



National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)

made under subsections 6B(1), 9(2), 12(2) and section 13 of the *National Vocational Education and Training Regulator (Charges) Act 2012*

Compilation No. 4

Compilation date: 8 June 2021

Includes amendments up to: *National Vocational Education and Training
Regulator (Charges) Amendment (Governance
and Other Matters) Determination 2021*
[F2021L00699]

Prepared by the Department of Education, Skills and Employment, Canberra

About this compilation

This compilation

This is a compilation of the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1)* that shows the text of the law as amended and in force on 8 June 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Commonwealth of Australia

National Vocational Education and Training Regulator (Charges) Act 2012

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR
(CHARGES) DETERMINATION 2013 (No.1)**

PART 1 PRELIMINARY

1 Name of Instrument

This legislative instrument is the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)*.

5 Authority

This instrument is made under the following provisions of the *National Vocational Education and Training Regulator (Charges) Act 2012*:

- (a) subsection 6B(1);
- (b) subsection 9(2);
- (c) subsection 12(2);
- (d) section 13.

6 Purposes

The purposes of this instrument are to determine the following:

- (a) an amount of National VET Regulator annual registration charge for the purposes of Part 1A of the Act;
- (b) the formulas for calculating charges payable under Part 2 or 3 of the Act;
- (c) the circumstances in which any of those charges may be waived in whole or in part under Part 4 of the Act.

Note: Part 2 of the Act imposes a charge for a compliance audit of an NVR registered training organisation's operations. Part 3 of the Act imposes a charge for the investigation of a complaint about an NVR registered training organisation.

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7 Definitions

Note: A number of expressions used in this instrument are defined in section 3 of the NVETR Act, including the following:

- (a) Australian Qualifications Framework;
- (b) compliance audit;
- (c) National VET Regulator;
- (d) NVR registered training organisation;
- (e) registered provider;
- (f) VET accredited course.

In this instrument:

Act means the *National Vocational Education and Training Regulator (Charges) Act 2012*.

ASQA means the Australian Skills Quality Authority, which has the meaning given by section 173 of the NVETR Act.

Auditor means a person who carries out a compliance audit on behalf of the National VET Regulator.

Complaint Officer means a person who investigates a complaint on behalf of the National VET Regulator for the purposes of Part 3 of the Act.

ELICOS has the same meaning as in the *Education Services for Overseas Students Act 2000*.

National VET Regulator annual registration charge means the charge imposed by Part 1A of the Act.

NVETR Act means the *National Vocational Education and Training Regulator Act 2013*.

qualification includes:

- (a) training package qualifications and VET accredited courses and programs (including ELICOS); and
- (b) for a single qualification, any number of units of competency in relation to the qualification.

training package means a nationally endorsed, integrated set of competency standards, assessment requirements and Australian Qualifications Framework qualifications and credit arrangements for a specific industry, industry sector or enterprise.

units of competency has the same meaning as in the Act.

Note: “Units of competency” is the term used for the specification of industry knowledge and skill and the application of that knowledge and skill to the standard of performance expected in the workplace.

Part 1A—National VET Regulator annual registration charge

7A General

- (1) For the purposes of section 6B of the Act, this Part determines an amount, or amounts, of National VET Regulator annual registration charge for a person.
- (2) The following amounts of National VET Regulator annual registration charge are determined for a person:
 - (a) any amount or amounts of charge determined for the person under section 7B (subject to section 7E);
 - (b) any amount or amounts of charge determined for the person under section 7C (subject to section 7E).

7B Amount determined for registration as an NVR registered training organisation

Scope

- (1) This section applies to a person if the person starts or continues to be registered during a financial year as an NVR registered training organisation, in relation to a particular registration.
- (2) If this section applies to a person in relation to 2 or more different registrations of the person as an NVR registered training organisation, this section applies in relation to each such registration.

Amount determined

- (3) An amount of National VET Regulator annual registration charge for the registration is determined for the person for the financial year in accordance with the following table (subject to subsection (5)):

Amount of charge—registration as an NVR registered training organisation		
Item	For this number of qualifications ...	the amount of charge for the financial year in relation to the registration is as follows ...
1	0 to 4 qualifications	\$1,130.
2	5 to 10 qualifications	\$3,220.
3	11 to 60 qualifications	\$6,975.
4	61 or more qualifications	\$10,730.

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- (4) For the purposes of subsection (3), the number of qualifications is the number of qualifications registered in the scope of registration that applies to the registration on:
- (a) the first day of the financial year; or
 - (b) if the registration starts after the first day of the financial year—the first day of the first whole month after the registration starts.

