



Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005

Act No. 124 of 2005 as amended

This compilation was prepared on 5 October 2007
taking into account amendments up to Act No. 171 of 2007

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Definitions.....	1
4 Principal object of Act.....	2
Part 2—General provisions relating to grants	4
Division 1—Agreements	4
5 Minister may make agreements.....	4
6 Agreements with States for ATCs.....	4
7 Agreements with ATC authorities for ATCs.....	4
Division 2—Other conditions of agreements	6
8 Certifying that payments duly spent or committed.....	6
9 Reports about financial expenditure.....	6
10 Reporting on performance.....	6
11 Condition about access to accounts etc. of ATC authority.....	6
12 Conditions about reporting.....	7
13 Condition of agreement not fulfilled.....	7
14 Overpayments.....	8
Division 3—Other matters	9
15 Minister’s power if amount repayable.....	9
16 Amount payable to the Commonwealth is a debt.....	9
17 Determinations requiring repayments.....	9
Part 3—Payments	10
18 Minister may make determinations authorising payments.....	10
19 Payments subject to conditions.....	11
20 Minister may refuse to authorise, or delay, payment in certain circumstances.....	11
Part 4—Miscellaneous	12
20A Changes to amounts that may be granted for particular years.....	12
21 Minister may determine amounts and times of payment of financial assistance.....	12
22 Payment reduced for false or misleading statement.....	12
23 Appropriation.....	13
24 Determinations etc.....	13
25 Delegation.....	13
26 Regulations.....	14
Notes	15

An Act to introduce business, industry and community leadership in the flexible provision of skills training and education for young Australians through granting financial assistance for establishing and operating Australian Technical Colleges, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005*.

2 Commencement [see Note 1]

This Act commences on the day on which it receives the Royal Assent.

3 Definitions

In this Act, unless the contrary intention appears:

ATC authority for an ATC means the body determined under subsection 7(1) to be the ATC authority for the ATC.

Australian Technical College or **ATC** means a school in respect of which financial assistance under this Act is provided or proposed to be provided.

government school has the same meaning as in the Schools Assistance Act.

non-government school has the same meaning as in the Schools Assistance Act.

other party, in relation to a Part 2 agreement, means the State or ATC authority making the agreement with the Commonwealth.

Part 2 agreement means an agreement made under Division 1 of Part 2.

qualified accountant means a person who:

- (a) is registered, or is taken to be registered, as a company auditor under Part 9.2 of the *Corporations Act 2001*; or
- (b) is a member of CPA Australia or the Institute of Chartered Accountants in Australia; or
- (c) is approved by the Minister as a qualified accountant for the purposes of this Act.

school has the same meaning as in the Schools Assistance Act.

Note: The definition of school in that Act includes a proposed school.

Schools Assistance Act means the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*.

State includes the Australian Capital Territory and the Northern Territory.

State Minister, for a State, means the Minister of the State who is responsible, or primarily responsible, for the administration of matters relating to school education in the State.

4 Principal object of Act

The principal object of this 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:

- (a) promoting pride and excellence in trade skills training for young people; and
 - (b) providing skills and education in a flexible learning environment to build a solid basis for secure and rewarding careers; and
 - (c) adopting a new industry-led approach to providing education and training in partnership with local communities; and
 - (d) 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
-

- (e) 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
- (f) 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
- (g) 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.

Part 2—General provisions relating to grants

Division 1—Agreements

5 Minister may make agreements

- (1) The Minister may, on behalf of the Commonwealth, make an agreement under this Division.
- (2) In making an agreement under this Division, the Minister must have regard to the object of this Act.

6 Agreements with States for ATCs

- (1) The Minister must not authorise a payment of financial assistance under this Act to a State for the establishment or operation of an ATC as a government school in the State unless a written agreement is in force between the State and the Commonwealth that sets out the following conditions:
 - (a) a condition that the payments received under the agreement be spent for the establishment or operation of the ATC;
 - (b) the conditions mentioned in Division 2 (other than section 11).
- (2) An agreement may also specify other conditions, and that the payments under this Act are made on those conditions.

