

Submission: Jobs and Skills Australia (JSA) Bill 2022

Approach to this Submission

Based on the content of the Jobs and Skills Australia Bill 2022 ('the Bill') and Jobs and Skills Australia (National Skills Commissioner Repeal) Bill 2022 and the related Explanatory Memorandum (EM) the content of this submission is directed at what is believed to be the core purpose of the Government's consultation. That is deciding and legislating for the new body, Jobs and Skills Australia (JSA), being in particular its "permanent functions, structure and governance arrangements" (EM pg.2).

This Submission therefore focuses on Part 2 of the Bill, in particular S 9 and 10, and the corresponding explanatory text in the EM. Parts 1, 3, 4 and 5 of the Bill are only briefly considered as consequence.

Context for JSA

Australia's economic, labour force/skills, social, environmental/climate and energy challenges, confounded by pandemic-restricted migration, plus trade and international risks, are well documented. The just released [interim report](#) of the Productivity Commission highlights Australia's relatively poor productivity growth, especially over the last decade, the causes and solutions for which are multi-fold and complex. Given current inflationary stress and inherited debt, the Australian Government (AG) is obliged to review and better target all its expenditure. Given all these factors, the justification of establishing JSA, as a national advisory and coordination body is unquestioned, timely and welcome, even more so given its ambition is based on tripartite cooperation, with the intent of all jurisdictions input and wide stakeholder input engagement.

Learning from the past

The Committee will be aware that Australia has over the last 30 years or so had some four like or similar statutory bodies, typically funded by the Australian Government. They all did part/much of what now seems to be proposed for JSA. This includes:

- The National Board of Employment, Education and Training (NBEET) a statutory body created in July 1988 under the *Employment, Education and Training Act 1988*.
- The Australian National Training Authority (ANTA) established under the *Australian National Training Authority Act 1992* abolished in 2005
- Skills Australia (SA) established under the *Skills Australia Act 2008* which evolved by legislative amendment into the Australian Workforce Productivity Agency (AWPA) and which closed in 2014.

Comparing the Bill and the Act under which Skills Australia was established, it would appear JSA's scope, functions, structure and governance most resembles that of Skills Australia, with NBEET and ANTA having wider VET policy advisory roles rather than a focus on economics of the labour market and 'skills forecasts'.

In "Common Cause: Strengthening Australia's Cooperative Federalism" the Australian National Training Authority (ANTA) was written up (pg.17) as a positive case study.

Established by the Australian National Training and Authority Act 1992 (Cwth), ANTA was a statutory authority given the mission of establishing a consistent national Vocational Education and Training (VET) system. The States and Territories formally recognised the national leadership role of ANTA through their own legislation, which established their own VET systems as the 'State Training Agency' under the ANTA agreement. ANTA was a tri-partite body consisting of the Commonwealth, the States and Territories and industry. Recognising the importance of orientating reform to industry needs, the ANTA board consisted entirely of industry advocates. In formal terms, ANTA reported to the Commonwealth minister; however, in practice, it reported to a Ministerial Council of Commonwealth, State and Territory ministers. ANTA was a successful catalyst for change because there was a clear and articulated need for major reform. ANTA benefited from a strong sense of commitment among the various government and industry players...As a new agency, ANTA fostered a sense of excitement

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supported by innovation and a ‘can-do’ culture, especially in the early years. As a policy body without direct responsibility for implementation, ANTA had to work at developing relationships with its partners responsible for implementation. It could not assume a command-and control position over the sector and had no ‘big stick’. It had to work at initiating, coordinating and mediating between different jurisdictions and institutional agendas.”

The four key lessons from the ANTA example were stated as:

- Funding – Sufficient financial resources need to be made available to support the implementation of major reforms. Key to ... success was its power to direct and approve funding
- Policy reform – Federal bodies established to drive reform need to have a clearly defined policy agenda.
- Cooperative design – Federal bodies need to be designed to facilitate cooperation. In the ANTA case, having non-government leadership was important in mediating Commonwealth and State and Territory interests to achieve shared objectives for sector reform.
- Governments – Must be flexible and... invest in innovative, purpose-built institutions where need arises

ANTA was abolished in 2005 and much of its functions swung back under the then Commonwealth department. Under a new Government in 2007, independent VET advisory functions in particular future workforce skills were peeled off into a new legislated agency, Skills Australia in 2008, and this evolved by legislative amendments into the Australian Workforce Productivity Agency, which was closed in 2014.

The Committee is asked: To carefully interrogate these past examples to establish why (other than bald politics) there is a history of aspirational starts, much effort, then closure and why dynamic evolution, continuity and longevity (other than perhaps ANTA) was not generally achieved by these bodies.

