

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR
BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations, Senator the Honourable Chris Evans)

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR BILL 2010

GENERAL OUTLINE

The National Vocational Education and Training Regulator Bill 2010 provides for the establishment of a national regulator for the vocational education and training sector. It also sets out the regulatory framework within which the National Vocational Education and Training Regulator (NVR) will operate. The Bill establishes that the NVR will derive its power from a referral of powers in referring states and from the Constitution in non-referring states and territories. The NVR will take over the regulatory functions of state regulators in referring states and territories. In non-referring states, it will have responsibility for registered training organisations which offer training to international students or which also operate in a referring state or territory.

The Bill provides for the NVR to be established by proclamation, with the NVR expected to begin operations in April 2011.

The formation of the NVR is a continuation of a long-standing policy direction to improve national consistency in vocational education and training (VET) regulation. Prior to this Bill, regulation of the VET sector has been carried out by a different regulator in each State and Territory. Despite initiatives to improve the consistency of regulation, including model clauses for state legislation and a nationally agreed quality framework, there are still inconsistencies in how VET regulation is carried out around the country.

The introduction of national regulation will build on the current quality and consistency in the VET sector and support the labour market and national productivity agendas by:

- building confidence in the quality and consistency of assessment and training outcomes of VET qualifications which in turn supports the confidence in the abilities of VET graduates
- maximising consistency in application of national standards and regulatory activity in all jurisdictions
- maximising consistency in the application of sanctions and the treatment of low quality registered training organisations
- providing clear lines of accountability and responsibility for quality of VET
- ensuring a coordinated response to emerging quality issues in the sector.

The NVR will form the basis of quality assurance in the VET sector. The Bill establishes a robust regulatory framework, with effective powers and sanctions available to NVR to enforce compliance with the standards for providers and courses.

A key mechanism for regulation in VET is the Australian Quality Training Framework (AQTF) which provides the national standards against which registered training organisations are regulated. The NVR will ensure compliance with the national standards in addition to supporting the continuous improvement of RTOs. These standards will be detailed in a legislative instrument.

The Bill does not make significant changes to the regulatory regime which currently exists in the states and territories. It is based on state and territory legislation and has been developed through extensive consultation with existing state and territory regulators. The Bill creates a slightly expanded regulatory tool box for the NVR and a broader range of investigative powers, which brings it into line with current Commonwealth policy and the powers available to the Commonwealth through the *Education Services to Overseas Students Act 2000*.

The National Regulator will be established as an independent statutory authority, and will consist of a Chief Commissioner and two other Commissioners.

In the interests of sound financial accountability, the National Regulator will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act) and the Chief Commissioner will be Chief Executive of the agency for the purposes of the FMA Act.

The National Regulator will be independent from states and territories, however it will have substantial reporting requirements to the Ministerial Council and many of the standards the NVR will enforce will be subject to the approval of state and territory ministers.

The establishment of the NVR will be supported by the establishment of a National Standards Council, which will have responsibility for developing and providing advice on the standards the NVR enforces and operates under.

FINANCIAL IMPACT STATEMENT

The NVR will be financed by Parliamentary appropriation. In this regard, the FMA Act will allow the Minister for Finance and Administration, or his or her delegate, to issue drawing rights as to the amounts in which, and the times at which, money may be drawn by the NVR. The NVR will have appropriations of \$94.9m made available to it between commencement in 2011 and June 2014.

The NVR will be able to cost recover through a number of specific services it will provide. It is expected that its cost recovery activities will return \$39.9m to the Budget during over the period January 2011 and June 2014.

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR BILL 2010

NOTES ON CLAUSES

Part 1

Introduction

Outline of Part

Part 1 of the Bill covers how the Bill is to be cited (when enacted) and when its provisions commence. Part 1 also defines various terms used in the Bill, sets out the Constitutional basis of the Bill (and the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010*) and deals with immunity from State and Territory vocational education and training laws and the general application of the Bill (and the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010*).

Detailed explanation

Part 1— Introduction

Division 1 - Preliminary

Clause 1 - Short title

This clause provides for the Act, when it is enacted, to be cited as the *National Vocational Education and Training Regulator Bill 2010*.

Clause 2 - Commencement

This clause inserts a three column table setting out commencement information for various provisions of the Bill. Each provision of the Bill specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for clauses 1 and 2 and any other provisions of the Bill not otherwise covered by the table to commence on Royal Assent.

The table also has the effect of providing that clauses 3 to 10 commence on a day or days to be proclaimed, or if any of the provisions do not commence within 6 months from Royal Assent, they commence on the day after that 6 month period expires; and that Parts 2 to 12 commence at the same time (i.e. the same time as clauses 3 to 15).

A note makes it clear that these commencement times will not be amended by any later amendments of the Act.

For ease of description, this Explanatory Memorandum uses the following abbreviations:

‘**NVR**’ means the National VET Regulator.

‘**Transitional Bill**’ means the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010*.

‘**VET**’ means vocational education and training.

Division 2 – Definitions

Clause 3 – Definitions

This clause defines certain terms that appear in the Bill. These definitions include the following:

Australia, when used in a geographical sense, includes the external Territories. Clause 9 of the Bill provides that the Bill and the Transitional Bill extend to every external Territory.

Australian Qualifications Framework has the same meaning as in the *Higher Education Support Act 2003*. It therefore means the framework for recognising and endorsing qualifications established by the Council comprised of the Commonwealth and State and Territory Ministers responsible for education, employment, training and youth affairs – currently known as the Ministerial Council for Tertiary Education and Employment (see Schedule 1 of the Higher Education Support Act).

compliance audit means audits carried out under subclause 35(1) (which allows the NVR to conduct compliance audits to assess whether a registered training organisation continues to comply with the VET Quality Framework).

corresponding State law means a State or Territory law that is declared by the regulations to correspond to particular provisions of this Bill or the regulations – as they are amended from time to time.

Education Minister means a Minister of a State or Territory who has responsibility for vocational education and training (in relation to a State or Territory).

executive officer means, in relation to a registered training organisation:

- a person who is concerned in or takes part in the management of the organisation (whether called a director or some other title); or
- if the organisation is a body corporate:
 - a person who, at any time during the organisation's registration under this Bill, owns at least 15% of the organisation, or is entitled to receive at least 15% of dividends paid by the organisation; or
 - the administrator of a deed of company arrangement executed by the organisation; or
 - a trustee or other person who administers a compromise or arrangement made between the organisation and another person/s.
- an administrator, receiver and manager, or liquidator of the organisation (other than court appointed receivers and managers or liquidators).

The other definitions are straightforward and do not require additional explanation.

Division 3 – Constitutional basis for this Act and the Transitional Act

Clause 4 – Constitutional basis for this Act and the Transitional Act

Subclause 4(1) provides that in referring States (the meaning of *referring State* is defined in clause 5) the application of this Bill and the Transitional Bill is based on the following legislative powers of the Commonwealth Parliament under the Constitution:

- all of the Commonwealth Parliament's powers to legislate under the Constitution with the exception of paragraph 51(xxxvii); and
- paragraph 51(xxxvii) which allows the Commonwealth Parliament to pass laws with respect to matters referred to the Commonwealth Parliament by the Parliament of the referring State.

A note to subclause 4(1) draws the reader's attention to subclauses 8(1) and 8(2) which explain when this Act will apply in a referring State.

Subclause 4(2) provides that in the Territories, the application of this Bill and the transitional Bill is based on the legislative powers of the Commonwealth Parliament under section 122 of the Constitution to make laws for the government of those

Territories, and other legislative powers of the Commonwealth Parliament under the Constitution. This Bill applies in those Territories as a law of the Commonwealth, therefore overriding subsection 22(3) of the *Acts Interpretation Act 1901*.

Subclause 4(3) provides that in non-referring States the application of this Bill and the Transitional Bill is based on the following legislative powers of the Commonwealth Parliament under the Constitution:

- the power of the Commonwealth Parliament to legislate with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (paragraph 51(xx) of the Constitution); and
- the legislative powers of the Commonwealth under paragraph 51(xix) of the Constitution (naturalization and aliens); and
- the legislative powers of the Commonwealth under paragraph 51(i) of the Constitution (trade and commerce with other countries and among States); and
- the legislative powers of the Commonwealth under section 122 of the Constitution (to make laws for the government of a Territory); and
- all of the Commonwealth Parliament's other powers to legislate under the Constitution with the exception of paragraphs 51(xx), 51(xix) or 51(i) or section 122.

A note to subclause 4(3) draws the reader's attention to subclause 8(4) which explains that this Bill only applies to certain organisations in non-referring States.

Subclause 4(4) provides that outside Australia, the application of this Bill and the Transitional Bill is based on:

- the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
- the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of those Territories; and
- the other legislative powers that the Commonwealth Parliament has under the Constitution.

A note to subclause 4(4) draws the reader's attention to clause 15 which explains the extra-territorial application of this Bill and the Transitional Bill.

Clause 5 – Meaning of *referring State*

This clause explains the meaning of the term referring State. See also clause 7 which explains the meaning of non-referring State, and provides that a State may be taken not to be a non-referring State for a certain period if the Minister determines that he or she has before clause 7 commences obtained written agreement from the relevant Education Minister for the State for the State to introduce legislation that adopts this Bill and the Transitional Bill and refers the matters covered by subclause 5(5).

Subclause 5(1) provides that a State is a referring State for the purposes of paragraph 51(xxxvii) of the Constitution if its Parliament:

- has referred matters covered by subclauses 5(3) and 5(5) to the Commonwealth parliament; or
- has adopted the relevant versions of this Bill and the Transitional Bill, or has referred the matter covered by subclause 5(5) to the Commonwealth Parliament.

Subclause 5(2) provides that a State is a referring State even if its referral law provides that:

- the reference to the Commonwealth Parliament (of a matter covered by subclauses (3) or (5)) is to terminate in particular circumstances; or
- the adoption of this Bill or the Transitional Bill is to terminate in particular circumstances; or
- the reference of a power to the Commonwealth Parliament of a matter covered by subclauses 5(3) or 5(5) only has effect:
 - if and to the extent that the matter is not within the Commonwealth Parliament's legislative powers (apart from a reference under paragraph 51(xxxvii) of the Constitution); or
 - if and to the extent that the matter is within the legislative powers of the State Parliament.

The reference of powers is in two parts, the first enabling the initial enactment of this Bill and the Transitional Bill, and the second enabling subsequent amendment of both Bills by the Commonwealth Parliament. Subclause 5(3) provides for the first part of the reference of powers relating to the extent of making laws with respect to those matters by including the referred provisions in this Bill and the Transitional Bill. Subclause 5(5) is the second part of the reference of powers and covers the referred matters to the extent of the Commonwealth Parliament making laws with respect to those matters by making express amendments to this Bill or the Transitional Bill.

Subclause 5(4) explains that that a State will stop being a referring State if:

- its initial reference terminates (ie matters covered by subclause 5(3); or where a State Parliament has adopted the relevant version of this Bill or the Transitional Bill, that adoption terminates.

Moreover, subclause 5(6) explains that a State will stop being a referring State if:

- the State's amendment reference terminates; and
- the exception to the amendment reference termination (subclause 5(7)) does not apply to the termination.

A State whose amendment reference has terminated will not cease to be a referring State if the termination is to take effect on a day to be fixed by proclamation; that day is no earlier than six months after the proclamation date; and the State's amendment reference, and the amendment reference of every other State, terminates on that day (subclause 5(7)). The effect of this provision is that a State can remain part of the national scheme if it terminates its amendment reference, but only if it gives at least six months notice of the termination and if every other referring State terminates its amendment reference on the same day.

Subclause 5(8) defines several terms used in clause 5. For example, there is a definition of the term 'amendment reference' of a State which means the reference by the Parliament of the State to the Parliament of the Commonwealth of matters covered by subclause 5(5).

Clause 6 – Meaning of referred VET matters

Subclause 6(1) describes the referred VET matters. Subclause 6(2) provides that the referred VET matters do not include the making of a law that excludes or limits a referring State or Territory law where the State or Territory law concerns the matters listed in subclause 6(2), except where such a State or Territory law relates to VET training courses or programs, or the regulation of VET organisations.

Subclause 6(1) provides that in this Bill referred VET matters means:

- the registration and regulation of NVR registered training organisations; and
- the accreditation or other recognition of VET courses; and
- the issue and cancellation of VET qualifications or statements of attainment; and
- the standards to be complied with by a VET regulator; and
- the collection, publication, provision and sharing of information about VET; and
- the investigative powers, sanctions and enforcement in relation to any of the above.

Subclause 6(2) provides that the definition in subclause (1) does not include the matter of making a law that excludes or limits the operation of a law of a referring State or a Territory to the extent that the law of the referring State or Territory makes provision with respect to:

- primary or secondary education (including the education of children subject to compulsory school education; or
- tertiary education that is recognised as higher education and not VET; or
- the rights and obligations of persons providing or undertaking apprenticeships or traineeships; or
- the qualifications or other requirements to undertake or carry out any business, occupation or other work (other than that of a VET organisation); or
- the funding by referring States or Territories of VET; or
- the establishment or management of any agency of the State or Territory that provides VET.

Clause 7 – Meaning of *non-referring State*

Subclause 7(1) provides that a State is a non-referring State if the State is not a referring State (referring State is defined in clause 5).

Subclause 7(2) provides that a State is taken not to be a non-referring State for the period mentioned in subclause 7(4) if the Minister determines, by legislative instrument, that the State is covered by subclause 7(2).

This period is the period beginning on the day clause 7 commences and ending on the earlier of:

- the day the legislation passed by the State adopting the relevant version of this and the Transitional Bill and referring the matter covered by subclause 5(5) of this Bill to the Commonwealth Parliament; and
- the last day of the 12 months beginning on the day clause 7 commences (subclause 7(4)).

The Minister may make a determination under subclause 7(2) if he or she has obtained the written agreement of the relevant Education Minister for the State before this clause commences, and the written agreement requires, for the purpose of paragraph 51(xxxvii) of the Constitution, that State Minister to introduce legislation into the State's parliament that:

- adopts the relevant version of the Bill and the relevant version of the Transitional Bill; and
- refers the matter covered by subclause 5(5) to the Commonwealth Parliament (subclause 7(3)).

While a determination made under subclause 7(2) is a legislative instrument, a note indicates that section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination

Pursuant to section 42 of the Legislative Instruments Act, where a legislative instrument has been tabled in one of the Houses of Parliament and a notice of motion to disallow the instrument has been given and passed (within the times prescribed in section 42), the instrument ceases to have effect. Subsection 44(1) of the Legislative Instruments Act provides that section 42 does not apply in relation to a legislative instrument where enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme - unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable (which is not the case here).

Clause 8 – When application of this Act takes effect

Subclause 8(1) provides that this Bill will take effect in a referring State covered by paragraph 5(1)(a) of this Bill on and after the later of the following:

- on the day that the State Parliament’s legislation that gives effect to the referral of matters under subsections 5(3) and 5(3) of this Bill receives Royal Assent in the relevant referring State; or
- the date when this clause commences.

In referring States covered by paragraph 5(1)(b), this Bill will take effect on and after the day legislation passed by the relevant State Parliament that adopts the relevant versions of this Bill and the Transitional Bill and refers matters covered by subclause 5(5) to the Commonwealth Parliament comes into force (subclause 8(2)).

In the Territories, this Bill applies on and after the day that this clause commences (subclause 8(3)).

Subclause 8(4) provides that this Bill will apply to a training organisation that operates in a non-referring State on and after the day clause 8 commences if it:

- is a registered provider other than a secondary school (registered provider is defined in clause 3); or
- provides all or part of a VET course in the non-referring State in question and in a referring State or Territory; or
- provides all or part of a VET course in the non-referring State in question and offers all or part of a vocational education and training course in a referring State or Territory that is to be provided in the referring State or Territory.

With respect to the offering of vocational education and training courses in a referring State or Territory, the intent of the Bill is that this covers the provision of long distance education, or training which will take place in the referring State or Territory. It is not intended that a registered training organisation which advertises training in a referring State or Territory which will actually take place in a non-referring State is covered by this Bill.

Subclause 8(5) provides that (in addition to its effect apart from subclause 8(5)) subclause 8(4) has the effect it would have if references to an organisation were expressly confined to trading corporations.

Clause 9 – Immunity from State and Territory laws

Subclause 9(1) provides that an NVR registered training organisation in a referring State is not subject to State laws relating to a referred VET matter (other than laws applying whether or not a person is a training organisation).

Subclause 9(2) provides that an NVR registered training organisation in a Territory is not subject to Territory laws relating to a referred VET matter (other than laws applying whether or not a person is a training organisation).

This means that the laws of a referring State or of a Territory of general application (such as regarding fair trading and occupational health and safety) can operate concurrently with this Bill.

Subclause 9(3) provides that, to the extent a registered training organisation is NVR registered and operates in a non-referring State, it is not subject to laws (other than laws which apply whether or not a person is a training organisation, i.e. those of general application such as regarding fair trading and occupational health and safety) of the non-referring State that relate to:

- Registration and regulation of VET organisations (other than secondary schools); or
- Accreditation or other recognition of VET courses or programs; or
- the issue and cancellation of VET qualifications or statements of attainment; or
- collection, publication, provision and sharing of information about VET; or
- the investigative powers, sanctions and enforcement in relation to any of the above.

It is not intended that State and Territory laws with respect to consumer protection in vocational education or funding of vocational education, for example, are included within the scope of this provision.

With respect to the offering of vocational education and training courses in a referring State or Territory, the intent of the Bill is that this covers the provision of long distance education, or training which will take place in the referring State or Territory. It is not intended that a registered training organisation which advertises training in a

referring State or Territory which will actually take place in a non-referring State is covered by this Bill.

Clause 10 – When this Bill does not apply – exclusion by a law of a referring State or a Territory

The effect of subclauses 10(1) and (2) is that if a law of a referring State or of a Territory declares a matter to be an excluded matter for the purpose of clause 10 in relation to the Bill or part of the Bill then the Bill, other than clause 10, and Part 2 (Registration) does not apply regarding the excluded matter to the extent provided by the declaration. Subclause 10(3) provides that this will not apply to a declaration to the extent prescribed by the regulations.

Clause 11 – Addressing inconsistency between Commonwealth and State and Territory Laws

This clause has effect despite anything else in this Bill including clause 9 of this Bill or the Transitional Bill (subclause 11(1)). This clause is intended, subject to subclause 11(5), to permit a referring State or a Territory to provide in legislation that a particular provision in legislation of that State or Territory will apply notwithstanding that it relates to a referred VET matter and notwithstanding anything else in this Bill including clause 9.

The effect of subclauses 11(2), (3) and (4) is that if a provision of a law of a referring State or Territory law is declared by a law of the State or Territory to be a VET legislation displacement provision, either generally or specifically regarding a provision of this Bill or the Transitional Bill, then:

- the Commonwealth provision does not prohibit the doing of an act or impose a civil or criminal liability for doing an act if the displacement provision specifically permits, requires, or authorizes the doing of that act; and
- the Commonwealth provision does not operate in or in relation to the State or Territory to the extent necessary to ensure that any inconsistency which would otherwise arise between the Commonwealth provision and the displacement provision does not arise.

This does not apply to a displacement provision where the regulations provide that this does not apply (subclause 11(5)).

Division 4 – General application of this Act and the Transitional Act

Clause 12 – Acts bind the Crown

The effect of this clause is to bind the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory in respect of this Bill and the Transitional Bill. However the Crown (in any of these capacities) is not liable to a pecuniary penalty or to be prosecuted for an offence.

Clause 13 Acts not to apply so as to exceed Commonwealth power

Subclause 13(1) provides that unless the contrary intention appears, if a provision of the Bill or the Transitional Bill would apart from this clause have an invalid application regarding one or more persons, things, matters, places, circumstances or cases, or classes of such persons, things etc, and therefore the provision exceeds Commonwealth legislative power, and it also has a valid application in relation to one or more of those persons, things etc. such that if the application were the provision's only application the provision would be within Commonwealth power, it is the Parliament's intention that the provision is to have every valid application, not an invalid application.

Subclause 13(2) provides that despite subclause 13(1), a provision will not have a particular valid application if it is clear apart from this clause that the provision was intended to have that valid application only if a particular invalid application, or all invalid applications, were within Commonwealth power, having regard to the provision's context and the purpose or object of the Bill or Transitional Bill.

Subclause 13(2) also provides that despite subclause 13(1), a provision will not have a particular valid application if the provision's operation regarding that valid application would be different in a substantial respect to what would have been its operation had every invalid application of the provision been within power, having regard to the provision's context and the purpose or object of the Bill or Transitional Bill.

Subclause 13(3) provides that subclause 13(2) does not limit the cases where a contrary intention may be taken to appear for the purpose of subclause 13(1).

Subclause 13(4) provides that this clause applies to a provision of the Bill and the Transitional Bill whether enacted on or after the day this clause commences.

Clause 14 – Extension of Act to External Territories

This clause provides that the Bill and the Transitional Bill will apply in every external Territory of Australia. Section 17 of the *Acts Interpretation Act 1901*, together with section 122 of the *Commonwealth of Australia Constitution Act 1901*, defines external Territory to broadly mean Territories not otherwise included within Australia, which are governed by the Commonwealth of Australia. This means, for example, that the Bill will cover the Indian Ocean Territories (Cocos (Keeling) Island and Christmas Island) and Norfolk Island.

Clause 15 – Extra-territorial application

This clause provides that this Bill and the Transitional Bill will extend to acts, omissions, matters or things outside of Australia in relation to all or part of a VET course or a VET qualification, unless a contrary intention applies.

