

**AUSTRALIAN GOVERNMENT RESPONSE**

**TO THE**

**SENATE EDUCATION, EMPLOYMENT AND WORKPLACE  
RELATIONS REFERENCES COMMITTEE'S  
REPORT OF THE INQUIRY  
INTO INDUSTRY SKILLS COUNCILS**

**JUNE 2011**



The Australian Government has a continuing commitment to investing in the economy's productive capacity through better and more targeted skills and training, measures to boost participation, and improving the private sector's opportunities to invest in infrastructure.

Through the *Building Australia's Future Workforce* package, announced as part of the 2011-2012 Budget, the Government has invested in a new approach to deliver the skilled workers the economy needs. The package has four components:

- placing industry at the heart of the training system
- modernising apprenticeships
- skills to support increased participation
- reform of the national training system.

The package strengthens and extends the role of industry in the national Vocational Education and Training (VET) system. The involvement of industry in the Australian VET system has been a defining feature of vocational education and training in Australia for almost two decades, and has given rise to its high international standing.

Primarily, industry engagement is realised by representation of industry bodies on, and industry direct input to, the various formal committees and councils that guide the policy agenda for the national training system. This high level of engagement at all levels of decision making ensures that industry plays a leading role in driving training policies, priorities and delivery.

The core of industry's leadership of VET in Australia is also realised through its active involvement in the development of industry-validated Training Packages. Through a network of Industry Skills Councils (ISCs), industry has a direct say in determining relevant skills needs for the industry and defining the competencies required in the workplace.

Since ISCs were established in 2005, their role and responsibilities in the national VET system has been expanded and strengthened. ISCs are recognised and accepted as key organisations underpinning the effectiveness of the national VET system and key sources of advice regarding workforce skills and training needs.

The *Building Australia's Future Workforce* package reflects the significant role of ISCs in the national VET system. ISCs will be key contributors to the implementation of the *Building Australia's Future Workforce* package through participation and collaboration in all four of the package's components, for example, in the National Workforce and Productivity Agency, National Workforce Development Fund, Language, Literacy and Numeracy Programs and Apprenticeship reform.

## **Background**

### *National Vocational Education and Training (VET) System*

For more than 15 years, Australia's Commonwealth and state and territory governments have worked with industry to develop a national training system that provides the basis for high quality and nationally recognised training.

Under Australia's Constitution, primary responsibility for schooling and vocational education resides with the state and territory governments. In general, the Australian Government takes a national leadership role and works collaboratively with the states and territories, industry and the community to advance national consistency, coherence, quality and effectiveness of education and training in all sectors across Australia. It focuses on the development of national and international priorities, policies and strategies for education, while the states and territories are responsible for regulation and delivery within their borders.

### *National Skills Framework*

The national VET system is underpinned by the National Skills Framework. The National Skills Framework provides the basis for high quality, flexible, nationally consistent vocational education and training which meets industry needs and which employers can trust. The framework has three components:

1. *Australian Qualifications Framework* (commonly known as the AQF) – establishes the appropriate level of qualifications according to broad vocational competency levels.
2. *Training Packages* – establish the competency outcomes from nationally recognised training.
3. *Australian Quality Training Framework* – sets the national standards for the registration and audit of training organisations and accreditation of courses.

### *Industry Skills Councils (ISCs)*

ISCs, and a new national industry training advisory body for the automotive industry-Auto Skills Australia, are privately registered companies run by industry-based boards of directors (employer and employee representatives). Their funding is provided substantially by the Australian Government through the Department of Education, Employment and Workplace Relations (DEEWR).

ISCs and Auto Skills Australia are independent of government, employer and employee bodies, regulators and licensing bodies, and Registered Training Organisations (ISCs and Auto Skills Australia cannot be Registered Training Organisations). ISCs bring together industries, peak bodies, enterprises, unions, training organisations and governments through a national system of industry advisory arrangements and structures based on industry-led boards of directors and committees. Thus ISCs are uniquely placed in the Australian VET system to:

- develop nationally agreed qualifications;
- provide independent advice on workforce and skills needs;
- assist enterprises with workforce development and training needs.

The Senate Report of the Inquiry into ISCs reflects the overwhelming message of the 119 submissions to the Inquiry that:

- the role and work of the ISCs was valued by VET stakeholders;
- ISCs were operating well;
- they were viewed as fundamental to the effective operation of the national VET system.

