

Explanatory Statement

National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Amendment Instrument 2021

Purpose and Authority

The *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Amendment Instrument 2021* (the Amendment Instrument) is made under subsection 158(1) of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act).

That subsection requires the National VET Regulator (also known as the Chief Executive Officer of the Australian Skills Quality Authority or ASQA), by legislative instrument, to make requirements relating to the financial viability of NVR registered training organisations.

Subsection 158(2) of the NVETR Act provides the Financial Viability Risk Assessment Requirements means the requirements under subsection (1) (the Requirements).

The Amendment Instrument amends the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021* (the Instrument) which commenced on 30 July 2021.

The Instrument remade and repealed the *Financial Viability Risk Assessment Requirements 2011* instrument (the former Instrument) which was due to sunset on 1 October 2021.

Section 12 of the Instrument currently provides that independent reviews of financial projections will have regard to the Australian Audit and Assurance Standards, *AUS 804 The Audit of Prospective Financial Information* and *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

The Amendment Instrument repeals section 12 and substitutes a new section. The effect of the amendment is to delete the reference to *AUS 804 The Audit of Prospective Financial Information* as it was withdrawn effective 19 February 2014 and is no longer valid. Relevant matters previously covered by that standard are captured by *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

In this respect, section 158(3) of the NVETR Act provides that despite sub section 14(2) of the *Legislation Act 2003*, the 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.

The amended section 12 incorporates the standard *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the Auditing and Assurance Standards Board, which was made on 30 May 2017, as existing from time to time.

ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information is incorporated by reference as authorised under section 158(3) of the NVETR Act.

The document applies to audits or review of prospective financial and related information other than audits or reviews of historical financial information covered by Australian Auditing Standards or Auditing Standards on Review Engagements respectively.

The document is freely available via web link at
https://www.auasb.gov.au/admin/file/content102/c3/ASAE_3000_revised_2017.pdf

The Amendment Instrument forms part of the VET Quality Framework. As defined in section 3 of the NVETR 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.

The former Instrument applied to all NVR registered training organisations from 1 July 2011. The *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* sets out the dates from which state and territory registered training organisations are taken to be NVR registered training organisations for the purposes of the NVETR Act. NVR registered training organisations must comply with the Requirements as a condition of registration under section 24 of the NVETR Act.

Further, the National VET Regulator is required to consider whether an applicant for registration under the NVETR Act complies with the VET Quality Framework and the applicable conditions of registration including section 24.

Commencement

The Amendment Instrument commences from the day after it is registered on the Federal Register of Legislation.

Consultation

The Amendment Instrument involves a minor change to section 12 of the Instrument and makes no other changes to the Instrument. ASQA meets regularly with key external stakeholders through various forums where the change has been noted.

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) previously confirmed that as the Instrument is unlikely to have more than a minor regulatory impact, a Regulatory Impact Statement is not required. OBPR reference: 44217.

Disallowance

Subsection 158(4) of the NVETR Act provides that despite anything in section 44 of the Legislation Act, section 42 of that Act (disallowance) applies to the Requirements.

Accordingly, the Amendment Instrument is subject to disallowance.

Abbreviations used in this Explanatory Statement

the Amendment Instrument means the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Amendment Instrument 2021*

the Instrument means the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021*.

the former Instrument means the *Financial Viability Risk Assessment Requirements 2011*.

the Requirements means the Financial Viability Risk Assessment Requirements as made under subsection 158(1) of the NVETR Act

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

Detailed Explanation of Amendments and Provisions

AMENDMENTS

The Amendment Instrument amends section 12 of the Instrument.

CONTENTS

Provisions

Sections 1 to 3 of the Amendment Instrument are formal provisions providing for the name, commencement, and authority for the Amendment Instrument.

Section 1 states the name of the Amendment Instrument as the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Amendment Instrument 2021*.

Section 2 provides for the Amendment Instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 states that the Amendment Instrument is made under subsection 158(1) of the NVETR Act.

Section 4 provides for an amendment to the Instrument as itemised in Schedule 1 and as there set out and provides that any other item has effect according to its terms.

Schedule 1 – Amendments

Section 1 of Schedule 1 repeals section 12 of the Instrument and substitutes a new section.

The effect of the amendment is to remove the reference in section 12 to Auditing and Assurance Standard *AUS 804 The Audit of Prospective Financial Information* in the context of independent financial projections as it was withdrawn effective 19 February 2014 and is no longer valid.

Independent financial projections as referred to will have regard to *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued by the Auditing and Assurance Standards Board on 30 May 2017, as existing from time to time. It is not suggested that the standard must be applied in the context of independent financial reviews but only regard is to be had to it.

It is also intended that the amendment will also pick up any changes to the standard over time.

In this respect, to the extent that the amendment incorporates the ASAE 3000 standard as existing from time to time to time, section 158(3) of the NVETR Act provides that despite section 14(2) of the Legislation Act, the 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.

A note to the amendment provides that the Auditing and Assurance Standards Board standards could in 2021 be viewed on the Auditing and Assurance Standards Board website (www.auasb.gov.au)

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 and at the request of the Parliamentary Joint Committee on Human Rights

Summary of instrument

The Amendment Instrument is made under subsection 158(1) of the NVETR Act. That subsection requires the National VET Regulator, by legislative instrument, to make requirements relating to the financial viability of NVR registered training organisations. Subsection 158(2) of the NVETR Act provides that the requirements are to be known as the Financial Viability Risk Assessment Requirements.

The purpose of the Amendment Instrument is to amend section 12 of the Instrument which commenced on 30 July 2021. The Instrument repealed and remade the former Instrument before it would otherwise sunset on 1 October 2021.

Analysis of human rights implications

Right to education

The Amended Instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 13 recognises that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms.

In addition, paragraph 13(2)(b) recognises that secondary education, in all its different forms, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education.

Right to work

In amending the Instrument, the Amendment Instrument engages the right to work contained in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 6 recognises that in order to fully achieve the realisation of the right to work, there should be available technical and vocational guidance and training programmes, policies and techniques.

The objective of the Amendment Instrument is to amend the Instrument in a minor way to clarify relevant Auditing and Assurance Standards that independent financial projections will have regard to as part of ensuring that an NVR registered training organisation is able to demonstrate its financial viability at any point in time and properly manage any risks going to its continued financial solvency as a going concern. Maintaining financial viability impacts on an organisation's capacity to achieve quality outcomes for students undertaking a course of vocational education and training with the organisation.

This objective is aimed at supporting the vocational education and training sector, and therefore promotes both the right to education and the right to work.

Conclusion

This Amendment 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*.