Part 2

Registration

Outline of Part

Part 2 of the Bill sets out how to apply for registration as a registered training organisation and how the NVR will go about determining applications, notifying applicants and issuing certificates of registration. As part of its decision making processes, the NVR will be able to determine the applicant's scope of registration, the period for which the applicant is to be registered (up to 5 years) and any conditions to be imposed on an applicant's registration. Part 2 specifies a number of conditions of registration that will apply to all registered training organisations, which are as follows:

- they must comply with the VET Quality Framework
- they must notify the NVR of certain material changes (including events that would significantly affect their ability to comply with the VET Quality Framework)
- they must provide information to the NVR in response to written requests
- they may be subject to compliance audits by the NVR at any time
- they must comply with the NVR's written directions as to how to comply with conditions or the VET Quality Framework

The NVR may impose other conditions on registration, including after registration has taken place and it may vary conditions it imposes.

Part 2 also sets out how registration is renewed, how registered training organisations can withdraw their registration and how the scope of registration can be changed.

Part 2 provides that the NVR may conduct compliance audits to assess whether registered training organisations are complying with the VET Quality Framework or to determine systemic issues relating to the quality of vocational education and training.

Part 2 also covers the administrative sanctions that the NVR can impose on registered training organisations and the suspension of a registered training organisation's scope of registration.

Detailed explanation

Part 2— Registration

Division 1 – Registering as an NVR registered training organisation

Subdivision A – Applying for registration

Clause 16 – Application for registration

Subclause 16(1) provides that a person may apply to the NVR for registration as an NVR registered training organisation. This includes renewal of registration.

Subclause 16(2) provides that a body that is part of a State or Territory may apply to the NVR to be registered, as an NVR registered training organisation. This includes renewal of registration.

Subclause 16(3) provides that applications for registration must be made by way of a form approved by the NVR and must be accompanied by any information or documents required by the NVR and the application fee for an assessment as determined by the Minister in a legislative instrument made under clause 232.

Clause 17 – Registration

Subclause 17(1) provides that the NVR may grant an application for registration. In making its decision, the NVR must consider whether the applicant complies with the VET Quality Framework and applicable conditions of registration as specified in Subdivision B of Division 1 of Part 2 of this Bill (subclause 17(2)).

Subclause 17(3) provides that when considering an application the NVR may conduct an audit of any matter relating to the application.

The NVR may charge a registration assessment fee (subclause 17(4)).

Subclause 17(5) provides that if the NVR has granted an application for registration, then it must also determine the period of registration – which cannot be more than 5 years. A note draws the reader’s attention to clause 31 which concerns renewals of registration.

Subclause 17(6) provides that, if the NVR considers it appropriate, it may impose one or more conditions (made under subclause 29(1)) on an applicant’s registration. A note draws the reader’s attention to Subdivision B of Division 1 of Part 2 of this Bill which concerns statutory conditions of registration.

Clause 18 – National VET Regulator to notify applicant of decision on registration

This clause requires the NVR to notify applicants in writing of the following within 30 days of it making a decision to either grant or reject an application for registration as a NVR registered training organisation:

- the NVR's decision
- if the NVR decides to reject an application – the reasons for this decision
- if the NVR decides to grant the application, the following:
 - o the applicant's scope of registration (a note explains these details are to be included on the National Register – see clause 216);
 - o the period for which the organisation is registered (a note explains these details are to be included on the National Register – see clause 216);
 - o any conditions placed on the organisation's registration under subclause 29(1) (a note explains these details are to be included on the National Register – see clause 216);
 - o the registration fee the applicant has to pay and, if the registration fee is payable in instalments, the amount of the instalments and the date by which payment is to be made.

Clause 19 – National VET Regulator to issue certificate of registration

This clause provides that the NVR must give a certificate of registration to applicants that it registers. These certificates must state matters prescribed by the regulations and the certificates are prima facie evidence of the matters stated in them.

Clause 20 – Commencement and duration of registration

Subclause 20(1) provides that an applicant's registration starts:

- in the case of a renewal of registration – on the day after the day the previous registration expired; and
- in any other case - on the date specified in a written notice given to the applicant

and expires at the end of the period determined by the NVR, unless the applicant's registration is cancelled or withdrawn before then.

A note to subclause 20(1) explains that a nationally registered training organisation's period of registration may be shortened and draws reference to paragraph 36(2)(c).

In exceptional circumstances, the NVR may extend an NVR registered training organisation's registration without the organisation having to apply for renewal of registration (subclause 20(2)). If this occurs, a reference to the organisation's period of registration is to be read as a reference to the period extended by the NVR (subclause 20(3)).

Exceptional circumstances, for the purpose of this clause, include, but are not limited to, occasions where a NVR registered training organisation's registration is to expire and renewal is not being sought, however a short extension of registration is required to ensure that outstanding assessment can be completed and/or statements of attainment and qualifications issued.

Subdivision B – Conditions of registration

Clause 21 – Complying with conditions

Clause 21 provides that an NVR registered training organisation must comply with the conditions set out in clauses 22 to 28 and with any conditions imposed on the organisation's registration under subclause 29(1). A note draws attention to the fact that failure to comply with a condition of registration is a contravention of a civil penalty provision – see clause 111.

Clause 22 – Condition – compliance with the VET Quality Framework

Subclause 22(1) provides that an NVR registered training organisation must comply with the Standards for NVR Registered Training Organisations. .

Subclause 22(2) and (3) provide that an NVR registered training organisation must comply with the Australian Qualifications Framework and the Date Provision Requirements respectively.

Clause 23 – Condition - satisfying fit and proper purpose requirements

This clause provides that an NVR registered training organisation must satisfy the Fit and Proper Person Requirements.

Clause 24 – Condition – satisfying the Financial Viability Risk Assessment requirements

This clause provides that an NVR registered training organisation must satisfy the Financial Viability Risk Assessment Requirements.

Clause 25 – Condition – notifying National VET Regulator of material changes

This clause provides that an NVR registered training organisation must notify the NVR, in writing, as soon as practicable on becoming aware, if:

- an event occurs that would significantly affect the provider’s ability to comply with the VET Quality Framework; or
- there are changes to the name or contact details of an executive officer or high managerial agent of the organisation; or
- there are other substantial changes to the organisation’s operations. Examples of substantial changes would include but not be limited to
 - o the expansion of operations to another state or campus,
 - o the commencement of new delivery modes (for example, online or correspondence), or
 - o a significant and unexpected turnover of staff.

Notification of these changes will allow the NVR to ensure that the provider still meets the requirements of the VET Quality Framework and, in particular, the Fit and Proper Person requirements. It will also ensure that the NVR has a clear understanding of those who are responsible for the operations of the provider at any given time.

Clause 26 – Condition – other information must be provided

This clause provides that an NVR registered training organisation must give the NVR such information that it requests by written notice for the purposes of this Bill. The notice must specify the time by which the information is to be given to the NVR.

The NVR may make these written requests for information via such means as mail outs, email or posting information on its website.

Clause 27 – Condition – cooperation

This clause provides that an NVR registered training organisation must cooperate with the NVR at least to the extent that it is necessary for the NVR to perform its functions, or to facilitate the NVR’s performance of its functions.

Clause 28 – Condition – compliance with directions given by the National VET Regulator

This clause provides that an NVR registered training organisation must comply with general written directions that the NVR gives to organisations about how the organisations are to comply with the VET Quality Framework or the other conditions of Subdivision B of Division 1 of Part 2. The NVR must publish a general direction on its website.

Clause 29 – Other conditions

Subclause 29(1) provides that the NVR may impose other conditions on an NVR registered training organisation's registration and these conditions need not be imposed at the time of registration and may be imposed later. Subclause 29(2) provides that the NVR may vary conditions imposed under subclause 29(1).

Clause 30 – National VET Regulator to notify NVR registered training organisation of change in conditions of registration

This clause provides that the NVR must, within 30 days of making a decision to impose a condition on an NVR registered training organisation's registration, notify that organisation in writing of the decision, the reasons for the decision and the period for which the condition is imposed.

A note explains that relevant details of each NVR registered training organisation's registration are entered on the National Register. The note also draws the reader's attention to clause 216 about the National Register.

Subdivision C – Renewing registration

Clause 31 – Renewal of registration

Subclause 31(1) provides that the NVR may renew an NVR registered training organisation's registration (under clause 17) if it applies for renewal at least 90 days before its registration is due to expire, or within any shorter period that the NVR may allow. Applications for renewal of registration must be accompanied by the relevant fee for applications for renewal of registration as determined by the Minister by legislative instruments made under clause 232(subclause 31(2)). An NVR registered training organisation's registration is taken to continue until the organisation's application is decided (subclause 31(3)) and an NVR registered training organisation may apply for renewal during any time when all or part of its scope of registration is suspended (subclause 31(4)).

Division 2 – Changing the scope of registration

Clause 32 – Application for change of scope of registration

This clause makes provision for NVR registered training organisations that want to offer all or part of VET courses that aren't within the scope of their registration to be able to apply to the NVR to change the scope of their registration to include the additional courses or parts of courses. Such applications must be made by way of a form approved by the NVR and must be accompanied any information or documents required by the NVR and the application fee for an assessment as determined by the Minister by legislative instrument made under clause 232.

Clause 33 – Change of scope of registration

Subclause 33(1) provides that the NVR may approve an application for a change in the applicant’s scope of registration.

In making its decision, the NVR must consider the applicant’s ability to provide the VET course or part of the VET course in accordance with the VET Quality Framework, other VET courses or parts of VET courses the applicant offers and whether the applicant complies with the VET Quality Framework and the other conditions of registration set out in Subdivision B of Division 1 of Part 2 of this Bill (subclause 33(2)).

If the NVR decides to grant an application, it must determine the day from which the applicant may deliver the VET course or part of the VET course (subclause 33(3)).

Clause 34 – National VET Regulator to notify applicant of decision on change of scope of registration

This clause provides that the NVR must, within 30 days of making a decision to grant or reject an application for a change in scope of registration, notify the applicant in writing of the decision, the reasons for the decision (if the application is rejected) and, if the NVR grants the application, the following:

- the new scope of registration
- the day from which the applicant can deliver the new VET course or part of the new VET course
- the period of the applicant’s registration
- any conditions imposed on the applicant’s registration under subclause 29(1).

A note explains that relevant details for each NVR registered training organisation are entered on the National Register. The note also draws the reader’s attention to clause 216 about the National Register. The NVR will ensure that the change in the applicant’s scope is reflected in changes to the record of that provider on the National Register.

Division 3 – Ensuring compliance with the VET Quality Framework

Subdivision A – Audits

Clause 35 – Audits

Sub-clause 35(1) provides that the NVR is entitled at any time to conduct compliance audits of NVR registered training organisations’ operations to see if the organisation in question continues to comply with the VET Quality Framework.

Sub-clause 35(2) provides that the NVR also has the power to review or examine any aspect of an NVR registered training organisation's operations in order to determine any systemic issues concerning the quality of vocational education and training.

Subdivision B – Administrative sanctions

Clause 36 – Sanctions

Sub-clause 36(1) provides that Subdivision B of Division 3 of Part 2 applies where:

- the NVR is satisfied, after natural justice requirements have been satisfied (see clause 37), that it is appropriate to impose one or more sanctions on an NVR registered training organisation; or
- in exceptional circumstances, the NVR is satisfied that it is appropriate to impose one or more sanctions on the organisation without needing to satisfy natural justice requirements.

Exceptional circumstances may include, but are not limited to, situations as follows:

- major occupational health and safety breaches;
- evidence of significant and high levels of fraud or malpractice;
- further issuing of qualifications that would undermine health and safety in other industries.

Sub-clause 36(2) provides that the sanctions the NVR may impose are as follows:

- to give an NVR registered training organisation a written direction requiring it to rectify a breach of its registration;
- to give an NVR registered training organisation a written direction requiring it to notify its students in writing of a matter that it set out in the direction;
- to shorten the period of an NVR registered training organisation's registration;
- to amend the scope of an NVR registered training organisation's registration;
- to suspend all or part of an NVR registered training organisation's scope of registration under clause 38;
- to cancel an NVR registered training organisation's registration under clause 39.

Sub-clause 36(3) provides that when the NVR is deciding what action to take against an NVR registered training organisation, it may have regard to:

- the conduct of the organisation or circumstances that existed before the NVR had reason to consider imposing any sanction (this includes matters arising or existing before this clause commences); and

- if the natural justice requirements in clause 37 apply, the conduct of the organisation or circumstances that existed after the NVR gave the organisation a natural justice written notice.

Clause 37 – Natural justice requirements

This clause sets out the natural justice requirements that the NVR must comply with before it can make a decision to impose any of the sanctions specified in subclause 36(2). These natural justice requirements require the NVR to give an NVR registered training organisation a written notice which:

- states that the NVR intends to make a decision to impose one of the sanctions specified in sub-clause 36(2) and gives reasons for the proposed decision; and
- invites the organisation to give the NVR a written response to the notice in accordance with the following timeframes:
 - if the NVR considers that urgent action is warranted, the notice must allow the organisation at least 24 hours to respond; or
 - in other cases, the notice must allow the organisation at least 72 hours to respond.

Sub-clause 37(2) provides that, after considering any response received from the organisation within the time specified in the notice, if the NVR still considers that the decision should be made, the NVR may make the decision and must give the organisation written notice of the decision.

These timeframes are consistent with those which are currently applied to providers registered under the *Education Services to Overseas Students Act 2000* and have been utilised to simplify the regulatory regime for providers registered under both schemes. It is expected that the 72 hours represents the minimum timeframe and that it would be more usual for the NVR to provide a 30 day period for response.

Clause 38 – Suspension

Subclause 38(1) provides that the NVR may by written notice suspend all or part of an NVR registered training organisation's scope of registration. A note explains that details about an NVR registered training organisations whose scope of registration are suspended are included on the National Register (see clause 216).

Subclause 38(2) provides that during a period of suspension, the NVR may require the NVR registered training organisation to do something or not do something or both. This may include restrictions on:

- enrolling any students in any part of the VET course
- allowing any students who have not yet commenced any part of the course to commence any part of the course

- publishing or broadcasting any advertisements about any part of the course
- causing any advertisements to be published or broadcast about any part of the course.

A note indicates that failure to comply with the NVR's requirements is an offence and a contravention of a civil penalty provision as provided by clauses 101 and 102 respectively.

Clause 39 – Cancellation

Subclause 39(1) provides that the NVR may by written notice cancel an NVR registered training organisation's registration in any circumstances that the Regulator considers it appropriate to do so, including if it fails to pay a registration fee. A note explains that details about an NVR registered training organisation whose registration is cancelled are included on the National Register (see clause 216).

Subclause 39(2) provides that any organisation whose registration is cancelled under this Bill must return its certificate of registration to the NVR within 10 days of that cancellation taking effect. A note indicates that failure to return a certificate of registration is a contravention of a civil penalty provision, see clause 112.

In addition, the organisations cannot apply for registration as an NVR registered training organisation for 2 years from the day the cancellation takes effect, unless the NVR considers that a shorter period is appropriate (subclause 39(3)).

Clause 40 – Other enforcement action

This clause makes it clear that the NVR may take other action against a registered training organisation under Part 6 of this Bill, in addition to or instead of action under Subdivision B of Division 3 of Part 2.

Division 4 – Requests for reassessment

Clause 41 – Requests for reassessment

Subclause 41(1) provides that this clause applies if the NVR, under Part 2, has deferred making a decision to change an NVR registered training organisation's scope of registration; and identified issues that the organisation would need to address before the NVR would be satisfied that the organisation has done what is required in order for the organisation's scope of registration to be changed. Subclause 41(2) provides that this clause applies if the NVR under Part 2 has identified issues that an NVR registered training organisation would need to address before the NVR would be satisfied that the organisation has done what is required for:

- a condition imposed on the organisation's registration to be varied or removed; or
- the organisation's scope of registration to be changed; or
- the organisation's suspension to be lifted.

Subclause 41(3) provides that the NVR registered training organisation may in writing ask the NVR to reassess the issues it has identified. This written request must describe the actions the NVR registered training organisation has taken to address the issues identified by the NVR and be accompanied by any reassessment fee determined by the Minister by legislative instrument made under clause 232 (subclause 41(4)).

Division 5 – Withdrawing registration

Clause 42 – Withdrawing registration

This clause provides that an NVR registered training organisation may withdraw its registration by giving written notice to the NVR. If the NVR considers that withdrawal of registration is appropriate, the NVR must advise the organisation by written notice of the day from which the withdrawal will take effect. An organisation whose registration is withdrawn under the Bill must return its certificate of registration to the NVR within 10 days of the withdrawal taking effect.

A note to the clause indicates that failure to return a certificate or registration is a contravention of a civil penalty provision, see clause 112.

Part 3

Accreditation of courses

Outline of Part

Part 3 of the Bill sets out how to apply for accreditation and renewal of accreditation of a VET course and how the NVR will go about determining applications and notifying applicants. Accreditation can be for up to 5 years and conditions can be imposed on the accreditation of a course. Conditions can be imposed at the time of accreditation or later and the NVR can vary conditions at its own initiative or in response to an application from the person on respect of whom the course is accredited.

Part 3 also covers reassessing and amending the accreditation of a VET accredited course, as well as cancelling accreditation and removing VET accredited courses from the National Register.

Detailed explanation

Division 1 – Applying for accreditation

Clause 43 – Application for accreditation

Subclause 43(1) provides that persons may apply to the NVR for a course to be accredited as a VET accredited course.

Subclause 43(2) provides that applications for course accreditation must be made by way of a form approved by the NVR and must be accompanied by any information or documents required by the NVR and the application fee determined by the Minister by legislative instrument made under clause 232.

Clause 44 – Accreditation of course

Subclause 44(1) provides that the NVR may approve an applicant's application for a course to be accredited.

In making a decision on the application, the NVR must consider whether the course meets the Standards for VET accredited courses (see clause 188) and the Australian Qualifications Framework (subclause 44(2)).

Subclause 44(3) provides that if the NVR has granted an application for course accreditation, then it must also determine the period of accreditation – which cannot be more than 5 years. A note draws the reader’s attention to clause 50 which concerns renewals of accreditation.

Subclause 44(4) provides that, if the NVR considers it appropriate, it may impose one or more conditions specified under subclause 48(1) on the accreditation of a course.

Clause 45 – National VET Regulator to notify the applicant of decision on accreditation of course

This clause requires the NVR to notify applicants in writing of the following within 30 days of the NVR making a decision to either grant or reject an application for a course to be accredited as a VET accredited course:

- the NVR’s decision; and
- if the NVR decides to reject an application – the reasons for this decision; and
- if the NVR decides to accept the application, the period for which the course of study is accredited and any conditions placed on the accreditation of the course under subclause 48(1).

A note explains that where the NVR decides to accept the application, details of each VET accredited course are to be included on the National Register (see clause 216).

Clause 46 – Commencement and duration of accreditation

Subclause 46(1) provides that the accreditation of an applicant’s course starts, if it is a renewal of the course’s accreditation, on the day after the previous accreditation expired, or otherwise on the date specified in a written notice given to the applicant and expires at the end of the period determined by the NVR, unless the accreditation is cancelled before then.

In exceptional circumstances, the NVR may extend the VET accredited course’s accreditation without the person in respect of whom the course is accredited having to apply for renewal of accreditation (subclause 46(2)). If this occurs, a reference to the period of accreditation is to be read as a reference to the period extended by the NVR (subclause 46(3)).

Division 2 – Conditions of accreditation

Clause 47 – Complying with conditions

This clause provides that a person must comply with any conditions imposed on the accreditation of a VET accredited course under subclause 48(1). A note indicates that

failure to comply with a condition is a contravention of a civil penalty provision, clause 130.

Clause 48 – Conditions

Subclause 48(1) provides that the NVR may impose conditions on the accreditation of a VET accredited course, which need not be imposed at the time the course is accredited.

Subclause 48(2) provides that the NVR may vary conditions imposed under subclause 48(1). The NVR may take this action following the provision of information from interested parties such as relevant industry regulators, employer or employee associations, industry skills councils or registered training organisations which are delivering the course.

Clause 49 – National VET Regulator to notify relevant person of change in conditions of accreditation

This clause provides that the NVR must, within 30 days of making a decision to impose or vary a condition on the accreditation of a VET accredited course, notify the person in respect of whom the course is accredited of the decision, the reasons for the decision and the period for which the condition is imposed. A note explains that details of conditions imposed on the accreditation of a VET accredited course are included on the National Register (see clause 216).

Division 3 – Renewing accreditation

Clause 50 – Renewal of accreditation

Subclause 50(1) provides that the NVR may renew the accreditation of a VET accredited course under clause 44 if the person in respect of whom a course is accredited applies for renewal at least 90 days before the accreditation of the course expires, or within any shorter period that the NVR allows.

Subclause 50(2) provides that an application for renewal of accreditation must be accompanied by the application fee determined by the Minister by way of a legislative instrument made under clause 232.

Subclause 50(3) provides that the accreditation of a VET accredited course is taken to continue until the person's application is decided.

Division 4 – Amending VET accredited courses

Clause 51 – Amending VET accredited courses

Subclause 51(1) provides that the NVR may amend a VET accredited course at any time while the course is accredited if it considers this necessary. It may do this on its own initiative, or after having received an application from the person in respect of whom the course is accredited and the NVR considers it appropriate to amend the course (subclause 51(2)). Such applications to amend accreditation must be in a form approved by the NVR and be accompanied by the application fee determined by the Minister under clause 232 and any information or documents required by the NVR (subclause 51(3)).

Acting on its own initiative, the NVR may chose to act following the receipt of information from interested parties such as relevant industry regulators, employer or employee associations or registered training organisations which are delivering the course.

Situations where the NVR may act to amend the course occur in situations such as where there has been a change of standard or legislation to which the course refers (for example a change to the Standards for VET Accredited Courses or a change to legislation in relation to licencing of persons to perform an occupation) or where a specific error within the course has been identified. It is not envisaged that the NVR would be involved in the substantial re-writing or amendment of courses.

