Explanatory Statement

ASQA Authorised Officer Requirements 2012 made under the
National Vocational Education and Training Regulator Act 2011

Issued by the authority of the Minister for Tertiary Education, Skills, Science and Research

Subject: National Vocational Education and Training Regulator Act 2011
          ASQA Authorised Officer Requirements 2012

Authority

Subsection 89(2A) of the National Vocational Education and Training Regulator Act 2011 (the Act) provides that the Minister may, by legislative instrument, determine the experience, training and qualification requirements for persons to be appointed as authorised officers.

Purpose and Operation

The purpose of the legislative instrument is to formally identify the experience, training and qualification requirements for persons to be appointed as authorised officers pursuant to subsection 89(1) of the Act.

Authorised officers exercise investigative powers under Part 5 of the Act. This includes entering premises by consent or under a warrant, and asking questions and seeking the production of documents.

Consultation

The Australian Skills Quality Authority was consulted on the content of the instrument.

Description of the provisions of the ASQA Authorised Officer Requirements 2012

Part 1—Preliminary

Division 1—Arrangements on commencement

1: Name of Instrument
Item 1 names the ASQA Authorised Officer Requirements 2012.

2: Commencement
Item 2 identifies that the legislative instrument will commence on the day after registration on the Federal Register of Legislative Instruments.

3: Purpose and Application
Item 3 identifies the purpose of the legislative instrument as being to determine the experience, training and qualification requirements for persons appointed as authorised officers by the Chief Commissioner under subsection 89(1) of the Act.

4: Definitions
Item 4 defines terms used throughout the legislative instrument.

A note to Item 4 provides that the terms provided in the note have the same meaning as that in the Act.
Part 2 – Authorised Officer Requirements

5: Matters the Chief Commissioner must have regard to
Item 5 notes that a person is taken to have satisfied the experience, training and qualification requirements for a person performing the role of an authorised officer, if the Chief Commissioner is satisfied that the person meets the criteria set out in any, or all, of items 6 and 7 of the instrument.

6: Assessment of Experience
Item 6 sets out in detail matters the Chief Commissioner must have regard to when assessing whether a person is able to demonstrate previous experience in working in an investigative or statutory compliance role. The relevant length of time is to be determined by the Chief Commissioner.

Item 6 provides a list of investigative functions which the Chief Commissioner must be satisfied that the person has demonstrated experience in where they are relevant to performing their functions as an authorised officer under the Act.

Item 6 also provides that where a person can demonstrate they possess a Certificate IV in Government (Investigations) or equivalent, the person is taken to have satisfied the experience requirements for appointment as an authorised officer.

7: Training and Qualification Requirements
Item 7 identifies the training and qualification requirements for appointment as an authorised officer, namely that the person must either hold a Certificate IV in Government (Investigations), or the person must be suitably experienced and appointed on the condition they complete a Certificate IV in Government (Investigations) within twelve months of their appointment as an authorised officer.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASQA Authorised Officer Requirements 2012

This Legislative Instrument (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

The Instrument is made by the Minister under subclause 89(2A) of the National Vocational Education and Training Regulator Act 2011 (the Act).

The purpose of the Instrument is to identify the experience, training and qualification requirements for persons to be appointed as authorised officers pursuant to subclause 89(1) of the Act.

For the Chief Commissioner of Australian Skills Quality Authority (ASQA) to appoint a person as an authorised officer under subclause 89(1) of the Act, the Chief Commissioner must be satisfied that the person meets the requirements of the Instrument.

Human rights implications

Right to work

The Instrument engages Article 6 of the International Covenant on Economic, Social, and Cultural Rights, the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.

The objective of the Instrument is to ensure that only suitably qualified and experienced persons will be appointed to exercise the monitoring and investigative powers under Part 5 of the Act. Given the nature of these powers, suitably qualified and experienced persons are necessary to ensure the protection of other rights such as the right to privacy and the right to a fair trial. This is therefore a legitimate object given the extent of the powers available to authorised officers. To the extent that the right to work is engaged, it is reasonable, necessary and proportionate for the Instrument to define the minimum training and experience requirements for an authorised officer appointed under the Act.

Conclusion

This Instrument is compatible with human rights because it supports the ability of suitably qualified and experiences persons to be appointed as authorised officers.