



Skills Australia Bill 2008

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Social Policy Section

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Skills Australia Bill 2008

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House: House of Representatives

Portfolio: Education, Employment and Workplace Relations

Commencement: On the day on which it receives the Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill establishes Skills Australia, a new statutory body that will provide independent advice to the Government on current, emerging and future workforce development and workforce skills needs.

Background

Basis of policy commitment

The establishment of Skills Australia was part of the Australian Labor Party's (ALP) 2007 election policy strategy to address skills shortages.¹ Skills Australia, a high level board of seven experts, comprising economic, industry, academic and education expertise, is to provide independent advice and recommendations to Government about Australia's skills needs, based on research, analysis and consultations.

The introduction of this legislation during the first Parliamentary sitting week, and the establishment of a Skills Australia Implementation Group, as an interim measure until the legislation is passed, is indicative of the priority the new Government is giving to implementing its strategy for addressing skills shortages and curbing inflation.²

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1. Kevin Rudd et al., [Skilling Australia for the future : Election 2007 policy document](#), ALP, 2007
<http://www.mskills.com.au/DownloadManager/Downloads/ALP%20Skills%20policy.pdf>
accessed on 15 February 2008.
 2. The Hon. Julia Gillard, Minister for Education, Employment and Workplace Relations, 'Second reading speech: Skills Australia Bill 2008', House Hansard, 13 February 2008. For

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Skills Australia has a significant role in this overall strategy. It will be on the basis of the advice received from Skills Australia that the Government will allocate promised new training places directly to industry sectors.³ The Government has promised funding for an additional 450,000 vocational education and training (VET) places (over four years) as well as promising that 'existing places will continue to be funded under existing arrangements'.⁴ More than a third of these new places are to be allocated to people outside, or marginally attached to the workforce, and the remainder to employed people needing to upgrade their skills. Some 20,000 of these new VET places for those outside the workforce are to be made available from April 2008.⁵

The ALP has promoted the merits of its new strategy for the allocation of new training places as demand driven i.e. driven by industry sector needs. Allocation of places will be according to industry demand, and based on the advice received from Skills Australia. The [*Skilling Australia for the future: Election 2007 policy document*](#) outlines how this direct allocation of places to industry sectors will be achieved. Funding for the places will be provided to the strengthened and better resourced Industry Skills Councils (ISCs). The ISCs are to allocate the places to employers through a tender process, and then the ISCs will commission the corresponding training packages from training providers. Funding of the ISCs will be outcomes oriented in that the ISCs will only receive part of the funding for each place upfront and the remainder only on the successful completion of training.⁶

This new strategy will be partially funded through the abolition of the former Coalition Government's Australian Skills Vouchers programme which the ALP critiqued as being supply driven.⁷ Labor has estimated the net cost of its Skilling Australia package at \$539 million (i.e. approximately \$1,172 million over four years, less \$633 million in offsets).⁸ The Australian Skills Vouchers programme was a Commonwealth Government student-centred funding programme i.e. Commonwealth dollars followed the student to the training provider through the voucher.⁹ This arrangement effectively involved the Commonwealth in direct purchasing/funding arrangements with education and training providers. The vouchers, worth up to \$3,000, could be used with training organisations

reference to the Skills Australia Implementation Group see p.3 of the printed copy of the second reading speech as this does not appear in Hansard.

3. Kevin Rudd, op.cit., p. 13.
4. *ibid.*, p.17.
5. Julia Gillard, op.cit., p.4.
6. Kevin Rudd, op.cit., pp.12–17.
7. *ibid.*, pp.7–8.
8. *ibid.*, p. 19. This estimate also includes additional funding for the Industry Skills Councils.
9. The Australian Skills Vouchers programme included Work Skills Vouchers and Business Skills Vouchers.

