 agreements that the other party to the agreement gives the Secretary of the Department a certificate by a qualified accountant certifying that the payments to the party have been spent (or committed to be spent) for the purposes specified in the agreement.

Subclause 8(2) has the effect of providing that if the other party to the Part 2 agreement is a State there must be a condition that, if not all the payments were spent (or committed to be spent) by the State for the purposes specified in the agreement, the State will (if the Minister so determines) pay the Commonwealth the amount stated in the determination within a period determined by the Minister.

Subclause 8(3) has the effect of providing that the amount stated in a subsection 8(2) determination must not exceed the sum of the unspent or uncommitted amounts.

Clause 9  Reports about financial expenditure

Has the effect of providing that there must be a condition in Part 2 agreements that the other party to the agreement gives the Minister reports about the expenditure of financial assistance under the Act containing the kind of information about assistance to that party that the Minister thinks appropriate.

Clause 10  Reporting on performance

Has the effect of providing that there must be a condition in Part 2 agreements that the other party to the agreement must comply with the performance reporting requirements mentioned in the agreement.

Clause 11  Condition about access to accounts etc. of ATC authority

Subclause 11(1) has the effect of providing that, if the other party to a Part 2 agreement is an ATC authority, there must be a condition in the agreement that the ATC authority allow a person authorised in writing by the Minister for the purpose (and with such help as the person requires) to:

- Have full and free access (at all reasonable times) to accounts, records and other documents of the ATC authority relating to information that the ATC authority is required under the agreement to give to the Minister; and
- To take extracts from, or make copies of, any such accounts, records and documents.
Subclause 11(2) provides that the authorised person must give the ATC authority reasonable notice of his/her intention to obtain the form of access described in paragraph 11(1)(a) [dot point 1 above].

**Clause 12  Conditions about reporting**

Has the effect of providing that there must be a condition in Part 2 agreements that the other party to the agreement give the Minister or the Secretary of the Department (as specified in this Act or in the agreement) at the times (and in the manner) required by the agreement, the reports or certificates mentioned in sections 8, 9 and 10 and any other reports of a kind or kinds specified in the agreement.

**Clause 13  Condition of agreement not fulfilled**

Subclause 13(1) has the effect of providing that there must be a condition in an agreement with an ATC authority that there will be certain consequences if certain conditions in the agreement are not met. Paragraphs 13(1)(a) and (b) set out the breach of conditions which must be provided for while paragraphs 13(1)(c), (d) and (e) set out the consequences which must be provided for in the agreement for such breaches.

**Breaches of conditions which must be provided for**

Paragraph 13(1)(a) has the effect of providing that one of the breaches of conditions which must be provided for is a breach of the condition in paragraph 7(2)(a) [dot point 1 in the explanation of subclause 7(2)].

Paragraph 13(1)(b) has the effect of providing that the other breach of conditions which must be provided for is the other party to the agreement failing to fulfil any other condition of the agreement by the date specified in the agreement (or within such further period as the Minister allows).

**Consequences which must be provided for in the agreement for such breaches**

Paragraphs 13(1)(c), (d) and (e) have the effect of providing that there must be a condition that, in the event of a breach described in paragraph 13(1)(a) or (b), the other party will (if the Minister so determines) repay to the Commonwealth the amount stated in the determination. If the other party does not do so, the Minister may make a determination reducing one or more payments of financial assistance under the Act to the other party and the Minister may delay the making of any further payment under the Act to the other party until the conditions mentioned in paragraphs 13(1)(a) and (b) are fulfilled.

Subclause 13(2) has the effect of providing that the amount mentioned in paragraph 13(1)(c) [the amount stated in the determination by the Minister] must not be more than:

- if the other party is a State, the sum of the payments mentioned in paragraph 6(1)(a); and
- if the other party is an ATC authority, the sum of the payments mentioned in paragraph 7(2)(b).
Clause 14  Overpayments

Provides that there must be a condition that, if the amount of financial assistance paid under the Act to the other party to the Part 2 agreement exceeds the amount that was properly authorised to be paid, the other party will (if the Minister so determines) pay the Commonwealth an amount (not more than the excess) stated in the determination.
Division 3—Other matters

Clause 15 Minister’s power if amount repayable

Provides that the Minister may make a determination reducing an amount that is authorised to be paid under the Act to the other party to a Part 2 agreement if (under a condition of the agreement) the Minister determines that the other party is to pay an amount to the Commonwealth and all or part of that amount remains unpaid. The amount of the reduction must not be more than the amount unpaid.

