**Explanatory Statement**

# **National Vocational Education and Training Regulator (Charges) Determination 2012 (No. 1) made under the *National Vocational Education and Training Regulator (Charges) Act 2012***

Issued by the authority of the Minister for Tertiary Education, Skills, Science and Research

Subject: *National Vocational Education and Training Regulator (Charges) Act 2012*

*National Vocational Education and Training Regulator (Charges) Determination 2012 (No. 1)*

## Authority

Subsections 9(2) and 12(2) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Charges Act) provide that the Minister must, by legislative instrument, determine the formula for calculating a charge payable under Part 2 and Part 3 of the Charges Act.

## Purpose and Operation

The purpose of the legislative instrument is to formally identify the formula for calculating a charge payable under Part 2 and Part 3 of the Charges Act.

Charges are payable by a registered training organisation (RTO) under the Charges Act for the costs and expenses incurred by the Australian Skills Quality Authority (ASQA) when undertaking compliance audits (Part 2) and in circumstances where ASQA has investigated a complaint about an RTO and finds the complaint substantiated (Part 3). In accordance with subsections 9(2) and 12(2), the Minister must make a legislative instrument identify the formula for calculating a charge payable under Part 2 and Part 3 of the Charges Act.

## Consultation

The formulas contained in the instrument were consulted upon with stakeholders (state and territory senior officers, peak RTO organisations, peak employee associations and industry representatives) in 2011 as part of the consultation for ASQA’s approved cost recovery impact statement for 1 July 2011-30 June 2014 (as published on www.asqa.gov.au).

ASQA was consulted on the content of the instrument.

Description of the provisions of the National Vocational Education and Training Regulator (Charges) Determination 2012 (No. 1)

## Part 1—Preliminary

**Division 1—Arrangements on commencement**

**1: Name of Instrument**Item 1 names the National Vocational Education and Training Regulator (Charges) Determination 2012 (No.1).

**2: Commencement**

Item 2 identifies that the legislative instrument will commence from 1 January 2013.

**3: Purpose and Application**

Item 3 identifies the purpose of the legislative instrument as being to determine the formula for calculating a charge payable under Part 2 and Part 3 of the Charges Act.

Item 3 also provides that charges payable under Part 2 of the Charges Act are for compliance audits commenced by ASQA on or after 1 January 2013. Charges payable under Part 3 of the Charges Act are with respect to complaints received by ASQA on or after 1 January 2013.

**4: Definitions**Item 4 defines terms used throughout the legislative instrument.

**ASQA official travel costs** are defined as reasonably incurred airfares and such other travel expenses which may be reasonably incurred, including but not limited to accommodation, car rental and meals.

When determining what is reasonable ASQA must comply with the requirements of the *Financial Management and Accountability Act 1997* and *Commonwealth Procurement Rules- 1 July 2012,* to achieve value for money when purchasing goods and services, including official travel. In relation to official air travel ASQA must comply with the requirements of the Commonwealth’s policy on domestic and international travel as it exists from time. The current policies of the Commonwealth at the time of commencement of this instrument are Finance Circular 2012/05 - Use of the Best Fare of the Day for Official International Air Travel and Finance Circular 2012/04 - Use of the Lowest Practical Fare for Official Domestic Air Travel.

As provided by the note to Item 4, unless contrary intention appears, an expression has the same meaning in the legislative instrument as in the National Vocational Education and Training Regulator Charges Act 2012.

**Part 2 – Calculation Formula**

**5: Calculation Formula**

Subitem 5(1) identifies the formula to calculate the charges payable by a RTO subject to a compliance audit undertaken by ASQA. The formula provides that the RTO must pay a rate of $150 per hour capped at $5,000 plus ASQA official travel costs.

For compliance audits conducted outside Australia in whole or part that commenced on or after 1 January 2014, the RTO must pay any additional expenses reasonably incurred by ASQA relating to the audit or part of the audit. This will vary according to the location of the off-shore activity.

Subitem 5(2) identifies the formula to calculate the charge payable by an RTO which is the subject of a complaints investigation where the complaint is substantiated. The formula provides that the RTO must pay a rate of $150 per hour capped at $3,000 plus ASQA official travel costs and, if a compliance audit is conducted as part of the investigation, $150 per hour capped at $5000 per activity, plus government approved travel costs.

For investigations and compliance audits conducted outside Australia in whole or part that commenced on or after 1 January 2014, the RTO must pay any additional expenses reasonably incurred by ASQA relating to the investigation or audit or part of the investigation or audit. This will vary according to the location of the off-shore activity.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**National Vocational Education and Training Regulator (Charges) Determination 2012 (No. 1)**

This Legislative Instrument (the Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The Instrument is made by the Minister under subclauses 9(2) and 12(2) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Charges Act).

The purpose of the Instrument is to set the formula that will enable ASQA to charge for compliance audits and the investigation of substantiated complaints which are conducted by ASQA of registered training organisations (RTOs). These charges will support ASQA’s regulatory functions by allowing it to recover costs for the regulatory functions it undertakes and fulfil its budgetary obligations.

**Human rights implications**

*Right to education*

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

The objectives of the Instrument is to enable ASQA to charge RTOs for complaints investigations, where substantiated and to charge for compliance audits. Charging for substantiated complaints will provide additional encouragement for RTOs to comply with the requirements of the *National Vocational Education and Training Regulator Act 2011.*  This will assist ASQA to undertake its regulatory functions in the vocational education and training (VET) sector, ensuring improved quality and greater integrity in the VET system and will therefore protect students’ rights to education.

To the extent that the right to education is engaged, it is reasonable, necessary and proportionate for the Instrument to set a formula that should act as a deterrent to the poor quality provision of vocational training.

**Conclusion**

This Instrument is compatible with human rights because it protects the right to education.

**Senator Chris Evans, Minister for Tertiary Education, Skills, Science and Research**