Division 5 – Cancelling accreditation

Clause 52 – Cancelling accreditation

Subclause 52(1) provides that the NVR may cancel the accreditation of a VET accredited course. Subclause 52(2) provides that it may do so on its own initiative if it is satisfied that:

- the VET accredited course does not meet the Standards for VET accredited courses (see clause 188) or the Australian Qualifications Framework; or
- the person in respect of whom the course is accredited no longer has the capacity to satisfy the Standards for VET accredited courses, or no longer exists.

The NVR may also cancel the accreditation if the person in respect of whom the course is accredited applies for cancellation and the NVR considers cancellation would be appropriate (subclause 52(3)). Such applications for cancellation of accreditation must be in a form approved by the NVR and accompanied by the application fee determined by the Minister under clause 232 and any information or documents required by the NVR (subclause 52(4)).

Clause 53 – National VET Regulator to notify relevant persons of proposed cancellation

Subclause 53(1) provides that if the NVR proposes to cancel the accreditation of a VET accredited course, then it must in writing advise each nationally registered training organisation that has the course within its scope of registration that it proposes to cancel the accreditation and also the VET Regulator of each non-referring State of the proposed cancellation.

Subclause 53(2) provides that this advice must state the date when the proposed cancellation will take effect.

Subclause 53(3) provides that the advice given to the NVR registered training organisation must also:

- advise the organisation how it must treat VET students in the VET accredited course. Note that for this purpose it is intended that the NVR would give consideration to matters such as to whether any currently running classes of the course in question should be allowed to conclude, or whether they should immediately cease, and to alternative options for current students such as recognition of prior learning in similar courses offered by other providers; and
- if the proposed cancellation would affect any conditions that have been imposed on the organisation's registration under subclause 29(1), what conditions will be imposed on the organisation's registration from the date that the cancellation of the course accreditation will take effect.

Clause 54 – When cancellation takes effect

Subclause 54(1) provides that the cancellation of a VET accredited course's accreditation takes effect on a day determined by the NVR.

Subclause 54(2) provides that this day must be at least 30 days after the NVR has given advice to each affected person (as required by clause 53) and take into account the needs of all VET students affected by the cancellation.

A note indicates that neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination under subclause 54(1).

Pursuant to section 42 of the Legislative Instruments Act, where a legislative instrument has been tabled in one of the Houses of Parliament and a notice of motion to disallow the instrument has been given and passed (within the times prescribed in section 42), the instrument ceases to have effect. Subsection 44(1) of the Legislative Instruments Act provides that section 42 does not apply in relation to a legislative instrument where enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme - unless the instrument is a regulation, or the

enabling legislation or some other Act has the effect that the instrument is disallowable (which is not the case here). Subsection 44(1) of the Legislative Instruments Act would apply with respect to a determination under subclause 54(1) of the Bill and render section 42 inapplicable.

Part 6 of the Legislative Instruments Act ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. Subsection 54(1) of the Legislative Instruments Act provides that Part 6 does not apply where enabling legislation for an instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme. That is the case with respect to a determination under subclause 54(1) of the Bill.

Part 4

National VET Regulator's power to issue and cancel VET qualifications etc

Outline of Part

Part 4 of the Bill covers the NVR's power to both issue and to cancel VET qualifications and VET statements of attainment. It also makes provision for civil penalties to apply in circumstances where someone fails to return or purports to use cancelled VET qualifications and VET statements of attainment.

Detailed explanation

Division 1 – Issue of VET qualifications and VET statements of attainment

Clause 55 – National VET Regulator may issue VET qualifications and VET statements of attainment

Subclause 55(1) provides that, if it is satisfied on reasonable grounds that someone has successfully completed the requirements of a VET qualification and they are a current or past VET student, the NVR can issue the VET qualification to them.

Subclause 55(2) provides that, if it is satisfied on reasonable grounds that someone has successfully completed the requirements of units of competency or modules of a VET course, the NVR can issue them with a VET statement of attainment in relation to these units of competency or modules of the VET course. This could occur, for example, if an assessment has been undertaken but a qualification has not been issued, for example in the case of a registered training organisation unexpectedly ceasing trading.

Subclause 55(3) provides that the NVR can only issue the VET qualification or statement of attainment in relation to an NVR registered training organisation in exceptional circumstances. At all other times, a student would be required to apply to the registered training organisation for the reissue of the certificate. The kinds of exceptional circumstances envisaged include, but are not limited to, situations such as where the former student may wish to ensure that their identity (or changed identity) can be protected, such as situations where they are fleeing domestic violence or are placed in witness protection.

Subclause 55(5) provides that, to avoid doubt, subclause 55(3) may apply even when an organisation was not an NVR registered training organisation under this Bill.

Subclause 55(4) provides that the NVR can issue a VET qualification or a VET statement of attainment at any time with respect to a former registered training organisation. Subclause 55(5) provides that, to avoid doubt, subclause 55(3) may apply in relation to a time when an organisation was not an NVR registered training organisation.

Division 2 – Cancellation of VET qualifications and VET statements of attainment

Subdivision A – Cancellation

Clause 56 – National VET Regulator may cancel VET qualifications and VET statements of attainment

Subclause 56(1) provides that the NVR may cancel a VET qualification or a VET statement of attainment issued by an NVR registered training organisation or a former registered training organisation to someone if it is satisfied on reasonable grounds that:

- the organisation did not provide, or arrange for another person to provide, all or part of the assessment required in order for the person to achieve the learning outcomes or competencies required for:
 - the qualification; or
 - the units of competency or modules that are specified in the statement; or
- the organisation issued the qualification or statement in error, or because of a document or representation that was false or misleading or was otherwise made or obtained in any other improper way; or
- issuing the qualification or statement was outside of the organisation's scope of registration; or
- it is appropriate in all the circumstances because of action the NVR has taken or is taking regarding:
 - the VET course of part thereof to which the qualification relates; or
 - the organisation in respect of the VET course or part thereof to which the qualification relates; or
 - part of the VET course to which the statement relates; or
 - the organisation in respect of part of the VET course to which the statement relates.

Subclause 56(2) provides that the NVR may only take the action specified in subclause 56(1) in relation to an NVR registered training organisation if:

- it has first given the organisation a written direction to cancel the VET qualification or statement of attainment and give the person concerned written notice of the cancellation by a particular time (paragraph 56(2)(a); and
- the organisation fails to cancel it by that time (paragraph 56(2)(b).

Subclause 56(3) clarifies that if an NVR registered training organisation has been given a written direction under paragraph 56(2)(a), the organisation can still cancel the relevant VET qualification or statement of attainment – even though its scope of registration no longer allows it to issue the qualification or statement of attainment.

Subclause 56(4) provides that the NVR may take action at any time under subclause 56(1) in relation to a former registered training organisation.

Clause 57 – National VET Regulator to notify person concerned of proposed cancellation

- Subclause 57(1) provides that, before the NVR has cancelled a person’s VET qualification or statement of attainment, it must notify the person concerned in writing. This written notice must: state that the NVR intends to cancel the person’s qualification or statement and the reasons for the proposed cancellation; and
- invite the person to give a written response to the notice within a period specified in the notice of at least 14 days, or at least 24 hours if the NVR considers the circumstances require urgent action.
-

Subclause 57(2) provides that if the NVR is unable to give the written notice to the person personally, it may where the circumstances are not urgent give it by any other way that it thinks is appropriate, including by publishing the notice on the NVR’s website or in a nationally circulating daily newspaper or in a regional daily newspaper in the State or Territory where the NVR thinks the person is living. A note explains that section 28A of the *Acts Interpretation Act 1901* also deals with the service of documents.

Subclause 57(3) clarifies that where the NVR considers that urgent action is required it may not give a notice in a way mentioned in subclause 57(2).

Clause 58 – National VET Regulator’s consideration of response

Subclause 58(1) provides that if after considering any response received the NVR considers that the VET qualification or statement of attainment must be cancelled, it must do so.

Subclause 58(2) provides that if the NVR cancels a VET qualification or statement of attainment it must give the person concerned written notice of the decision and require them to return the qualification or statement to the NVR either:

- if the circumstances were urgent as mentioned in subparagraph 57(1)(b)(i), within 7 days after the date of the notice inviting the person to respond to the proposed cancellation; or
- in any other case, within 30 days after the date of the notice inviting the person to respond to the proposed cancellation, or within 30 days after the date the notice is published.

Clause 59 – When cancellation takes effect

Subclause 59(1) provides that, subject to subclause 59(2), the cancellation of a VET qualification or statement of attainment will take effect when:

- if the circumstances were urgent as mentioned in subparagraph 57(1)(b)(i) – 7 days after the date or the notice mentioned in that subparagraph; ; and
- in any other case - 30 days of the date of the notice inviting the person to respond to the proposed cancellation or 30 days after the notice was published. .

Subclause 59(2) provides that, in the event of:

- a person applying to the Administrative Appeals Tribunal to review the NVR’s decision to cancel a person’s VET qualification or statement of attainment (within the relevant 30 day period for lodging applications for review); and
- the person notifies the NVR in writing of the lodging the application within the relevant 30 day period; and
- The decision of the Tribunal affirms the National VET Regulator’s cancellation decision -

then cancellation of the qualification or statement takes effect when the appeal has been finally determined or otherwise disposed of by the Tribunal.

Subdivision B – Cancellation

Clause 60 – Civil penalty–failure to return VET qualification or VET statement of attainment

Subclause 60(1) provides that a person is liable for a civil penalty if he or she is given a notice under subparagraph 57(1)(b)(i) and fails to return his or her VET qualification or statement of attainment to the NVR within 7 days after the date of the notice. The maximum civil penalty will be 100 penalty units (currently \$11,000).

Subclause 60(2) provides that a person is liable for a civil penalty if he or she is given a notice under subparagraph 57(1)(b)(ii) other than in a way mentioned in subclause 57(2) and the person fails to return his or her VET qualification or statement of attainment within 30 days after the date of the notice. The maximum civil penalty will be 100 penalty units (currently \$11,000).

Subclause 60(3) provides that a person is liable for a civil penalty if the NVR has given a notice under subclause 57(2) and the person that the notice relates to is aware of it but fails to return his or her VET qualification or statement of attainment to the NVR within 30 days after the notice is published. The maximum civil penalty will be 100 penalty units (currently \$11,000).

Subclause 60(4) provides that a person is liable for a civil penalty if their VET qualification or VET statement of attainment is cancelled as mentioned in subclause 59(2) and they fail to return the qualification or statement within 7 days after the cancellation taking effect. The maximum civil penalty will be 100 penalty units (currently \$11,000).

Subclause 60(5) makes it clear that the civil penalty provisions in subclauses 60(2) and 60(3) do not apply in circumstances where paragraphs 59(2) (a) and (b) apply.

Clause 61 – Civil penalty–use of cancelled VET qualification or VET statement of attainment

This clause provides that a person is liable for a civil penalty if he or she purports to hold a VET qualification or VET statement of attainment that has been cancelled. The maximum civil penalty will be 240 penalty units (currently \$26,400).

Part 5

Investigative powers

Outline of Part

The NVR needs adequate powers in order to be able to effectively carry out its roles and responsibilities as a national regulator of vocational education and training.

Part 5 sets out the investigative powers available to the NVR for the purposes of finding out whether the provisions of this Bill have been or are being complied with.

Part 5 deals with:

- powers of authorised officers to search premises, either by consent or under warrant
- the obligations and incidental powers of authorised officers
- the rights and responsibilities of the occupiers of premises
- general provisions relating to the seizure of things
- the appointment of authorised officers to undertake searches.

Detailed explanation

Division 1 – Requiring people to give information and produce documents or things

Subdivision A – Requests by National VET Regulator

Clause 62 – Request to person who is, or was, connected with a registered training organisation

Subclause 62(1) provides that, for the purposes of this Bill, the NVR may request that someone currently or previously connected with a current or former NVR registered training organisation give the NVR information specified in the request (the NVR can require this information to be provided in writing), or to produce documents or other things to the NVR, if the NVR has reason to believe that the person can give or produce the information, document or things. The information must be provided in writing if the NVR requires (subclause 62(2)).

The NVR's request must be served on the person, be in writing signed by the Chief Commissioner and state the period by which the person must comply (subclause 62(3)).

The period by which the person must comply must be at least 14 days after service of the notice on the person, or a shorter time of at least 24 hours in circumstances where the NVR reasonably considers a shorter time is necessary (subclause 62(4)).

Examples of circumstances where the NVR might reasonably conclude a shorter time was necessary include where a person was likely to leave Australia, and where an RTO was providing training in a manner which would result in a health or safety risk.

Subclause 62(5) provides that the person must give the information or produce the documents or other things within the time stated in the request, or within any further time that the NVR may allow. A note explains that failure to comply with a request is an offence under clause 64.

Clause 63 – National VET Regulator may retain documents and things

Subclause 63(1) provides that if documents or things are produced to the NVR in accordance with a request under clause 62, then the NVR:

- is entitled to take possession of the documents or things and take copies or extracts of them; and
- is entitled to retain the documents or things for a period necessary for the purposes of:
 - this Bill; or
 - an investigation to which the documents or things relate; or
 - enabling evidence to be secured for a prosecution or civil penalty proceedings.

Subclause 63(2) provides that where the NVR does retain possession of the documents or things, it must allow a person otherwise entitled to inspect the document or view the thing to do so at times the person would ordinarily be able to do so.

Subdivision B – Offence and related provisions

Clause 64 – Failure to comply with National VET Regulator’s request

This clause provides that it is an offence carrying a maximum penalty of 30 penalty units if a person fails to comply with a request they have been given under clause 62.

Clause 65 – Self-incrimination etc.

Subclause 65(1) provides that a person is not excused from giving information or producing a document or thing when requested to do so under clause 62 on grounds that production of the information or document requested could incriminate them or expose them to a penalty.

Subclause 65(2) provides that the information given or the document or thing produced, or any information, document or thing obtained as a result – direct or

indirect – of giving the information or producing the document or thing, may only be used as evidence against a person in certain proceedings. These are:

- proceedings for an offence against clause 64; or
- proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code Act 1995*. These sections refer to false or misleading information or misleading documents and obstruction of Commonwealth public officials; and
- civil proceedings for a contravention of a civil penalty provision.

This clause abrogates the privilege against self-incrimination where a person is requested to give information or produce a document or thing under clause 62; however, the information provided or the document or thing provided cannot be used as evidence against the person in criminal proceedings other than for the offences listed in subclause 65(2). The information given, or the document or thing produced, by the person will still be able to be used, either directly or indirectly, in civil proceedings or for the NVR to undertake further investigations which may then become the basis for civil proceedings. This is appropriate in these circumstances given the NVR will necessarily rely on the information provided by persons who are, or were, connected with current or former nationally registered training organisations in undertaking its regulatory and quality assurance functions, one of the aims of which is to protect the students in these organisations. The civil penalties and offences provisions are an important way for the NVR to enforce quality standards and maintain integrity in vocational education and training. It will be important for the NVR to be able to use the information, document or thing gathered under clause 62, which would otherwise not have been able to be gathered, as the basis for a civil penalty under this Bill, or as the basis for further investigations which may ultimately result in a civil penalty.

Division 2 – Search of premises

Subdivision A – Exercising monitoring or enforcement powers

Clause 66 – Authorised officer may enter premises by consent or under a warrant

Sub-clause 66(1) provides that, for the purpose of ascertaining whether the Bill has been or is being complied with, or to check the correctness of information provided under the Bill authorised officers may enter any premises and exercise the monitoring powers set out in clause 67.

Sub-clause 66(2) provides that if an authorised officer has reasonable grounds for suspecting that there may be evidential material on any premises, the authorised officer may enter the premises and exercise the monitoring powers set out in clause 68.

However, under sub-clause 66(3) an authorised officer is not authorised to enter the premises unless the occupier of the premises has consented to the entry and the

authorised officer has shown their identity card if required by the occupier or the entry is made under a warrant. A note states that if entry to premises is with the occupier's consent, the authorised officer must leave the premises if the consent no longer has effect (see clause 72).

'Evidential material' is defined in clause 3. In relation to offences under this Bill, or offences under the *Crimes Act 1914* or the *Criminal Code* that relate to this Bill, evidential material means:

- things with respect to which an offence has been committed, or it is reasonably suspected an offence has been committed; or
- things with respect to which it is reasonably suspected the things will constitute evidence of an offence having been committed, or are intended to be used to commit the offence.

In relation to contraventions of civil penalty provisions, evidential material means:

- things with respect to which a civil penalty provision has been contravened, or it is reasonably suspected a civil penalty provisions has been contravened; or
- things with respect to which it is reasonably suspected the things will constitute evidence of a civil penalty provision having been contravened, or are intended to be used to contravene a civil penalty provision.

Clause 67 – Monitoring powers of authorised officers

This clause sets out the monitoring powers of authorised officers for the purposes of clause 67.

The monitoring powers under sub-clause 67(1) are as follows:

- to search premises and any things on the premises;
- to examine any activities carried on at the premises;
- to inspect, examine, take measurements of or conduct tests on any things on the premises;
- to take pictures (still or moving) of, or make recordings of any things on the premises;
- to inspect any documents on the premises and to take extracts from them or make copies of them;
- to take any equipment and materials onto the premises that are required for the purpose of exercising monitoring powers;

Under sub-clause 67(2), the monitoring powers include the power to operate electronic equipment on the premises to establish whether it, or other storage devices on the premises (this includes disks and tapes) that can be used with the equipment (or is associated with it), contains information relevant to determining whether this Bill has been complied with, or relevant to assessing the correctness of information provided under this Bill.

In relation to the monitoring powers set out in sub-clause 67(2), subclause 67(3) provides for further monitoring powers enabling authorised officers to:

- operate electronic equipment on the premises so as to convert information into documentary form and to remove such documents from the premises; and
- operate electronic equipment on the premises in order to transfer information to a disk, tape or other storage device (that the authorised officer either brings to the premises, or which is already there and the occupier gives written consent to allow the authorised officer to use) and to remove the disk, tape or storage device from the premises.

Authorised officers can only operate electronic equipment for the purposes of subclauses 67(2) or 67(3) if they believe on reasonable grounds that they can do so without damaging the equipment (sub-clause 67(4)).

Where the entry onto premises is made under a monitoring warrant (see Subdivision E of Division 2 of Part 5), sub-clause 67(5) provides that the monitoring powers include the power to secure a thing for up to 24 hours if:

- the thing is found during the exercise of the monitoring powers; and
- the authorised officer reasonably believes the thing would afford evidence of an offence or contravention of a civil penalty provision under this Bill (or both), or an offence under the *Crimes Act 1914* or the *Criminal Code* as they relate to this Bill; and
- the authorised officer reasonably believes the circumstances are serious and urgent and require the thing to be secured pending a warrant being obtained to seize it (to prevent the thing being concealed, lost or destroyed in the meantime).

Sub-clause 67(6) allows the authorised officer to apply to a magistrate to secure the thing for longer than 24 hours if the authorised officer reasonably believes this is necessary. The authorised officer must give notice to the occupier (or the occupier's representative) of the authorised officer's intention to apply for an extension of time and the occupier or representative is entitled to be heard in relation to the application (sub-clause 67(7)). The provisions of Division 2 of Part 5 relating to issuing monitoring warrants apply (with any necessary modifications) to the issue of an extension (sub-clause 67(8)) and the 24 hour period may be extended more than once (sub-clause 67(9)).

Clause 68 – Enforcement powers of authorised officers

This clause sets out the enforcement powers available to authorised officers who enter premises by consent or under an enforcement warrant for the purposes of clause 66. These enforcement powers are as follows:

- If the occupier of the premises has consented to the entry, the authorised officer has the power to search the premises and things on

- the premises for evidential material that the authorised officer reasonably suspects may be on the premises (paragraph 68(1)(a)).
- If the entry is under an enforcement warrant, the power to search the premises and any things on the premises for the type of evidential material mentioned in the enforcement warrant, and the power to seize any such evidential material found (paragraph 68(1)(b)).
- To inspect, examine, take measurements of or conduct tests on or take samples of evidential material (paragraph 68(1)(c)).
- To take pictures (still or moving) of, or make recordings of the premises or evidential material (paragraph 68(1)(d)).
- To take any equipment and materials onto the premises that are required for the purpose of exercising enforcement powers (paragraph 68(1)(e)).

Under sub-clause 68(2), the enforcement powers include the power to operate electronic equipment on the premises to establish whether it, or other storage devices on the premises (this includes disks and tapes) that can be used with the equipment (or is associated with it), contains evidential material.

In relation to the enforcement powers set out in sub-clause 68(2), subclause 68(3) provides for further enforcement powers enabling authorised officers to:

- where the entry to premises has been under an enforcement warrant – the power to seize the electronic equipment or storage devices (including disks and tapes) (paragraph 68(3)(a)); and
- operate electronic equipment on the premises so as to convert evidential material into documentary form and to remove such documents from the premises (paragraph 68(3)(b); and
- operate electronic equipment on the premises in order to transfer evidential material to a disk, tape or other storage device (that the authorised officer either brings to the premises, or which is already there and the occupier gives written consent to allow the authorised officer to use) and to remove the disk, tape or storage device from the premises (paragraph 68(3)(c)).

Authorised officers can only operate electronic equipment for the purposes of subclauses 68(2) or (3) if they believe on reasonable grounds that they can do so without damaging the equipment (sub-clause 68(4)).

Subclause 68(5) provides that, where entry to premises has been under an enforcement warrant, authorised officers are only entitled to seize electronic equipment or storage devices (including disks and tapes) where:

- it is not practicable to operate electronic equipment on the premises so as to convert evidential material into documentary form and to remove such documents from the premises; or
- it is not practicable to operate electronic equipment on the premises in order to transfer evidential material to a disk, tape or other storage device (that the authorised officer either brings to the premises, or which is already there and the occupier gives written consent to allow

- the authorised officer to use) and to remove the disk, tape or storage device from the premises; or
- continued possession of the electronic equipment or storage devices (including disks and tapes) by the occupier would amount to an offence under a Commonwealth law.

