

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**SKILLING AUSTRALIA'S WORKFORCE (REPEAL AND TRANSITIONAL  
PROVISIONS) BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Vocational and Technical Education  
the Honourable Gary Hardgrave MP)

# **SKILLING AUSTRALIA'S WORKFORCE (REPEAL AND TRANSITIONAL PROVISIONS) BILL 2005**

## **OUTLINE**

The Australian National Training Authority (ANTA) was established in 1992 to coordinate the levels of government in establishing a national vocational education and training system.

On 22 October 2004, the Prime Minister announced the abolition of ANTA and the transfer of ANTA's functions to the Department of Education, Science and Training from July 2005.

The Bill will repeal the *Australian National Training Authority Act 1992* (the ANTA Act) and the *Vocational Education and Training Funding Act 1992*.

The Bill provides for the transitional arrangements for the transfer of functions and responsibilities from ANTA to the Department of Education, Science and Training, including arrangements for the transfer of assets, liabilities and custody of records to the Commonwealth.

This Bill is linked to the Skilling Australia's Workforce Bill 2005 which is the vehicle for the Government's new national training arrangements following the abolition of ANTA.

## **FINANCIAL IMPACT**

Ongoing savings of \$3.096 million per year will be realised from 2006-07 through the abolition of ANTA. These savings will be achieved primarily through the elimination of duplication in management and corporate support services (\$2.646m) and minor administrative savings (\$0.450m).

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**NOTES ON CLAUSES**

**Clause 1 - Short title**

Provides for the Act to be cited as the *Skilling Australia's Workforce (Repeal and Transitional Provisions) Act 2005*.

**Clause 2 - Commencement**

Provides for sections 1 to 3 of the Act to commence on the day on which it receives the Royal Assent.

Schedules 1 and 2 commence at the same time as the commencement of sections 3 to 47 of the *Skilling Australia's Workforce Act 2005*.

**Clause 3 - Schedule(s)**

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

# **Schedule 1 – Transitional provisions**

## **Part 1 – Definitions**

### **Item 1 - Definitions**

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

## **Part 2—Assets, liabilities and legal proceedings**

### **Item 2 – Vesting of assets of ANTA**

Provides that any assets owned by ANTA immediately before the transition time will, at the transition time, become the assets of the Commonwealth without the need for any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

The ‘transition time’ is defined in item 1 as the time at which sections 3 to 47 of the *Skilling Australia’s Workforce Act 2005* commence.

### **Item 3 – Vesting of liabilities of ANTA**

Provides that the liabilities of ANTA existing immediately before the transition time will, at the transition time, become liabilities of the Commonwealth without the need for any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

### **Item 4 – Substitution of the Commonwealth as a party to pending proceedings**

Provides that if there were any proceedings pending in any court or tribunal to which ANTA was a party immediately before the transition time, the Commonwealth is substituted for ANTA as a party to the proceedings from the transition time.

### **Item 5 – Transfer of custody of ANTA records**

Provides that any records or documents in the custody of ANTA immediately before the transition time are to be transferred to the custody of the Commonwealth at or after the transition time.

## **Part 3—Miscellaneous**

### **Item 6 – Instruments**

Provides that instruments to which this item applies continue to have effect on and after the transition time as if a reference in the instrument to ANTA were a reference to the Commonwealth.

This item applies to an instrument if the instrument was in force immediately before the transition time, and it is an instrument to which one or more of the following apply:

- an instrument that was made by ANTA;
- an instrument to which ANTA was a party;
- an instrument that was given to, or in favour of, ANTA;
- an instrument under which any right or liability accrues or may accrue to ANTA; or
- any other instrument in which a reference is made to ANTA.

### **Item 7 – Members of ANTA**

Provides that a person who held office as a member of ANTA immediately before the transition time ceases to hold that office at the transition time.

### **Item 8 – Repayment of payments made by ANTA**

This item deals with payments made on particular terms and conditions by ANTA to States or other persons under Part 3 of the ANTA Act, and provides for repayment to the Commonwealth if the Minister is satisfied that there has been a failure to fulfil a term or condition of the payment.

