



National Skills Commissioner Act 2020

No. 76, 2020

**An Act to provide for the appointment of a
National Skills Commissioner, and for related
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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National Skills Commissioner Act 2020

No. 76, 2020

An Act to provide for the appointment of a National Skills Commissioner, and for related purposes

[Assented to 2 September 2020]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *National Skills Commissioner Act 2020*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	3 September 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act establishes the office of the National Skills Commissioner, sets out the Commissioner's functions and deals with other matters relating to the role of the Commissioner (including administrative matters).

4 Definitions

In this Act:

advisory committee means a committee established under section 8.

Commissioner means the National Skills Commissioner referred to in section 6.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

Secretary means the Secretary of the Department.

VET means vocational education and training.

VET course has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

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Part 2—Establishment and functions of the National Skills Commissioner

5 Simplified outline of this Part

This Part establishes the office of the National Skills Commissioner and sets out the Commissioner's functions.

The main functions of the Commissioner are:

- (a) to provide advice to the Minister and the Secretary on Australia's workforce skills needs, efficient prices for VET courses, the public and private return on government investment in VET, VET in regional, rural and remote Australia and other matters relating to the VET system; and
- (b) to publish an annual report about Australia's current, emerging and future workforce skills needs.

The Minister may establish one or more advisory committees to give advice in relation to the Commissioner's functions.

6 National Skills Commissioner

There is to be a National Skills Commissioner.

7 Functions of the National Skills Commissioner

- (1) The functions of the Commissioner are:
 - (a) to provide advice to the Minister or to the Secretary in relation to the following:
 - (i) Australia's current, emerging and future workforce skills needs;
 - (ii) the development of efficient prices for VET courses;
 - (iii) the public and private return on government investment in VET qualifications;

- (iv) the performance of Australia's system for providing VET;
 - (v) issues affecting the state of the Australian and international labour markets;
 - (vi) opportunities to improve access, skills development and choice for regional, rural and remote Australia in relation to VET; and
- (b) to inform the public about the matters mentioned in paragraph (a); and
 - (c) to collect, analyse, share and publish data and other information about the matters mentioned in paragraph (a) to inform policy development and program delivery; and
 - (d) any other function that:
 - (i) is conferred on the Commissioner by the rules, by this Act or by any other law of the Commonwealth; or
 - (ii) is incidental or conducive to the performance of the above functions.
- (2) The Commissioner must, before the end of each calendar year beginning on or after 1 January 2021, prepare and give to the Minister a report on Australia's current, emerging and future workforce skills needs during the calendar year.
 - (3) The Minister must table the report in each House of the Parliament as soon as practicable after receiving the report.
 - (4) The Commissioner must, as soon as practicable after the report is tabled in the House of Representatives, publish the report:
 - (a) on the Department's website; or
 - (b) if the rules specify another manner in which the report is to be published—in that manner.

8 Establishment and functions of advisory committees

- (1) The Minister may establish, in writing, advisory committees to advise the Commissioner in relation to the performance of the Commissioner's functions.
 - (2) The Minister may determine, in relation to an advisory committee:
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Section 9

- (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.
- (3) In performing the Commissioner's functions under this Part, the Commissioner must have regard to any relevant advice given to the Commissioner by an advisory committee.
- (4) Subsection (3) does not, by implication, limit the matters to which the Commissioner may have regard.

9 Members of advisory committees

Appointment

- (1) Each member of an advisory committee is to be appointed by the Minister by written instrument.
- (2) A person may only be appointed as a member of an advisory committee if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
- (3) A member of an advisory committee is not an official of the Department for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Remuneration

- (4) A member of an advisory committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by that Tribunal is in operation, a member of an advisory committee is to be paid the remuneration that is prescribed by the rules.

Duty to act in an impartial and independent manner

- (5) A member of an advisory committee must act in an impartial and independent manner in relation to the giving of advice to the Commissioner.