Clause 16 Amount payable to the Commonwealth is a debt

Subclause 16(1) has the effect of providing that an amount payable by a State to the Commonwealth under the Act (or under a Part 2 agreement) is a debt due by the State to the Commonwealth.

Subclause 16(2) has the effect of providing that an amount payable by an ATC authority to the Commonwealth under the Act (or a Part 2 agreement) is a debt due by the ATC authority to the Commonwealth.

Clause 17 Determinations requiring repayments

Provides that, if the Minister is considering whether to make a determination under paragraph 13(1)(c) or section 14, he/she must take into account all relevant matters, including whether the other party to the Part 2 agreement gave all relevant information to the Commonwealth before the grant of financial assistance was made.
Part 3—Payments

Clause 18  Minister may make determinations authorising payments

Subclause 18(1) has the effect of providing that the Minister may make a determination authorising payment of financial assistance under the Act to a State or an ATC authority.

Subclause 18(2) has the effect of providing that the Minister must not make a determination authorising payment of financial assistance to an ATC authority if the Minister has determined eligibility criteria for the payment of financial assistance under the Act to the ATC authority for the ATC concerned and the Minister is satisfied that the eligibility criteria are not fulfilled.

Subclause 18(3) has the effect of providing that subsection 18(2) does not apply if the Minister is satisfied that (in the circumstances) the payment should be authorised despite the non fulfilment of the eligibility criteria.

Subclause 18(4) creates a table setting out the maximum aggregate amount which the Minister may determine under subsection 18(1) for the years 2005, 2006, 2007, 2008 and 2009. The table is divided into two columns. Column 1 lists each year and column 2 the maximum aggregate amount which may be determined for each year.

Clause 19  Payments subject to conditions

Provides that a payment under the Act is subject to the conditions set out in the agreement for the payment.

Clause 20  Minister may refuse to authorise, or delay, payment in certain circumstances

Subclause 20(1) provides that the Minister may refuse to authorise a payment to an ATC authority under the Act for an ATC that is a non-government school in a State during any period when the State Minister does not recognise the ATC as a school.

Subclause 20(2) has the effect of providing that the Minister may refuse to authorise (or may delay) a payment to an ATC authority that is a body corporate if it is being wound up, a receiver has been appointed in respect of its property or its affairs are under the control of a manager.

Subclause 20(3) has the effect of providing that the Minister may refuse to authorise (or may delay) a payment to an ATC authority that is not a body corporate if the Minister considers that its liabilities are substantially greater than its assets or it is (and is likely to continue for a substantial period to be) unable to pay its debts as and when they fall due for payment.
Part 4—Miscellaneous

Clause 21  Minister may determine amounts and times of payment of financial assistance

Provides that the amounts of financial assistance authorised to be paid under the Act are to be paid in such a way (including payment by instalments) and at such times as the Minister determines.

Clause 22  Payment reduced for false or misleading statement

Subclause 22(1) has the effect of providing that, if a person made a statement to the Minister, the Secretary or an APS employee in the Department for the purposes of the Act (or an agreement made under the Act) about a grant of financial assistance, the statement was false or misleading in a material particular and, relying on the statement, a payment has been made under the Act to a State or to an ATC authority of an amount that (in the Minister’s opinion) exceeds the amount that would have been authorised to be paid if the statement had not been false or misleading in a material particular, then the Minister may make a determination reducing by the amount of the excess any amount payable under this Act to the State or the ATC authority.

Subclause 22(2) provides that a determination under section 22 may take effect from a day before the day on which the determination was made.

Clause 23  Appropriation

Has the effect of providing that amounts payable by the Commonwealth under the Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Clause 24  Determinations etc.

Proposed subsection 24(1) provides that a determination under the Act must be in writing.

Proposed subsection 24(2) has the effect of providing that (subject to subsection 22(2)) a determination takes effect on the day stated in the determination or, if no day is stated, the day on which it is made.

Proposed subsection 24(3) has the effect of providing that, if a provision of the Act refers to a determination made (or other act or thing done by) the Minister and no other provision of the Act expressly authorises the Minister to make such a determination (or do such an act or thing) then this subsection authorises the Minister to do so.

Proposed subsection 24(4) provides that a determination under the Act is not a legislative instrument. This provision is included to assist readers, as determinations made under the Act are not legislative instruments within the meaning of section 5 of the Legislative Instruments Act 2003.
Clause 25  Delegation

Provides that the Minister may, by writing, delegate to the Secretary or an SES employee in the Department all or any of the Minister’s powers under the Act (or under an agreement mentioned in the Act).

Clause 26  Regulations

Provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed (or necessary or convenient to be prescribed) for carrying out or giving effect to the Act.