

# Explanatory Statement

## ***Financial Viability Risk Assessment Requirements 2011***

### **Authority**

This instrument is made under subsection 158(1) of the *National Vocational Education and Training Regulator Act 2011* (the Act). That subsection requires the National VET Regulator, by legislative instrument, to make requirements relating to the financial viability of NVR registered training organisations. Subsection 158(2) of the Act provides that the requirements are to be known as the *Financial Viability Risk Assessment Requirements* (the Requirements).

### **Purpose and Operation**

On 1 July 2011, the National VET Regulator assumed regulatory responsibility for functions that were previously performed by the states and territories in relation to the matters dealt with by the Act (Victoria and Western Australia retain regulatory responsibility for some organisations residing within their jurisdictions).

The Requirements form part of the VET Quality Framework. As defined in section 3 of the Act, the VET Quality Framework is comprised of the Standards for NVR Registered Training Organisations, the Australian Qualifications Framework, the Fit and Proper Person Requirements, the Financial Viability Risk Assessment Requirements and the Data Provision Requirements.

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

Further, the National VET Regulator is required to consider whether an applicant for registration under the Act complies with the Requirements in deciding whether to grant their application (see subsection 17(2) of the Act).

### **Description of the provisions**

Parts 1 and 2 of the Requirements set out preliminary matters, and the context and intent of the Requirements.

Part 3 of the Requirements requires an organisation seeking registration with the National VET Regulator to submit to an assessment of financial viability risk as part of the assessment of the application for registration, and requires an NVR registered training organisation to submit to an assessment at a time determined by the National VET Regulator. It also sets out the circumstances in which the National VET Regulator may waive the requirement for a financial viability risk assessment, and other matters relating to the obligation to submit to an assessment.

Part 4 of the Requirements sets out the form and content of financial viability risk assessments. An assessment of financial viability is required to provide an indication of whether an organisation will remain viable in the short to medium term. Financial viability is defined in the Requirements as the ability of an organisation to generate sufficient income to meet operating payments, debt commitments and, where applicable, to allow growth while

delivering quality training and assessment services and outcomes. In addition to an analysis of the financial data, the assessment will consider qualitative factors that can impact upon the organisation's financial health (eg. business plans, changes in ownership, pending legal action etc.).

## **Commencement**

The Requirements commence on 1<sup>st</sup> July 2011 or the day after they are registered on the Federal Register of Legislative Instruments – whichever is the later.

## **Consultation**

Before the National VET Regulator made the Requirements, consultation was undertaken as follows:

Meetings with:

- Victorian Registration and Qualifications Authority
- Department of Education, Employment and Workplace Relations - Financial Viability and Debt Team
- VET Fee-Help Financial & Payments Team
- Grant Thornton Australia Limited

Further discussions with:

- Kingsway Financial Assessments P/L
- State and Territory regulators (QLD, NSW, WA)
- Tertiary Education Quality and Standards Agency
- PricewaterhouseCoopers Australia

> On 21 April 2011 a consultation meeting was held with key industry stakeholders to include discussion of a draft version of the Requirements. Representatives from the following industry bodies were present at this meeting:

- Australian Council for Private Education and Training
- Enterprise RTO Association
- Victorian Automobile Chamber of Commerce
- Australian Chamber of Commerce and Industry
- Construction, Forestry, Mining and Energy Union
- Master Builders Association
- National Centre for Vocational Education Research
- TAFE Directors Association
- State and Territory VET Regulators.

> The Requirements have been discussed at joint meetings held with State and Territory representatives.