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that had been approved by the Department of Education, Science and Training (DEST) to provide voucher eligible courses. During the 2007 election campaign the former Coalition Government promised an additional \$392.9 million for this programme, adding to the \$408 million that had already been committed. This was based on estimates of 60,000 vouchers a year.¹⁰

Introduced as part of a strategy to raise the skills of the adult workforce, the Australian Skills Vouchers were made available to, in order of priority: unskilled workers wanting to obtain qualifications, income support recipients facing active job search requirements, unemployed jobseekers receiving income support and involved in active job search, and people not in the labour force who intended looking for work after obtaining their qualification. They were provided to people aged 25 and over, without Year 12 or equivalent qualifications, to undertake accredited literacy/numeracy and basic education courses and Certificate II courses.

The target groups for both the former Coalition Government's Australian Skills Vouchers and the ALP's new Skilling Australia programme are therefore very similar. However, the Australian Skills Vouchers were only provided for lower level qualifications—in the ALP's view another disadvantage of this programme. The Skilling Australia programme therefore includes higher level qualifications, thus expanding its potential reach.

Position of significant interest groups/press commentary

Press articles record support from the Business Council of Australia, the Australian Industry Group (albeit cautious) and TAFE Directors Australia for the establishment of Skills Australia when it was announced in 2007.¹¹ Support was influenced by concern about the shortage of skilled labour, interest in improving the forecasting of skills shortages, and the expectation that a useful contribution could be made by a well-resourced body focused on industry needs.

The former Coalition Government's Minister for Vocational and Further Education, Mr Andrew Robb, was reported to have been critical of the proposal on the grounds that it would add another layer of bureaucracy and do nothing to solve the skills shortage.¹²

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10. *New Skills: vouchers for training: The Coalition Government election 2007 policy*, <http://parlinfoweb.parl.net/parlinfo/Repository1/Library/partypol/HOQO62.pdf>, accessed on 15 February.
 11. Siobhain Ryan, '[Employers back Labor's new national skills body](#)', *The Australian*, 17 September 2007, p. 5, Alexander Symonds, '[Cautious praise for Labor's skills plan](#)', *Australian Financial Review*, 17 September, 2007, p. 4.
 12. *ibid.*, Siobhain Ryan see also Minister Robb's response to Labor's plan to abolish the Work Skills Vouchers, A. Robb (Minister for Vocational and Further Education) [Labor's skills policy: smoke and mirrors](#), Media release, 15 November 2007

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Higher education policy analyst and columnist for *The Australian* Gavin Moodie has expressed scepticism about the overall strategy on a number of fronts. Insofar as Skills Australia's advisory role he says, 'no country anywhere at any time has successfully forecast work force demand over the period needed to plan education places and there is nothing to suggest federal Labor's work force forecasting would succeed where all others have failed'. With regard to the proposed strategy for allocating places based on the advice of Skills Australia, Mr Moodie challenges the ALP's claims that it moves from a supply driven system to a demand driven one. He sees it more as a move away from being a supply system driven by state training departments to one where supply is driven by the Industry Skills Councils. Furthermore he believes that whereas the former Coalition Government's funding policies had been moving towards reducing the divisions between vocational and higher education, this allocative mechanism would likely increase the divisions.¹³

Financial implications

This Bill does not provide for appropriations—not for Skills Australia nor for the proposed new training places.

Skills Australia will be funded through appropriations to the Department of Education, Employment and Workplace Relations (DEEWR) and will be allocated \$14.6 million for the 2007-08 to 2010-11 funding period.

As indicated earlier, the ALP's estimates of the total cost of its Skilling Australia policy (including additional funding for the ISCs) was \$1,172 million over four years, and offset by some \$633 million savings from the abolition of the Australian Skills Vouchers programme, its net impact would be \$539 million.

Key policy issues

Skills Australia is part of the Government's new industry focused VET funding programme which effectively replaces the Australian Skills Vouchers programme of the former Coalition Government. The programme involves a new process for the identification of skills needs, and for the allocation and purchasing of training. There may be debate about the relative merits of the two programmes, and whether they are based on supply or demand driven allocative mechanisms. However, as a programme that involves the Commonwealth directly in the funding and purchasing of services from training providers, it effectively continues the former Coalition Government's interest in greater Commonwealth control over the allocation of its funds than that afforded by the system of

13. Gavin Moodie, '[A fresh start for the Liberals](#)', *Australian*, 12 December 2007, p. 30.

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grants provided to the States and Territories under the Skilling Australia's Workforce Agreement (the Commonwealth outlays approximately \$1.3 billion on these grants annually).

