



National Vocational Education and Training Regulator (Transitional Provisions) Act 2011

No. 13, 2011

**An Act to deal with transitional matters arising
from the enactment of the *National Vocational
Education and Training Regulator Act 2011*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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National Vocational Education and Training Regulator (Transitional Provisions) Act 2011

No. 13, 2011

**An Act to deal with transitional matters arising
from the enactment of the *National Vocational
Education and Training Regulator Act 2011*, and for
related purposes**

[Assented to 12 April 2011]

The Parliament of Australia enacts:

National Vocational Education and Training Regulator (Transitional Provisions) Act 2011

No. 13, 2011 1

1 Short title

This Act may be cited as the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2011
2. Schedule 1	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	1 July 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Transitional provisions

Part 1—Preliminary

1 Interpretation

(1) In this Schedule:

commencement means the day this item commences.

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

record, in relation to a registered training organisation registered by a State VET Regulator, means a document, or an object, in any form (including any electronic form) that is, or has been, kept by the Regulator because of:

- (a) any information or matter that it contains or that can be obtained from it; or
- (b) its connection with any event, person, circumstance or thing.

relevant commencement day means:

- (a) for a referring State covered by paragraph 5(1)(a) of the new law—the later of:
 - (i) the day that the legislation passed by the Parliament of the State referring the matters covered by subsections 5(3) and (5) of the new law to the Commonwealth Parliament receives the Royal Assent; and
 - (ii) the day this item commences; or
- (b) for a State covered by subsection 7(2) of the new law—the day that the legislation passed by the Parliament of the State:
 - (i) adopting the relevant version of the new law and the relevant version of this Act; and
 - (ii) referring the matter covered by subsection 5(5) of the new law to the Commonwealth Parliament;comes into force; or
- (c) for a non-referring State in relation to a registered training organisation mentioned in subitem 26(2) or 27(4)—the day that the National VET Regulator registers the organisation; or
- (d) for a Territory—the day this item commences.

show cause notice means a written notice given to a registered training organisation that:

- (a) sets out the grounds on which a State VET Regulator is giving the notice; and
- (b) invites the organisation to respond to the State VET Regulator, in writing, addressing the grounds on which the Regulator has given the notice.

The notice may also state the period within which the organisation must give the written response to the State VET Regulator.

TVET Australia means TVET Australia Limited (ABN 99 062 758 632).

- (2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.
- (3) Unless the context otherwise requires, a reference in this Schedule to a State VET Regulator includes a reference to a VET Regulator of a Territory.
- (4) In relation to a State VET Regulator of a non-referring State, a reference in this Schedule to:
 - (a) a registered training organisation registered by the State VET Regulator of the non-referring State; or
 - (b) a registered training organisation registered in the non-referring State;is to be read as a reference to a registered training organisation that:
 - (c) is a registered provider (other than a secondary school); or
 - (d) provides all or part of a VET course in the non-referring State and a referring State or a Territory; or
 - (e) provides all or part of a VET course in the non-referring State and offers all or part of a VET course in a referring State or a Territory to be provided in the referring State or Territory.
- (5) In addition to its effect apart from this subitem, subitem (4) also has the effect it would have if each reference to a registered training organisation were, by express provision, confined to a trading corporation.

Part 2—Continuation of existing registrations etc.

Division 1—Continuation of existing registrations etc.

2 Registration of registered training organisations—referring States

- (1) This item applies to a registered training organisation that is, immediately before the relevant commencement day, registered in a referring State.
- (2) Before the end of 90 days beginning on the relevant commencement day, the registered training organisation must:
 - (a) apply to the National VET Regulator for registration under the new law; or
 - (b) seek confirmation, in writing, from the relevant State VET Regulator that:
 - (i) the organisation's registration has been transferred to the National VET Regulator; and
 - (ii) a copy of records, of a kind specified in a determination made by the National VET Regulator, have been provided by the State VET Regulator to the National VET Regulator;and provide that confirmation to the National VET Regulator.
- (3) However, subitem (2) does not apply if the registered training organisation and the National VET Regulator are notified, before the end of 90 days beginning on the relevant commencement day, in writing, by the relevant State VET Regulator that the State VET Regulator has:
 - (a) transferred the organisation's registration to the National VET Regulator; and
 - (b) provided a copy of records, of a kind specified in a determination made by the National VET Regulator, for a period before the relevant commencement day.
- (4) If a registered training organisation gives the National VET Regulator written confirmation, as mentioned in paragraph (2)(b), but a copy of

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Part 2 Continuation of existing registrations etc.

the records mentioned in subparagraph (2)(b)(ii) have not actually been provided by the State VET Regulator to the National VET Regulator:

- (a) the National VET Regulator must notify the organisation, in writing, of that fact; and
 - (b) the organisation must, within 90 days of being so notified, apply to the National VET Regulator for registration under the new law.
- (5) The registered training organisation is taken to be an NVR registered training organisation for the period:
- (a) beginning on the relevant commencement day; and
 - (b) ending on the day on which:
 - (i) the National VET Regulator notifies the organisation of its decision under the new law to grant or reject its application; or
 - (ii) the National VET Regulator updates the National Register to record that the organisation is now registered by the National VET Regulator.

