



National Vocational Education and Training Regulator Amendment (Enforcement) Regulation 2015

Select Legislative Instrument No. 28, 2015

I, the Honourable Alex Chernov AC QC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 26 March 2015

Alex Chernov
Administrator

By His Excellency's Command

Simon Birmingham
Assistant Minister for Education and Training

OPC60968 - B

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1 Name

This is the *National Vocational Education and Training Regulator Amendment (Enforcement) Regulation 2015*.

2 Commencement

Each provision of this instrument 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.

Commencement information	
Column 1	Column 2
Provisions	Commencement
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.
2. Schedule 1	2 April 2015.
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of Schedule 1 to the <i>National Vocational Education and Training Regulator Amendment Act 2015</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

3 Authority

This instrument is made under the *National Vocational Education and Training Regulator Act 2011*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments commencing 2 April 2015

National Vocational Education and Training Regulator Regulations 2011

1 Before regulation 1

Insert:

Part 1—Preliminary

2 Regulation 3

Repeal the regulation, substitute:

3 Definitions

Note: A number of expressions used in these Regulations are defined in the Act, including the following:

- (a) Commissioner;
- (b) member of the staff of the Regulator;
- (c) National Register;
- (d) National VET Regulator;
- (e) NVR registered training organisation.

In these Regulations:

Act means the *National Vocational Education and Training Regulator Act 2011*.

infringement officer has the meaning given by regulation 8.

subject to an infringement notice, in relation to a provision, has the meaning given by regulation 7.

3 Before regulation 4

Insert:

Part 2—Registering as an NVR registered training organisation

4 Regulation 5

Repeal the regulation, substitute:

Part 3—Enforcement

Division 1—Civil penalties in relation to conditions of registration

5 Conditions of registration

For paragraph 111(2)(a) of the Act, a condition of an NVR registered training organisation mentioned in any of the following provisions of the Act is prescribed:

- (a) subsection 22(3) (complying with the Data Provision Requirements);
- (b) section 24 (satisfying the Financial Viability Risk Assessment Requirements);
- (c) section 25 (notifying the National VET Regulator of material changes).

Division 2—Infringement notices

6 Preliminary

This Division is made for section 149 of the Act.

7 Provisions subject to infringement notices

Each of the following provisions of the Act are *subject to an infringement notice* under this Division:

- (a) section 94;
- (b) section 96;
- (c) section 98;
- (d) section 100;
- (e) section 112;

- (f) section 115;
- (g) section 117;
- (h) section 119;
- (i) section 121;
- (j) section 123;
- (k) section 125;
- (l) section 127;
- (m) section 129.

8 Meaning of *infringement officer*

- (1) Each of the following persons is an *infringement officer* for the purposes of this Division:
 - (a) a Commissioner;
 - (b) a member of the staff of the Regulator who is an SES employee or acting SES employee;
 - (c) a member of the staff of the Regulator who holds, or is acting in, an Executive Level 2 position;
 - (d) a member of the staff of the Regulator who occupies an office or holds a position equivalent to that of a Commissioner, an SES employee or an Executive Level 2 position.
- (2) A person who is an *infringement officer* for the purpose of exercising powers mentioned in subregulation (1) is also an *infringement officer* for the purposes of:
 - (a) exercising other powers under this Division; or
 - (b) performing functions or duties under this Division;that are incidental to the powers mentioned in subregulation (1).

9 When an infringement notice may be given

- (1) If an infringement officer reasonably believes that a person has contravened a provision subject to an infringement notice under this Division, the infringement officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

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- (3) A single infringement notice must relate only to a single contravention of a single provision unless subregulation (4) applies.
 - (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than 1 day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing and multiple contraventions of civil penalty provisions, see section 141 of the Act.

10 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
 - (e) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice; and
 - (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and

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- (i) state that payment of the amount is not an admission of guilt or liability; and
 - (j) state that the person may apply to the National VET Regulator to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that if the notice is withdrawn proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (n) state that the person may make written representations to the National VET Regulator seeking the withdrawal of the notice.