The Report's recommendations reinforce the message of the submissions and suggest some improvements in the operation and management of the ISCs. These have been considered by the Government and some have already been acted upon in the context of developing a new Funding Agreement between DEEWR and ISCs which is expected to be executed by the end of June 2011 and cover the period 1 July 2011 – 30 June 2014.

Following is the Australian Government response to each recommendation.

### Recommendation 1

**The committee recommends that all 11 ISCs review their activities to ensure that their primary focus is directed at training package oversight and strategy, and that this work remain separated from the work of RTOs in product development and training delivery.**

### Australian Government Response

This recommendation is supported and reflects current arrangements.

The following comments are offered in relation to:

*'The committee is strongly of the view that ISCs should use their government funding to pursue their core activities.'*

The Australian Government provides core funding to the 11 ISCs and Auto Skills Australia to:

- provide industry intelligence and advice to government and enterprises on workforce development and skills needs;
- actively support the development, implementation and continuous improvement of high quality training and workforce development products and services, including Training Packages;
- provide independent skills and training advice to enterprises, including matching identified training needs with appropriate training solutions.

Since their inception in 2005, ISCs have built on their role in the key area of developing and maintaining Training Packages and have grown into their strengthened role in workforce development under the Government's *Skilling Australia for the Future* policy announced in November 2007. The success of ISCs and recognition of the value of the ISCs contribution to the effectiveness of the national VET system has led to increased demands and expectations in relation to the range and volume of services that ISCs could provide under the core Funding Agreement.

The core Funding Agreement provides a strong framework that enables DEEWR to monitor and manage the ISCs' performance of their key roles and responsibilities and to ensure expenditure of government funding accords with these. However, the Australian Government recognises that the funding provided under the core Funding Agreement does not and cannot cover the range of all of the possible activities that ISCs could undertake as contributors to the national VET system. The scope of what ISCs can do is limited by the funding they receive under the core Funding Agreement and their related capacity. ISCs' Annual Business Plans provide a mechanism that enables DEEWR to ensure that funds provided through DEEWR-ISCs core Funding Agreements are spent in accordance with the

purpose of these Agreements and Government priorities. Under the Funding Agreement ISCs, must provide an Annual Business Plan for DEEWR approval.

The following comments are offered in relation to:

*'... The production of training materials should only be considered where there is a demonstrated, unmet need and any conflict of interest is avoided.'*

ISCs are the only bodies that have a mandate to develop and maintain Training Packages. A Training Package is an integrated set of nationally endorsed units of competency, Australian Qualification Framework qualifications and assessment guidelines designed for a specific industry, an industry sector or enterprise.

Training materials are the materials or resources that are developed to support the delivery of and/or assessment of Training Package qualifications. ISCs do not have an exclusive mandate to develop training materials; these materials may be developed by other organisations.

While ISCs are allowed, and may, under the core Funding Agreement develop training materials, given the limitations of the funding available, the associated capacity constraints and the number of demands on these resources, ISCs have to carefully prioritise their activities and, as a consequence, the majority of ISCs do not develop training materials.

ISCs as independent companies are able to develop training materials from sources other than funds provided under the core Funding Agreement. Some ISCs do have a commercial 'arm' of their organisation with which DEEWR has no contractual relationship.

Identification and management of Conflicts of Interest is addressed under the *Corporations Act 2001* and in the core Funding Agreement. Management of Conflict of Interest is addressed in more detail in the response to Recommendation 6.

## Recommendation 2

**The committee recommends that the ISC CEOs Forum examine the prospect of developing a template for environmental scans to foster greater consistency in the timing and reporting, and to encourage better utility of the scans for affected stakeholders.**

## Australian Government Response

This recommendation is supported and reflects current arrangements.

The requirement for ISCs to produce an annual Environmental Scan (E-Scan) was first introduced in 2008 by the National Quality Council (NQC) - a Committee of the Ministerial Council for Tertiary Education and Employment responsible, until 1 July 2011, when the National Standards Council becomes operational, for the Training Package Development and Endorsement Policy. The NQC's Training Package Development and Endorsement Policy provides the policy framework for the timing, style and focus of the E-Scan.

DEEWR has provided the ISCs with a template and guidelines to assist with the development of E-Scans. The guidelines and templates are regularly reviewed in

consultation with Skills Australia and with the ISCs' CEOs. The guidelines and template for the E-Scans are updated in response to the feedback and in alignment with the NQC's Training Package Development and Endorsement Policy.