Note 1: An NVR registered training organisation is registered under section 17 of the new law.

Note 2: Subparagraph (5)(b)(i) may apply in the circumstances described in subitem (4).

Note 3: Records relating to a registered training organisation that applies for registration still need to be provided by the relevant State regulator, see item 27.

**3 Registration of registered training organisations—
non-referring States**

- (1) This item applies to a registered training organisation that is, immediately before commencement, registered in a non-referring State.
- (2) Before the end of 90 days beginning on commencement, the registered training organisation must:
 - (a) apply to the National VET Regulator for registration under the new law; or
 - (b) seek confirmation, in writing, from the relevant State VET Regulator that:
 - (i) the organisation's registration has been transferred to the National VET Regulator; and
 - (ii) a copy of records, of a kind specified in a determination made by the National VET Regulator, have been

provided by the State VET Regulator to the National VET Regulator;

and provide that confirmation to the National VET Regulator.

- (3) However, subitem (2) does not apply if the registered training organisation and the National VET Regulator are notified, before the end of 90 days beginning on commencement, in writing, by the relevant State VET Regulator that the State VET Regulator has:
- (a) transferred the organisation's registration to the National VET Regulator; and
 - (b) provided a copy of records, of a kind specified in a determination made by the National VET Regulator, for a period before commencement.
- (4) If a registered training organisation gives the National VET Regulator written confirmation, as mentioned in paragraph (2)(b), but a copy of the records mentioned in subparagraph (2)(b)(ii) have not actually been provided by the State VET Regulator to the National VET Regulator:
- (a) the National VET Regulator must notify the organisation, in writing, of that fact; and
 - (b) the organisation must, within 90 days of being so notified, apply to the National VET Regulator for registration under the new law.
- (5) The registered training organisation is taken to be an NVR registered training organisation for the period:
- (a) beginning on commencement; and
 - (b) ending on the day on which:
 - (i) the National VET Regulator notifies the organisation of its decision under the new law to grant or reject its application; or
 - (ii) the National VET Regulator updates the National Register to record that the organisation is now registered by the National VET Regulator.

Note 1: An NVR registered training organisation is registered under section 17 of the new law.

Note 2: Subparagraph (5)(b)(i) may apply in the circumstances described in subitem (4).

Note 3: Records relating to a registered training organisation that applies for registration still need to be provided by the relevant State regulator, see item 27.

4 Registration of registered training organisations— Territories

If a registered training organisation was, immediately before the relevant commencement day, registered under a Territory law, the organisation is taken to be an NVR registered training organisation for the period:

- (a) beginning on the relevant commencement day; and
- (b) ending on the day on which:
 - (i) the organisation's registration would expire under the relevant Territory law but for this item; or
 - (ii) the organisation's registration is cancelled under subsection 39(1) of the new law; or
 - (iii) the withdrawal of the organisation's registration under section 42 of the new law takes effect;whichever occurs first.

Note: An NVR registered training organisation is registered under section 17 of the new law.

5 Conditions of registration etc.

- (1) To avoid doubt, if a registered training organisation is taken to be an NVR registered training organisation under this Division:
 - (a) any condition imposed on the organisation or the organisation's registration, before the relevant commencement day, requiring a fee, however described, to be paid to the relevant State, Territory or State VET Regulator continues in force as if it were a condition imposed under the new law; and
 - (b) a fee mentioned in paragraph (a) is, on and after the relevant commencement day, payable to the National VET Regulator, even if the State or Territory law that imposed the fee, or allowed such a fee to be imposed, is amended or repealed; and
 - (c) the National VET Regulator may, in accordance with the new law, impose conditions on the organisation's registration, as if the organisation had applied for registration and the Regulator had decided to grant the application.
- (2) An inference that a registered training organisation complies with the VET Quality Framework is not to be made only because the

organisation is taken to be an NVR registered training organisation under this Division.