Amy Owen, a strategic analyst and former technical and further education (TAFE) manager acknowledges the merits of this programme, including the expertise of ISCs and the likelihood that it 'will deliver very significant growth to Australia's vocational training effort'. However, she has this to say about its likely effect on the Commonwealth's influence

...these arrangements are predicated on an unprecedented degree of centralised control over the distribution of training effort. They bypass the states and territories, current "user choice" mechanisms and other direct client-provider training transactions, and institutionalise Commonwealth controlled entities as the sole brokers of relations between employers and training providers.¹⁴

Another feature of this policy is that the funding will be made available to training providers on a contestable basis. A key issue for the TAFE sector will therefore be its capacity to compete and benefit from this area of funding growth, particularly important to the sector if there were to be no change in levels of funding under the Commonwealth/State funding arrangements.¹⁵

A key question therefore is—with Skills Australia and the ISCs promoted as having such a key role in the allocation of new and future training places, what are the implications for the level and distribution of the Commonwealth's grants to the States and Territories to support them in the running of their VET systems, and in particular their TAFE institutes?

The ALP has said it will maintain the existing arrangements for grants to the States and Territories. However, the levels of government funding under these arrangements have been in contention for some years. They have remained relatively static, while the sector has been expected to grow to meet the needs of a growing economy. The sector is responding to funding pressures through increased fees/charges levied on individuals for publicly supported courses, and increased revenue seeking activities such as offering fee-for-service and full fee courses. In support of increasing the private sources of revenue available to the VET sector, the Commonwealth Government has introduced income contingent loans to assist some full-fee paying VET students. Some even advocate the broader application of such loans to include assistance for students doing publicly supported courses.¹⁶ However, despite these efforts to expand private funding options, the

14. Amy Owen, ['Out in the cold'](#), *Campur Review*, v.18, no.4, 29 January 2008.

15. *ibid.* for more on this issue.

16. For more discussion about these funding pressures and issues see Carol Kempner, ['Higher Education Support Amendment \(Extending Fee-Help for VET Diploma and VET](#)

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broad ranging needs and clientele served by the VET system, and by TAFEs in particular, may well mean that better targeting of government funding to support clients with special needs may well be required, particularly if there is no increase in government grants funding.¹⁷

The Coalition Government had flagged its intention to review the Commonwealth/State funding arrangements as part of the negotiations for the new Skilling Australia's Workforce Agreement that will take place during 2008. It was proposing funding arrangements that were more like those applied in the higher education sector, where there would be funding of actual 'places' (rather than the current curriculum hours), therefore allowing for specific courses to be funded, and for providers to operate as independent businesses.¹⁸ It remains to be seen what a new funding agreement under the new ALP Government will entail.

Another key question is what will be the full scope of Skills Australia's role given the prominence it will have as an independent, statutory authority?

At present, advice to Government on skills and labour market needs is available from a number of sources, for example:

- DEEWR provides advice that finds expression in the [Migration Occupations in Demand List \(MODL\)](#) and the [National Skills Needs List \(NSNL\)](#) which are used to support skilled migration and training programmes, and
- The [National Industry Skills Committee](#), set up under the National Training System framework that guides the level and distribution of Commonwealth, State and Territory funds to the national VET system, provides advice to the [Ministerial Council for Vocational and Technical Education \(MCVTE\)](#) on matters relating to vocational education and training, including workforce planning, and future training priorities.

On account of its status as a statutory body, comparisons might be made between Skills Australia and the Australian National Training Authority (ANTA). ANTA was the statutory, advisory body established in 1992 to set up a collaborative national training system. To do this it had to operate independently of all levels of government. It was abolished by the former Coalition Government in 2005 when its functions were taken over by DEST (now by DEEWR). However, Skills Australia's role differs in that it is being established to advise the Minister, not the Ministerial Council. It can also be directed by

[Advanced Diploma Courses\) Bill 2007](#), *Bills Digest*, no.11, Parliamentary library, Canberra2007-08, pp.16–17.