7 Agreements with ATC authorities for ATCs

- (1) The Minister may determine that a body is the *ATC authority* for an ATC.
- (2) The Minister must not authorise a payment of financial assistance under this 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:
 - (a) either:
 - (i) a condition that, while the agreement is in force, the ATC be a school of a kind in respect of which financial

assistance is payable under Part 6 of the Schools Assistance Act; or

- (ii) if, when the agreement commences, financial assistance is not so payable—a condition that the ATC be 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;
 - (b) a condition that the payments received under the agreement be spent for the establishment or operation of the ATC;
 - (c) the conditions mentioned in Division 2 (other than subsection 8(2)).
- (3) An agreement may also specify other conditions, and that the payments under this Act are made on those conditions.
- (4) In addition to the conditions specified in the agreement, the Minister may determine eligibility criteria for the payment of financial assistance under this Act to the ATC authority.
- (5) In determining eligibility criteria, the Minister must have regard to the object of this Act.

Division 2—Other conditions of agreements

8 Certifying that payments duly spent or committed

- (1) There must be a condition that the other party to the Part 2 agreement give to the Secretary of the Department a certificate:
 - (a) made by a qualified accountant; and
 - (b) specifying whether the payments to the party have been spent (or committed to be spent) for the purposes specified in the agreement.
- (2) 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 to the Commonwealth the amount stated in the determination within a period determined by the Minister.
- (3) The amount stated in the determination must not be more than the sum of the unspent or uncommitted amounts.

9 Reports about financial expenditure

There must be a condition that the other party to the Part 2 agreement give to the Minister reports about the expenditure of financial assistance under this Act that contain the kind of information that the Minister thinks appropriate about that assistance to that party.

10 Reporting on performance

There must be a condition that the other party to the Part 2 agreement comply with the performance reporting requirements mentioned in the agreement.

11 Condition about access to accounts etc. of ATC authority

- (1) If the other party to the Part 2 agreement is an ATC authority, there must be a condition that the ATC authority allow a person

authorised in writing by the Minister for the purpose, with such help as the person requires:

- (a) 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
 - (b) to take extracts from, or make copies of, any such accounts, records and documents.
- (2) The authorised person must give reasonable notice to the ATC authority of his or her intention to obtain access as mentioned in paragraph (1)(a).

12 Conditions about reporting

There must be a condition that the other party to the Part 2 agreement give to the Minister or to 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:

- (a) the reports or certificates mentioned in sections 8, 9 and 10; and
- (b) any other reports of a kind or kinds specified in the agreement.

13 Condition of agreement not fulfilled

- (1) There must be a condition that if:
- (a) in the case of an agreement mentioned in section 7—the condition in paragraph 7(2)(a) is not fulfilled; or
 - (b) in any case—the other party to the Part 2 agreement does not fulfil another condition of the agreement by the date specified in the agreement, or within such further period as the Minister allows;
- then:
- (c) the other party will, if the Minister so determines, repay to the Commonwealth the amount stated in the determination; and
 - (d) if the other party does not do so, the Minister may make a determination reducing one or more payments of financial assistance under this Act to the other party; and

Part 2 General provisions relating to grants

Division 2 Other conditions of agreements

Section 14

- (e) the Minister may delay the making of any further payment under this Act to the other party until the conditions mentioned in paragraphs (a) and (b) are fulfilled.
- (2) The amount mentioned in paragraph (1)(c) must not be more than:
 - (a) if the other party is a State—the sum of the payments mentioned in paragraph 6(1)(a); and
 - (b) if the other party is an ATC authority—the sum of the payments mentioned in paragraph 7(2)(b).

14 Overpayments

There must be a condition that, if the amount of financial assistance paid under this 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 to the Commonwealth an amount (not more than the excess) stated in the determination.

Division 3—Other matters

15 Minister's power if amount repayable

The Minister may make a determination reducing an amount that is authorised to be paid under this Act to the other party to a Part 2 agreement if:

- (a) under a condition of the agreement the Minister determines that the other party is to pay an amount to the Commonwealth; and
- (b) all or part of that amount remains unpaid.

The amount of the reduction must not be more than the amount unpaid.

16 Amount payable to the Commonwealth is a debt

- (1) An amount payable by a State to the Commonwealth under this Act, or under a Part 2 agreement, is a debt due by the State to the Commonwealth.
- (2) An amount payable by an ATC authority to the Commonwealth under this Act, or under a Part 2 agreement, is a debt due by the ATC authority to the Commonwealth.