The focus of E-Scans, as described in the Training Package Development and Endorsement Policy, is to provide a national high level snap shot of current and emerging skills needs based on industry intelligence. Thus the E-Scans do not purport to, and cannot provide an enterprise, jurisdiction or region with a detailed workforce and skills development plan.

The requirement to deliver an annual E-Scan is also a requirement of DEEWR-ISCs Funding Agreement, which stipulates its delivery date for each ISC as the end of February each year.

The productivity and participation focus of the Government has increased the need for a more systematic approach to workforce development and for matching skills and training delivery with the current and future needs of industry, sectors and regions. As a consequence, the expectations of E-Scans have increased over the last few years.

A new independent agency, the National Workforce and Productivity Agency, will be established under the *Building Australia's Future Workforce* package. Its role will include the development of sectoral skills and workforce development plans in conjunction with ISCs and industry. The provision of independent advice on sectoral and regional skills needs to support workforce planning and productivity, including small business, will be critical to this particular role.

In the context of the new Agency's roles and activities, the role and content of E-Scans may need to be reviewed, taking into account that ISCs are not research, or data gathering and analysis agencies and may have a limited capacity to develop E-Scans that may be needed in the future.

While the evolving and growing expectations of E-Scans and ISCs' role in this regard are acknowledged, the E-Scans, as a requirement of the Training Package Development and Endorsement policy, remain for now as specified by this policy.

The Senate Committee also recommends that the ISCs CEOs' Forum develops a template and mechanism to achieve greater consistency in the timing and reporting of E-Scans. However, given that these considerations are covered by current policy and that the CEOs' Forum is an informal body, the CEOs' Forum may not be the most appropriate body to consider the changes to the template and to E-Scans generally. Its advice and views on E-Scans may be sought in the future in the context of current policy review, when undertaken.

### Recommendation 3

**The committee recommends that the government develops standard contracts with clauses detailing accountability and reporting requirements for all paid works undertaken by ISCs under contract to government agencies. These standard clauses should be incorporated into contracts between DEEWR and each ISC.**

## Australian Government Response

This recommendation is supported and reflects current arrangements.

DEEWR funded projects are contracted utilising DEEWR standard Funding Agreement templates. The templates meet the requirements of the *Financial Management and Accountability Regulations*, *Commonwealth Grant Guidelines* and the *DEEWR Procurement Manual* and, as such, provide a sound accountability and reporting framework.

The ISC core Funding Agreement incorporates the standard DEEWR contractual requirements and clauses and the same template is used for all DEEWR core Funding Agreements with ISCs.

Each DEEWR core Funding Agreement with an ISC details:

- the project deliverables;
- timeframes;
- progress and financial reporting;
- acquittal of funds and payments linked to the successful completion of contract requirements; and
- key performance indicators and performance measures.

A key reporting requirement in the core Funding Agreement relates to financial accountability. It includes Annual Audited Financial Statements and a Final Audited Financial Statement and Acquittal of Funds.

The payment of instalments under the core Funding Agreement is linked to DEEWR's acceptance of satisfactory progress against requirements and deliverables described in the Agreement. DEEWR is able to withhold payments until satisfied with the quality and content of the reportable item. Thus ISC core Funding Agreements provide a strong and consistent reporting framework and mechanisms to ensure that ISCs are accountable for the expenditure of funds and the delivery of the project outcomes.

The existing DEEWR standard Funding Agreement and relevant clauses provide sufficient mechanisms and frameworks to ensure that legal and fiduciary requirements are followed and met. In recognition of the importance of accountability and reporting requirements, DEEWR in the new Funding Agreement with ISCs for 2011-2014 has further strengthened reporting requirements using the existing standard clauses.

While Government funding provided via the Funding Agreement is the main source of ISCs revenue as independent companies, ISCs also access funding from other sources, which may include other Australian Government Departments as well as state and territory governments. Contracts of all Australian Government Departments and Agencies are required to comply with the *Financial Management and Accountability Act 1997* and promote the efficient, effective and ethical use of Commonwealth resources, including contractual accountability and reporting requirements.

Within the boundaries of the legislative requirements, it is ultimately up to each Government Agency or organisation to determine the terms and conditions under which their financial support is provided.