6 Suspension of registered training organisations

If:

- (a) a registered training organisation is taken to be an NVR registered training organisation under this Division; and
- (b) either:
 - (i) in the case of an organisation registered in a referring State or a Territory—all or part of the organisation's scope of registration, immediately before the relevant commencement day, was suspended; or
 - (ii) in the case of an organisation registered in a non-referring State—all or part of the organisation's scope of registration, immediately before commencement, was suspended;

the suspension continues until:

- (c) the National VET Regulator is satisfied that the organisation has done whatever is required for the suspension to be lifted (which may be something that was not required by the relevant State VET Regulator); or
- (d) the National VET Regulator takes action in relation to the suspension under the new law.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

Division 2—Applications for registration or renewal of registration

7 Pending applications for registration—referring States and Territories

(1) If:

- (a) an organisation has, before the relevant commencement day, applied to a State VET Regulator of a referring State or the VET Regulator of a Territory for registration; and
- (b) the State VET Regulator has not decided the application before the relevant commencement day;

then:

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- (c) the National VET Regulator must decide the application under the new law within 6 months after the relevant commencement day; and
- (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must register the organisation as an NVR registered training organisation under section 17 of the new law; and
 - (ii) the Regulator must notify the organisation of its decision in accordance with section 18 of the new law; and
- (e) if the National VET Regulator decides to reject the application—the Regulator must notify the organisation of its decision in accordance with section 18 of the new law.

Note 1: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

Note 2: The National VET Regulator is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 11(1), see subitem 11(4).

- (2) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the NVR registered training organisation's registration.

8 Pending applications for registration—non-referring States

- (1) If:
 - (a) an organisation has, before commencement, applied to a State VET Regulator of a non-referring State for registration; and
 - (b) the State VET Regulator has not decided the application before commencement;then:
 - (c) the National VET Regulator must decide the application under the new law within 6 months after commencement; and
 - (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must register the organisation as an NVR registered training organisation under section 17 of the new law; and

- (ii) the Regulator must notify the organisation of its decision in accordance with section 18 of the new law; and
- (e) if the National VET Regulator decides to reject the application—the Regulator must notify the organisation of its decision in accordance with section 18 of the new law.

Note: The National VET Regulator is taken to have granted the application if it does not make a decision within 6 months after commencement or a longer period determined under subitem 11(1), see subitem 11(4).

- (2) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the NVR registered training organisation's registration.

9 Pending applications for renewal of registration—referring States and Territories

- (1) If:
 - (a) a registered training organisation registered in a referring State or a Territory has applied to the relevant State VET Regulator for renewal of its registration; and
 - (b) the State VET Regulator has not decided the application before the relevant commencement day;then:
 - (c) the National VET Regulator must decide the application under the new law within 6 months after the relevant commencement day; and
 - (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must register the organisation as an NVR registered training organisation under section 17 of the new law; and
 - (ii) the Regulator must notify the organisation of its decision in accordance with section 18 of the new law; and
 - (e) if the National VET Regulator decides to reject the application—the Regulator must notify the organisation of its decision in accordance with section 18 of the new law.

Note 1: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

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Note 2: The National VET Regulator is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 11(1), see subitem 11(4).

- (2) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the NVR registered training organisation's registration.
- (3) The registered training organisation is taken to be an NVR registered training organisation for the period:
 - (a) beginning on the relevant commencement day; and
 - (b) ending:
 - (i) on the day on which the National VET Regulator makes its decision; or
 - (ii) if the Regulator determines a longer period under subitem 11(1)—on the last day of that period; or
 - (iii) if the Regulator does not determine a longer period under subitem 11(1)—on the day that occurs 6 months after the relevant commencement day;whichever occurs first.

Note: If subparagraph (3)(b)(iii) applies, the registered training organisation's registration will be taken to be renewed for 2 years, see subitem 11(5).

- (4) An inference that a registered training organisation complies with the VET Quality Framework is not to be made only because the organisation is taken to be an NVR registered training organisation for the period mentioned in subitem (3).

10 Pending applications for renewal of registration— non-referring States

- (1) If:
 - (a) a registered training organisation registered in a non-referring State has applied to the relevant State VET Regulator for renewal of its registration; and
 - (b) the State VET Regulator has not decided the application before commencement;then:
 - (c) the National VET Regulator must decide the application under the new law within 6 months after commencement; and

- (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must register the organisation as an NVR registered training organisation under section 17 of the new law; and
 - (ii) the Regulator must notify the organisation of its decision in accordance with section 18 of the new law; and
- (e) if the National VET Regulator decides to reject the application—the Regulator must notify the organisation of its decision in accordance with section 18 of the new law.

Note: The National VET Regulator is taken to have granted the application if it does not make a decision within 6 months after commencement or a longer period determined under subitem 11(1), see subitem 11(4).

- (2) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the NVR registered training organisation's registration.
- (3) The registered training organisation is taken to be an NVR registered training organisation for the period:
 - (a) beginning on commencement; and
 - (b) ending:
 - (i) on the day on which the National VET Regulator makes its decision; or
 - (ii) if the Regulator determines a longer period under subitem 11(1)—on the last day of that period; or
 - (iii) if the Regulator does not determine a longer period under subitem 11(1)—on the day that occurs 6 months after commencement;whichever occurs first.

Note: If subparagraph (3)(b)(iii) applies, the registered training organisation's registration will be taken to be renewed for 2 years, see subitem 11(5).