Pursuant to subclause 68(6), the enforcement powers also include seizing things found on premises where:

- entry is under an enforcement warrant; and
- the authorised officer reasonably believes that the things found amount to evidential material of a kind that is not specified in the warrant; and
- the authorised officer reasonably believes that it is necessary to seize the things to prevent them from being concealed, lost or destroyed.

Clause 69 – Persons assisting authorised officers

Subclause 69(1) makes provision for other persons to provide assistance to authorised officers who enter premises by consent or under a warrant where the assistance is necessary and reasonable. These persons are called persons assisting the authorised officer.

Subclause 69(2) provides that a person assisting may enter premises and exercise monitoring or enforcement powers, but only in accordance with directions given to them by an authorised officer. Where this occurs, the powers exercised by a person assisting are taken to have been exercised by the authorised officer (subclause 69(3)).

Subclause 69(4) provides that, if the authorised officer gives a written direction to a person assisting, the written direction is not a legislative instrument. This provision is taken to assist readers, as the instrument would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 70 – Use of force in executing a warrant

This clause provides that, in executing a warrant, the authorised officer and a person assisting the authorised officer may use such force against things as is necessary and reasonable in the circumstances. It is envisaged that the use of force would include, but not be limited to, the moving of furniture or other objects to allow access to documents and other evidentiary material.

Clause 71 – Authorised officer may ask questions and seek production of documents

Under subclause 71(1), if an authorised officer enters premises with consent the authorised officer may ask the occupier to:

- answer any questions put by the authorised officer relating to the operations of the Bill, information provided, or the reasons for which the authorised officer entered the premises; and
- produce any documents requested by the authorised officer relating to the operations of the Bill, information provided, or the reasons for which the authorised officer entered the premises.

Under subclause 71(2), if an authorised officer enters premises under a warrant the authorised officer may require the occupier to:

- answer any questions put by the authorised officer relating to the operation of the Bill, information provided under this Bill, or the reasons for which the authorised officer entered the premises; and
- produce any documents requested by the authorised officer relating to the operation of the Bill, information provided under this Bill, or the reasons for which the authorised officer entered the premises.

Subclause 71(3) provides for an offence with a penalty of 30 penalty units where a person is subject to a requirement under subclause 71(2) and fails to comply with the requirement.

Subdivision B – Obligations and incidental powers of authorised officers

Clause 72 – Consent

This clause provides that the authorised officer must, before obtaining an occupier's consent to enter premises for the purposes of paragraph 66(3)(a), inform the occupier that he or she may refuse consent. In addition, a consent has no effect unless it is voluntary and the occupier may give consent for a limited time and may also withdraw consent – in which case the authorised officer and any person assisting must leave the premises.

Clause 73 – Announcement before entry under warrant

Sub-clause 73(1) provides that, before entering premises under a warrant, an authorised officer must announce that he or she is authorised to enter the premises, show his or her identity card and allow any person at the premises an opportunity to allow entry.

Sub-clause 73(2) provides that an authorised officer does not have to do any of these things if he or she believes on reasonable grounds that immediate entry is required to ensure that the effective execution of the warrant is not frustrated.

Sub-clause 73(3) provides that, if any person who is or appears to represent the occupier of the premises is present, the authorised officer must as soon as practicable

after entering the premises show his or her identity card to the occupier of other person.

Clause 74 – Authorised officer to be in possession of warrant

Sub-clause 74(1) provides that an authorised officer executing a monitoring warrant in relation to premises must be in possession of the warrant or a copy of the warrant.

Sub-clause 74(2) provides that an authorised officer executing an enforcement warrant must be in possession of either:

- the warrant issued by a magistrate under clause 86, or a copy of it; or
- if the warrant was issued by telephone under subclause 87(6), the form of that warrant, or a copy of the form.

Clause 75 – Details of warrant etc. to be given to occupier

This clause provides that where an authorised officer is executing a warrant in relation to premises and the occupier or another person who apparently represents the occupier is present, the authorised officer must, as soon as practicable, make available to the person one of the following:

- a copy of a monitoring warrant issued under clause 85 or of an enforcement warrant issued under clause 86 (it need not include the signature of the issuing magistrate); or
- if the warrant was issued by telephone or fax under clause 87, a copy of the form.

The authorised officer must also inform the person of his or her rights under Division 2 of Part 5.

Clause 76 – Expert assistance to operate electronic equipment

Subclause 76(1) provides that this clause applies to premises in relation to which a monitoring warrant or an enforcement warrant applies.

Subclause 76(2) provides that where entry to premises is under a monitoring warrant and the authorised officer reasonably believes that:

- there is information on the premises that is relevant to determining compliance with the Bill or assessing the correctness of information provided under the Bill which may be accessible by operating electronic equipment on the premises; and
- expert assistance is required to operate the equipment; and
- if action isn't taken the information may be destroyed or altered or otherwise interfered with;

the authorised officer may do what is necessary to secure equipment (including by locking it up or guarding it).

Subclause 76(3) provides that where entry to premises is under an enforcement warrant and the authorised officer reasonably believes that:

- there is evidential material on the premises of the kind specified in the enforcement warrant which may be accessible by operating electronic equipment on the premises; and
- expert assistance is required to operate the equipment; and
- if action isn't taken the evidential material may be destroyed or altered or otherwise interfered with;

the authorised officer may do what is necessary to secure equipment (including by locking it up or guarding it).

Subclause 76(4) provides that the authorised officer must give notice to the occupier or the occupier's representative of the authorised officer's intention to secure the equipment and that it may be secured for up to 24 hours.

Subclause 76(5) provides that the equipment may be secured until the end of the 24 hour period, or until the equipment has been operated by the expert – whichever occurs first.

The authorised officer may apply to a magistrate for an extension of the 24 hour period where the authorised officer reasonably believes the equipment needs to be secured for longer (subclause 76(6)). The authorised officer must give the occupier or the occupier's representative notice of the intention to apply for an extension and the person is entitled to be heard in relation to the application (subclause 76(7)).

The provisions of Division 2 of Part 5 relating to issuing monitoring and enforcement warrants apply with any necessary modifications to the issue of an extension (subclause 76(8)) and the 24 hour period may be extended more than once (subclause 76(9)).

Clause 77 – Compensation for damage to electronic equipment

This clause provides for compensation to be payable by the Commonwealth for damage caused to electronic equipment, or data, or programs.

Subclause 77(1) provides that the clause applies where:

- as a result of electronic equipment being operated as mentioned in Division 2 of Part 5, damage is caused to equipment or data recorded on the equipment, or programs associated with use of the equipment are damaged or corrupted; and
- the damage or corruption happened because the person operating the equipment exercised insufficient care, or insufficient care was exercised in selecting the person who operated the equipment.

Subclause 77(2) provides that the Commonwealth must pay the owner of the equipment, or data or programs reasonable compensation as the parties agree upon.

If the parties fail to reach agreement, the owner or user may commence proceedings for compensation in the Federal Court of Australia (subclause 77(3)).

In determining how much compensation should be paid, regard is to be had as to whether the occupier (or their employees or agents if present at the time) provided any warning or guidance on the operation of the equipment (subclause 77(4)).

Subclause 77(5) provides that damage to data includes damage caused by data being erased or added.

Subdivision C – Occupier’s rights and responsibilities

Clause 78 – Occupier entitled to observe execution of warrant

Subclause 78(1) provides that the occupier or their representative who are present at premises where a warrant is being executed are entitled to observe the execution of the warrant. This right ceases if they impede the execution of the warrant (subclause 78(2)) and the warrant may be executed in 2 or more areas of the premises simultaneously (subclause 78(3)).

Clause 79 – Occupier to provide authorised officer with facilities and assistance

Subclause 79(1) provides that the occupier or their representative must provide the authorised officer executing a warrant, or persons assisting the authorised officer, with all reasonable facilities and assistance required for the effective exercise of their powers under the warrant. It is an offence to fail to do so and the offence carries a penalty of 30 penalty units (subclause 79(2)).

Subdivision D – General provisions relating to seizure

Clause 80 – Copies of seized things to be provided

Subclause 80(1) provides that an authorised officer who is executing an enforcement warrant and who seizes documents, films, computer files or other things that can easily be copied, or storage devices that hold information that can easily be copied must, if requested to do so and as soon as possible after the seizure, give copies to the occupier or the representative who are present when the warrant is executed. However, this does not apply where possession of such information or things would amount to an offence against a Commonwealth law (subclause 80(2)).

Clause 81 – Receipts for things seized

This clause provides that, where things have been seized under Division 2 of Part 5, the authorised officer must provide a receipt for the thing seized and that the receipt can cover more than one thing.

Clause 82 – Return of seized things

Subclause 82(1) provides that, if an authorised officer has seized a thing under Division 2 of Part 5, then, subject to any contrary court order, the authorised officer must take reasonable steps to return it upon the first of the following occurring (unless the thing is forfeited or is forfeited to the Commonwealth, or it is subject to a dispute as to its ownership):

- the reason for the seizure no longer exists, or a decision has been made not to use the thing in evidence; or
- a period of 60 days has expired since the thing was seized.

Subclause 82(2) provides that, where an authorised officer would otherwise be required to return a seized thing because of the expiry of the 60 day period, the authorised officer does not have to do so if:

- court proceedings have been instituted and have not been completed before the end of the 60 day period (including appeals) and the thing may constitute evidence in those proceedings; or
- a court order made under clause 83 allows the thing to continue to be retained; or
- a law or court order (of the Commonwealth or a State or Territory) allows the Commonwealth, the NVR or an authorised officer to retain, destroy, dispose of or otherwise deal with the thing.

Subclause 82(3) provides that a thing required to be returned must be returned to the person from whom it was seized or, if that person is not entitled to possess it, the owner of the thing.

Clause 83 – Magistrate may permit a thing to be retained

Subclause 83(1) provides that an authorised officer can apply to a magistrate for an order to retain a thing for a further period if court proceedings in which the thing may constitute evidence have not yet been commenced either:

- before the end of the 60 day period following the seizure of the thing; or
- before the end of any period previously specified in a magistrate's order made under this clause.

Subclause 83(2) provides that a magistrate may order a thing to continue to be retained for up to 3 years to enable evidence to be secured for the purpose of investigations into and prosecutions or proceedings with respect to:

- an offence against this Bill, or the *Crimes Act 1914* or the *Criminal Code* that relates to this Bill; and/or
- the contravention of a civil penalty provision.

Subclause 83(3) provides that, before making any such application, the authorised officer must take reasonable steps to discover who has an interest in the retention of the thing and, if practicable, notify them if the authorised officer believes they may have an interest in the proposed application.

Clause 84 – Disposal of things

This clause allows the NVR to dispose of a thing seized under Division 2 of Part 5 in a manner the NVR thinks appropriate in circumstances where an authorised officer is required to take reasonable steps to return the thing and the person to whom it is to be returned cannot be found despite reasonable efforts to locate them, or the person refuses to take possession of the thing. A note draws attention to clause 234 which relates to compensation for acquisition of property in certain circumstances.

Subdivision E – Warrants

Clause 85 – Monitoring warrants

This clause allows an authorised officer to make an application to a magistrate for a monitoring warrant.

Subclause 85(1) provides that an authorised officer may make an application to a magistrate for a warrant with respect to premises.

Subclause 85(2) provides that a magistrate may issue the warrant if satisfied by information provided on oath or affirmation that it is reasonably necessary for one or more authorised officers to have access to premises to enable them to determine whether the Bill has been or is being complied with, or to assess the correctness of information provided under the Bill.

Subclause 85(3) provides that the magistrate must not issue the warrant unless the authorised officer or another person has given to the magistrate, orally or by affidavit, any further information that the magistrate requires relating to the grounds for issuing the warrant.

Subclause 85(4) provides that the warrant must:

- describe the premises to which the warrant relates; and
- state that the warrant is to be issued under this clause; and

- state that the warrant is issued for the purposes of determining whether the Bill has been or is being complied with, or to assess the correctness of information provided under the Bill; and
- authorise one or more authorised officers (whether or not they are named in the warrant) to enter premises and exercise the powers that are specified in Subdivisions A and B of Division 2 of Part 5 in relation to the premises; and
- state whether entry is authorised at any time of day, or whether it is restricted to specific hours of the day; and
- specify the day on which the warrants ceases to have force (this cannot be more than 6 months after the warrant is issued).

Clause 86 – Issue of enforcement warrants

This clause allows an authorised officer to make an application to a magistrate for an enforcement warrant.

Subclause 86(1) provides that an authorised officer may make an application to a magistrate for a warrant with respect to premises.

Subclause 86(2) provides that a magistrate may issue the warrant if satisfied by information provided on oath or affirmation that there are reasonable grounds for suspecting that within the next 72 hours there is or may be evidential material on the premises.

Subclause 86(3) provides that the magistrate must not issue the warrant unless the authorised officer or another person has given to the magistrate, orally or by affidavit, any further information that the magistrate requires relating to the grounds for issuing the warrant.

Subclause 86(4) provides that the warrant must:

- describe the premises to which the warrant relates; and
- state that the warrant is to be issued under this clause; and
- specify the kind of evidential material that is to be searched for under the warrant; and
- name one or more authorised officers; and
- authorise the authorised officer or authorised officers to enter the premises and exercise the powers that are specified in Subdivisions A, B and D of Division 2 of Part 2 in relation to the premises; and
- state whether entry is authorised at any time of day, or whether it is restricted to specific hours of the day; and
- specify the day on which the warrants ceases to have force (this cannot be more than one week after the warrant is issued).

Clause 87 – Enforcement warrants by telephone, fax etc.

Subclause 87(1) provides that an authorised officer can apply by telephone, fax or other electronic means to a magistrate for an enforcement warrant under clause 86 in relation to premises in urgent cases or where the authorised officer reasonably believes that delay caused by making an application in person would frustrate the effective execution of the warrant.

Subclause 87(2) provides that the magistrate may require voice communication to the extent that voice communication is practicable in the circumstances.

Subclause 87(3) provides that the authorised officer must, before applying for a warrant, prepare information setting out the grounds on which the warrant is sought. This information, on oath or affirmation, must set out that there are reasonable grounds for suspecting that within the next 72 hours there is or may be evidential material on the premises. If it is necessary to do so, the authorised officer, may apply for the warrant before the information is sworn or affirmed.

Subclause 87(4) provides that the magistrate may complete and sign the warrant (that the magistrate would issue under clause 86 if an application had been made under that clause) if the magistrate is satisfied, after considering the information provided and any further information the magistrate requires, that there are reasonable grounds for issuing the warrant.

Subclause 87(5) provides that if the magistrate completes and signs the warrant, the magistrate must inform the authorised officer by telephone, fax or other electronic means of the terms of the warrant and the time and day on which the warrant was signed.

The authorised officer must then complete a form of warrant in the same terms as the warrant complete by the magistrate stating the name of the magistrate and the time and day on which the magistrate signed the warrant (subclause 87(6)).

Subclause 87(7) provides that the authorised officer must also, no later than the day after the warrant ceases to be in force, or the day on which the warrant is executed (whichever occurs earlier), send the magistrate:

- the form of warrant that the authorised officer has completed; and
- the information referred to in subclause 87(3) which must have been sworn or affirmed (ie information that set out the reasonable grounds for suspecting that within the next 72 hours there was or may have been evidential material on the premises).

The magistrate must attach the documents provided under subclause 87(7) to the warrant signed by the magistrate (subclause 87(8)).

Subclause 87(9) provides that the form of warrant completed under subclause 87(6) carries the same authority as the warrant signed by the magistrate.

Subclause 87(10) provides that courts must assume (unless the contrary is proved) that the exercise of powers was not authorised by a warrant if:

- it is a material matter in court proceedings for the court to be satisfied that the power was authorised by this clause; and
- the warrant signed by the magistrate authorising the exercise of the powers is not produced in evidence.

Clause 88 – Offence relating to warrants by telephone, fax etc.

This clause provides that an authorised officer commits an offence carrying a penalty of 2 years imprisonment if:

- the authorised officer states in a document purporting to be a warrant under clause 87 the name of a magistrate – unless that magistrate signed the warrant; or
- the authorised officer states on a form of warrant under clause 87 a matter that, to the authorised officer’s knowledge, departs from the terms of the warrant signed by the magistrate in a material particular; or
- the authorised officer purports to execute or to present to another person a document purporting to be a form of warrant under clause 87 that the authorised officer knows has not been approved by a magistrate, or knows that departs in a material particular from the terms of a warrant signed by a magistrate; or
- the authorised officer gives a magistrate a form of warrant under clause 87 that is not the form of warrant that the authorised officer purported to execute.

Subdivision F – Appointment of authorised officers and issue of identity cards

Clause 89 – Appointment of authorised officers

Subclause 89(1) provides that the Chief Commissioner may appoint NVR staff members as authorised officers for the purposes of the Bill.

Subclause 89(2) provides that the Chief Commissioner must only appoint persons as authorised officers if satisfied that they have suitable qualifications and experience to properly carry out the role.

Subclause 89(3) provides that authorised officers must comply with any directions of the Chief Commissioner when exercising powers as authorised officers.

Subclause 89(4) provides that any directions given by the Chief Commissioner under subclause 89(3) are not legislative instruments. This provision is included to assist readers as the instrument would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 90 – Identity cards

Subclause 90(1) provides that the Chief Commissioner must issue identity cards to authorised officers.

Subclause 90(2) provides that the identity cards must be in the form approved by the Chief Commissioner and contain a recent photograph of the authorised officer.

Subclause 90(3) provides for an offence carrying a penalty of 1 penalty unit if a person has been issued with an identity card, ceases to be an authorised officer and does not as soon as practicable after so ceasing, return his or her identity card to the Chief Commissioner.

Subclause 90(4) provides that an offence against subclause 90(3) is an offence of strict liability and a note draws the reader's attention to section 6.1 of the Criminal Code which concerns strict liability. The strict liability nature of this element reflects the necessity of ensuring that authorised officers quickly return their identity cards to the Chief Commissioner after they cease to be authorised officers. The imposition of strict liability is designed to prevent identity cards being misused once a person has ceased to be an authorised officer. Subclause 90(5) gives protection to authorised officers as it provides that the offence does not apply where the identity card has been lost or destroyed. In addition, the imposition of strict liability is appropriate in light of the low penalty of 1 penalty unit.

A note to subclause 90(5) explains that a defendant bears the burden of proof in any court proceedings in relation to this subclause and draws the reader's attention to subsection 13.3(3) of the *Criminal Code* concerning the evidential burden of proof.

Subclause 90(6) provides that an authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

Subdivision G – Powers of magistrates

Clause 91 – Federal Magistrates—consent to nomination

Subclauses 91(1) and (2) provide that that Minister may, in writing, nominate a Federal Magistrate, who consents in writing, to be a magistrate for the purposes of this Bill.

Subclause 91(3) provides that a nomination by the Minister is not a legislative instrument. This provision is included to assist readers as the nomination would not be a legislative instrument as it would not be of legislative character for the purposes of section 5 of the *Legislative Instruments Act 2003*.

Clause 90 – Magistrates—personal capacity

Subclause 92(1) provides that powers conferred on magistrates under Division 2 of Part 5 are conferred on them in their personal capacity and not as members of a court.

Subclause 92(2) provides that magistrates (other than Federal Magistrates) do not have to accept the power conferred.

Subclause 92(3) provides that when magistrates exercise powers conferred by Division 2 of Part 5 they have the same protection and immunity as if they exercised the power as the court of which the magistrate is a member, or as a member of the court of which the magistrate is a member.

Part 6

Enforcement

Outline of Part

Important aims of the NVR are to enhance and strengthen the overall quality of the vocational education and training system and to ensure that all students (domestic and international) receive a high quality education at Australia's VET providers.

To meet these aims it is important that the NVR has the ability to properly regulate registered training organisations. This includes the ability to take appropriate enforcement action when merited.

Powerful enforcement tools already exist under the *Education Services for Overseas Students Act 2000* which regulates the provision of education to overseas students (including those undertaking VET courses) and provides for offences for conduct including providing or promoting courses without a registered provider, failing to keep certain required records, providing false and misleading information and providing non-genuine courses.

Part 6 of this Bill sets out offences and civil penalty provisions. It also provides for enforceable undertakings, infringement notices and injunctions.

Offences and civil penalties

Part 6 provides for both offences and civil penalties for registered training organisations that engage in the following conduct:

- providing a VET course outside of scope of registration
- issuing a VET qualification outside of scope of registration
- issuing a VET statement of attainment outside of scope of registration
- advertising a VET course outside of scope of registration
- engaging in certain prohibited conduct while a registered training organisation is suspended
- issuing a VET qualification without providing adequate training or assessment
- issuing a VET statement of attainment without providing adequate training or assessment
- issuing a VET qualification without ensuring adequate training or assessment
- issuing a VET statement of attainment without ensuring adequate training or assessment
- civil penalties may also be imposed for breaches of conditions that imposed on a registered training organisation's registration and failure to return a certificate of registration.

Part 6 also provides for both offences and civil penalties with respect to the following conduct in circumstances where the person is not a registered training organisation:

- falsely claiming to be a registered training organisation
- issuing a VET qualification
- issuing a VET statement of attainment.

In addition, Part 6 provides for both offences and civil penalties for the following conduct:

- making false or misleading representations in advertisements
- making false or misleading representations relating to a VET course
- purporting to issue VET qualifications.

Finally, Part 6 provides for a civil penalty where a person breaches a condition of a course accreditation.

The amounts of the civil penalties are greater than the amounts of the offence penalties. This is considered appropriate to cover corporate wrongdoing and is in accordance with the Commonwealth's *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. Civil penalties do not require proof of a fault element and this is justifiable in circumstances where offenders are corporations.

A contravention of a provision of the Bill imposing a civil penalty is not an offence. That means that a contravention is not a violation of the criminal law.

Enforceable undertakings

In circumstances where the NVR considers that a person has committed an offence under the Bill, or has contravened a civil penalty provision, Part 6 provides for the NVR to accept written undertakings from the person. If the NVR considers that the person has breached an undertaking, the NVR may apply for a court order in respect of the matter. The court order may, amongst other things, direct that the provider comply with the undertaking.