Note: An amount payable under an infringement notice in relation to an alleged contravention of a civil penalty provision must not exceed one-tenth of the maximum penalty prescribed for the contravention: see subsection 149(2) of the Act.

- (2) The notice may include any other matters the infringement officer considers necessary.

11 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the National VET Regulator for an extension of the period referred to in paragraph 10(h).
- (2) If the application is made before the end of that period, the National VET Regulator may, in writing, extend that period. The National VET Regulator may do so before or after the end of that period.
- (3) If the National VET Regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 10(h) is taken to be a reference to that period so extended.
- (4) If the National VET Regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 10(h) is taken

to be a reference to the period that ends on the later of the following days:

- (a) the day that is the last day of the period referred to in paragraph 10(h);
 - (b) the day that is 7 days after the day the person was given notice of the National VET Regulator's decision not to extend.
- (5) The National VET Regulator may extend the period more than once under subregulation (2).

12 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the National VET Regulator seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The National VET Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the National VET Regulator:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the National VET Regulator; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Division that is included in the same Act or legislative instrument as the provision in relation to which the infringement notice is given;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Division if the contravention is constituted by conduct

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- that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
- (iv) any other matter the National VET Regulator considers relevant.

Notice of withdrawal

- (4) If the National VET Regulator withdraws an infringement notice given to a person, the National VET Regulator must give notice to the person of the withdrawal. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.
- (5) The notice may include any other matters the National VET Regulator considers necessary.

Refund of amount if infringement notice withdrawn

- (6) If:
- (a) the National VET Regulator withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

Notice of refusal to withdraw an infringement notice

- (7) If the National VET Regulator refuses to withdraw an infringement notice given to a person, the National VET Regulator must give notice of the decision to refuse to the person. The refusal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is not withdrawn; and

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- (e) that the period referred to in paragraph 10(h) is extended to the period ending 28 days after the day the notice of the refusal is given.

Period for payment extended

- (8) If the National VET Regulator refuses to withdraw an infringement notice, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 10(h) is taken to be a reference to the period ending 28 days after the day the notice of the refusal is given.

13 Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 10(h):
 - (a) any liability of the person for the alleged contravention is discharged; and
 - (b) proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
 - (c) the person is not regarded as having admitted guilt or liability for the alleged contravention.
- (2) Subregulation (1) does not apply if the notice has been withdrawn.

14 Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Division; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Division if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Division; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Division.

Part 4—National Vocational Education and Training Regulator

15 Name specified for National VET Regulator

For subsection 155(2) of the Act, the National VET Regulator may also be known as the Australian Skills Quality Authority.

Part 5—Application and transitional provisions

16 Application provisions for the *National Vocational Education and Training Regulator Amendment (Enforcement) Regulation 2015*

- (1) Division 1 of Part 3 of these Regulations as inserted by item 4 of Schedule 1 to the *National Vocational Education and Training Regulator Amendment (Enforcement) Regulation 2015* applies in relation to acts and omissions that occur after the commencement of this subregulation.
- (2) Division 2 of Part 3 of these Regulations as inserted by item 4 of Schedule 1 to the *National Vocational Education and Training Regulator Amendment (Enforcement) Regulation 2015* applies in relation to contraventions of civil penalty provisions that occur after the commencement of this subregulation.

Schedule 2—Amendments contingent on the National Vocational Education and Training Regulator Amendment Act 2015

National Vocational Education and Training Regulator Regulations 2011

1 After paragraph 7(j)

Insert:

(ja) section 123B;

2 At the end of regulation 16

Add:

- (3) The amendment of these Regulations made by item 1 of Schedule 2 to the *National Vocational Education and Training Regulator Amendment (Enforcement) Regulation 2015* applies in relation to contraventions of civil penalty provisions that occur after the commencement of this subregulation.