#### Recommendation 4

**The committee recommends that future contracts between DEEWR and ISCs require the holding of sufficient funds to comply with statutory obligations of directors under relevant corporate legislation, and prohibit the ownership by ISCs of physical assets, such as real estate, that are not directly related to the effective performance of their role.**

#### Australian Government Response

This recommendation is supported and reflects current arrangements.

The following comments are offered in relation to:

*'DEEWR and Industry Skills Councils require the holding of sufficient funds to comply with statutory obligations of directors under relevant corporate legislation....'*

The requirements of Australian Securities and Investments Commission (ASIC) and the current core Funding Agreement meet this recommendation.

ISCs are independent companies registered with ASIC and they are subject to the *Corporations Act 2001 (Act)*. Under the *Act*, directors of a corporation must ensure that the corporation is trading solvently. A necessary corollary of solvency is to ensure that the corporation has sufficient reserves to meet existing statutory obligation. Additionally, the core ISC Funding Agreement requires that ISCs comply with all statutory obligations including the obligation to trade solvently. There is no need to duplicate ASIC requirements or to include additional clauses in the Funding Agreement to address the requirement to trade solvently.

The following comments are offered in relation to:

*'.... prohibit the ownership by Industry Skills Councils of physical assets, such as real estate....'*

Under the terms of the current Funding Agreement, ISCs could acquire physical assets as long as the asset was under \$100,000 and as long as the asset was used for the purposes of the DEEWR-ISC Funding Agreement. Any purchase involving funds of \$100,000 or over requires DEEWR's approval. This constraint clearly would not allow ISCs under the current funding arrangements to purchase any real estate from the core government funds.

As ISCs are independent legal entities, DEEWR is not in a position to prevent them from purchasing real estate with funds from sources other than those provided by DEEWR.

#### Recommendation 5

**The committee recommends that DEEWR's contract with each ISC requires that directors receive no remuneration but that reasonable costs incurred for travel, accommodation and incidentals expenses incurred while exercising the role of director be reimbursed.**

## Australian Government Response

The Australian Government does not support this recommendation.

The payment of remuneration for directors is an internal issue for each ISC.

The governance arrangements of ISCs reflect their status as independent, not-for-profit companies. ISCs are incorporated as public companies that operate under the *Corporations Act 2001*. As such, each ISC operates under the rules of its constitution, is managed by a bi-partite (employers and unions) board of directors and is accountable to ASIC for the observance of its obligations under statute and common law.

Acceptance of this recommendation would potentially interfere with ISCs' internal corporate governance and potentially result in ISCs being unable to attract suitable directors especially from small business.

## Recommendation 6

**The committee recommends that any new contracts between DEEWR and the ISCs from June 2011 explicitly require ISC board directors to declare any simultaneous membership of RTO boards, regardless of whether there is a potential for any conflict of interest.**

## Australian Government Response

This recommendation is supported and reflects current arrangements.

ISCs are subject to the *Corporations Act 2001 (Act)*. The core ISC Funding Agreement requires that ISCs comply with all statutory obligations; this includes the obligations and responsibilities of directors.

Under company law, directors must not allow a conflict of interest to compromise their position. Directors must not place themselves in a position where there is a real or substantial possibility of a conflict of interest. Sections 182 and 183 of the *Corporations Act 2011* deal with improper use of information and improper use of position. These Sections identify that it is a director's obligation not to place his or her own interests or those of persons with whom a director is linked, ahead of that of the corporation. This applies not only to use of the position of a director, but also to the use of information that comes to the director.

The need to identify and manage circumstances where a real or perceived conflict of interest might occur is also included as a standard clause in the core DEEWR-ISC Funding Agreement. Under the terms of the core Funding Agreement, ISCs are required to ensure that to the best of their knowledge after making diligent inquiries, no conflict of interest exists or is likely to arise in the performance of the obligations under the Agreement. In the event that a conflict of interest arises or is likely to arise during the term of the Agreement, ISCs are required to immediately inform DEEWR in writing of that conflict of interest and the steps proposed to resolve or deal with the conflict.

There is no need to duplicate the Conflict of Interest requirements of the *Corporations Act 2001* or the core Funding Agreement to address the concern that directors may also be on Registered Training Organisations' boards.