Functions of JSA

The Bill, specifically referring to S9 Functions and S10 Performance of Functions, is in general appropriately crafted and clear in detailing JSA’s legislated scope of function and purpose. It is clearly connected to the Government’s objectives as explained in the EM.

The Committee is asked: To consider the following additional factors.

S9 - The Bill is VET ‘centric’ when labour market needs and future jobs are increasingly at HE level skills

JSA’s remit spans the entire labour market. It is increasingly forecast that jobs will require education and training at an HE level (~AQF 7 and above) with current estimates at ~50% of jobs and increasing. Depending on how S9 is read, it is founded on jobs and skills demand serviced by VET-level skills. This is short sighted.

As the labour market and jobs evolve, JSA outputs will increasingly be relevant in informing *tertiary-system* policy so impacting universities and the HE sector, plus industry-based training, as well as the VET sector. There is little in the Bill that prevents this; but there is nothing in the Bill that acknowledges this.

S9 – The Bill must take account of the VET sector’s basis of operation - ‘cooperative federalism’

The success of JSA requires cooperative AG and State and Territory (S&T) relationships based Constitutionally under ‘cooperative federalism’.

The recent events regarding the failure to negotiate a new National Agreement in VET by all jurisdictions related to extremes of desired ‘control’ of policy and funding by the ex-AG which was rejected by all State and Territory (S&T) Governments.

With good will, the wording of S9(d) should be supportive in resolving these past jurisdictional differences.

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Issues with Structure of JSA per the Bill

The EM states the purpose of the Bill is to establish a new statutory body within the Department of Employment and Workplace Relations. This is a typical and traditional AG response.

The Committee is asked: To examine carefully if this structure will have the desired long-term national impact and gain federated ‘buy in’ over the long term.

What might success and failure look like in the long term

Considering the ANTA success factors above, the long-term future success of JSA requires it to be federally minded, nationally supported, whose data and analyses are not just informative but practically useful as well as being operationally valued by multiple government and non-government stakeholders.

The alternate is that over time JSA slides into being negatively viewed as yet another worthy attempt at an expert ‘job-skills’ statutory body funded and centred on the needs and influence of the AG. Both in its physical location and its mindset it is seen as majority anchored in Canberra, with its staffing, culture and resources embedded in a line Agency budget.

As it is written, the Bill is more likely to spawn a body that over time gradually slides into this negative view. JSA needs greater in-built federated ambition, scope, and inclusiveness in its operationalisation. This is achievable in particular by a bolder approach to Structure and Governance.

JSA’s potential contribution to the Australian Government (AG) is vastly bigger than just skills/training

The potential contribution of JSA, just within the AG itself, includes multiple Ministers/portfolios and diverse yet connected policy areas including: job security/wages, migration, workforce participation/barriers to employment, women’s labour market experiences, 1st Nation peoples; industry/manufacturing skills, higher education, research and innovation, as well as VET skills and training. Ambition and impact are widespread.

Not federally minded and no evidence of cooperative federalism

JSA is obliged to connect with jurisdictions and other key stakeholders e.g. unions, industry but only “where appropriate” (S10). These words should be *deleted*, as they legally, operationally and culturally, reinforce the perception and risk that JSA is another body, owned and funded by the AG, Canberra-centric and whilst informative in a national-level, never really provides anything specifically useful or new at a State/Territory level that jurisdictions had not already mostly figured out locally. S&T skills Ministers are accountable to their own Parliaments and communities and have their own industry advisory mechanisms and data sources.

Ineffective practical translation of labour market advice into training practice

If JSA is to provide comprehensive, well researched labour-economic reports with practical translation to improved education/training outcomes, then there needs to be massively improved policy implementation of reforms in the national training system e.g. training products and qualifications need to evolve and be authorised for use *far* faster than present. A better ‘federated’ JSA will have flow on cooperative benefits.

Ineffective data sharing, unnecessary centralisation and perceived data hierarchy

The Bill indicates that JSA will ‘collect, analyse, share and publish data and other information’ S9(f). Long term personal experience as MD NCVER, is that the default position in working with AG and its skills/training agencies is an unwillingness to share data e.g. for the purposes of data linkage studies, or data where the AG are sole funders of operations in VET. This is compounded by the AG’s ongoing investment into bigger ‘centralised-data collection, management’ systems which confounds the contracted functions of bodies like the Ministerial Company NCVER. It contributes to a ‘data-analytics hierarchy’ that sees the AG’s role as superior. Over time it diminishes the capacity of NCVER to conduct effective research e.g. data linkage.