Infringement notices

Part 6 provides the NVR with the ability to prescribe regulations to enable it to give a person an infringement notice where the person is alleged to have committed an offence under the Bill, or to have contravened a civil penalty provision. Infringement notice penalties must not be more than one-fifth of the maximum amount for prescribed for an offence, or one-tenth of the maximum penalty prescribed for a civil penalty provision.

Injunctions

In circumstances where a person engages or proposes to engage in conduct in contravention of the Bill, Part 6 enables the NVR to make applications to the Federal

Court for injunctions to restrain the person from doing something, or to require the person to do something.

Detailed explanation

Division 1 – Offences and civil penalty provisions

Subdivision A – Conduct by NVR registered training organisations

Clause 93 – Offence—providing all or part of VET course outside scope of registration

This clause provides that an NVR registered training organisation commits an offence if it provides all or part of a VET course that is outside of the organisation's scope of registration. The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Clause 94 – Civil penalty—providing all or part of VET course outside scope of registration

This clause provides that an NVR registered training organisation contravenes this clause and is liable for a civil penalty if it provides all or part of a VET course that is outside of the organisation's scope of registration. The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 95 – Offence—issuing VET qualification outside scope of registration

This clause provides that an NVR registered training organisation commits an offence if it purports to issue a VET qualification that relates to a VET course that is outside of the organisation's scope of registration. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 96 – Civil penalty— issuing VET qualification outside scope of registration

This clause provides that an NVR registered training organisation contravenes this clause and is liable for a civil penalty if it purports to issue a VET qualification that relates to a VET course that is outside of the organisation's scope of registration. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 97 – Offence—issuing VET statement of attainment outside scope of registration

This clause provides that an NVR registered training organisation commits an offence if it purports to issue a VET statement of attainment that relates to part of a VET course that is outside of the organisation's scope of registration. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 98 – Civil penalty— issuing VET statement of attainment outside scope of registration

This clause provides that an NVR registered training organisation contravenes this clause and is liable for a civil penalty if it purports to issue a VET statement of attainment that relates to part of a VET course that is outside of the organisation's scope of registration. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 99 – Offence—advertising all or part of VET course outside scope of registration

This clause provides that an NVR registered training organisation commits an offence if it publishes or broadcasts an advertisement (or causes an advertisement to be published or broadcast) that represents that the organisation provides, or will provide, all or part of a VET course and that course or part of the course is not within the organisation's scope of registration. The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

It is anticipated that the NVR would exercise discretion around this offence. Where a registered training organisation had applied to extend the scope of its registration and had a reasonable expectation of having its scope so extended, it could seek approval from the NVR to advertise prior to the decision being made.

Clause 100 – Civil penalty— advertising all or part of VET course outside scope of registration

This clause provides that an NVR registered training organisation contravenes this clause and is liable for a civil penalty if it publishes or broadcasts an advertisement (or causes an advertisement to be published or broadcast) that represents that the organisation provides, or will provide, all or part of a VET course and that course or part of the course is not within the organisation's scope of registration. The maximum civil penalty will be 240 penalty units (currently \$26,400).

It is anticipated that the NVR would exercise discretion around this offence. Where a registered training organisation had applied to extend the scope of its registration and had a reasonable expectation of having its scope so extended, it could seek approval from the NVR to advertise prior to the decision being made.

Clause 101 – Offence—certain conduct prohibited while nationally registered training organisation suspended

Subclause 101(1) provides that an NVR registered training organisation commits an offence if, while all or part of its scope of registration is suspended the NVR requires the organisation to do something, and the organisation does not do that thing.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Subclause 101(2) provides that an NVR registered training organisation commits an offence if, whilst all or part of its scope of registration is suspended the NVR requires the organisation not to do something and the organisation does that thing.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Clause 102 – Civil penalty— certain conduct prohibited while scope of registration suspended

Subclause 102(1) provides that an NVR registered training organisation contravenes this subclause and is liable for a civil penalty if, whilst all or part of its scope of registration is suspended the NVR requires the organisation to do something and the organisation does not do that thing.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Subclause 102(2) provides that an NVR registered training organisation contravenes this subclause and is liable for a civil penalty if, whilst all or part of its scope of registration is suspended the NVR requires the organisation not to do something and the organisation does that thing.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 103 – Offence— issuing VET qualification without providing adequate assessment

Subclause 103(1) provides that an NVR registered training organisation commits an offence if it issues a VET qualification and:

- the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation; and
- the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Subclause 103(2) provides that an NVR registered training organisation commits an offence if it issues a VET qualification and:

- the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation and another registered training organisation; and
- in respect of the requirements of the qualification relating to the organisation, the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Clause 104 – Civil penalty— issuing VET qualification without providing adequate assessment

Subclause 104(1) provides that an NVR registered training organisation contravenes subclause 104(1) and is liable for a civil penalty if it issues a VET qualification and:

- the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation; and
- the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Subclause 104(2) provides that an NVR registered training organisation contravenes subclause 104(2) and is liable for a civil penalty if it issues a VET qualification and:

- the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation; and
- in respect of the requirements of the qualification relating to the organisation, the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 105 – Offence— issuing VET statement of attainment without providing adequate assessment

Subclause 105(1) provides that an NVR registered training organisation commits an offence if it:

- issues a VET statement of attainment; and

- the units of competency or modules listed in the statement relate to assessment that the organisation provides or purports to provide; and
- the organisation did not provide, or arrange for another person to provide, the assessment a VET student needs in order to satisfy the requirements of those units of competency or modules.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Subclause 105(2) provides that an NVR registered training organisation commits an offence if it:

- issues a VET statement of attainment; and
- the units of competency or modules listed in the statement relate to assessment that the organisation and another registered training organisation provides or purport to provide; and
- regarding the units of competency or modules relating to the organisation, it did not provide, or arrange for another person to provide, the assessment a VET student needs in order to satisfy the requirements of those units of competency or modules.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Clause 106 – Civil penalty— issuing VET statement of attainment without providing adequate assessment

Subclause 106(1) provides that an NVR registered training organisation contravenes this subclause and is liable for a civil penalty if it:

- issues a VET statement of attainment; and
- the units of competency or modules listed in the statement relate to assessment that the organisation provides or purports to provide; and
- the organisation did not provide, or arrange for another person to provide, the assessment a VET student needs in order to satisfy the requirements of those units of competency or modules.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Subclause 106(2) provides that an NVR registered training organisation contravenes this subclause and is liable for a civil penalty if it:

- issues a VET statement of attainment; and
- the units of competency or modules listed in the statement relate to assessment that the organisation and another registered training organisation provides or purport to provide; and
- regarding the units of competency or modules relating to the organisation, it did not provide, or arrange for another person to provide, the assessment a VET student needs in order to satisfy the requirements of those units of competency or modules.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 107 – Offence— issuing VET qualification without ensuring adequate assessment

This clause provides that an NVR registered training organisation commits an offence if it issues or purports to issue a VET qualification to a VET student and did not satisfy itself that the student had successfully satisfied the requirements of the qualification.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Clause 108 – Civil penalty— issuing VET qualification without ensuring adequate assessment

This clause provides that an NVR registered training organisation contravenes this clause and is liable for a civil penalty if it issues or purports to issue a VET qualification to a VET student and did not satisfy itself that the student had successfully satisfied the requirements of the qualification.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 109 – Offence— issuing VET statement of attainment without ensuring adequate assessment

This clause provides that an NVR registered training organisation commits an offence if it issues or purports to issue a VET statement of attainment to a VET student and did not satisfy itself that the student had successfully satisfied the requirements of the units of competency or modules specified in the statement.

The maximum penalty for this offence will be 120 penalty units (currently \$13,200).

Clause 110 – Civil penalty— issuing VET statement of attainment without ensuring adequate assessment

This clause provides that an NVR registered training organisation contravenes this clause and is liable for a civil penalty if it issues or purports to issue a VET statement of attainment to a VET student and did not satisfy itself that the student had successfully satisfied the requirements of the units of competency or modules specified in the statement.

The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 111 – Civil penalty—breach of condition of registration

This clause provides for civil penalties for NVR registered training organisations that do something or fail to do something that result in a breach of a condition of their registration as mentioned in clause 21, where the condition is of a kind prescribed by the regulations.

The breaches of some conditions will be more important than breaches of other conditions.

This clause is therefore divided into two subclauses that allow the regulations to differentiate between different categories of breaches of conditions of registration – those mentioned in subclause 111(1) being more serious than those mentioned in subclause 111(2).

The breach of conditions of a kind prescribed by subclause 111(1) will expose nationally registered training organisations to potential liability for a maximum civil penalty per contravention of 240 penalty units (currently \$26,400).

The breach of conditions of a kind prescribed by subclause 111(2) will expose nationally registered training organisations to potential liability for a maximum civil penalty per contravention of 120 penalty units (currently \$13,200).

Clause 112– Civil penalty— failure to return certificate of registration

Subclause 112(1) provides that a former registered training organisation whose registration has been cancelled under the Bill and that does not return its certificate of registration to the NVR within 10 days from the day the cancellation takes effect contravenes this subclause and is liable for a civil penalty. The maximum civil penalty will be 120 penalty units (currently \$13,200).

Subclause 112(2) provides that a former registered training organisation contravenes this subclause and is liable for a civil penalty of up to 120 penalty units if its registration has been withdrawn under this Bill and it fails to return its certificate of registration within 10 days of the withdrawal taking effect.

Clause 113 – Geographical jurisdiction

This clause will give offences against Subdivision A of Division 1 of Part 6 extended geographical jurisdiction, as provided for in section 15.4 of the *Criminal Code*. That is, the offence applies whether or not the conduct constituting the alleged offence occurs in Australia and whether or not a result of the conduct constituting the alleged offence occurs in Australia.

Subdivision B – Conduct that is prohibited if not an NVR registered training organisation

Clause 114 – Offence—falsely claiming to be an NVR registered training organisation

This clause provides that a person commits an offence if the person holds himself or herself or itself out as an NVR registered training organisation when he or she or it is not. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 115 – Civil penalty— falsely claiming to be an NVR registered training organisation

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person holds himself or herself or itself out as an NVR registered training organisation when he or she or it is not. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 116 – Offence—providing, or offering to provide, all or part of a VET course without registration

Subclause 116(1) provides that a person commits an offence if the person is not an NVR registered training organisation and provides or offers to provide all or part of a VET course in a referring State or a Territory. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Subclause 116(2) provides that a person commits an offence if the person is not an NVR registered training organisation and is a registered provider other than a secondary school (registered provider is defined in clause 3) and the person provides or offers to provide all or part of a VET course in a non-referring State. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 117 – Civil penalty—providing, or offering to provide, all or part of a VET course without registration

Subclause 117(1) provides that a person contravenes this subclause and is liable for a civil penalty if the person is not an NVR registered training organisation and provides or offers to provide all or part of a VET course in a referring State or a Territory. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Subclause 117(2) provides that a person contravenes this subclause and is liable for a civil penalty if the person is not an NVR registered training organisation and is a registered provider other than a secondary school (registered provider is defined in clause 3) and provides or offers to provide all or part of a VET course in a non-referring State. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 118 – Offence—issuing VET qualification

This clause provides that a person commits an offence if the person purports to issue a VET qualification and the person is not a registered training organisation. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 119 – Civil penalty— issuing VET qualification

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person purports to issue a VET qualification and the person is not a registered training organisation. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 120 – Offence—issuing VET statement of attainment

This clause provides that a person commits an offence if the person purports to issue a VET statement of attainment and the person is not a registered training organisation. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 121 – Civil penalty— issuing VET statement of attainment

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person purports to issue a VET statement of attainment and the person is not a registered training organisation. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Subdivision C – Other prohibited conduct

Clause 122 – Offence—making false or misleading representation in advertisement

This clause provides that a person commits an offence if the person makes a representation in connection with an advertisement relating to:

- all or part of a VET course or of a VET qualification, or
- a course or part of a course being held out as a VET course or part of a VET course; or
- a qualification being held out as a VET qualification; and
- the representation is false or misleading in a material particular and is in connection with an advertisement.
-

The maximum penalty for this offence will be 60 penalty units (currently \$6,600).

Clause 123 – Civil penalty— making false or misleading representation in advertisement

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person makes a representation in connection with an advertisement relating to:

- all or part of a VET course or of a VET qualification; or
- a course or part of a course being held out as a VET course or part of a VET course; or
- a qualification being held out as a VET qualification; and
- the representation is false or misleading in a material particular and is in connection with an advertisement.

The maximum civil penalty will be 120 penalty units (currently \$13,200).

Clause 124 – Offence—making false or misleading representation relating to VET course or VET qualification

This clause provides that a person commits an offence if the person makes a representation relating to:

- all or part of a VET course or of a VET qualification; or
- a course or part of a course being held out as a VET course or part of a VET course; or
- a qualification being held out as a VET qualification; and the representation is false or misleading in a material particular.

The maximum penalty for this offence will be 60 penalty units (currently \$6,600).

Clause 125 – Civil penalty— making false or misleading representation relating to VET course or VET qualification

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person makes a representation relating to:

- all or part of a VET course or a Vet qualification; or
- a course or part of a course being held out as a VET course or part of a VET course; or
- a qualification being held out as a VET qualification; and the representation is false or misleading in a material particular.

The maximum civil penalty will be 120 penalty units (currently \$13,200).

Clause 126 – Offence—purporting to issue VET qualification

This clause provides that a person commits an offence if the person purports to issue a qualification as a VET qualification and the qualification is not a VET qualification. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 127 – Civil penalty— purporting to issue VET qualification

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person purports to issue a qualification as a VET qualification and the qualification is not a VET qualification. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 128 – Offence—purporting to issue VET statement of attainment

This clause provides that a person commits an offence if the person purports to issue a statement as a VET statement of attainment and it is not a VET statement of attainment. The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Clause 129 – Civil penalty— purporting to issue VET statement of attainment

This clause provides that a person contravenes this clause and is liable for a civil penalty if the person purports to issue a statement as a VET statement of attainment and it is not a VET statement of attainment. The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 130 – Civil penalty— breach of condition of accreditation

This clause provides that a person contravenes this clause and is liable for a civil penalty if a course is accredited in respect of the person and the person does something, or fails to do something, that breaches a condition that has been imposed on the accreditation of the course. The maximum civil penalty will be 120 penalty units (currently \$13,200).

Clause 131 – Civil penalty— using a bogus VET qualification or VET statement of attainment

Subclause 131(1) provides that a natural person contravenes this subclause and is liable for a civil penalty if s/he obtains a qualification that they know, or a reasonable person in the circumstances could be expected to have known, is not a VET qualification and s/he purports to hold it as a VET qualification. The maximum civil penalty will be 240 penalty units (currently \$26,400).

Subclause 131(2) provides that a natural person contravenes this subclause and is liable for a civil penalty if s/he obtains a statement of attainment that they know, or a reasonable person in the circumstances could be expected to have known, is not a VET statement of attainment and s/he purports to hold it as a VET statement of attainment. The maximum civil penalty will be 240 penalty units (currently \$26,400).

Clause 132 – Geographical jurisdiction

This clause will give offences against Subdivision C of Division 1 of Part 6 extended geographical jurisdiction, as provided for in section 15.4 of the *Criminal Code*. That is, the offence applies whether or not the conduct constituting the alleged offence occurs in Australia and whether or not a result of the conduct constituting the alleged offence occurs in Australia.

Subdivision D – Executive officers

Clause 133 – Liability of executive officer of registered training organisation

Subclause 133(1) provides that executive officers of registered training organisations commit an offence if:

- the organisation commits an offence; and
- the executive officer knew that the offence would be committed; and
- the executive officer was able to influence the organisation in relation to the commission of the offence; and
- the executive officer failed to take all reasonable steps to prevent the offence being committed.

Subclause 133(2) provides that the executive officer is liable for a penalty of one-fifth of the maximum penalty that could be imposed against the registered training organisation with respect to the organisation's breach of an offence against subclause 133(1).

Subclause 133(3) provides that executive officers of registered training organisations are liable to a civil penalty if:

- the organisation contravenes a civil penalty provision; and
- the executive officer knew that the contravention would happen; and
- the executive officer was able to influence the organisation in relation to the contravention; and
- the executive officer failed to take all reasonable steps to prevent the contravention.

Subclause 133(4) provides that the executive officer is liable for a civil penalty of one-tenth of the maximum civil penalty that could be imposed against the registered training organisation with respect to the organisation's contravention of a civil penalty provision under subclause 133(3).

See also clauses 135 and 136 which relate to the liability of partners in a partnership and of members of unincorporated associations respectively.

Clause 134 – Reasonable steps to prevent offence or contravention

This clause relates to clause 133 and whether or not an executive officer fails to take all reasonable steps to prevent an offence being committed by a registered training

organisation, or to prevent the contravention of a civil penalty provision by the organisation.

Subclause 134(1) provides that a court, in making a decision about this is to have regard to the following:

- any action the executive officer took to ensure that the employees, agents and contractors of the organisation had a reasonable knowledge and understanding of the requirements to comply with this Bill and the regulations to the extent that such requirements affect them; and
- any action the executive officer took when he or she became aware that the organisation was committing an offence against or was otherwise contravening this Bill or the regulations.

Subclause 134(2) provides that this clause does not otherwise limit the generality of clause 133.

Subdivision E – Partnerships

Clause 135 – Liability of partners in a partnership

Subclause 135(1) provides that, with respect to offences against Subdivisions A, B or C of Division 1 of Part 6 that would otherwise have been committed by a partnership, each partner of the partnership at the time the offence is committed is taken to have committed the offence where:

- the partner actually did the relevant act or made the relevant omission; or
- the partner aided, abetted, counselled or procured the relevant act or omission; or
- the partner was knowingly concerned in or a party to the relevant act or omission (this can be directly or indirectly, or by way of an act or omission by the partner). The reason for making provision for an offence to be taken to be committed where a partner is knowingly concerned or a party to an act or omission is to extend offence options beyond circumstances where the partner aided, abetted, counselled or procured the relevant act or omission. In this context ‘knowingly concerned in or a party to’ would mean actual knowledge or approval of the relevant act or omission constituting the offence.

Subclause 135(2) provides that, with respect to the contravention of civil penalty provisions under Subdivisions A, B or C of Division 1 of Part 6 that would otherwise have been contravened by a partnership, each partner of the partnership at the time of the contravention is taken to have contravened the provision where:

- the partner actually engaged in the conduct; or
- the partner aided, abetted, counselled or procured the conduct; or

- the partner was knowingly concerned in or a party to the conduct (this can be directly or indirectly, or by way of an act or omission by the partner).

Subclause 135(3) provides that, if a partner in a partnership commits an offence, the partner is liable for a penalty that can be no more than the maximum penalty that could be imposed against an individual for the same offence.

Subclause 135(4) provides that, if a partner in a partnership contravenes a civil penalty provision, the partner is liable for a civil penalty that can be no more than the maximum civil penalty that could be imposed against an individual for the same contravention.

Subclause 135(5) provides that, for the purposes of subclauses 135(1) and (2), in order to establish that a partnership engaged in particular conduct, it is sufficient to show that the partner engaged in conduct in the ordinary course of the partnership's business, or within the scope of the actual or apparent authority of the partner.

Subclause 135(6) provides that, for the purposes of subclause 135(1), in order to show that a partnership had a particular state of mind when conduct was engaged in, it is sufficient to show that the partner concerned had that state of mind.

A note states that Division 2 of Part 12 contains further provisions about partnerships.

Subdivision F – Unincorporated associations

Clause 136 – Liability of members of unincorporated associations

Subclause 136(1) provides that, with respect to offences against Subdivisions A, B or C of Division 1 of Part 6 that would otherwise have been committed by an unincorporated association, each member of the association's committee of management at the time the offence is committed is taken to have committed the offence where:

- the member actually did the relevant act or made the relevant omission; or
- the member aided, abetted, counselled or procured the relevant act or omission; or
- the member was knowingly concerned in or a party to the relevant act or omission (this can be directly or indirectly, or by way of an act or omission by the member). The reason for making provision for an offence to be taken to be committed where a member is knowingly concerned or a party to an act or omission is to extend offence options beyond circumstances where the member aided, abetted, counselled or procured the relevant act or omission. In this context 'knowingly concerned in or a party to' would mean actual knowledge or approval of the relevant act or omission constituting the offence.

Subclause 136(2) provides that, with respect to the contravention of civil penalty provisions under Subdivisions A, B or C of Division 1 of Part 6 that would otherwise have been contravened by an unincorporated association, each member of the association's committee of management at the time of the contravention is taken to have contravened the provision where:

- the member actually engaged in the conduct; or
- the member aided, abetted, counselled or procured the conduct; or
- the member was knowingly concerned in or a party to the conduct (this can be directly or indirectly, or by way of an act or omission by the member).

Subclause 136(3) provides that, if a member of an unincorporated association's committee of management commits an offence, the member is liable for a penalty that can be no more than the maximum penalty that could be imposed against an individual for the same offence.

Subclause 136(4) provides that, if a member of an unincorporated association's committee of management contravenes a civil penalty provision, the member is liable for a civil penalty that can be no more than the maximum civil penalty that could be imposed against an individual for the same contravention.

Subclause 136(5) provides that, for the purposes of subclause 136(1), in order to show that an unincorporated association had a particular state of mind when conduct was engaged in, it is sufficient to show that the member of the association's committee of management concerned had that state of mind.

A note states that Division 3 of Part 12 contains further provisions about unincorporated associations.

Division 2 – Civil penalty proceedings

Subdivision A – Obtaining an order for a civil penalty

Clause 137 – Federal Court or Federal Magistrates Court may impose pecuniary penalty

Subclause 137(1) provides that, if a person contravenes a provision of the Bill imposing a civil penalty, the NVR may apply to the Federal Court or the Federal Magistrates Court within six years of the contravention for an order that the person pays the Commonwealth a pecuniary penalty.