17. For an interesting discussion about these funding issues particularly as they affect TAFE students see Martha Kinsman, ['Taking the charge'](#), *Campus Review*, v.17, no.40, October 9, 2007.
18. *bid.*

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the Minister and is therefore very much within the control of the Commonwealth Government. To this extent it would appear not to have a formal role within the National Training System arrangements, nor a position that might be viewed as independent of all levels of government. ANTA also had responsibilities for the allocation of funds and the administration of national programmes, as well as advisory responsibilities. While the Bill establishing Skills Australia allows for functions others than those specified to be conferred on Skills Australia, it is unclear at this stage whether the Government has any plans to extend its role beyond that of an advisory body, and beyond that of providing advice to the Commonwealth Government through the Minister.

Main provisions

The provisions of the Bill are relatively self-explanatory and are outlined in the Explanatory Memorandum. A brief overview of the structure of the Bill is presented here

The Bill is in five parts:

Part 1 of the Bill contains preliminary matters. **Clause 4** sets out the object of the proposed Act which is to provide for expert and independent advice relating to Australia's workforce skills and development needs.

Part 2 deals with the establishment and functions of Skills Australia. **Subclauses 6(1) and (2)** specify that the primary function is providing advice to the Minister.¹⁹ Additional functions are provided under **subclauses 6(3) and (4)**. They include a public information role (**paragraph 6(4)(a)**) and any functions directed by the Minister in writing (**paragraph 6(4)(b)**).

Clause 7 provides for directions to be given by the Minister to Skills Australia. According to **subclause 7(2)** the directions given by the Minister must be of a general nature only. Under **subclause 7(5)** this advice is not a legislative instrument under the Legislative Instruments Act 2003.²⁰ **Subclause 7(3)** prevents the Minister from giving directions to Skills Australia about the content of any advice they might prepare.

19. In accordance with section 19A of the *Acts Interpretation Act 1901* the Minister is the Minister for Education, Employment and Workplace Relations.

20. Section 5 of the *Legislative Instruments Act 2003* defines a legislative instrument' as an instrument of a legislative character that is, or was, made under a delegation of power from Parliament. An instrument has a legislative character if it determines or alters the content of the law rather than applying the law in a particular case; and if it affects a privilege or interest, imposes an obligation, or creates, varies or removes a right. All legislative instruments must be recorded on the Federal Register of Legislative Instruments in order to be enforceable.

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Part 3 provides for the constitution and membership of Skills Australia including appointment terms, remuneration and other terms and conditions, disclosure of interests, resignation and termination. **Clause 8** provides for a Chair and six other members. **Subclause 9(1)** requires that the Chair and members be appointed by the Minister; and **subclause 9(2)** that they have experience in academia, the provision of education and training, economics and industry. Under **clause 18** the Minister may terminate the appointment of a member if, amongst other things, the Minister is satisfied that the performance of the member has been unsatisfactory for a significant period. Neither the Bill itself, nor the explanatory memorandum contains any guidance as to what would constitute ‘unsatisfactory performance’. There is, similarly no guidance as to the duration of a ‘significant period’.

Part 4 deals with the conduct of meetings of Skills Australia including convening, presiding over, the requirement for a quorum of a majority of current members, voting and decision making, and the establishment of committees. **Clause 24** does provide that Skills Australia may make decisions without holding a meeting. **Subclause 24(2)** requires Skills Australia to first determine the nature of the decisions that are to be made without a meeting and the method by which members will vote in respect of those decisions. **Clause 25** provides for Skills Australia to establish committees to assist in the performance of its functions, the conditions under which they may be established, and their operating requirements. Under **subclause 25(9)** decisions to establish a committee, the Minister’s approval of committee members and directions are not legislative instruments.

Part 5 deals with miscellaneous issues including **clause 26** which deals with the engagement of staff, and **clause 27** which requires Skills Australia to provide the Minister with an annual report on its operations for presentation to Parliament. The report must include details of any directions given to Skills Australia by the Minister under paragraph 6(4)(b) or subsection 7(1) during the year.

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