The Committee is asked: To carefully consider any submission it may receive from the NCVER. To bolster the relationship between NCVER and any established JSA, it is suggested a formal Memorandum of Cooperation between these entities be established, to minimise overlaps in tasks and role and to maximise cooperative technical and information exchange, consistent with clear understanding of JSA’s functions as per S9 (a)-(f)

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of the Bill vs. NCVER's contracted functions. Besides training statistics, NCVER functions include a unique research function whose qualitative evaluations and data analytics will greatly inform the work of JSA. It is critical such research synergies and benefits are well connected and sustained into the future.

Policy leadership conflicts

The JSA as proposed in the Bill risks not getting the appropriate recognition for its policy advice within the wider AG bureaucracy. Depending on how it is positioned and funded, there will be occasions of professional tensions between the statutory body and Department(s) in advising any Minister (s).

In the VET sector, S&T Ministers have recently demonstrated, during negotiations of a new National Agreement for VET, their expectations of cooperative federalism and that VET sector policy and funding is a federally shared endeavour. S&T Ministers will expect clear boundaries and limits to JSA's national role.

S&T and stakeholders want genuine and meaningful national inclusiveness and participation

If JSA is structured as proposed in the Bill, the majority of national stakeholders will listen and participate, but in the end will be receivers of advice, and not feel directly included in framing federation-wide solutions.

Industry and employers are impatient and just want skills shortages addressed, jurisdictions want some degrees of freedom, by balanced cooperation with and accountability to the AG, to drive their local VET skills sectors. There is strong argument to consider an alternate structure for a JSA to that proposed in the Bill.

A Preferred Structure for JSA

The key lessons from ANTA (above) were:

- Cooperative design - Federal bodies need to be *designed to facilitate cooperation*.
- Defined policy agenda and scope - Federal bodies established to drive reform need to have a *clearly defined policy agenda*.
- Government flexibility - Must be flexible and invest in *innovative, purpose-built institutions*
- Security of funding - *Sufficient financial resources* to support the implementation of major reforms

The Committee is asked: Based on these lessons, to consider a preferred structure for the new JSA.

A standalone Statutory Authority

Recognising the AG's interests in primary control and funding, the JSA should be structured as an AG Statutory Authority, with direct connection to the AG but whose advice is independent. The best existing legal 'model' - but for different purposes - are the HE and VET regulators; TEQSA and ASQA; respectively.

A 'federated and networked' Statutory Authority

The Statutory Authority should be conceived as primarily a 'networked virtual entity', with a minimal necessary physical HQ in Canberra. Other Commonwealth offices across the jurisdictions can be used to house all staff so as to maintain all network and physical security across all data and infrastructure.

External critical working relationships specific to JSA success

The reputation and national networking of JSA will much depend on its relationships with other VET sector advisory bodies, in particular 'persons or bodies with an interest in the labour market, workforce skills or workforce training needs' (S10).

There is an expectation that the Australian Government will fund some 8 or so Industry Clusters (ICs) (likely non-profit) entities whose tasks may be expected to span specific-industry domain skills assessment and forecasting (sharing intelligence/data with JSA), plus development and fast maintenance/upgrade of industry-informed training products for approval (by ASQA) and then these fast deployed into the national training market.

This proposed preferred structure well accommodates such relationships.

The Committee is asked: To consider how a JSA would work most effectively with the proposed ICs.

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Executives: JSA CEO and any other Executives

The CEO is to be appointed by the AG Minister(s) and answerable to the Minister(s), not a Departmental Secretary. Any other Executives are to be appointed by the CE on merit and be nationally advertised.

Staffing and expertise drawn from a wider pool than the APS

Details of budget, organisation structure and specifically numbers of staff are not known at this time. However, the staffing of any Statutory Authority should (at set up) be based on a national federated opportunity with positions defined and filled on applicant expertise and merit.

It is suggested that 40% of non-executive staff be drawn from the Australia Public Service (per S14 of the Bill) and that the other 60% are comprised of seconded staff who apply and win positions on merit; these persons drawn from other S&T Governments, unions, industry, HE or VET sectors from across the federation.

The standard would be a 3-year secondment, with employment industrially set up as an APS member.

Governance of JSA under the Preferred Structure

The Statutory Authority would have a Board of Management (Commissioners in TEQSA and ASQA).

The Board would comprise between 7-9 individuals as Directors, based on AG and national stakeholder nominations, with appointments decided solely by the AG Minister(s). The Chair of the Board will be appointed by AG Minister(s).

AG Minister(s) would approve a Statutory Authority Charter of Purpose as well as an Annual Statement of Performance Objectives and Measures. The form and nature of related strategic/other plans would be determined by the Board.