Subclause 137(2) provides that, if the Federal Court or Federal Magistrates Court is satisfied that the person has contravened a civil penalty provision, it may order the person to pay a pecuniary penalty to the Commonwealth for each contravention of that provision. The amount of the penalty is determined by the Federal Court or the Federal Magistrates Court and is payable for each contravention, but the penalty for

each contravention must not exceed the amount specified in the relevant civil penalty provision. (The maximum penalty amounts are explained in Division 1 of Part 6.)

Subclause 137(3) provides that the Federal Court or Federal Magistrates Court must have regard to all relevant matters in determining the pecuniary penalty, including:

- the nature and extent of the contravention; and
- the nature and extent of any loss or damage suffered as a result of the contravention; and
- the circumstances in which the contravention took place; and
- whether the person had previously been found by the court in proceedings under this Bill to have engaged in similar conduct.

Subclause 137(4) provides that the Federal Court or Federal Magistrates Court must use the civil evidence and procedure rules when hearing and determining applications for a pecuniary penalty order. A note explains that the standard of proof in civil proceedings is the balance of probabilities as provided for in section 140 of the *Evidence Act 1995*.

Subclause 137(5) provides that if conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted against the person in relation to the contravention of any one or more of those provisions. However, that person is not liable for more than one pecuniary penalty in respect of the same conduct.

Clause 138 – Involvement in contravening civil penalty provision

Subclause 138(1) provides that a person must not:

- aid, abet, counsel or procure a contravention of a civil penalty provision; or
- induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
- conspire to contravene a civil penalty provision.

Subclause 138(2) deems that this Bill applies to a person who contravenes subclause 138(1) in relation to a civil penalty provision as if the person had contravened the provision.

Clause 139 – Recovery of a pecuniary penalty

This clause provides that if the Federal Court or Federal Magistrates Court orders a person to pay a pecuniary penalty, the Commonwealth can enforce the order as if it were a judgment of the court.

Clause 140 – Gathering information for application for pecuniary penalty

This clause allows the NVR to gather information from other parties for use in an application to the Federal Court or Federal Magistrates Court for a pecuniary penalty order.

Subclause 140(1) provides that this clause applies where it appears that someone (who for the purposes of the clause is called a ‘wrongdoer’) has contravened a civil penalty provision.

Subclause 140(2) provides that where the NVR reasonably suspects that a person apart from the wrongdoer has information that is relevant to an application for a pecuniary penalty order (whether or not the application has actually been made), the NVR may by writing request that the person provide the NVR with all reasonable assistance in connection with the application.

Subclause 140(3) provides that subclause 140(2) does not apply to a qualified lawyer who acts or has acted for the wrongdoer.

Subclause 140(4) provides that the NVR may make an application to the Federal Court or the Federal Magistrates Court for an order that the person be required to give assistance to the NVR with respect to the application for the pecuniary penalty order.

Subclause 140(5) provides that a person commits an offence if he or she is required under subclause 140(2) to give all reasonable assistance to the NVR in connection with an application for a pecuniary penalty order for a contravention of a civil penalty provision and the person fails to give such assistance. The maximum penalty for this offence will be 30 penalty units (currently \$3,300).

Subclause 140(6) provides that a written requirement made under subclause 140(2) is not a legislative instrument. This provision is included to assist readers as the written requirement is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 141 – Continuing and multiple contraventions of civil penalty provisions

Subclause 141(1) provides that where the provisions of this Bill require something to be done within a certain time period, or by a certain time then, unless a provision provides to the contrary, the obligation continues until the thing is done – even if the stipulated time period has elapsed.

Subclause 141(2) provides that where there has been a refusal or failure to comply with a requirement described in subclause 137(1) and there has been a contravention of a civil penalty provision, then a person contravenes that civil penalty provision on each day that the person refuses or fails to comply with the requirement. This includes the day on which the Federal Court or Federal Magistrates Court makes an order that the person pay a pecuniary penalty for any of the contraventions, or for any later day.

Subclause 141(3) allows legal proceedings against a person for pecuniary penalty orders for contraventions of civil penalty provisions to be joined where the

proceedings are founded on the same facts, or form, or are part of a series of contraventions of the same or similar character.

Subclause 141(4) provides that where such legal proceedings (as described in subclause 141(3)) are joined, the Federal Court or Federal Magistrates Court may make a single order to pay a pecuniary penalty – but the penalty ordered to be paid must not exceed the sum total of the maximum penalties for all the separate contraventions.

Subclause 141(5) provides that subclause 141(1) does not affect the application of section 4K of the *Crimes Act 1914* in relation to a law of the Commonwealth. Section 4K of the Crimes Act covers continuing and multiple offences.

Subdivision B – Civil penalty proceedings and criminal proceedings

Clause 142 – Civil proceedings after criminal proceedings

This clause provides that the Federal Court or Federal Magistrates Court must not make a pecuniary penalty order against a person for contravention of a civil penalty provision if that person has been convicted of an offence for substantially the same conduct as that constituting the contravention.

Clause 143 – Criminal proceedings during civil proceedings

Subclause 143(1) provides that proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if criminal proceedings are started or have already been started against the person for an offence that is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

Subclause 143(2) provides that if the person is not convicted of the offence, proceedings for contravention of a civil penalty provision may be resumed. Otherwise, the proceedings for the order are dismissed.

Clause 144 – Criminal proceedings after civil proceedings

This clause provides that criminal proceedings may not be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision if the person has been ordered to pay a pecuniary order under this Bill for that contravention.

Clause 145 – Evidence given in proceedings for civil penalty not admissible in criminal proceedings

This clause sets out how evidence of information given or evidence of production of documents by an individual in proceedings for a pecuniary penalty order against the individual can be used in criminal proceedings. Where criminal proceedings are

commenced against a person who has already given evidence or produced documents in civil penalty proceedings against that person arising from substantially the same conduct, that evidence is inadmissible in the criminal proceedings. This does not apply to criminal proceedings relating to the falsity of the evidence in the civil proceedings.

Division 3 – Enforceable undertakings

Clause 146 – Acceptance of undertakings

Subclause 146(1) provides that if the NVR considers a person has committed an offence under this Bill or has contravened a civil penalty provision, the NVR may accept a written undertaking from the person.

The person may, with the NVR's consent, withdraw or vary the undertaking at any time (subclause 146(2)) and the NVR may, by written notice to the person, cancel the undertaking (subclause 146(3)).

Subclause 146(4) permits the NVR to publish undertakings on the National Register.

Clause 147 – Enforcement of undertakings

Subclause 147(1) provides that, if the NVR considers that a person who gave an undertaking under clause 146 has breached any of the terms of that undertaking, the NVR may apply to the Federal Court, or the Federal Magistrates Court for an order under subclause 147(2).

Subclause 147(2) provides that if the court is satisfied the person has breached an undertaking it may make one or more of the following orders:

- an order that the person comply with the undertaking;
- an order directing the person to pay an amount to the Commonwealth up to the amount of any financial benefit the person has obtained attributable to the breach;
- an order directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- any other order the Court considers appropriate.

Division 4 – Infringement notices

Clause 148 – Infringement notices in respect of offences

This clause provides that the regulations may make provision for persons alleged to have committed offences under this Bill to pay penalties to the Commonwealth as an alternative to prosecution and that the penalty imposed must not exceed one-fifth of the maximum penalty for the offence.

Clause 149 – Infringement notices in respect of civil penalty provisions

This clause provides that the regulations may make provision for persons alleged to have contravened a civil penalty provision to pay penalties to the Commonwealth as an alternative to civil penalty proceedings and that the penalty imposed must not exceed one-tenth of the maximum penalty for contravening the provision.

Division 5 – Injunctions

Whilst the offence and civil penalty provisions of the Bill may result in persons (including registered training organisations) being penalised financially, there is no guarantee that such financial penalties will change the person's behaviour. In such circumstances, the NVR may apply to the Federal Court or Federal Magistrates Court for an injunction to prevent or compel certain action.

Clause 150 – Injunctions

Subclause 150(1) provides that if a person has, is or proposes to engage in conduct that contravenes this Bill, the Federal Court or Federal Magistrates Court may (on receiving an application from the NVR) grant an injunction to either restrain the person from engaging in the conduct, or to require the person to do something

Subclause 150(2) provides that, if a person refused or failed or is or is proposing to refuse or fail to do an act or thing in contravention of this Bill, the Federal Court or the Federal Magistrates Court may (on receiving an application from the NVR) grant an injunction to require the person to do that act or thing.

Clause 151 – Interim injunctions

This clause provides that, before deciding the NVR's application (under clause 150), the Federal Court or Federal Magistrates Court may also choose to grant an interim injunction that restrains the person from engaging in conduct of a kind mentioned in clause 150.

Clause 152 – Discharge etc. of injunctions

This clause provides that the Federal Court or Federal Magistrates Court may discharge or vary injunctions it has granted.

Clause 153 – Certain limits on granting injunctions not to apply

Subclause 153(1) provides that the Federal Court or Federal Magistrates Court may grant an injunction to restrain a person from engaging in particular conduct if:

- the court is satisfied that the person has engaged in conduct of that kind – regardless of whether or not the court considers that the person intends to engage in conduct of that kind again; or
- it appears to the court that if an injunction is not granted it is likely the person will engage in conduct of that kind – regardless of whether or not the person has engaged in that kind of conduct before and whether or not there is any imminent danger of substantial damage to others if the person engages in that kind of conduct.

Subclause 153(2) provides that the Federal Court or Federal Magistrates Court may grant an injunction to require a person to do an act or thing if:

- the court is satisfied that the person has refused or failed to do the act or thing – regardless of whether or not the court considers that the person intends to refuse or fail to do the act or thing again; or
- it appears to the court that if an injunction is not granted it is likely the person will refuse or fail to do the act or thing – regardless of whether or not the person has previously refused or failed to do the act or thing and whether or not there is any imminent danger of substantial damage to others if the person refuses or fails to do the act or thing.

Clause 154 – Other powers of the Federal Court or Federal Magistrates Court unaffected

This clause clarifies that the Federal Court’s or Federal Magistrates Court’s powers to issue injunctions under Division 5 of Part 6 are additional to any other powers that the courts have whether under this Bill or otherwise.

Part 7

National Vocational Education and Training Regulator

Outline of Part

Part 7 of the Bill establishes the NVR as a Commonwealth body consisting of a Chief Commissioner and 2 Commissioners. Part 7 also sets out the NVR's functions and powers and provides that the NVR has the privileges and immunities of the Crown.

Detailed explanation

Division 1 – Establishment, functions and powers of Regulator

Clause 155 – Establishment

This clause establishes the NVR, provides that the NVR may also be known by a name specified in the regulations, and that the State and Territory ministers for education must be consulted if it is to be abolished.

Clause 156 – Constitution

This clause provides that the NVR consists of a Chief Commissioner and 2 Commissioners. A note explains that the NVR is a legal identity of the Commonwealth.

Clause 157 – Functions of the National VET Regulator

Subclause 157(1) provides that the NVR has the following functions:

- to register an organisation as a NVR registered training organisation
- to accredit courses that may be offered and/or provided by registered training organisations
- to carry out compliance audits of NVR registered training organisations
- to promote and encourage the continuous improvement of a registered training organisation's capacity to provide a VET course or part of a VET course

- if requested to do so by the Minister, or on the NVR's own initiative, to advise and make recommendations to the Minister on matters relating to vocational education and training
- if requested to do so, in writing, by the Education Minister for a State or Territory, or on the NVR's own initiative, to advise and make recommendations to the Education Minister for the State or Territory on specific matters relating to vocational education and training in the State or Territory [when preparing this advice, the NVR may consult with VET Regulators in non-referring States – subclause 157(2)]
- if requested to do so, in writing, by the Chair of the Ministerial Council, or on the NVR's own initiative, to advise and make recommendations to the Ministerial Council on general matters relating to vocational education and training in all jurisdictions [when preparing this advice, the NVR may consult with VET Regulators in non-referring States – subclause 157(2)]
- to collect, analyse, interpret and disseminate information about vocational education and training
- to publish performance information, of a kind prescribed by the regulations, relating to NVR registered training organisations
- to conduct training programs relating to the regulation of registered training organisations and/or the accreditation of courses
- to enter into arrangements with occupational licensing bodies, other industry bodies, or both, for the purpose of ensuring compliance by NVR registered training organisations with this Bill. Other industry bodies would include but not be limited to, for example, industry skills councils, state advisory bodies, industry peak bodies and other industry associations.
- to cooperate with a regulatory authority of another country that has responsibility relating to the quality or regulation of vocational education and training for all, or part, of the country
- to develop relationships with its counterparts in other countries
- to develop key performance indicators, to be agreed by the Minister, against which the NVR's performance can be assessed each financial year
- to develop service standards that the NVR must meet in performing its functions
- any other function relating to vocational education and training that is set out in a legislative instrument made by the Minister [the Minister must not set out such a function in a legislative instrument unless the Ministerial Council agrees to the function – subclause 157(3) – see also clause 191 for how the Ministerial Council gives agreement]. A note to subclause 157(3) indicates that section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that sets out a function (see sections 44 and 54 of that Act).
- such other functions as are conferred on the NVR by or under this Bill or the *Education Services for Overseas Students Act 2000* or any other law of the Commonwealth
- to do anything incidental to, or conducive to, the performance of any of these functions.

Subclauses 157(4) and (5) respectively provide that, in performing its functions, the NVR must apply the Risk Assessment Framework (see clause 190) and have regard to reports or information it receives about matters relating to this Bill. A failure to do so, however, does not affect the validity of the performance of the function by the NVR (subclause 157(6)).

Subclause 157(7) provides that the NVR has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions. A note explains that State law may also confer other functions on the NVR (Division 2 of Part 8).

Clause 158 – Financial Viability Risk Assessment Requirements

This clause requires the NVR, by way of a legislative instrument, to make requirements in relation to the financial viability of NVR registered training organisations. These requirements are to be known as the *Financial Viability Risk Assessment Requirements*.

Clause 159 – Independence of the National VET Regulator

This clause provides that, other than directions the Minister may give it under clause 160, the NVR is not subject to any directions from anyone about the performance of its function, or the exercise of its powers.

Clause 160 – Minister may give directions to the National VET Regulator

This clause provides that the Minister may, by way of legislative instrument, give directions to the NVR if the Minister considers that this is necessary in order to protect the integrity of the VET sector. The NVR must comply with the Minister's directions, which cannot be about:

- Registration of a person or body as an NVR registered training organisation; or
- Accreditation of a course as a VET accredited course; or
- A particular NVR registered training organisation; or
- A person in respect of whom a VET accredited course is accredited.

Situations where the integrity of the VET sector might be threatened include, but are not limited to, where there is widespread non-compliance in training within a specific industry sector, or where lack of action on the behalf of the NVR might result in the undermining of confidence in VET qualifications.

A note explains that neither section 42 (disallowance), nor Part 6 of the *Legislative Instruments Act 2003* relating to 'sunsetting' apply to the determination.

Pursuant to section 42 of the Legislative Instruments Act, where a legislative instrument has been tabled in one of the Houses of Parliament and a notice of motion to disallow the instrument has been given and passed (within the times prescribed in section 42), the instrument ceases to have effect. Section 44 of the Legislative Instruments Act provides that section 42 does not apply in relation to a legislative instrument where enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme - unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable (which is not the case here). Section 44 of the Legislative Instruments Act would apply with respect to directions under this clause of the Bill and render section 42 inapplicable.

Part 6 of the Legislative Instruments Act ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. Section 54 of the Legislative Instruments Act provides that Part 6 does not apply where enabling legislation for an instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme. That is the case with respect to directions under this clause of the Bill.

Clause 161 – National VET Regulator has privileges and immunities of the Crown

This clause provides that the NVR has the privileges and immunities of the Crown. This means that the NVR falls within the ‘shield’ of the Crown and is entitled to the privileges and immunities of the Crown in the right of the Commonwealth.

Division 2 – Appointment of Commissioners

Clause 162 – Appointment

Sub-clause 162(1) provides that Commissioners are appointed on a full-time basis by the Governor-General by written instrument.

A note to clause 162(1) explains that Commissioners are eligible for reappointment and refers to of the *Acts Interpretation Act 1901* which provides that, in any Act, appoint includes re-appoint (section 33(4A)).

An instrument of appointment would not be a legislative instrument by virtue of the existing exemption in item 9 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Sub-clause 162(2) provides that persons may only be appointed as Commissioners if the Minister is satisfied they are appropriately qualified, knowledgeable and experienced.

Subclause 162(3) precludes anyone from being appointed as Commissioner if they have, in the past 5 years before an appointment has been made, been an executive officer of a registered training organisation.

The Governor-General must appoint one of the Commissioners to be the Chief Commissioner (subclause 162(4)) and may appoint another Commissioner to be Deputy Chief Commissioner (subclause 162(5)).

Clause 163 – Term of appointment

This clause provides that a Commissioner's term of office is to be specified in the instrument of appointment and cannot be longer than 5 years.

Clause 164 – Remuneration and allowances

Subclause 164(1) provides that a Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, the Commissioner is to be paid such remuneration that is determined by the Minister.

Such a determination would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Subclause 164(2) provides that a Commissioner is to be paid such allowances as are prescribed by the regulations.

This clause has effect subject to the *Remuneration Tribunal Act 1973* which provides for the Remuneration Tribunal to conduct inquiries and make determinations on the remuneration of certain office holders (subclause 164(3)).

Clause 165 – Leave of absence

Subclause 165(1) provides that a Commissioner's recreation leave entitlements are determined by the Remuneration Tribunal.

Such a determination would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Subclause 165(2) provides that the Minister may grant a Commissioner leave of absence on such terms and conditions as the Minister determines. Such a grant of

leave would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Clause 166– Outside employment

This clause provides that a Commissioner must not engage in paid outside employment without the Minister’s approval.

Clause 167 – Disclosure of interests to the Minister

Sub-clause 167(1) provides that a Commissioner must disclose by written notice to the Minister all interests, pecuniary or otherwise, that the member has or acquires which conflict or could conflict with the proper performance of the NVR’s functions.

Sub-clause 167(2) requires a Commissioner to give the notice to the Minister as soon as practicable after becoming aware of a potential conflict of interest.

Such a disclosure given by a Commissioner is not a legislative instrument under section 5 of the *Legislative Instruments Act 2003*, as it is not legislative in character.

Clause 168 – Other terms and conditions

This clause makes allowance for the Minister to determine in writing any terms and conditions of a Commissioner in relation to matters that are not covered in this Bill.

Such written determinations would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Clause 169 – Resignation

Subclause 169(1) provides that a Commissioner may resign by giving a written resignation to the Governor-General.

Subclause 169(2) provides that if the Chief Commissioner resigns, then he or she also resigns as the Chief Executive Officer of the NVR. A note explains that this subclause does not prevent a person who is both a Commissioner and the Chief Executive Officer from later being reappointed as only a Commissioner.

Such resignations take effect on the day they are received by the Governor-General or, if a later day is specified in the resignation, on that later day (subclause 169(3)).

The written resignations would not be a legislative instrument, by virtue of the existing exemption under item 10 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Clause 170 – Termination of employment

Subclause 170(1) sets out the grounds upon which a Commissioner's appointment may be terminated by the Governor-General. The grounds on which the Governor-General may terminate an appointment are:

- for misbehaviour, or physical or mental incapacity; or
- if the Commissioner becomes bankrupt, applies for relief from bankruptcy or insolvency, enters into an arrangement with creditors regarding the payment of his or her debts, or assigns all or part of his or her remuneration for the benefit of creditors; or
- if the Commissioner is absent for 14 consecutive days or for 28 days in any 12 month period – unless the Commissioner is on leave of absence; or
- if the Commissioner engages in paid employment outside of their duties as Commissioner – unless the Minister has given approval for that paid outside employment (see clause 166); or
- if the Commissioner fails without reasonable excuse to comply with clause 167 (disclosure of interests to the Minister) or subclause 175(1) (disclosure of interests to other Commissioners).

Subclause 170(2) provides that the Minister must terminate a Commissioner's appointment if he or she becomes an executive officer of a registered training organisation.

Any instrument of termination of appointment would not be a legislative instrument, by virtue of the existing exemption under item 9 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*.

Clause 171 – Acting Chief Commissioner

Subclause 171(1) provides that if a Deputy Chief Commissioner has been appointed, he or she is to act as the Chief Commissioner:

- when there is a vacancy in the office of Chief Commissioner (whether or not an appointment has previously been made); or
- whenever the Chief Commissioner is absent from duty or overseas, or is unable to perform the duties of Chief Commissioner for any reason.

Subclause 171(2) provides that the actions of the Deputy Chief Commissioner purporting to act under this clause would not be invalid merely because the occasion to act had not arisen or had ceased. This will provide certainty and stability.

A note draws attention to section 20 of the *Acts Interpretation Act 1901* which provides that an instrument of appointment would not be a legislative instrument by virtue of the existing exemption in item 9 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*. Section 33A of the *Acts Interpretation Act* relates to acting appointments and provides, amongst other things, that while the appointee is

acting in the office, he or she has and may exercise all the powers and shall perform all the functions and duties of the holder of the office.

Clause 172 – Acting Commissioners

Subclause 172(1) allows the Governor-General, by written instrument, to appoint a person to act as the Deputy Chief Commissioner (if one has been appointed):

- when there is a vacancy in the office of Deputy Chief Commissioner ;
or
- whenever the Deputy Chief Commissioner is absent from duty or overseas, or is unable to perform the duties of Deputy Chief Commissioner for any reason.

Subclause 172(2) allows the Governor-General, by written instrument, to appoint a person to act as a Commissioner (other than as the Chief Commissioner or Deputy Chief Commissioner):

- when there is a vacancy in the office of Commissioner (whether or not an appointment has previously been made); or
- whenever the Commissioner is absent from duty or overseas, or is unable to perform the duties of Commissioner for any reason.