- (4) An inference that a registered training organisation complies with the VET Quality Framework is not to be made only because the organisation is taken to be an NVR registered training organisation for the period mentioned in subitem (3).

11 Extension of time for considering applications

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- (1) If the National VET Regulator is satisfied that, for reasons beyond its control, a decision cannot be made within the 6 month period mentioned in paragraph 7(1)(c), 8(1)(c), 9(1)(c) or 10(1)(c), the Regulator may determine a longer period, of no more than 6 months, within which it must make a decision on an application.
- (2) If the National VET Regulator determines a longer period, it must do so not later than 6 weeks before the expiry of the 6 month period mentioned in paragraph 7(1)(c), 8(1)(c), 9(1)(c) or 10(1)(c), whichever applies.
- (3) If the National VET Regulator determines a longer period under subitem (1), the Regulator must, within 7 days of making the determination:
 - (a) notify the organisation concerned, in writing, of the determination; and
 - (b) give, in writing, the reasons for the determination.
- (4) If:
 - (a) a decision is not made within the 6 month period mentioned in paragraph 7(1)(c), 8(1)(c), 9(1)(c) or 10(1)(c) and the National VET Regulator does not determine a longer period; or
 - (b) the Regulator determines a longer period but does not make a decision within that period;the Regulator is taken to have granted the application.
- (5) If the National VET Regulator is taken to have granted an application, as mentioned in subitem (4), the organisation to which the application relates is taken to have been registered (including by way of a renewal of registration), for 2 years beginning on the first day after the 6 month period.
- (6) An inference that an organisation complies with the VET Quality Framework is not to be made only because the organisation is taken to have been registered as an NVR registered training organisation for the period mentioned in subitem (5).

Division 3—Applications for change of scope of registration

12 Pending applications for change of scope of registration—referring States and Territories

- (1) This item applies to a registered training organisation that is, immediately before the relevant commencement day, registered in a referring State or a Territory.
- (2) If:
- (a) a registered training organisation has, before the relevant commencement day, applied to a State VET Regulator to change its scope of registration to include a VET course or part of a VET course; and
 - (b) the State VET Regulator has not decided the application before the relevant commencement day;
- then:
- (c) the National VET Regulator must decide the application under the new law as soon as practicable; and
 - (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must determine the day from which the VET course, or part of the VET course, may be delivered by the organisation; and
 - (ii) the Regulator must notify the organisation of its decision in accordance with section 34 of the new law; and
 - (e) if the National VET Regulator decides to reject the application—the Regulator must notify the organisation of its decision in accordance with section 34 of the new law.
- Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).
- (3) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the NVR registered training organisation's registration.

13 Pending applications for change of scope of registration— non-referring States

- (1) This item applies to a registered training organisation that is, immediately before commencement, registered in a non-referring State.
- (2) If:
 - (a) a registered training organisation has, before commencement, applied to a State VET Regulator to change its scope of registration to include a VET course or part of a VET course; and
 - (b) the State VET Regulator has not decided the application before commencement;then:
 - (c) the National VET Regulator must decide the application under the new law as soon as practicable; and
 - (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must determine the day from which the VET course, or part of the VET course, may be delivered by the organisation; and
 - (ii) the Regulator must notify the organisation of its decision in accordance with section 34 of the new law; and
 - (e) if the National VET Regulator decides to reject the application—the Regulator must notify the organisation of its decision in accordance with section 34 of the new law.
- (3) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the NVR registered training organisation's registration.

Division 4—Applications for withdrawal of registration

14 Pending applications for withdrawal of registration— referring States and Territories

- (1) This item applies to a registered training organisation that is, immediately before the relevant commencement day, registered in a referring State or a Territory.
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(2) If:

- (a) a registered training organisation has, before the relevant commencement day, applied to a State VET Regulator to have its registration withdrawn; and
- (b) the State VET Regulator has not decided the application before the relevant commencement day;

then:

- (c) if the National VET Regulator is satisfied, in all the circumstances, that it is appropriate to allow the organisation's registration to be withdrawn—the Regulator must allow the registration to be withdrawn; and
- (d) the National VET Regulator must, by notice in writing, notify the organisation of its decision and, if the organisation's registration is to be withdrawn, the day from which the withdrawal takes effect.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

(3) If:

- (a) a registered training organisation's registration is withdrawn under this item; and
- (b) the organisation was issued with a certificate of registration;

the organisation must return the certificate to the National VET Regulator within 10 days of the day the withdrawal takes effect.

15 Pending applications for withdrawal of registration— non-referring States

(1) This item applies to a registered training organisation that is, immediately before commencement, registered in a non-referring State.

(2) If:

- (a) a registered training organisation has, before commencement, applied to a State VET Regulator to have its registration withdrawn; and
- (b) the State VET Regulator has not decided the application before commencement;

then:

- (c) if the National VET Regulator is satisfied, in all the circumstances, that it is appropriate to allow the

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organisation's registration to be withdrawn—the Regulator must allow the registration to be withdrawn; and

- (d) the National VET Regulator must, by notice in writing, notify the organisation of its decision and, if the organisation's registration is to be withdrawn, the day from which the withdrawal takes effect.