If registration as an NVR registered training organisation starts during financial year

- (5) If the registration starts after the first day of a financial year, the amount of charge is the amount worked out as follows:

$$\text{Subsection (3) amount} \times \frac{\text{Number of remaining months}}{12}$$

where:

number of remaining months means the number of whole months remaining in the financial year after the start of the registration.

subsection (3) amount means the amount that would otherwise be determined for the registration for the financial year under subsection (3).

Note: If a person's registration as mentioned in subsection (1) ends during a financial year, a pro rata refund worked out on the same basis is payable to the person: see subsection 232A(4) of the NVETR Act.

7C Amount determined for registration as a registered provider if the National VET Regulator is an ESOS agency for the provider

Scope

- (1) This section applies to a person if:
- (a) the person starts or continues to be registered during a financial year as a registered provider in relation to a particular registration; and
 - (b) the National VET Regulator is the ESOS agency (within the meaning of the *Education Services for Overseas Students Act 2000*) for the registered provider in relation to a course (or courses) covered by that registration.

Note: A registered provider is a provider registered under Part 2 of the *Education Services for Overseas Students Act 2000* (see section 3 of the NVETR Act).

- (2) If this section applies to a person in relation to 2 or more different registrations of the person as a registered provider, this section applies in relation to each such registration.

Amount determined

- (3) An amount of National VET Regulator annual registration charge for the registration is determined for the person for the financial year in accordance with the following table (subject to subsection (5)):

Amount of charge—registration as a registered provider if the National VET Regulator is an ESOS agency for the provider		
Item	For this number of qualifications ...	the amount of charge for the financial year in relation to the registration is as follows ...
1	0 to 2 qualifications	\$950.
2	3 to 4 qualifications	\$1,645.
3	5 to 50 qualifications	\$4,375.
4	51 or more qualifications	\$7,100.

- (4) For the purposes of subsection (3), the number of qualifications is the number of courses in relation to which this section applies that are covered by the registration on:
- (a) the first day of the financial year; or
 - (b) if the registration starts after the first day of the financial year—the first day of the first whole month after the registration starts.

Note: This section applies in relation to a course only if the National VET Regulator is the ESOS agency for the registered provider in relation to the course (see paragraph (1)(b)).

If registration as a registered provider starts during financial year

- (5) If the registration starts after the first day of a financial year, the amount of charge is the amount worked out as follows:

$$\text{Subsection (3) amount} \times \frac{\text{Number of remaining months}}{12}$$

where:

number of remaining months means the number of whole months remaining in the financial year after the start of the registration.

subsection (3) amount means the amount that would otherwise be determined for the registration for the financial year under subsection (3).

Note: If the person's registration as mentioned in subsection (1) ends during a financial year, a pro rata refund worked out on the same basis is payable to the person: see subsection 232A(4) of the NVETR Act.

7D Waiver of National VET Regulator annual registration charge

- (1) For the purposes of paragraph 13(b) of the Act, a National VET Regulator annual registration charge may be waived, in whole or in part, if, in the opinion of the National VET Regulator:
 - (a) special or unusual circumstances exist which would cause the charge to be unreasonable or inequitable; or
 - (b) the amount of the charge that remains unpaid is so small that its recovery would be uneconomical to pursue.
- (2) However, the following circumstances do not constitute grounds for granting a waiver:
 - (a) the person liable to pay the charge is a body that has ceased to exist;
 - (b) the person liable to pay the charge stops being registered as an NVR registered training organisation, or as a registered provider;
 - (c) the person liable to pay the charge stops carrying on business as an NVR registered training organisation, or as a registered provider.
- (3) To avoid doubt, circumstances related to the COVID-19 pandemic are special or unusual circumstances which could cause the charge to be unreasonable or inequitable for the purposes of paragraph (1)(a).

7E Circumstances in which annual registration charge is zero

- (1) This section applies to an NVR registered training organisation or registered provider that held registration immediately before 1 January 2020.
- (2) Despite sections 7B and 7C, an annual registration charge is determined to be zero where the charge would otherwise become payable on or after 1 January 2020 and prior to 30 June 2020.

Part 2—Compliance audit and complaint investigation charges

8 Calculation Formulas

- (1) For the purpose of subsection 9(1) of the Act, a charge under Part 2 of the Act is to be calculated according to the following formula:
 - (a) the amount of \$275 per Auditor per hour to conduct a compliance audit;and

