

Explanatory Statement

Fit and Proper Person Requirements made under the *National Vocational Education Training Regulator Act 2011*

Issued by the authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Subject: *National Vocational Education and Training Regulator Act 2011*
Standards for Fit and Proper Person Requirements

Authority

Subsection 186(1) of the *National Vocational Education and Training Regulator Act 2011* (the Act) provides that the Minister may, by legislative instrument, make requirements for assessing whether a person is a fit and proper person. Subsection 186(2) of the Act provides that the agreed requirements are to be known as the *Fit and Proper Person Requirements*.

In accordance with sections 44 and 54 of the *Legislative Instruments Act 2003*, the Fit and Proper Person Requirements (the Requirements) are not subject to disallowance or sunseting.

Purpose and Operation

The purpose of the Requirements are to determine fit and proper person requirements for persons who exercise a degree of control or influence over the operation of a registered training organisation (RTO).

The Requirements form part of the VET Quality Framework. As defined in section 3 of the Act, the VET Quality Framework is comprised of the Standards for NVR Registered Training Organisations, the Australian Qualifications Framework, the Fit and Proper Person Requirements, the Financial Viability Risk Assessment Requirements and the Data Provision Requirements.

Compliance with the Requirements is a condition of registration under the Act.

The objectives of the Requirements are to ensure that persons who exercise a degree of control or influence over the management of the RTO are people in whom the public are likely to have confidence in their suitability to manage, or be involved with, an organisation that provides or assesses national qualifications.

The Requirements formally identifies in a legislative instrument fit and proper person requirements for registration under the Act. These Requirements are similar to the fit and proper person requirements previously found in the User Guide to the Australian Quality Training Framework (AQTF). The Requirements identify:

- > all fit and proper person requirements and
- > all persons required to meet the fit and proper person requirements.

The Requirements are not intended to change the existing fit and proper person requirements found in the AQTF except to clarify the category of persons subject to the fit and proper person requirements – see FPPR 5.

The Requirements also include the following additional factors for consideration by the regulator:

- > whether the person has ever provided a state or territory registering body and/or the National VET Regulator with false or misleading information or made a false or misleading statement to a state or territory registering body or the National VET Regulator, and whether the person knew that the statement made or information provided to the state or territory registering body or National VET Regulator was false or misleading;
- > whether the person has ever been found not to be a fit and proper person for the purposes of the *Education Services for Overseas Students Act 2000*;
- > whether the public is likely to have confidence in the person's suitability to be involved with an organisation that provides or assesses national qualifications.

Consultation

Before the Minister made the Requirements, the following consultation was undertaken:

- > The Requirements were discussed with representatives from each State and Territory at meetings held on 3 March 2011 and 24 May 2011.
- > On 20 and 21 April 2011 a consultation meeting was held with stakeholders (unions, training provider peak bodies, employer groups, industry bodies and State and Territory representatives) that included discussion of the draft Requirements.
- > The Requirements were circulated to the Ministerial Council for endorsement which was received on 24 June 2011.

Description of the provisions of the Requirements.

Part 1—Preliminary

Division 1—Arrangements on commencement

FPPR 1: Name of Standards

FPPR 1 names the Fit and Proper Person Requirements 2011.

FPPR 2: Commencement

FPPR 2 provides that the Requirements commence on the later of 1 July 2011 or the day after registration on the Federal Register of Legislative Instruments.

FPPR 3: Definitions

FPPR 3 defines terms used throughout the Requirements and clarifies the application of the Requirements.

Part 2—Fit and Proper Person Requirements

FPPR 4: Fit and Proper Person Requirements

FPPR 4 sets out the considerations that the National VET Regulator must have regard to when making a decision about whether a person meets the fit and proper person requirements for registration.

FPPR 5: Persons subject to a Fit and Proper Person Requirement

FPPR 5 identifies the people that the National VET Regulator must consider when making a decision about whether an applicant under the NVETR ACT meets the fit and proper person requirements.