(3) If:

- (a) a registered training organisation's registration is withdrawn under this item; and
- (b) the organisation was issued with a certificate of registration;

the organisation must return the certificate to the National VET Regulator within 10 days of the day the withdrawal takes effect.

Part 3—Continuation of existing course accreditations etc.

Division 1—Continuation of existing accreditations etc.

16 Accreditation of VET accredited courses continue in force

- (1) If, immediately before the relevant commencement day, a course was accredited by:
- (a) the State VET Regulator of a referring State; or
 - (b) the VET Regulator of a Territory;
- the course is taken to be a VET accredited course for the period:
- (c) beginning on the relevant commencement day; and
 - (d) ending on the day on which:
 - (i) the course's accreditation would expire under the relevant State or Territory law but for this subitem; or
 - (ii) the course's accreditation is cancelled under subsection 52(1) of the new law.

Note: A course is accredited as a VET accredited course under section 44 of the new law.

- (2) To avoid doubt, if a course is taken to be a VET accredited course under subitem (1), the National VET Regulator may, in accordance with the new law, impose conditions on the accreditation of the VET accredited course.
- (3) An inference that a course meets the Standards for VET Accredited Courses or the Australian Qualifications Framework is not to be made only because the course is taken to be a VET accredited course under subitem (1).

17 Suspension of a course's accreditation

If:

- (a) a course is taken to be a VET accredited course under item 16; and
- (b) the course's accreditation, immediately before commencement, was suspended;

the suspension continues until:

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- (c) the National VET Regulator is satisfied that the person or entity in respect of whom the course is accredited has done whatever is required for the suspension to be lifted (which may be something that was not required by the relevant State VET Regulator); or
- (d) the National VET Regulator takes action in relation to the suspension under the new law.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

Division 2—Applications for accreditation, or renewal of accreditation, of a course

18 Pending applications for accreditation—referring States and Territories

- (1) If:
 - (a) a person or entity has, before the relevant commencement day, applied to a State VET Regulator of a referring State or the VET Regulator of a Territory for accreditation of a course; and
 - (b) the State VET Regulator has not decided the application before the relevant commencement day;then:
 - (c) the National VET Regulator must decide the application under the new law within 6 months after the relevant commencement day; and
 - (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must accredit the course as a VET accredited course under section 44 of the new law; and
 - (ii) the Regulator must notify the person or entity of its decision in accordance with section 45 of the new law; and
 - (e) if the National VET Regulator decides to reject the application—the Regulator must notify the person or entity of its decision in accordance with section 45 of the new law.

Note 1: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

Note 2: The National VET Regulator is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 20(1), see subitem 20(4).

- (2) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the course's accreditation.

19 Pending applications for renewal of accreditation— referring States and Territories

- (1) If:
- (a) a person or entity in respect of whom a VET accredited course is accredited has applied to a State VET Regulator of a referring State or the VET Regulator of a Territory for renewal of the accreditation of the course; and
 - (b) the State VET Regulator has not decided the application before the relevant commencement day;
- then:
- (c) the National VET Regulator must decide the application under the new law within 6 months after the relevant commencement day; and
 - (d) if the National VET Regulator decides to grant the application:
 - (i) the Regulator must accredit the course as a VET accredited course under section 44 of the new law; and
 - (ii) the Regulator must notify the person or entity of its decision in accordance with section 45 of the new law; and
 - (e) if the National VET Regulator decides to reject the application—the Regulator must notify the person or entity of its decision in accordance with section 45 of the new law.

Note 1: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

Note 2: The National VET Regulator is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 20(1), see subitem 20(4).

- (2) To avoid doubt, if the National VET Regulator decides to grant the application, the Regulator may, in accordance with the new law, impose conditions on the course's accreditation.

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Part 3 Continuation of existing course accreditations etc.

- (3) The course is taken to be a VET accredited course for the period:
- (a) beginning on the relevant commencement day; and
 - (b) ending:
 - (i) on the day on which the National VET Regulator makes its decision; or
 - (ii) if the Regulator determines a longer period under subitem 20(1)—on the last day of that period; or
 - (iii) if the Regulator does not determine a longer period under subitem 20(1)—on the day that occurs 6 months after the relevant commencement day;
- whichever occurs first.

Note: If subparagraph (3)(b)(iii) applies, the accreditation of the course will be taken to be renewed for 2 years, see subitem 20(5).

- (4) To avoid doubt, an inference that a course meets the Standards for VET accredited courses or the Australian Qualifications Framework is not to be made only because the course is taken to be a VET accredited course for the period mentioned in subitem (3).

