National Vocational Education and Training Regulator Amendment Act 2011

No. 171, 2011

An Act to amend the National Vocational Education and Training Regulator Act 2011, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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i  National Vocational Education and Training Regulator Amendment Act 2011  No. 171, 2011
National Vocational Education and Training Regulator Amendment Act 2011

No. 171, 2011

An Act to amend the National Vocational Education and Training Regulator Act 2011, and for related purposes

[Assented to 4 December 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the National Vocational Education and Training Regulator Amendment Act 2011.
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.

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<th>Provision(s)</th>
<th>Commencement</th>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>4 December 2011</td>
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<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
<td>17 May 2012 (see F2012L01018)</td>
</tr>
</tbody>
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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Amendments

National Vocational Education and Training Regulator Act 2011

1 At the end of Division 1 of Part 1

Add:

2A Objects

The objects of this Act are:

(a) to provide for national consistency in the regulation of vocational education and training (VET); and

(b) to regulate VET using:
   (i) a standards-based quality framework; and
   (ii) risk assessments, where appropriate; and

(c) to protect and enhance:
   (i) quality, flexibility and innovation in VET; and
   (ii) Australia’s reputation for VET nationally and internationally; and

(d) to provide a regulatory framework that encourages and promotes a VET system that is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population; and

(e) to protect students undertaking, or proposing to undertake, Australian VET by ensuring the provision of quality VET; and

(f) to facilitate access to accurate information relating to the quality of VET.

Note 1: The standards-based quality framework mentioned in paragraph (b) consists of instruments made by the Ministerial Council, the Minister or the National VET Regulator.

Note 2: These objects are subject to the constitutional basis for this Act (see Division 3).

2 Section 9
Repeal the section, substitute:

9 Immunity from State and Territory laws

Organisation immune from certain State and Territory laws

(1) An NVR registered training organisation operating in a State or Territory is not subject to a law of the State or Territory relating to:
   - (a) the registration and regulation of vocational education and training organisations; or
   - (b) the accreditation or other recognition of vocational education and training courses or programs; or
   - (c) the issue and cancellation of vocational education and training qualifications or statements of attainment; or
   - (d) the collection, publication, provision and sharing of information about vocational education and training; or
   - (e) investigative powers, sanctions and enforcement in relation to any of the above.

This subsection has effect subject to subsections (2) and (3).

Extent organisation remains subject to those laws

(2) The organisation is subject to that law of the State or Territory to the extent to which that law relates to:
   - (a) primary or secondary education (including the education of children subject to compulsory school education); or
   - (b) tertiary education that is recognised as higher education and not vocational education and training; or
   - (c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships; or
   - (d) the qualifications or other requirements to undertake or carry out any business, occupation or other work (other than that of a vocational education and training organisation); or
   - (e) the funding by the State or Territory of vocational education and training; or
   - (f) the establishment or management of any agency of the State or Territory that provides vocational education and training.

Some laws outside scope of immunity

(3) The organisation is subject to that law of the State or Territory if:
Amendments Schedule 1
Amendments Part 1

(a) that law applies whether or not a person is a training organisation; or
(b) that law is specified in regulations:
   (i) made for the purposes of this paragraph; and
   (ii) as agreed by the Ministerial Council.

Note: For how the Ministerial Council gives agreement, see section 191.

3 At the end of subsection 16(1)
Add:

Note: It is an offence to provide or offer to provide all or part of a VET course without registration, see section 116.

4 Subsection 35(1)
After “comply with”, insert “this Act or”.

5 Paragraph 51(2)(a)
Repeal the paragraph, substitute:

(a) on its own initiative, if the Regulator is satisfied that the action is reasonable and:
   (i) updates information in the course; or
   (ii) corrects false or misleading information in the course; or
   (iii) has been requested by an occupational licensing body, or other industry body, that deals with, or has an interest in, matters relating to the course’s content; or

6 Subsection 58(2)
Repeal the subsection, substitute:

(2) If the National VET Regulator cancels a VET qualification or VET statement of attainment, the person concerned must return the qualification or statement to the Regulator within the period applying under subsection 59(1).

Note: This requirement will not begin unless and until the person is given notice of the decision to cancel (see subsection 59(1)).

(3) Subsection (2) ceases to apply if and when paragraphs 59(2)(a), (aa) and (b) apply.
Note: Subsection 59(2) is about seeking review of the decision to cancel the qualification or statement.

(4) The National VET Regulator must take reasonable steps to give the person concerned written notice of:

(a) the decision to cancel the qualification or statement; and

(b) the requirement in subsection (2) to return the qualification or statement.

7 Subsection 59(1)

Repeal the subsection, substitute:

(1) Subject to subsection (2), the cancellation of a person’s VET qualification or VET statement of attainment takes effect at the end of:

(a) the 7-day period starting on the day the person is given notice under subsection 58(4) of the decision to cancel, if that decision relates to a notice mentioned in subparagraph 57(1)(b)(i); or

(b) the 30-day period starting on the day the person is given notice under subsection 58(4) of the decision to cancel, if that decision relates to a notice mentioned in subparagraph 57(1)(b)(ii).

8 Paragraph 59(2)(a)

Repeal the paragraph, substitute:

(a) apart from this subsection, paragraph (1)(b) would apply to a person; and

(aa) the person applies to the Administrative Appeals Tribunal for review of the National VET Regulator’s decision to cancel the person’s VET qualification or VET statement of attainment within the 30-day period mentioned in paragraph (1)(b); and

9 Paragraph 59(2)(b)

Omit “the relevant 30 day period”, substitute “that 30-day period”.