Resignation

- (6) A member of an advisory committee may resign from the committee by giving the Minister a written resignation.
- (7) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

Termination

- (8) The Minister may terminate the appointment of a member of an advisory committee:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of a member of the committee because of physical or mental incapacity.
- (9) The Minister may terminate the appointment of a member of an advisory committee if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the member fails to comply with subsection (5) (which deals with giving advice in an impartial and independent manner).

10 Ministerial directions

- (1) The Minister may, by legislative instrument, give the Commissioner directions about the way in which the Commissioner is to carry out the Commissioner's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to directions given under this subsection (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

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- (2) The Commissioner must comply with a direction under subsection (1).

Part 3—Administration

11 Simplified outline of this Part

This Part deals with administrative matters relating to the office of the National Skills Commissioner, including the appointment of the Commissioner and the terms and conditions on which the Commissioner holds office.

12 Appointment

- (1) The National Skills Commissioner is to be appointed by the Minister by written instrument, on a full-time basis.

Note: The National Skills Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The National Skills Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) A person may only be appointed as the National Skills Commissioner if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

13 Acting appointments

- (1) The Minister may, by written instrument, appoint a person to act as the National Skills Commissioner:
- (a) during a vacancy in the office of the National Skills Commissioner (whether or not an appointment has previously been made to the office); or
 - (b) during any period when the National Skills Commissioner:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (2) A person may only be appointed to act as the National Skills Commissioner if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

14 Remuneration

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the rules.
- (2) The Commissioner is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

15 Leave of absence

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

16 Engaging in other paid work

The Commissioner must not engage in paid work outside the duties of the Commissioner's office without the Minister's approval.

17 Other terms and conditions

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

18 Resignation

- (1) The Commissioner may resign the Commissioner's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

19 Termination of appointment

- (1) The Minister may terminate the appointment of the Commissioner:
 - (a) for misbehaviour; or
 - (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
 - (a) the Commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Commissioner's creditors; or
 - (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors; or
 - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Commissioner engages, except with the Minister's approval, in paid work outside the duties of the Commissioner's office (see section 16); or
 - (d) the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

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20 Application of the finance law etc.

- (1) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Commissioner is taken to be an official of the Department.
- (2) The Secretary, when preparing the Department's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include information in that report about the performance of the Commissioner's functions, and the exercise of the Commissioner's powers, during the period.

21 Arrangements relating to staff of the Department

- (1) The staff assisting the Commissioner are to be APS employees in the Department whose services are made available to the Commissioner, by the Secretary, in connection with the performance of any of the Commissioner's functions.
- (2) When performing services for the Commissioner, the persons are subject to the directions of the Commissioner.

22 Other persons assisting the Commissioner

- (1) The Commissioner may also be assisted by employees of Agencies (within the meaning of the *Public Service Act 1999*) whose services are made available to the Commissioner in connection with the performance of any of the Commissioner's functions.
- (2) When performing services for the Commissioner, the employees are subject to the directions of the Commissioner.

23 Consultants

- (1) The Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commissioner's functions.
- (2) The consultants are to be engaged on the terms and conditions that the Commissioner determines in writing.

Part 4—Miscellaneous

24 Simplified outline of this Part

This Part contains miscellaneous provisions, such as delegations and the general rule-making power.

25 Delegation

- (1) The Minister may, in writing, delegate the Minister's powers under subsection 13(1) or 15(2), to:
 - (a) the Secretary of the Department; or
 - (b) an SES, or an acting SES employee, in the Department.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) The Commissioner may, in writing, delegate all or any of the Commissioner functions or powers under this Act to a person who:
 - (a) is:
 - (i) a member of the staff assisting the Commissioner as mentioned in subsection 21(1); or
 - (ii) a person whose services are made available to the Commissioner as mentioned in subsection 22(1); and
 - (b) holds or is acting in an Executive Level 2 position, or an equivalent or higher position.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister or Commissioner, as the case requires.

26 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
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- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 14 May 2020
Senate on 11 June 2020]*

(58/20)