17 Determinations requiring repayments

If the Minister is considering whether to make a determination under paragraph 13(1)(c) or section 14, the Minister 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

18 Minister may make determinations authorising payments

- (1) The Minister may make a determination authorising payment of financial assistance under this Act to a State or an ATC authority.
- (2) However, the Minister must not make a determination authorising payment of financial assistance to an ATC authority if:
 - (a) the Minister has determined eligibility criteria for the payment of financial assistance under this Act to the ATC authority for the ATC concerned; and
 - (b) the Minister is satisfied that the eligibility criteria are not fulfilled.
- (3) Subsection (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.
- (4) The sum of the amounts authorised to be paid under subsection (1) for a year must not be more than the amount in the following table for the year:

Financial assistance		
	Column 1	Column 2
	Year	Amount (\$)
1	2005	15,810,000
2	2006	118,357,080
3	2007	148,981,588
4	2008	118,400,087
5	2009	96,603,544
6	2010	15,823,000
7	2011	16,951,000

Note: The operation of section 20A may affect the amounts in column 2.

19 Payments subject to conditions

A payment under this Act is subject to the conditions set out in the agreement for the payment.

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

- (1) The Minister may refuse to authorise a payment to an ATC authority under this 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.
- (2) The Minister may refuse to authorise, or may delay, a payment to an ATC authority that is a body corporate if:
 - (a) it is being wound up; or
 - (b) a receiver has been appointed in respect of its property; or
 - (c) its affairs are under the control of a manager.
- (3) 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:
 - (a) its liabilities are substantially greater than its assets; or
 - (b) 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

20A Changes to amounts that may be granted for particular years

- (1) The regulations may specify an amount for column 2 of the table in subsection 18(4) for a particular year.
- (2) If regulations are made under subsection (1) specifying an amount for the column for a year, this Act has effect as if the amount specified in the column for the year were the amount specified in the regulations for the column for that year.
- (3) The amount the regulations may specify under subsection (1) may be nil.

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

Amounts of financial assistance authorised to be paid under this Act are to be paid in such a way, including payment by instalments, and at such times, as the Minister determines.

22 Payment reduced for false or misleading statement

- (1) If:
 - (a) a person made a statement for the purposes of this Act or an agreement made under this Act about a grant of financial assistance; and
 - (b) the statement was made to:
 - (i) the Minister; or
 - (ii) the Secretary; or
 - (iii) an APS employee in the Department; and
 - (c) the statement was false or misleading in a material particular; and
 - (d) relying on the statement, a payment has been made under this 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;
-

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.

- (2) A determination under this section may take effect from a day before the day on which the determination was made.

23 Appropriation

The Consolidated Revenue Fund is appropriated for the purposes of this Act.

24 Determinations etc.

- (1) A determination under this Act must be in writing.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Subject to subsection 22(2), a determination takes effect on:
- (a) the day stated for the purpose in the determination; or
 - (b) if no day is stated—the day on which it is made.

- (3) If:

- (a) a provision of this Act refers to a determination made or other act or thing done by the Minister; and
- (b) no other provision of this Act expressly authorises the Minister to make such a determination or do such an act or thing;

this subsection authorises the Minister to make such a determination or do such an act or thing.

- (4) A determination under this Act is not a legislative instrument.

25 Delegation

The Minister may, by written instrument, delegate all or any of the Minister's powers and functions under this Act or under an agreement mentioned in this Act to:

- (a) the Secretary of the Department; or
- (b) an SES employee in the Department.

Note: *SES employee* is defined in the *Acts Interpretation Act 1901*.

26 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts

**Notes to the Australian Technical Colleges
(Flexibility in Achieving Australia's Skills Needs) Act
2005**

Note 1

The *Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005* as shown in this compilation comprises Act No. 124, 2005 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005</i>	124, 2005	19 Oct 2005	19 Oct 2005	
<i>Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Act 2006</i>	91, 2006	18 Aug 2006	18 Aug 2006	—
<i>Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Act (No. 1) 2007</i>	26, 2007	15 Mar 2007	15 Mar 207	—
<i>Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Act (No. 2) 2007</i>	171, 2007	28 Sept 2007	28 Sept 2007	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected

How affected

S. 18..... am. No. 91, 2006; Nos. 26 and 171, 2007

S. 20A..... ad. No. 91, 2006