10 Subsections 60(1), (2) and (3)

Repeal the subsections, substitute:

6 National Vocational Education and Training Regulator Amendment Act 2011 No. 171, 2011
Civil penalty—no review sought

(1) A person contravenes this subsection if:

(a) the cancellation of the person’s VET qualification or VET statement of attainment takes effect under subsection 59(1); and

(b) the person fails to comply with the requirement in subsection 58(2) (about returning the qualification or statement).

Civil penalty: 100 penalty units.

Note 1: The cancellation will not take effect unless and until the person is given notice of the decision to cancel (see subsection 59(1)).

Note 2: The requirement in subsection 58(2) can cease to apply if the person seeks review of the decision to cancel, and notifies the Regulator of this (see subsection 58(3)).

11 Before subsection 60(4)

Insert:

Civil penalty—review sought

12 Paragraph 60(4)(a)

Omit “a person’s VET qualification or VET statement of attainment takes effect as mentioned in”, substitute “the person’s VET qualification or VET statement of attainment takes effect under”.

13 Subsection 60(5)

Repeal the subsection.

14 At the end of section 61

Add:

Note: The cancellation takes effect under subsection 59(1) or (2).

15 Section 70

Omit “things”, substitute “a thing”.

16 Section 70

Omit “circumstances.”, substitute:

circumstances if:
(a) the person (if any) apparently in charge of the thing has been given a reasonable opportunity to open, move or otherwise deal with the thing; or
(b) it is not possible to give that person such an opportunity.

Note: This section does not authorise the use of force against a person.

17 Subsection 89(2)
Repeal the subsection, substitute:

(2) The Chief Commissioner must not appoint a person as an authorised officer unless the person satisfies the experience, training and qualification requirements (if any) determined under subsection (2A).

(2A) The Minister may, by legislative instrument, determine the experience, training and qualification requirements for authorised officers.

18 Section 107 (heading)
Repeal the heading, substitute:

107 Offence—issuing VET qualification without ensuring student satisfied requirements

19 Section 108 (heading)
Repeal the heading, substitute:

108 Civil penalty—issuing VET qualification without ensuring student satisfied requirements

20 Section 109 (heading)
Repeal the heading, substitute:

109 Offence—issuing VET statement of attainment without ensuring student satisfied requirements

21 Section 110 (heading)
Repeal the heading, substitute:

8 National Vocational Education and Training Regulator Amendment Act 2011 No. 171, 2011
110 Civil penalty—issuing VET statement of attainment without ensuring student satisfied requirements

22 At the end of section 158

Add:

(3) Despite subsection 14(2) of the Legislative Instruments Act 2003, the Financial Viability Risk Assessment Requirements may make provision in relation to a matter by applying, adopting or incorporating any matter contained in another instrument or other writing as in force or existing from time to time.

23 Subsection 185(1) (note)

Omit “Note”, substitute “Note 1”.

24 At the end of subsection 185(1)

Add:

Note 2: For adopting matters contained in other instruments as in force from time to time, see section 191A.

25 Subsection 186(1) (note)

Omit “Note”, substitute “Note 1”.

26 At the end of subsection 186(1)

Add:

Note 2: For adopting matters contained in other instruments as in force from time to time, see section 191A.

27 Subsection 187(1) (note)

Omit “Note”, substitute “Note 1”.

28 At the end of subsection 187(1)

Add:

Note 2: For adopting matters contained in other instruments as in force from time to time, see section 191A.

29 Subsection 188(1) (note)

Omit “Note”, substitute “Note 1”.

National Vocational Education and Training Regulator Amendment Act 2011 No. 171, 2011
30 At the end of subsection 188(1)
Add:

Note 2: For adopting matters contained in other instruments as in force from time to time, see section 191A.

31 Subsection 189(1) (note)
Omit “Note”, substitute “Note 1”.

32 At the end of subsection 189(1)
Add:

Note 2: For adopting matters contained in other instruments as in force from time to time, see section 191A.

33 At the end of subsection 190(1)
Add:

Note: For adopting matters contained in other instruments as in force from time to time, see section 191A.

34 At the end of Subdivision D of Division 1 of Part 8
Add:

191A Adopting matters contained in other instruments as in force from time to time

(1) Each of the following instruments may make provision in relation to a matter by applying, adopting or incorporating any matter contained in another instrument or other writing as in force or existing from time to time:

(a) the Standards for NVR Registered Training Organisations;
(b) the Fit and Proper Person Requirements;
(c) the Data Provision Requirements;
(d) the Standards for VET Accredited Courses;
(e) the Standards for VET Regulators;
(f) the Risk Assessment Framework.

(2) Subsection (1) has effect despite subsection 14(2) of the Legislative Instruments Act 2003 and subsection 46AA(2) of the Acts Interpretation Act 1901.

35 After section 205
Insert:

205A Disclosure of information to TEQSA

The National VET Regulator may disclose VET information to the Tertiary Education Quality and Standards Agency (TEQSA) for the purposes of enabling or assisting TEQSA to perform or exercise any of TEQSA’s functions or powers.
Part 2—Application and transitional provisions

36 Application of amendments—cancellation of qualifications and statements of attainment
The amendments made by this Schedule of Division 2 of Part 4 of the National Vocational Education and Training Regulator Act 2011 apply in relation to notices given under subsection 57(1) or (2) of that Act on or after the commencement of this Schedule.

37 Application of amendments—warrants
The amendments made by this Schedule of section 70 of the National Vocational Education and Training Regulator Act 2011 apply in relation to warrants issued on or after the commencement of this Schedule.

38 Application of amendments—authorised officers
The amendments made by this Schedule of section 89 of the National Vocational Education and Training Regulator Act 2011 apply in relation to appointments made on or after the commencement of this Schedule.

39 Transitional regulations
The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the repeal and substitution made by item 2 of this Schedule.

[Minister’s second reading speech made in—
Senate on 24 August 2011
House of Representatives on 31 October 2011]