- (b) if any part of a compliance audit is conducted outside Australia, requiring the National VET Regulator to send an Auditor overseas, then in addition to the costs and expenses determined in accordance with paragraph 8(1)(a), the costs and expenses that the National VET Regulator:
 - (i) would have incurred under the Regulator's International Travel Policy had the Auditor been an official of the National VET Regulator; or
 - (ii) has actually incurred under the Regulator's International Travel Policy because the Auditor is an official of the National VET Regulator.
- (2) For the purpose of subsection 12(1) of the Act, where a complaint is found to have been substantiated, a charge under Part 3 of the Act is to be calculated according to the following formula:
 - (a) the amount of \$275 per Complaint Officer per hour to conduct an investigation into the complaint; and
 - (b) the amount of \$275 per Auditor per hour to conduct a compliance audit as a part of the investigation; and
 - (c) if any part of the investigation or compliance audit is conducted outside Australia, requiring the National VET Regulator to send an Auditor or a Complaint Officer overseas, then in addition to the costs and expenses determined in accordance with paragraph 8(2)(a), the costs and expenses that the National VET Regulator:
 - (i) would have incurred under the Regulator's International Travel Policy had the Auditor or Complaint Officer been an official of the National VET Regulator; or
 - (ii) has actually incurred under the Regulator's International Travel Policy because the Auditor or Complaint Officer is an official of the National VET Regulator.

9 Circumstances in which a charge may be waived in whole or in part

- (1) For the purpose of subsection 13(b) of the Act, a charge that would otherwise be payable under the Act may be waived, in whole or in part where, in the opinion of the National VET Regulator;
 - (a) special or unusual circumstances exist which cause the charge to be unreasonable or inequitable; or

- (b) the amount of the charge that remains unpaid is so small that its recovery would be uneconomical to pursue.
- (2) For the purposes of paragraph 9(1)(a), the following circumstances do not constitute grounds for granting a waiver:
 - (a) where the NVR registered training organisation required to pay the charge did not consent to the compliance audit or complaint investigation that resulted in the imposition of a charge; or
 - (b) where the NVR registered training organisation required to pay the charge does not agree with the outcome of the compliance audit or complaint investigation that resulted in the imposition of a charge; or
 - (c) where the NVR registered training organisation required to pay the charge ceases to exist, or ceases to be an NVR registered training organisation, or ceases to carry on business as a registered training organisation.
- (3) To avoid doubt, circumstances related to the COVID-19 pandemic are special or unusual circumstances which could cause the charge to be unreasonable or inequitable for the purposes of paragraph (1)(a).

10 Auditor and Complaint Officer Charge for a part hour

- (1) For the purpose of paragraphs 8(1)(a) or 8(2)(a), where an Auditor or a Complaint Officer has taken:
 - (a) less than 30 minutes to conduct, and complete, a compliance audit or a complaint investigation, the amount of the charge is zero dollars;
 - (b) 30 minutes or more, to conduct, and complete, a compliance audit or a complaint investigation, the amount of the charge is calculated at the rate of \$68.75 for each 15 minute block of work completed.

11 Circumstances in which compliance audit and complaint investigation charges are zero

Despite sections 8 and 10, a charge under Part 2 or Part 3 of the Act (in relation to compliance audits or for the investigation of a complaint) is determined to be zero where the charge would otherwise become payable on or after 1 January 2020 and prior to 30 June 2020.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1)	30 July 2013 (F2013L01468)	31 July 2013	s 4
National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Determination 2017	28 June 2017 (F2017L00784)	1 July 2017	-
National Vocational Education and Training Regulator (Charges) Amendment Determination (No. 1) 2018	5 July 2017 (F2018L01007)	6 July 2018	ss 2(2)
National Vocational Education and Training Regulator (Charges) Amendment (COVID-19) Determination 2020	4 May 2020 (F2020L00547)	1 January 2020	-
National Vocational Education and Training Regulator (Charges) Amendment (Governance and Other Matters) Determination 2021	1 June 2021 (F2021L00699)	8 June 2021	-

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Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Making words	am 2021 (F2021L00699)
Section 2	rep 2018 (LA s 48D)
Section 3	rep 2017 (F2017L00784)
Section 4	rep 2017 (F2017L00784)
Section 5	rs 2017 (F2017L00784)
Section 6	rs 2017 (F2017L00784)
	am 2021 (F2021L00699)
Section 7	am 2017 (F2017L00784)
	ad 2018 (F2018L01007)
	rs 2021 (F2021L00699)
Section 7A	am 2020 (F2020L00547)
	am 2021 (F2021L00699)
Section 7D	am 2020 (F2020L00547)
	am 2021 (F2021L00699)
Section 7E	ad 2020 (F2020L00547)
Section 8	rs 2018 (F2018L01007)
	am 2021 (F2021L00699)
Section 9	am 2020 (F2020L00547)
	am 2021 (F2021L00699)
Section 10	rs 2018 (F2018L01007)
Section 11	ad 2020 (F2020L00547)
Part 1A	ad 2017 (F2017L00784)
Part 2 (heading)	rs 2017 (F2017L00784)
	rs 2018 (F2018L01007)
Part 3 (heading)	rep 2017 (F2017L00784)
Part 4 (heading)	rep 2017 (F2017L00784)