Subclause 172(3) provides that the actions of a person purporting to act under an appointment would not be invalid merely because of a technical or other grounds relating to the person's appointment, or because the appointment had ceased to have effect, or the occasion to act had not arisen or had ceased. This will provide certainty and stability.

A note draws attention to sections 20 and 33A of the *Acts Interpretation Act 1901*. Section 20 provides that an instrument of appointment would not be a legislative instrument by virtue of the existing exemption in item 9 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*. Section 33A of the *Acts Interpretation Act* relates to acting appointments and provides, amongst other things, that while the appointee is acting in the office, he or she has and may exercise all the powers and shall perform all the functions and duties of the holder of the office.

Division 3 – National VET Regulator procedures

Subdivision A – Meetings

Clause 173 – Times and places of meetings

This clause provides that the Chief Commissioner must ensure that such meetings are held in order that the NVR can efficiently perform its functions. These meetings are to be convened at such times and places as the Chief Commissioner decides and the

Chief Commissioner must also convene meetings when asked to do so in writing by the other 2 Commissioners.

Clause 174 – Conduct of meetings

This clause provides as follows with respect to meetings:

- the Chief Commissioner is to preside at all meetings at which he or she is present
- if the Chief Commissioner is not present, a person appointed to act by the Chief Commissioner must be present and must preside
- a quorum is constituted by 2 Commissioners
- the NVR may, subject to Division 3 of Part 7, regulate meetings as it sees fit
- the person presiding at meetings has a deliberative vote but, if votes are tied, does not have a casting vote
- the NVR must ensure minutes of meetings are kept.

A note states that section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

Clause 175 – Disclosure of interests

This clause provides that if a Commissioner has a pecuniary or other interest in matters being considered at a meeting, he or she must disclose the nature of the interest to other Commissioners (sub-clause 175(1)). The disclosure must be made as soon as practicable after the relevant facts come to the Commissioner's notice (sub-clause 175(2)) and must be recorded in the minutes of meeting (sub-clause 175(3)).

Sub-clause 175(4) provides that, unless the NVR determines to the contrary, the Commissioner in question must not be present at or take part in such deliberations on the matter, nor the NVR's decision on the matter. Such determinations under sub-clause 175(4) must be recorded in the minutes of the meeting (sub-clause 175(6)).

Sub-clause 175(5) provides that when a determination is to be made for the purposes of sub-clause 175(4), the Commissioner in question with the interest must not be present when the NVR deliberates the matter and must not participate in the decision on the matter (sub-clause 175(4)).

Subdivision B – Decisions without meetings

Clause 176 – Decisions without meetings

This clause makes provision for decisions to have been taken by meetings of the NVR without meetings actually taking place.

This can only happen if the NVR has determined both that this will occur and also the method by which Commissioners are to indicate their agreement with proposed decisions (sub-clause 176(2)).

Where such a determination has been made, sub-clause 176(1) provides that decisions are taken to have been made at a meeting if:

- without a meeting occurring, a majority of Commissioners indicate their agreement with the proposed decision in accordance with the method determined under sub-clause 176(2); and
- all Commissioners were actually informed of the proposed decision, or reasonable efforts were made to inform all of them of the proposed decision.

Clause 177 – Record of decisions

This clause provides that the NVR must keep records of decisions made without meetings in accordance with clause 176.

Division 4 – Ensuring compliance with the standards for VET Regulators

Clause 178 – National VET Regulator to cooperate with assessments

This clause provides that the NVR must cooperate with the Ministerial Council when it makes any assessment as to whether the NVR continues to comply with the Standards for VET Regulators.

Division 5 – Chief Executive Officer

Clause 179 – Chief Executive Officer

This clause creates the office of Chief Executive Officer of the NVR and provides that the Chief Executive is the Chief Executive Officer.

Clause 180 – Functions and powers of the Chief Executive Officer

Sub-clause 180(1) provides that the Chief Executive Officer is responsible for the management and administration of the NVR.

Sub-clause 180(2) provides that things done by the Chief Executive Officer in the name of or on behalf of the NVR are taken to have been done by the NVR.

Clause 181 – Minister may give directions to Chief Executive Officer

Sub-clause 181(1) provides that the Minister may, by legislative instrument, give the Chief Executive Officer written directions about the performance of his or her functions. The Chief Executive Officer must comply with these directions (sub-clause 181(2)), except to the extent that the directions relate to the Chief Executive Officer's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the NVR (sub-clause 181(3)).

A note to sub-clause 181(1) explains that neither section 42 (disallowance), nor Part 6 of the *Legislative Instruments Act 2003* relating to 'sunsetting' apply to the directions. The note also draws reference to sections 44 and 54 of the Legislative Instruments Act.

Pursuant to section 42 of the Legislative Instruments Act, where a legislative instrument has been tabled in one of the Houses of Parliament and a notice of motion to disallow the instrument has been given and passed (within the times prescribed in section 42), the instrument ceases to have effect. Subsection 44(1) of the Legislative Instruments Act provides that section 42 does not apply in relation to a legislative instrument where enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme - unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable (which is not the case here). Subsection 44(1) of the Legislative Instruments Act would apply with respect to directions under subclause 181(1) of the Bill and render section 42 inapplicable.

Part 6 of the Legislative Instruments Act ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. Subsection 54(1) of the Legislative Instruments Act provides that Part 6 does not apply where enabling legislation for an instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme. That is the case with respect to directions under subclause 181(1) of the Bill.

Division 6 – Staff and consultants

Clause 182 – Staff

This clause provides that the staff of the NVR are to be engaged under the *Public Service Act 1999*. For the purposes of that Act, the Chief Executive Officer and staff of the NVR together constitute a statutory agency and the Chief Executive Officer is the head of that statutory agency.

Clause 183 – Staff to be made available to the National VET Regulator

Subclause 183(1) provides the NVR is to be assisted by officers and employees of other Commonwealth agencies and authorities and other persons under arrangements made under subclause 183(2).

Subclause 183(2) provides that the Chief Executive Officer may make arrangements with other State or Territory authorities or their officers for them to make their officers or employees available to the NVR for the performance of its functions or exercise of its duties. Such arrangements may provide for the Commonwealth to reimburse a State or Territory for such services rendered (subclause 183(3)).

Subclause 183(4) provides that persons performing services for the NVR under this clause are subject to directions of the Chief Executive Officer.

Clause 184 – Consultants

This clause provides that the Chief Commissioner may engage consultants to perform services for the NVR. Such consultants should have suitable qualifications and experience and are to be engaged on terms and conditions determined by the Chief Commissioner in writing.

Part 8

Commonwealth-State arrangements

Outline of Part

Part 8 of the Bill covers matters concerning Commonwealth-State relations. These include:

- the role of the Ministerial Council in carrying out such tasks as agreeing to the Standards for Registered Training Organisations, requirements for data provision and the Risk Assessment Framework
- the conferral of functions and powers on the NVR by State law (and how this also applies to the Australian Capital Territory and the Northern Territory)
- the jurisdiction of federal courts.

Detailed explanation

Division 1 – Role of Ministerial Council

Subdivision A – NVR registered training organisations

Clause 185 – Standards for NVR Registered Training Organisations

This clause provides that the Minister may, by legislative instrument, make standards to be known as the *Standards for NVR Registered Training Organisations*. The Standards are to be agreed by the Ministerial Council. A note indicates that section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the standards (see sections 44 and 54 of that Act).

Clause 186 – Fit and proper requirements

This clause provides that the Minister may by legislative instrument, agreed by the Ministerial Council, make requirements (to be called the *Fit and Proper Person Requirements*) for assessing whether a person is a fit and proper person.

A note indicates that section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the requirements (see sections 44 and 54 of that Act).

Clause 187 – Date Provision Requirements

This clause provides that the Minister may, by legislative instrument, make requirements for data provision to be known as the *Data Provision Requirements*. The Requirements are to be agreed by the Ministerial Council.

A note indicates that section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the requirements (see sections 44 and 54 of that Act).

Subdivision B – VET accredited course

Clause 188 – Standards for VET accredited courses

This clause provides that the Minister may, by legislative instrument, make standards to be known as the *Standards for VET accredited courses*. The Standards are to be agreed by the Ministerial Council.

A note indicates that section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the requirements (see sections 44 and 54 of that Act).

Subdivision C – VET Regulators

Clause 189 – Standards for VET regulators

This clause provides that the Minister may, by legislative instrument, make standards for VET regulators to be known as the *Standards for VET regulators*. The Standards are to be agreed by the Ministerial Council.

A note indicates that section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the requirements (see sections 44 and 54 of that Act).

Clause 190 – Risk Assessment Framework

This clause provides that the Minister may, by writing, make guidelines for the NRV to use when it assesses risk to be known as the *Risk Assessment Framework*. The guidelines are to be agreed by the Ministerial Council.

Subclause 190(3) provides that the guidelines are not a legislative instrument. This provision is included to assist readers, as it would not be a legislative instrument

under section 5 of the *Legislative Instruments Act 2003*, as the guidelines would not be legislative in character.

Subdivision D – Miscellaneous

Clause 191 – How the Ministerial Council gives agreement

This clause provides that the Ministerial Council is to give its agreement for the purposes of this Bill by way of it making a resolution of the Council in accordance with procedures that are determined by the Council.

Division 2 – Conferral of functions and powers by State law

Subdivision A – Conferral of functions and powers

Clause 192 – Commonwealth consent to conferral of functions etc. on the National VET Regulator by corresponding State laws

Subclause 192(1) provides that a corresponding State law may confer functions or powers, or impose duties, upon the NVR.

However, subclause 192(2) provides that subclause (1) does not authorise any such conferral by a corresponding State law where that conferral would contravene any constitutional doctrine or otherwise exceed the legislative power of the Commonwealth. This is a reading down provision which will limit the operation of subclause 192(1) to the extent necessary to ensure that the authorisation of the conferral of duties, functions and powers under subclause 192(1) is constitutionally valid.

Subclause 192(3) provides that subclause 192(1) does not extend to any functions, powers or duties that are of a kind prescribed in regulations made for the purposes of subclause 192(3).

Subclause 192(4) provides that this Bill is not intended to exclude or limit any corresponding State laws which confers functions or powers on the NVR to the extent that such corresponding State laws are both consistent with subclauses 192(1) to (3) and are also capable of operating concurrently with this Bill.

Clause 193 – Meaning of imposes a duty

This clause is an interpretative provision. It provides that, for the purposes of this Bill, a State law imposes a duty on the NVR if the law confers a function or power on the NVR and the circumstances of the conferral give rise to an obligation on the NVR to perform the function or exercise the power.

Clause 194 – When duty imposed

Subclause 194(1) provides clause 194 applies if a corresponding State law purports to impose a duty on the NVR.

Subclause 194(2) provides that the duty is taken not to be imposed by this Bill (or another Commonwealth law) to the extent that imposing the duty is within the legislative powers of the State concerned and imposing the duty by the law of the State would be consistent with constitutional doctrines that restrict the duties that can be imposed on the NVR. A note explains that if subclause 194(2) applies, the duty is taken to have been imposed by the corresponding State law (as the Commonwealth would have consented to the imposition of the duty under clause 192).

Subclause 194(3) provides that if, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by a State) the duty is taken to be imposed by this Bill to the extent necessary.

Subclause 194(4) then provides that if, because of subclause 194(3), this Bill is taken to impose the duty, it is the intention of Parliament to rely on all legislative powers available to it under the Constitution to support the imposition of the duty.

Subclause 194(5) provides that a duty is taken to be imposed by this Bill only to the extent to which imposing the duty is within the legislative powers of the Commonwealth and is consistent with constitutional doctrines.

Subclause 194(6) provides that neither this Bill nor any other Commonwealth law impose any duties on the NVR to the extent that they would contravene any constitutional doctrine restricting duties that can be imposed on the NVR or would otherwise exceed the legislative powers of the Commonwealth.

Subclause 194(7) provides that none of subclauses 194(1) to (6) limit clause 192. Accordingly, there can be no argument that the scope of the authorisation of the conferral of duties, functions and powers under clause 192 is limited by the operation of clause 194.

Clause 195 – Duty imposed by corresponding State law applying Commonwealth law

Subclause 195(1) provides that clause 195 only applies for the purpose of applying this Bill or another Commonwealth law (with or without modification) as a State law by provision of a corresponding State law and that clause 195 does not apply for those purposes if the corresponding State law otherwise provides.

Subclause 195(2) provides that if a corresponding State law purports to impose a duty on the NVR to do something, then the duty is taken to have been imposed by the State law to the extent that imposing the duty is within the legislative powers of the State and is consistent with any constitutional doctrines that restrict the duties that can be imposed on the NVR.

Subclause 195(3) makes it clear that corresponding State laws do not impose duties on the NVR to the extent that the imposition of such duties would contravene any constitutional doctrines that restrict duties that can be imposed on the NVR or would otherwise exceed State legislative powers.

Subclause 195(4) provides that where the imposition of a duty on the NVR would contravene any constitutional doctrines that restrict duties that can be imposed on the NVR, or would otherwise exceed State legislative powers, the corresponding State law is taken instead to have conferred on the NVR a power to do the thing at the NVR's discretion.

Subdivision B – Jurisdiction of federal courts

Clause 196 – Conferral of jurisdiction on federal courts

This clause provides that, where a provision of a corresponding State law purports to apply a provision of a Commonwealth law purporting to confer jurisdiction in a matter on a federal court as a State law, then jurisdiction in respect of the matter is taken to have been conferred on a federal court.

Subdivision C – Administrative decisions

Clause 197 – Review of certain decisions under State laws

Subclause 197(1) provides that applications can be made to the Administrative Appeals Tribunal for review of a *reviewable State decision*.

Subclause 197(2) provides that a reviewable State decision is a decision made by the NVR in performing its functions and exercising its powers as conferred by a corresponding State law if:

- the law under which the decision was made provides for review by the Administrative Appeals Tribunal; and
- the decision is declared by the regulations to be a reviewable decision for the purpose of this clause.

Subclause 197(3) provides that, for the purposes of subclause 197(1), the *Administrative Appeals Tribunal Act 1975* will have effect as if the corresponding State law is an enactment.

Subdivision D – Application to the Australian Capital Territory and the Northern Territory

Clause 198 – Application to the Australian Capital Territory and the Northern Territory

This clause provides that Division 2 of Part 8 applies to the Australian Capital Territory and the Northern Territory in the same way that the Division applies to a State.

Part 9

Administrative law matters

Outline of Part

Part 9 of the Bill sets out which decisions of the NVR are reviewable decisions. If a decision is reviewable, a person affected by the decision can apply to the NVR for the decision to be reconsidered. If the person is dissatisfied with the reconsideration decision, the person may seek further review by the Administrative Appeals Tribunal.

Part 9 also contains provisions restricting the disclosure of certain information by the NVR and authorising the disclosure of other information.

Detailed explanation

Division 1 – Review of decisions

Clause 199 – Reviewable decisions

This clause contains a table which sets out the decisions of the NVR that are reviewable decisions. These reviewable decisions are as follows:

- a decision to grant an application for registration (including renewal of registration) as an NVR registered training organisation
- a decision determining the period for which an NVR registered training organisation is registered
- a decision to impose a condition on an NVR registered training organisation's registration
- a decision to reject an application for registration (including renewal of registration) as an NVR registered training organisation
- a decision to vary a condition on an NVR registered training organisation's registration
- a decision not to determine a shorter period for making an application for renewal of registration as an NVR registered training organisation
- a decision to refuse to renew an NVR registered training organisation's registration
- a decision to change or refuse to change an NVR registered training organisation's scope of registration
- a decision to suspend all or part of an NVR registered training organisation's scope of registration
- a decision to shorten the period of an NVR registered training organisation's registration

- a decision to defer making a decision under Part 2 of the Bill to change an NVR registered training organisation's scope of registration until the organisation addresses issues identified by the National VET Regulator
- A decision not to allow an NVR registered training organisation's registration to be withdrawn
- a decision to cancel an NVR registered training organisation's registration
- a decision to refuse to accredit a course
- a decision to impose conditions on the accreditation of a VET accredited course
- a decision to vary a condition on the accreditation of a VET accredited course
- a decision to refuse to renew the accreditation of a VET accredited course
- a decision to amend a VET accredited course
- a decision to cancel the accreditation of a VET accredited course
- a decision to give a written direction to an NVR registered training organisation under paragraphs 36(2)(a) or (b)
- a decision not to issue a VET qualification
- a decision not to issue a VET statement of attainment
- a decision to cancel a VET qualification
- a decision to cancel a VET statement of attainment
- a decision to enter details on the register under subclause 216(5).

Clause 200 – Applications for reconsideration of decisions

This clause sets out the process for making applications to the NVR for reconsideration of reviewable decisions made by persons or bodies to whom a power or function has been delegated under clauses 224 or 225.

Subclause 200(2) provides that persons who are affected by and dissatisfied with a reviewable decision may apply to the NVR for the NVR to reconsider the decision.

Subclause 200(3) provides that such applications must set out the reasons for the application and must be in a form approved in writing by the NVR. The applications must also be accompanied by any fee that is determined by the Minister in a legislative instrument made under clause 232.

Subclause 200(4) provides that the application must be made within 30 days after the applicant has been informed of the decision, or any longer period allowed by the NVR (the NVR can decide to extend the time either before or after the expiry of the 30 day period).

Subclause 200(5) provides that the NVR's approved form of application may require certain statements in applications for reconsideration to be verified by way of statutory declarations.

Clause 201 – Reconsideration by the National VET Regulator

Subclause 201(1) provides that, when the NVR receives an application for reconsideration of a reviewable decision, it must reconsider the decision and either affirm, vary or revoke it.

Subclause 201(2) provides that the person who reconsiders the decision under review must be:

- if an NVR staff member made the decision:
 - the Commissioner; or
 - a member of the NVR's staff who was not involved in making the decision and who is senior in position to anyone involved in making the decision
- in any other case – a Commissioner, or a TEQSA staff member who was not involved in making the decision.

Subclause 201(3) provides that a reconsideration decision by the NVR has effect as though it had been made under the provision under which the original decision was made.

Subclause 201(4) provides that the NVR must give applicants for reconsideration a written notice that gives its decision on the reconsideration and which also informs the applicant that the applicant is entitled to make an application to the Administrative Appeals Tribunal for review of the NVR's decision on the reconsideration.

Subclause 201(5) provides that the NVR must give an applicant a written statement of the NVR's reasons for its decision on the reconsideration within 30 days of making that decision.

Clause 202 – Deadline for reconsideration

This clause provides that the NVR must make a decision on an application for reconsideration of a reviewable decision within 90 days of receiving the application and that, if it does not inform the applicant of its decision within this 90 day period, the NVR is taken to have affirmed the original decision.

Clause 203 – Review by the Administrative Appeals Tribunal

Subclause 203(1) provides that applications may be made to the Administrative Appeals Tribunal for review of a reviewable decision if the NVR has affirmed or varied the reviewable decision under clause 201.

Subclause 203(2) provides that applications for review of a reviewable decision may also be made to the Administrative Appeals Tribunal in situations where the reviewable decision was made by a person other than a member of staff of the NVR.

Division 2 – Information management

Subdivision A – Unauthorised disclosure

Clause 204 – Unauthorised disclosure of VET information

This clause creates an offence carrying a maximum penalty of 2 years imprisonment for unauthorised disclosure of VET information.

Persons will commit the offence in circumstances where:

- they disclose VET information or produce a document; and
- they have the VET information because they are or were an ‘entrusted person’; and
- the disclosure or production:
 - o occurs outside of the purposes of this Bill or of the performance of their duties as an entrusted person; and
 - o is not required or authorised by a Commonwealth law, or a law of a State or Territory.

VET information is defined in clause 3 as being information in relation to a registered training organisation that is held by the NVR and relates to the performance of its functions.

An entrusted person for the purposes of this clause means any of the following:

- a Commissioner
- the Chief Executive Officer
- a staff member of the NVR
- a consultant engaged under clause 184.

Subdivision B – Information sharing

Clause 205 – Disclosure of information by National VET Regulator

Subclause 205(1) provides that, for the purpose of administering laws about vocational education and training, the NVR may disclose information to:

- the Secretary (as defined in clause 3); or
- a Commonwealth authority (as defined in clause 3); or
- a State or Territory authority (as defined in clause 3); or
- a person holding an office or appointment under a Commonwealth or State or Territory law; or
- another VET Regulator (as defined in clause 3); or
- the National Centre for Vocational Education Research (or its successor).

The effect of subclause 205(2) is that, where the NVR discloses personal information under subclause 205(1) to a person holding an office or appointment under a

Commonwealth or State or Territory law or the National Centre for Vocational Education Research (or its successor), the NVR must advise the person about whom the personal information relates of the disclosure and details of the information disclosed. This advice must be in writing.

Clause 206 – Advising State/Territory Education Ministers about concerns or proposed cancellation of registration

Subclause 206(1) provides that the NVR may advise State or Territory Education Ministers if:

- the NVR has serious concerns about a registered training organisation that provides all or part of a VET course in the State or Territory in question; or
- it proposes to cancel the registration of an NVR registered training organisation that provides all or part of a VET course in that State or Territory; or
- an NVR registered training organisation has given written notice to the Regulator seeking to have its registration withdrawn.

If it does so, the NVR may also advise the following (per subclause 206(2)):

- a person holding an office or appointment under a Commonwealth or State or Territory law; or
- Commonwealth employees of the prescribed kind; or
- employees of the prescribed kind in the State or Territory in question.

Clause 207 – Disclosure of information to occupational licensing bodies etc.

Subclause 207(1) provides that, if it considers it appropriate, the NVR may disclose information to an occupational licensing body or other industry body that deals with or has an interest in vocational education and training (other than a State or Territory authority). Other industry bodies would include but not be limited to, for example, industry skills councils, state advisory bodies, industry peak bodies and other industry associations.

The effect of subclause 207(2) is that, where the NVR discloses information under subclause 207(1), the NVR must advise the person about whom the personal information relates of the disclosure and details of the information disclosed. This advice must be in writing.