20 Extension of time for considering applications

- (1) If the National VET Regulator is satisfied that, for reasons beyond its control, a decision cannot be made within the 6 month period mentioned in paragraph 18(1)(c) or 19(1)(c), the Regulator may determine a longer period, of no more than 6 months, within which it must make a decision on an application.
- (2) If the National VET Regulator determines a longer period, it must do so not later than 6 weeks before the expiry of the 6 month period mentioned in paragraph 18(1)(c) or 19(1)(c), whichever applies.
- (3) If the National VET Regulator determines a longer period under subitem (1), the Regulator must, within 7 days of making the determination:
- (a) notify the person or entity concerned, in writing, of the determination; and
 - (b) give, in writing, the reasons for the determination.
- (4) If:
- (a) a decision is not made within the 6 month period mentioned in paragraph 18(1)(c) or 19(1)(c) and the National VET Regulator does not determine a longer period; or
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- (b) the Regulator determines a longer period but does not make a decision within that period;
- the Regulator is taken to have granted the application.
- (5) If the National VET Regulator is taken to have granted an application, as mentioned in subitem (4), the course to which the application relates is taken to be a VET accredited course (including by way of a renewal of accreditation) for 2 years beginning on the first day after the 6 month period.
- (6) To avoid doubt, an inference that a course meets the Standards for VET accredited courses or the Australian Qualifications Framework is not to be made only because the course is taken to be a VET accredited course for the period mentioned in subitem (5).

Part 4—References to, and things done by, or in relation to, a VET Regulator

21 Things done by, or in relation to, a VET Regulator

- (1) If a thing was done by, or in relation to, the State VET Regulator of a referring State under a law of the State, then the thing is taken after the relevant commencement day, to have been done by, or in relation to, the National VET Regulator.
- (2) If a thing was done by, or in relation to, the VET Regulator of a Territory under a law of the Territory, then the thing is taken after the relevant commencement day, to have been done by, or in relation to, the National VET Regulator.
- (3) If a thing was done by, or in relation to, a State VET Regulator of a non-referring State in respect of a registered training organisation registered by the State VET Regulator, then the thing is taken after commencement, to have been done by, or in relation to, the National VET Regulator in respect of the organisation.
- (4) Subitems (1), (2) and (3) apply only to things done by, or in relation to, a State VET Regulator in respect of a matter dealt with by the new law.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

- (5) The Minister may, by writing, determine that subitem (1), (2) or (3) does not apply in relation to a specified thing done by, or in relation to, a State VET Regulator.
- (6) To avoid doubt, doing a thing includes making an instrument.
- (7) A determination under subitem (5) is not a legislative instrument.

22 Show cause notices—referring States and Territories

- (1) This item applies to a registered training organisation that is, immediately before the relevant commencement day, registered in a referring State or a Territory.
 - (2) If, before the relevant commencement day, a State VET Regulator had given a registered training organisation a show cause notice, then,
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within 60 days after the relevant commencement day, the National VET Regulator must:

- (a) decide what action to take in relation to the organisation under the new law; and
- (b) if the National VET Regulator decides to take action—in taking the relevant action, notify the organisation that the Regulator is taking the action in response to the show cause notice; and
- (c) if the National VET Regulator decides not to take action—within 30 days of its decision, notify the organisation, in writing, that no further action will be taken in relation to the show cause notice.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

- (3) If a decision is not made within 60 days after the relevant commencement day, the National VET Regulator is taken to have decided not to take action under the new law in relation to the registered training organisation.
- (4) If, in relation to a show cause notice:
 - (a) a State VET Regulator required a person to provide evidence, information or any document; and
 - (b) the evidence, information or document was not provided to the State VET Regulator before the relevant commencement day;

then, the evidence, information or document must be provided to the National VET Regulator.

23 Show cause notices—non-referring States

- (1) This item applies to a registered training organisation that is, immediately before commencement, registered in a non-referring State.
- (2) If, before commencement, a State VET Regulator had given a registered training organisation a show cause notice, then, within 60 days after commencement, the National VET Regulator must:
 - (a) decide what action to take in relation to the organisation under the new law; and
 - (b) if the National VET Regulator decides to take action—in taking the relevant action, notify the organisation that the

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Part 4 References to, and things done by, or in relation to, a VET Regulator

Regulator is taking the action in response to the show cause notice; and

- (c) if the National VET Regulator decides not to take action—within 30 days of its decision, notify the organisation, in writing, that no further action will be taken in relation to the show cause notice.
- (3) If a decision is not made within 60 days after commencement, the National VET Regulator is taken to have decided not to take action under the new law in relation to the registered training organisation.
- (4) If, in relation to a show cause notice:
- (a) a State VET Regulator required a person to provide evidence, information or any document; and
 - (b) the evidence, information or document was not provided to the State VET Regulator before the relevant commencement day;
- then, the evidence, information or document must be provided to the National VET Regulator.