#### **Recommendation 7**

**The committee recommends that DEEWR include a clause in its new contracts with ISCs permitting the renegotiation of industry coverage and potential splitting of ISCs during the term of the contracts, were this considered desirable and necessary to better fulfil the role of the ISCs concerned.**

#### **Australian Government Response**

The Australian Government does not support this recommendation.

In making this recommendation, the Senate Committee noted that most stakeholders who submitted their views to the Inquiry were satisfied with ISCs' effectiveness; however, there were a few stakeholders, albeit a minority, who expressed some criticism in relation to the current industry coverage of ISCs.

Realignment of an ISC's industry or sectoral coverage is not contingent on the inclusion of clauses in the core Funding Agreement; rather, it is a matter for Government to determine. The review and renegotiation of the sectoral coverage of ISCs can occur any time, through a variation of contract based on the Minister's decision.

#### **Recommendation 8**

**The committee recommends that contracts between DEEWR and the ISCs be standardised and made publicly available on the DEEWR website.**

#### **Australian Government Response**

The Australian Government agrees in part with this recommendation and notes that the recommendation is already partially satisfied.

The following comments are offered in regard to:

*'The committee recommends that contracts between DEEWR and Industry Skills Councils be standardised.....'*

DEEWR-ISC core Funding Agreements are already standardised. ISCs also enter into other individual contracts with DEEWR and standard contract templates are utilised for such contracts, which is a DEEWR requirement. ISCs may also enter into contracts with other entities, including other Commonwealth Government Departments, and it is ultimately up to each government agency or organisation to determine the terms and conditions under which their funding is provided.

The following comments are offered in regard to:

*'...and made publicly available on the DEEWR website.'*

The publication of the de-identified Funding Agreements on DEEWR website is not supported as it would go further than reporting requirements of the Commonwealth Grant Guidelines and the Government sees no reason for treating contractual information relating to its agreements with Industry Skills Councils differently to that of other grant recipients.

In compliance with the *Commonwealth Grant Guidelines* (CGGs), DEEWR publishes on its website information on individual grants, including the individual ISCs' Funding Agreements. DEEWR's grant reporting includes information regarding the grant's purpose, recipient, program title, value as well as the commencement date and duration of the grants. The Grants Register is publically available on the DEEWR website at <http://www.deewr.gov.au/department/Pages/Grants.aspx>

#### **Recommendation 9**

**The committee recommends that ISCs more regularly review their consultation practices and devise practical strategies to address concerns expressed by business, in particular small businesses.**

#### **Recommendation 10**

**The committee further recommends that DEEWR identify best practice consultation principles and seek ways to incorporate these into its next contract with the ISCs.**

#### **Australian Government Response**

##### **Recommendation 9 and Recommendation 10**

The Australian Government supports these recommendations.

Industry engagement and involvement in the VET system underpins its strength. The ISCs provide a key point of contact for industry engagement and collaboration. ISCs, have over time, established extensive and effective industry networks and have articulated stakeholder engagement plans. Nevertheless, the capacity of ISCs to grow, review and refine their stakeholder networks, and review their consultation practices, is critical to the continued relevance and quality of industry advice and implicitly to the strength of the national VET system.

The following comments are offered in regard to:

##### *Recommendation 9*

*'The committee recommends the Industry Skills Councils more regularly review their consultation practices and devise practical strategies to address concerns expressed by business, in particular small business.'*

The next Funding Agreement 2011-2014, to commence on 1 July 2011, has addressed this important stakeholder engagement issue by including a requirement that, as part of their Annual Business Plans, ISCs provide a Stakeholder Engagement and Communication Plan. This requirement will ensure annual reviews and revisions of Stakeholder Engagement and Communication Plan. The plan will be expected to include practical strategies to address stakeholders concerns and pay particular attention to consultation with small business and, where appropriate, with regional and rural stakeholders.

The following comments are offered in regard to:

*Recommendation 10*

*'The committee further recommends that DEEWR identify best practice consultation principles and seek ways to incorporate these into its next contract with the Industry Skills Councils.'*

DEEWR is aware of some stakeholders' concerns regarding consultation practices and the ISCs' consultation practices are and will continue to be closely monitored by DEEWR. Additionally, DEEWR will identify best practice consultation principles in consultation with the ISCs and other stakeholders.

Consideration of this issue may also be included in a review of ISCs which is anticipated to be undertaken during the term of the next Funding Agreement 2011-2014. Once established, these principles could be included in the Funding Agreement at any time.