Clause 208 – Disclosure of information in accordance with international cooperative arrangements

This clause provides that the NVR may disclose information about assessing or regulating training organisations to regulatory authorities in other countries if Australia has cooperative arrangements with those countries about assessing or

regulating registered training organisations and disclosure is consistent with these arrangements.

Clause 209 – Release of information to the public

Subclause 209(1) provides that the NVR may release information to the public where it is satisfied that release would:

- reasonably inform someone's choice about whether or not to enrol as a VET student with a registered training organisation; or
- encourage improvement in the quality of vocational education and training services provided; or
- encourage compliance with the Australian Qualifications Framework.

Subclause 209(2) provides that the NVR may provide for release of information under subclause 209(1) by authorising the following to release the information:

- a Commonwealth authority; or
- a State or Territory authority; or
- a person holding an office or appointment under a Commonwealth or State or Territory law.

Clause 210 – Disclosure of information to the National VET Regulator

Subclause 210(1) provides that the NVR may request the following to disclose information to it in accordance with the request:

- a Commonwealth authority; or
- a State or Territory authority; or
- a person holding an office or appointment under a Commonwealth or State or Territory law;
- another VET Regulator;
- an occupational licensing body or other industry body (apart from a State or Territory Authority) that deals with or has an interest in vocational education and training.

Subclause 210(2) provides that disclosure by persons in response to a request by the NVR is taken to be a disclosure authorised by law for the purposes of the following:

- Information Privacy Principle 11(1)(d) of section 14 of the *Privacy Act 1988*; and
- National Privacy Principle 2.1(g) of Schedule 3 of the *Privacy Act 1988*; and
- Any provision of a State or Territory law that provides that personal information may be disclosed where disclosure is authorised by law

Subclause 210(3) provides that the following must disclose information requested by the NVR even if, despite subclause 210(2), disclosure would otherwise be prevented by a State or Territory law:

- a State or Territory authority; and
- a person holding an office or appointment under a Commonwealth or State or Territory law; and
- another VET Regulator.

Subdivision C – VET student records

Clause 211 – VET student records to be provided to the National VET Regulator – executive officers etc.

Subclause 211(1) provides that a person who possesses or controls VET student records relating to a training organisation or a former registered training organisation must provide copies of them to the NVR if:

- the person is or was an executive officer or high managerial agent of the organisation; and
- either the organisation's registration has been cancelled and arrangements for the transfer of some or all of the records to the NVR have not been made under clause 213; or
- the organisation has effectively ceased to operate – even though it may still be an NVR registered training organisation.

It is intended that an organisation may be taken to have effectively ceased to operate in circumstances such as, but not limited to,

- where training and assessment has ceased being undertaken without advice regarding its recommencement being provided to students by the registered training organisation;
- where students have discovered premises locked and inaccessible during usual business hours of the registered training organisation;
- where high managerial agents and executive officers are consistently not contactable at business premises; or
- where a high managerial agent has indicated to the NVR that the organisation is ceasing operations but an application for withdrawal has not been received.

The effect of subclause 211(2) is that where the requirements of this clause operate, the person must provide the copies of the records to the NVR within the following timeframes:

- where an organisation's registration has been cancelled – within 30 days from when the cancellation takes effect; and
- where an organisation has effectively ceased to operate – within 30 days from when the operations ceased.

Subclause 211(3) provides that persons commit an offence if they fail to comply with subclause 211(2). The maximum penalty for this offence will be 300 penalty units (currently \$33,000).

Subclause 211(4) provides that persons are liable for a civil penalty if they fail to comply with subclause 211(2). The maximum civil penalty will be 600 penalty units (currently \$66,000).

Clause 212 – National VET Regulator may request VET student records to be provided to Regulator

The effect of this clause is that, where the NVR considers someone other than a person mentioned in subclause 211(1) holds VET student records relating to a training organisation or a former training organisation, the NVR may, by written notice, request the person to provide a copy of the records to the NVR within a time as specified in the notice.

Clause 213 – Transfer of VET student records to another registered training organisation

Subclause 213(1) provides that if a VET student transfers from one registered training organisation to an NVR registered training organisation, then:

- the student may request the first organisation to transfer his or her VET student records to the second organisation; or
- the second organisation may request the first organisation to transfer the person's VET student records to it because the student has enrolled in the second organisation.

Subclause 213(2) provides that the second organisation must advise the NVR by written notice of the transfer of any VET student records.

Clause 214 – National VET Regulator's management of VET student records

Subclause 214(1) provides that the NVR may provide a VET student record to a registered training organisation if the student in question enrolls at that organisation and requests the NVR to do so, or the organisation requests the transfer because the student has enrolled at the organisation.

Subclause 214(2) provides that, if the NVR considers it appropriate, it may provide a VET student record to a registered training organisation on its own initiative.

Subclause 214(3) provides that if the NVR discloses personal information under subclause 214(2) it must advise the person concerned in writing of the disclosure and the details of the information disclosed.

Part 10

Reporting requirements

Outline of Part

Part 10 of the Bill covers annual reports that the NVR must provide to the Minister for tabling in Parliament and the required contents of the VET National Register.

Detailed explanation

Clause 215 – Annual report

Subclause 215(1) provides that the NVR must give the Minister (for presentation to Parliament) annual reports relating to the performance of the NVR's functions. These annual reports relate to each financial year and must be provided to the Minister as soon as practicable after the end of each financial year.

A note draws the reader's attention to section 34C of the *Acts Interpretation Act 1901* which contains provisions about periodic reports. Amongst other things, section 34C provides that, where an Act requires a periodic report to be given to the Minister for presentation to Parliament, but does not specify a time for tabling the report, the Minister must cause a copy of the report to be tabled in both Houses of Parliament within 15 sitting days after receipt (subsection 34C(3)).

Subclause 215(2) provides that for the purposes of subclause 215(1), a financial year means a period that commences on the day this clause commences and finishes on 30 June 2012.

Subclause 215(3) provides that the NVR must include the following in the annual reports:

- an assessment of the extent to which the NVR's operations in that year have contributed to the objectives of the NVR's strategic plan and annual operating plan for the year; and
- any variations of the strategic plan and annual operating plan that have taken effect during the year; and
- an evaluation of the NVR performance against key performance indicators that have been agreed by the Minister; and
- an evaluation of the NVR's overall performance during the year against other performance indicators in the annual operating plan for the year; and

- a statement about the compliance of the NVR during the year with the Standards for VET Regulators; and
- a report on whether the service standards have been met by the NVR during the year, including reasons where the service standards have not been met; and
- details of the number of directions given to the NVR by the Minister during the year; and
- details of the number and types of matters relating to vocational education and training which the Commonwealth, State and Territory Education Ministers referred to the NVR during the year and a general description of the NVR's response; and
- details of the number and types of matters relating to vocational education and training which the Ministerial Council referred to the NVR during the year and a general description of the NVR's response; and
- the financial statements that are required by section 49 of the *Financial Management and Accountability Act 1997*; and
- an audit report on those financial statements under section 57 of the *Financial Management and Accountability Act 1997*.

The statement of compliance with the Standards for VET Regulators would outline any reasons for non-compliance and would be backed by a self-assessment undertaken by the NVR.

Section 49 of the *Financial Management and Accountability Act 1997* requires a Chief Executive to give the annual financial statements required by the Finance Minister's Orders to the Auditor-General. These annual financial statements must give a true and fair view of the matters that the Orders require to be included in the statements.

Section 57 of the *Financial Management and Accountability Act 1997* requires the Auditor-General to examine those financial statements and report whether they have been prepared in accordance with the Finance Minister's Orders and give a true and fair view of the matters required by the Orders.

Subclause 215(4) provides that the Minister must give a copy of the report to relevant Ministers for the parties comprising the Ministerial Council (except the Commonwealth Minister) at the same time the report is presented to the Australian Parliament.

Clause 216 – National Register

Subclause 216(1) provides that the NVR must ensure the following are included on the National Register:

The following details for each NVR registered training organisation:

- business name and business address
- names of executive officers and high managerial agents

- scope of registration
- period of registration
- conditions imposed on registration under subclause 29(1)
- any VET qualifications or VET statements of attainment that have been cancelled.

The following details where all or part of an NVR registered training organisation's scope of registration has been suspended:

- period and extent of the suspension
- reason for the suspension
- names of the organisation's executive officers and high managerial agents.

The following details where an NVR registered training organisation's registration has been cancelled:

- day from which the cancellation takes effect
- the reason for the cancellation
- if applicable, the VET qualifications or VET statements of attainment that have been cancelled
- names of the organisation's executive officers and high managerial agents.

The following details for each VET accredited course:

- the person in respect of whom the course is accredited;
- the person's name and address, or business name and address;
- period for which the course is accredited
- any conditions imposed on the accreditation of the course under subclause 48(1).

The following details for each cancelled VET accredited course:

- the person in respect of whom the course is accredited;
- the person's name and address, or business name and address;
- day from which the cancellation takes effect
- the reasons for the cancellation.

Subclause 216(2) provides that the NVR may ensure that details are removed from the National Register, for example about an NVR registered training organisation whose registration has been withdrawn.

Subclause 216(3) provides that the regulations may prescribe matters that the NVR must ensure are entered on the National Register. This does not prevent the NVR from ensuring that other matters are entered on the National Register (subclause 216(4)).

Subclause 216(5) provides that the National Register is to be made available for inspection on the internet.

Part 11

Strategic and annual operating plans

Outline of Part

Part 11 of the Bill contains provisions concerning the NVR's strategic plans and annual operating plans and how they are to be developed, approved, revised and varied. When performing its functions and exercising its powers, the NVR must taking account of strategic plans and annual operating plans.

Detailed explanation

Division 1 – Strategic plans

Clause 217 – Development of strategic plan

Subclause 217(1) provides that the NVR must develop a rolling series of written 3 year strategic plans that define the principal objectives of the NVR for the 3 year period and gives a broad outline of the strategies to be used by the NVR in order to achieve those objectives.

Subclause 217(2) provides that the first strategic plan is to cover the 3 year period from 1 July 2011 to 30 June 2014 and that later strategic plans are to cover subsequent periods of 3 years at a time.

Subclause 217(3) provides that a strategic plan is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 218 – Approval of strategic plan

This clause provides for the manner in which the strategic plan is to be approved by the Minister, including the timeframes for its submission by the NVR to the Minister. Subclause 218(3) provides that a strategic plan takes effect either on the date it is approved by the Minister, or the first day of three year period it applies to, whichever occurs later.

Subclause 218(1) provides that the NVR is required to provide the Minister with the first strategic plan at the end of 2 months after the day this clause commences. Subsequent strategic plans are to be submitted to the Minister before 31 January of the final year of the 3 year period, unless the Minister agrees a later submission. Note that the Minister may only grant extensions until 31 March of that third year.

Subclause 218(2) provides that the NVR does not need to provide the Minister with a strategic plan for approval in a calendar year if:

- the first year to which a plan relates is a year in respect of which a strategic plan is in force; and
- at the request of the NVR, the Minister determines that subclause 218(2) applies for this particular calendar year.

Clause 219 – Variation of strategic plans

Subclause 219(1) allows the NVR to review a strategic plan, either prior its commencement, or during the period to which it applies. A note draws attention to clause 221 about varying annual operating plans.

Subclause 219(2) provides that the NVR can vary a strategic plan with the approval of the Minister. If the variation is only of a minor nature, the NVR may vary a plan without needing to obtain the Minister's approval and the variation takes effect on the day that it is made (subclause 219(6)). In addition, the NVR must inform the Minister of a variation made of a minor nature as soon as practicable after the minor variation has been made (subclause 219(7)).

Subclause 219(3) provides that the Minister may, at any time request that the NVR vary a strategic plan (whether or not it has yet to come into force). The NVR must vary the plan accordingly and seek the Minister's approval of the variations made (subclause 219(4)).

If a strategic plan is varied after the plan has commenced, subclause 219(5) makes it clear that the varied plan has effect from the date the variation is approved, not from the date the plan commenced.

Division 2 – Annual operational plans

Clause 220 – Development of annual operational plan

Subclause 220(1) provides that the NVR must give the Minister annual operating plans covering the 12 month period:

- starting on the day this clause commences and ending on 30 June 2012 – within 2 months of commencement of this clause; and
- beginning on 1 July in a later calendar year – before 30 April in that calendar year.

Subclause 220(2) provides that the annual operating plan must set out the actions to be taken by the NVR in that year to contribute to the achievement of the goals set out in the strategic plan (as dealt with by Division 1 of Part 11 – Strategic plans), and must also identify those performance indicators against which the NVR’s performance can be assessed.

Subclause 220(3) provides that the annual operating plan comes into effect at the beginning of the period to which it relates.

Subclause 220(4) provides that the period beginning on the day this clause commences and ending on 30 June 2012 is taken to be a 12 month period.

Subclause 220(5) provides that an annual operating plan is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 221 – Variation of annual operational plan

This clause provides that, when the NVR submits a proposal to the Minister to vary a strategic plan, the NVR must also make consequential variations to a relevant annual operating plan as required.

Division 3 – Compliance with plans

Clause 222 – Compliance with plans

This clause provides that when it performs its functions and exercises its powers, the NVR and the Chief Executive Officer must take into account the strategic plan and the annual operating plan that are in force.

Part 12

Miscellaneous

Outline of Part

Part 2 of the Bill contains miscellaneous provisions concerning delegations, partnerships and unincorporated associations, fees that the NVR can charge for goods and services it provides, protection from civil actions and the ability of the Governor-General to make regulations for the purposes of the Bill.

Detailed explanation

Division 1—Delegations

Clause 223 – Delegation by the Minister

This clause provides that the Minister may in writing delegate all or any powers of the Minister under the Bill (apart from clause 91 - which allows the Minister to nominate a Federal Magistrate, or 160 - which allows the Minister to give directions to the NVR) to the Chief Commissioner, or to the Secretary.

Clause 224 – Delegation by the National VET Regulator—government authorities etc.

Subclause 224(1) provides that the NVR may in writing delegate all or any of its functions and powers to an NVR staff member, a consultant engaged under clause 184, a Commonwealth authority, or to a person holding an office or appointment under a Commonwealth law. A delegate of the NVR under this subclause must comply with any written directions of the NVR (subclause 224(3)).

Subclause 224(2) provides that, if the State or Territory concerned agrees to the delegation, the NVR may in writing delegate all or any of its functions and powers to a State or Territory authority, or to a person holding an office or appointment under a State or Territory law. A delegate of the NVR under this subclause must comply with any written directions of the NVR (subclause 224(3)).

Subclause 224(4) provides that delegates under subclauses 224(1) and (2) cannot sub-delegate any of the functions or powers delegated to them without obtaining the

NVR's written consent. Sub-delegates must comply with any written directions that are given by the delegate (subclause 224(5)) and where delegates themselves have been given directions, they must give corresponding directions to their sub-delegates (subclause 224(6)).

Subclause 224(7) provides that sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to sub-delegations in the same way that they apply to delegations. Section 34AA concerns the ability to delegate powers to persons who from time to time hold or occupy a specified position or office. Section 34AB concerns the effect of delegations. Section 34A provides that where the exercise of a power is dependent on an opinion, belief or state of mind, the delegate can exercise the power based on their own opinion, belief or state of mind.

Clause 225 – Delegation by the National VET Regulator—occupational licensing bodies and other industry bodies

This clause provides that the NVR may in writing delegate all or any of its functions and powers to an occupational licensing body or another industrial body (apart from one covered by clause 224) that deals with or has an interest in matters relating to vocational education and training.

Other industry bodies would include but not be limited to, for example, industry skills councils, state advisory bodies, industry peak bodies and other industry associations.

A delegate of the NVR under this clause must comply with any written directions of the NVR.

Clause 226 – Delegation by the National VET Regulator—NVR registered training organisations

This clause provides that that NVR may in writing delegate the NVR's function of both amending a registered training organisation's scope of registration and accrediting a course, or just accrediting a course or just amending its scope of registration, to an NVR registered training organisation. If it does so, the organisation must notify the NVR if it performs the function within 30 days of performing the function.

The NVR will develop administrative guidelines which will provide advice about circumstances under which these delegations will be made.

Division 2—Provisions affecting partnerships

Clause 227 – Partnerships—rights and obligations

Subclause 227(1) provides that this Bill applies to partnerships as if they are persons, subject to the changes specified in:

- this clause
- clause 135 (liability of partners in a partnership)
- clause 228 (continuity of partnerships)
- clause 229 (partnership ceases to exist).

Subclause 227(2) provides that where any rights are exercisable by a partnership, they are exercisable by each partner instead.

Subclause 227(3) provides that, where any obligations would otherwise be imposed on a partnership, the obligations are instead imposed on each partner, but may be discharged by any of the partners in the partnership.

Subclause 227(4) provides that, subject to clause 135 (which covers the liability of partners in a partnership), partners are jointly and severally liable to pay any amounts that may be payable under this Bill.

Clause 228 – Continuity of partnerships

This clause provides that, for the purposes of how this Bill applies to a partnership, any change of the composition of the partnership does not affect its continuity.

Clause 229 – Partnership ceases to exist

Subclause 229(1) provides that, where a partnership ceases to exist, those persons who were partners immediately before the partnership ceased to exist, remain liable to satisfy any obligations imposed by this Bill.

Subclause 229(2) provides that clause 227 applies as if references to partnerships were references to partnerships ceasing to exist and that references to partners of the partnership were references to anyone who was a partner immediately before the partnership ceased to exist.

Subclause 229(3) provides that, for the purposes of clause 229, a partnership is taken to have ceased to exist if its dissolution does not result in the creation of another partnership.

Division 3—Provisions affecting unincorporated associations

Clause 230 – Unincorporated associations—rights and obligations

Subclause 230(1) provides that this Bill applies to unincorporated associations as if they are persons, subject to the changes specified in:

- this clause
- clause 136 (liability of members of unincorporated associations)
- clause 231 (unincorporated association ceases to exist).

Subclause 230(2) provides that where any rights are exercisable by an unincorporated association, they are exercisable by each member of the association's committee of management instead.

Subclause 230(3) provides that, where any obligations would otherwise be imposed on an unincorporated association, the obligations are instead imposed on each member of the association's committee of management, but may be discharged by any of the members of the committee of management.

Subclause 230(4) provides that, subject to clause 136 (which covers the liability of members of unincorporated associations), members are jointly and severally liable to pay any amounts that may be payable under this Bill.

Clause 231 – Unincorporated association ceases to exist

Subclause 231(1) provides that, where an unincorporated association ceases to exist, those persons who were members of the association's committee of management immediately before the association ceased to exist, remain liable to satisfy any obligations imposed by this Bill.

Subclause 231(2) provides that clause 230 applies as if references to unincorporated associations were references to unincorporated associations ceasing to exist and that references to members of the association's committee of management were references to anyone who was a member immediately before the association ceased to exist.

Subclause 231(3) provides that, for the purposes of clause 231, an unincorporated association is taken to have ceased to exist if its dissolution does not result in the creation of another association.

Division 4—Miscellaneous

Clause 232 – Fees

Subclause 232(1) provides that the Minister may by legislative instrument determine the amounts of fees that the NVR can charge for the goods and services that it provides when performing its functions (apart from the service under subclause 35(2) concerning audits it may conduct on an NVR registered training organisation's operations to determine any systemic issues relating to the quality of vocational education and training).

Subclause 232(2) provides that, before making any such determination, the Minister must obtain the approval of the Ministerial Council for the amount of a fee relating to

goods or services provided to nationally registered training organisations, or relating to goods or services in respect of VET accredited courses.

Subclause 232(3) provides that, before making a determination, the Minister must consult the NVR about any other fees relating to goods or services not covered by subclause 232(2).

Subclause 232(4) provides that the Minister's determination may also cover how a fee is to be worked out.

Subclause 232(5) provides that the Minister's determination may also determine other matters about the payment of fees including when fees may be paid in instalments, how fees may be set off against other amounts payable and when fees may be waived.

Subclause 232(6) provides that fees determined under subclause 232(1) must not amount to taxation.

A note to subclause 232(1) provides that neither section 42 (disallowance), nor Part 6 of the *Legislative Instruments Act 2003* relating to 'sunsetting' apply to a legislative instrument that determines fees (see sections 44 and 54 of that Act).

Pursuant to section 42 of the Legislative Instruments Act, where a legislative instrument has been tabled in one of the Houses of Parliament and a notice of motion to disallow the instrument has been given and passed (within the times prescribed in section 42), the instrument ceases to have effect. Subsection 44(1) of the Legislative Instruments Act provides that section 42 does not apply in relation to a legislative instrument where enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme - unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable (which is not the case here). Subsection 44(1) of the Legislative Instruments Act would apply with respect to a determination under subclause 232(1) of the Bill and render section 42 inapplicable.

Part 6 of the Legislative Instruments Act ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. Subsection 54(1) of the Legislative Instruments Act provides that Part 6 does not apply where enabling legislation for an instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme. That is the case with respect to a determination under subclause 232(1) of the Bill.

Clause 233 – Protection from civil actions

This clause provides that the NVR, a Commissioner, a staff member of the NVR and a consultant to the NVR are not liable to actions or other proceedings for damages

relating to acts they do or fail to do in good faith in the performance or exercise or the purported performance or exercise of the NVR's functions or powers.

Clause 234 – Compensation for acquisition of property

This clause provides that if the operation of this Bill would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person, and that if the Commonwealth and the person do not agree on the amount, the person may start court proceedings for recovery of a reasonable amount as the court determines.

Clause 235 – Regulations

This clause enables the Governor-General to make regulations prescribing matters required, necessary or convenient for the operation of or giving effect to this Bill. This includes regulations to prescribe scales of expenses to be allowed to persons who are required to give information, documents or things under Division 1 of Part 5 of this Bill. Any such regulations would be legislative instruments under section 6(a) of the *Legislative Instruments Act 2003*.