Part 5—Review of decisions

24 Rights of review of certain decisions

To avoid doubt, an application may be made to the Administrative Appeals Tribunal under Division 1 of Part 9 of the new law for review of any of the following decisions of the National VET Regulator:

- (a) a decision under section 17 of the new law, as applied by one of the following provisions of this Schedule, to register an organisation as an NVR registered training organisation:
 - (i) paragraph 7(1)(d);
 - (ii) paragraph 8(1)(d);
 - (iii) paragraph 9(1)(d);
 - (iv) paragraph 10(1)(d);
- (b) a decision under section 17 of the new law, as applied by one of the following provisions of this Schedule, not to register an organisation as an NVR registered training organisation:
 - (i) paragraph 7(1)(e);
 - (ii) paragraph 8(1)(e);
 - (iii) paragraph 9(1)(e);
 - (iv) paragraph 10(1)(e);
- (c) a decision under subsection 29(1) of the new law, as applied by one of the following provisions of this Schedule, to impose a condition on an NVR registered training organisation's registration:
 - (i) paragraph 5(1)(c);
 - (ii) subitem 7(2);
 - (iii) subitem 8(2);
 - (iv) subitem 9(2);
 - (v) subitem 10(2);
 - (vi) subitem 12(3);
 - (vii) subitem 13(3);
- (d) a decision under section 44 of the new law, as applied by one of the following provisions of this Schedule, to accredit a course as a VET accredited course:
 - (i) paragraph 18(1)(d);
 - (ii) paragraph 19(1)(d);

- (e) a decision under section 44 of the new law, as applied by one of the following provisions of this Schedule, not to accredit a course as a VET accredited course:
 - (i) paragraph 18(1)(e);
 - (ii) paragraph 19(1)(e);
- (f) a decision under subsection 48(1) of the new law, as applied by one of the following provisions of this Schedule, to impose a condition on a VET accredited course's accreditation:
 - (i) subitem 16(2);
 - (ii) subitem 18(2);
 - (iii) subitem 19(2);
- (g) a decision under section 33 of the new law, as applied by one of the following provisions of this Schedule, to change an NVR registered training organisation's scope of registration:
 - (i) paragraph 12(2)(d);
 - (ii) paragraph 13(2)(d);
- (h) a decision under section 33 of the new law, as applied by one of the following provisions of this Schedule, not to change an NVR registered training organisation's scope of registration:
 - (i) paragraph 12(2)(e);
 - (ii) paragraph 13(2)(e);
- (i) a decision under section 42 of the new law, as applied by one of the following provisions of this Schedule, to allow a registered training organisation to withdraw its registration:
 - (i) paragraph 14(2)(c);
 - (ii) paragraph 15(2)(c);
- (j) a decision under section 42 of the new law, as applied by one of the following provisions of this Schedule, not to allow a registered training organisation to withdraw its registration:
 - (i) paragraph 14(2)(c);
 - (ii) paragraph 15(2)(c);
- (k) a decision under subitem 11(1) or 20(1) of this Schedule to determine a longer period within which the National VET Regulator may make a decision on an application.

Part 6—Treatment of staff employed by VET Regulators etc.

25 Engagement of staff

- (1) Without limiting item 30, regulations under that item may provide for:
- (a) the engagement of an employee from a State VET Regulator or the VET Regulator of a Territory, on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with the relevant VET Regulator immediately before the engagement; and
 - (b) the engagement of an employee from TVET Australia, on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee's terms and conditions of employment with TVET Australia immediately before the engagement; and
 - (c) staffing procedures of a State VET Regulator of a referring State or the VET Regulator of a Territory to apply, or to continue to apply, in relation to:
 - (i) processes begun before, but not completed by, the relevant commencement day; or
 - (ii) things done by, for or in relation to the relevant VET Regulator or an employee of that VET Regulator before the relevant commencement day; or
 - (d) staffing procedures of a State VET Regulator of a non-referring State to apply, or to continue to apply, in relation to:
 - (i) processes begun before, but not completed by, commencement; or
 - (ii) things done by, for or in relation to the relevant State VET Regulator or an employee of that VET Regulator before commencement; or
 - (e) staffing procedures of TVET Australia to apply, or to continue to apply, in relation to:
 - (i) processes begun before, but not completed by, commencement; or

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- (ii) things done by, for or in relation to TVET Australia or an employee of TVET Australia before commencement; or
- (f) staffing procedures of the National VET Regulator to apply in relation to:
 - (i) in the case of a referring State or a Territory—processes begun before, but not completed by, the relevant commencement day; or
 - (ii) in the case of a non-referring State or TVET Australia—processes begun before, but not completed by, commencement; or
 - (iii) things done by, for or in relation to a State VET Regulator of a referring State before the relevant commencement day; or
 - (iv) things done by, for or in relation to the VET Regulator of a Territory before the relevant commencement day; or
 - (v) things done by, for or in relation to a State VET Regulator of a non-referring State before commencement; or
 - (vi) things done by, for or in relation to TVET Australia before commencement.
- (2) Regulations made for the purposes of this item have effect despite the *Public Service Act 1999*.
- (3) In this item:
staffing procedures includes procedures and policies related to:
 - (a) recruitment, promotion or performance management; or
 - (b) inefficiency, misconduct, forfeiture of position, fitness for duty or loss of essential qualifications; or
 - (c) disciplinary action, grievance processes or reviews of or appeals against staffing decisions; or
 - (d) transfers, resignations or termination of employment; or
 - (e) leave.