Subitem 8(1) provides that if, before the transition time, ANTA had made a payment to a State or to another person under Part 3 of the ANTA Act on particular terms and conditions, the Commonwealth is treated, on and after that time, as if it had made the payment on the same terms and conditions. Paragraph 8(1)(b) provides that if the Minister is satisfied that the State or other person has failed to fulfil a term or condition on which the payment has been made, the Minister may, on behalf of the Commonwealth, give notice that the Minister is satisfied of the failure to fulfil a term or condition.

Subitem 8(2) provides that a State or another person to whom a notice is given by the Commonwealth under paragraph (1)(b) is liable to pay immediately to the Commonwealth an amount equal to the amount of the payment or the amount that is specified in the notice.

Subitem 8(3) provides that a notice given under paragraph (1)(b) is not a legislative instrument. This provision is included to assist readers, as a notice given under paragraph (1)(b) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subitem 8(4) provides that this item does not affect the availability to the Commonwealth of any legal or equitable remedy for a failure to fulfil a term or condition of a payment that was made by ANTA, before the transition time, to a State or to another person.

### **Item 9 – Annual audit reports by States – payments in respect of 2004 and 2005**

Subitem 9(1) provides that item 9 applies in respect of the reporting periods of the year 2004, and the 6 month period ending on 30 June 2005.

Subitem 9(2) requires each State to which funds were paid by ANTA for the relevant reporting period to give the Minister a written statement by a qualified auditor specifying the amounts of those funds spent in respect of the period and certifying that the amounts so spent were spent for the purposes for which they were allocated to the State by ANTA.

Subitem 9(3) provides that the statement must be given to the Minister:

- for the year 2004—not later than 30 September 2005; and
- for the 6 month period ending on 30 June 2005—not later than 31 December 2005.

Subitem 9(4) provides that this item does not apply to a State in respect of the year 2004 if the State has given a report to the Minister for that year under section 17 of the ANTA Act before the transition time.

### **Item 10 – Final financial reports**

Subitem 10(1) requires the Minister to prepare the report referred to in section 9 of the *Commonwealth Authorities and Companies Act 1997* for ANTA for the financial year ending on 30 June 2005.

Subitem 10(2) provides that the obligation imposed on ANTA under section 9 of the *Commonwealth Authorities and Companies Act 1997* to prepare an annual report for the financial year ending 30 June 2005 is satisfied if the report is prepared by the Minister.

### **Item 11 – Final annual national report**

Subitem 11(1) requires the Minister, as soon as practicable after the transition time, to lay before each House of the Parliament an annual report for the year 2004, representing the draft annual national report prepared by ANTA for that year under section 18 of the ANTA Act.

Subitem 11(2) provides that the draft annual national report for 2005 prepared by the Minister under section 44 of the *Skilling Australia's Workforce Act 2005* must include the information for the 6 month period ending on 30 June 2005 that ANTA would have been required to include in the draft annual national report under section 18 of the ANTA Act

## **Item 12 – Exemption from stamp duty and other State or Territory taxes**

Subitem 12(1) provides that no stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.

An ‘exempt matter’ is defined in subitem 12(2) as the vesting of an asset or liability under this Schedule, or the operation of this Schedule in any other respect.

Subitem 12(3) provides that the Minister may certify in writing that a specified matter is an exempt matter, or that a specified thing was connected with a specified exempt matter.

Subitem 12(4) states that in all courts and for all purposes, except for the purposes of criminal proceedings, a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

Subitem 12(5) provides that a certificate under subitem (3) is not a legislative instrument. This provision is included to assist readers, as a certificate made under subitem (3) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

## **Item 13 – Certificates taken to be authentic**

Provides that a document appearing to be a certificate made or issued under a provision of this Schedule is taken to be such a certificate and is taken to have been properly given unless the contrary is established.

## **Item 14 – Delegation by Minister**

Provides that the Minister may, by writing, delegate to the Secretary or an SES employee in the Department any or all of the Minister’s powers under Schedule 1.

## **Item 15 – Regulations**

Provides that the Governor-General may make regulations prescribing matters required or permitted by Schedule 1 to be prescribed (or necessary or convenient to be prescribed) for carrying out or giving effect to Schedule 1.

## **Schedule 2 – Repeal of Acts**

### ***Australian National Training Authority Act 1992***

#### **Item 1**

Repeals the whole of the Act.

### ***Vocational Education and Training Funding Act 1992***

#### **Item 2**

Repeals the whole of the Act.