Both Charter and Statement would be consulted annually seeking input from all relevant stakeholders prior to AG Minister(s) approval.

The AG Minister(s) will be obliged to publish annually Charter revisions and details of progress made against Performance Objectives and Measures.

The Board must convene biannually a virtual conference of key stakeholders to consult nationally, detail progress and demonstrate proven use e.g. of its data products and analyses. The basis of expected conference invitees are those persons or bodies covered under S10 of the Bill.

The Board, on the advice of the CEO, will have resources to undertake fixed term projects justified by its Charter and Performance Objectives, if expertise is not on staff.

The Board will provide and publish an Annual Report, including Audited Financials.

Summary

The initiative of establishing JSA based on tripartite cooperation and desired wide stakeholder input and engagement is welcome and supported. However, JSA's design, structure and governance needs far greater in-built federated ambition, scope, and inclusiveness in its operationalisation to achieve national impact.

The long-term future success of JSA requires it to be federally minded and structured, nationally supported, whose data are not just informative but whose analyses are practically useful and able to be operationally implemented and valued by multiple government and non-government stakeholders across the country.

This is achievable by conceiving of JSA as a 'networked virtual entity' in which all key stakeholders can effectively and ongoingly participate and influence. Recruiting expert staff nationally and not from just the APS provides for building of longer-term stakeholder relationships and bolsters learning about other points of view. It will be culturally challenging. It is a national teaming of ideas and expertise.

It is this sort of novel approach that is both needed and practically demonstrates to stakeholders the Prime Minister's ambition for a new approach to the Federation.

JCSF Consulting Pty Ltd 8 August 2022 [Dr Craig Fowler BSc (Hons), MSc, PhD, MBA (Tech. Man.), GAIDC].

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Appendix

JCSF Consulting/Dr Craig Fowler - refer for further information [LinkedIn entry](#).

Relevant recent publications concerning national tertiary education system (see especially bolded)

"What the National Innovation and Science Agenda (NISA) Didn't Say About Skills and Jobs" Craig Fowler NCVER Feb 2016

"The boundaries and connections between the VET and HE sectors: 'confused, contested and collaborative'" Craig Fowler NCVER Jan 2017

"A chance to be bold and ambitious: make apprenticeships the lynchpin to a better integrated tertiary education sector" Craig Fowler, John Stanwick, NCVER June 2017

"Data linkage in VET research: opportunities, challenges and principles" Kristen Osborne, Craig Fowler, Michelle Circelli, NCVER Feb. 2018

"Identifying work skills: international approaches" Gitta Siekmann, Craig Fowler NCVER December 2017

"Exploring higher level VET apprentices and VET student loans", Craig Fowler, Patrick Korbel, NCVER August 2018

"Boundaries and Connections between VET and HE at AQF 5/6", Craig Fowler, 2018 LH Martin Institute, University of Melbourne Oct 2018

The Boundaries & Connections between VET & HE: What to make of AQF 5-6 Mechanisms or Muddle? Craig Fowler, Campus Review Sept. 2018

"VET Funding in the Tertiary System: Five Policy Driven Reasons for Cost Shifting" Craig Fowler, Campus Review Aug. 2018

"Exploring higher level VET apprentices and VET Student Loans" Craig Fowler, Campus Review Dec. 2018

"Making friends with new ideas – tertiary system reforms at AQF 5-6" Craig Fowler, Campus Review Feb. 2019

"Models for federated cooperation: past practice and future implications for VET" Craig Fowler, Campus Review April 2019

"Fit-for-future purpose: architectural policies, foundational enablers spanning HE/VET sectors" Craig Fowler, Campus Review June 2019

"The Joyce Review of VET: good summary, incomplete analysis, solutions need a rework" Craig Fowler, Campus Review Oct 2019

"Australia's tertiary education system: Repair to the past or rebuild for the future? Craig Fowler, Campus Review May 2020

"VET transparency and accountability more fallacy than fact, or 'when all else fails tell the truth'" Craig Fowler, Campus Review Dec 2020

"The PC's VET report card: no 'crisis' but 'acknowledged weaknesses' and 'where to now?'" Craig Fowler Campus Review Feb. 2021

"Retraining nation: are Boards part accountable for national under-performance" Craig Fowler, Australian Institute of Company Directors July 2020

"The 'Economic Accelerator' risks being more talk than torque: Why 'Blue Sky' research matters – Opinion" Campus Review Craig Fowler Feb. 2022

"Will a new government undo knotted problems in the stalled reform of the VET National Agreement and the Australian Qualifications Framework? Opinion" Craig Fowler Campus Review June 2022