Part 7—Legal proceedings

26 Substitution of National VET Regulator as a party to pending proceedings

- (1) If, immediately before the relevant commencement day:
- (a) the State VET Regulator of a referring State or the VET Regulator of a Territory was a party to proceedings of a kind described in subitem (3); and
 - (b) the proceedings were pending in any court or tribunal;
- the National VET Regulator is substituted for the State VET Regulator after the relevant commencement day as a party to the proceedings.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

- (2) If, immediately before the relevant commencement day:
- (a) a State VET Regulator of a non-referring State was a party to proceedings of a kind mentioned in subitem (3) in relation to a registered training organisation registered by the State VET Regulator; and
 - (b) the proceedings were pending in any court or tribunal;
- the National VET Regulator is substituted for the State VET Regulator after the relevant commencement day as a party to the proceedings in relation to the organisation.
- (3) Subitems (1) and (2) apply only to proceedings that relate to a decision by a State VET Regulator in respect of which the National VET Regulator has the same, or substantially the same, function under the new law.

Part 8—Miscellaneous

27 Transfer of custody of records

- (1) If any records, of a kind specified in a determination made by the National VET Regulator, relating to:
- (a) an organisation that is taken to be an NVR registered training organisation under this Schedule; or
 - (b) an organisation that is registered as an NVR registered training organisation under the new law because of this Schedule; or
 - (c) a course that is taken to be a VET accredited course under this Schedule;

are in the custody of a State VET Regulator immediately before the relevant commencement day, copies of the records must be transferred to the National VET Regulator as soon as practicable after the relevant commencement day.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

- (2) Subitem (1) does not apply in respect of records that have already been transferred to the National VET Regulator, as mentioned in subparagraph 2(2)(b)(ii) or subitem 2(3).
- (3) Subitem (4) applies in relation to an organisation in a non-referring State if:
- (a) the organisation is taken to be an NVR registered training organisation under this Schedule; or
 - (b) the organisation is registered as an NVR registered training organisation under the new law because of this Schedule.
- (4) Copies of records, of a kind specified in a determination made by the National VET Regulator, relating to an organisation mentioned in subitem (3) that are in the custody of the State VET Regulator of the non-referring State immediately before commencement must be transferred to the National VET Regulator as soon as practicable after commencement.

- (5) Subitem (4) does not apply in respect of records that have already been transferred to the National VET Regulator, as mentioned in subparagraph 3(2)(b)(ii) or subitem 3(3).

28 Determination about records

- (1) The National VET Regulator may, for the purposes of this Schedule, determine the kind of records relating to an organisation or a course that must be provided by a State VET Regulator.

Note: A reference to a State VET Regulator includes a reference to a VET Regulator of a Territory, see subitem 1(3).

- (2) A determination made under subitem (1) is not a legislative instrument.

29 Powers of National VET Regulator

To avoid doubt, the National VET Regulator may take action under Part 4 of the new law (which relates to the Regulator's powers to issue and cancel VET qualifications and VET statements of attainment) in respect of:

- (a) an organisation that is taken to be an NVR registered training organisation under this Schedule; or
- (b) an organisation that is registered as an NVR registered training organisation under the new law because of this Schedule;

even though the organisation was not an NVR registered training organisation at the time the events in respect of which action is to be taken occurred.

30 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) The regulations may prescribe matters of a transitional nature (including matters of an application or saving nature):
- (a) arising out of the enactment of the new law; or
 - (b) relating to the transition from the application of provisions of laws of a referring State or Territory (as in force before the relevant commencement day) relating to the regulation of the

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VET sector to the application of provisions of the new law;
or

- (c) relating to the transition from the application of provisions of laws of a non-referring State (as in force before commencement) relating to the regulation of the VET sector to the application of provisions of the new law.

The regulations have effect despite anything else in this Act.

- (3) The regulations may provide that certain items of this Schedule are taken to be modified as set out in the regulations. Those items then have effect as if they were so modified.
- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under this item may be expressed to take effect from a day before the regulations are registered under that Act.
- (5) Subitems (2) and (3) do not limit subitem (1).
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*[Minister's second reading speech made in—
Senate on 26 November 2010
House of Representatives on 24 March 2011]*

(286/10)