



National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)

I, Brendan O'Connor, Minister for Skills and Training make this legislative instrument under subsections 9(2), 12(2) and 13 of the *National Vocational Education and Training Regulator (Charges) Act 2012*.

Dated JULY 30, 2013

BRENDAN O'CONNOR

Brendan O'Connor
Minister for Skills and Training

Commonwealth of Australia

National Vocational Education and Training Regulator (Charges) Act 2012

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR
(CHARGES) DETERMINATION 2013 (No. 1)**

PART 1 PRELIMINARY

1 Name of Instrument

This legislative instrument is the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)*.

2 Commencement

This legislative instrument will commence on the day after it is registered on the Federal Register of Legislative Instruments.

3 Revocation

The *National Vocational Education and Training Regulator (Charges) Determination 2012 (No. 1)* (old determination) (**F2012L02582**) registered on 21 December 2012 is revoked.

4 Savings

- (1) The charges in section 5 of the old determination, continue to apply to compliance audits commenced by ASQA or complaints received by ASQA prior to the commencement of this instrument.
- (2) Despite subsection 4(1), or any other section in this instrument, compliance audits and investigations into substantiated complaints commenced by ASQA prior to the commencement of this instrument may be waived, in whole or in part, in accordance with section 9 of this instrument.

5 Authority

This legislative instrument is made under subsections 9(2), 12(2) and section 13 of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Charges Act).

6 Purpose

The purpose of this instrument is to determine the formula for calculating a charge payable under Part 2 and Part 3 of the Charges Act and to determine the circumstances in which that charge may be waived in whole or in part under Part 4 of the Charges Act.

7 Definitions

In this instrument:

ASQA means the National VET Regulator established under subsection 155(1) of the *National Vocational Education and Training Regulator Act 2011* and specified under section 5 of the *National Vocational Education and Training Regulator Regulations 2011* to be known as the Australian Skills Quality Authority.

Charges Act means the *National Vocational Education and Training Regulator (Charges) Act 2012*.

ASQA official travel costs means:

- (1) reasonably incurred airfares; and
- (2) such other travel expenses which may reasonably be incurred, including but not limited to, accommodation, car rental and meals.

Reasonable expenses means expenses that would be incurred by APS employees or officials performing similar or comparable work in overseas locations in accordance with the then current Commonwealth policy governing overseas travel expenses.

Note: Unless contrary intention appears, an expression has the same meaning in this legislative instrument as in the *National Vocational Education and Training Regulator (Charges) Act 2012*.

PART 2 CALCULATION FORMULAS

8 Calculation Formulas

- (1) For the purpose of subsection 9(1) of the Charges Act, a charge under Part 2 of that Act is to be calculated according to the following formula:
 - (a) the costs and expenses incurred by ASQA in conducting a compliance audit:
 - (i) \$1,000; plus
 - (ii) for a compliance audit that exceeds four hours in length - \$250 per hour; plus
 - (iii) ASQA official travel costs; plus
 - (b) if any part of a compliance audit is conducted outside Australia, and commenced on or after 1 January 2014, then in addition to costs and expenses in accordance with paragraph 8(1)(a), any additional reasonable expenses incurred by ASQA relating to that part of the audit.

- (2) For the purpose of subsection 12(1) of the Charges Act, a charge under Part 3 of that Act is to be calculated according to the following formula:
- (a) the costs and expenses incurred by ASQA in conducting:
 - (i) an investigation into a complaint about a NVR registered training organisation, which is found to be substantiated - \$250 per hour; plus
 - (ii) ASQA official travel costs; plus
 - (iii) a compliance audit – the charges as prescribed in paragraph 8(1)(a) of this Determination; plus
 - (b) if any part of the investigation or compliance audit is conducted outside Australia, and commenced on or after 1 January 2014, then in addition to costs and expenses in accordance with paragraph 8(2)(a), any additional reasonable expenses incurred by ASQA in relation to that part of the investigation or audit.

PART 3 WAIVERS

9 Circumstances in which a charge may be waived in whole or in part

- (1) For the purpose of subsection 13(b) of the Charges Act, a charge that would otherwise be payable under that Act may be waived, in whole or in part where, in the opinion of ASQA's Chief Commissioner;
- (a) special or unusual circumstances exist which cause the charge to be unreasonable or inequitable; or
 - (b) the amount of the charge that remains unpaid is so small that its recovery would be uneconomical to pursue.
- (2) For the purposes of paragraph 9(1)(a), the following circumstances do not constitute grounds for granting a waiver:
- (a) where the NVR registered training organisation required to pay the charge did not consent to the compliance audit or complaint investigation that resulted in the imposition of a charge; or
 - (b) where the NVR registered training organisation required to pay the charge does not agree with the outcome of the compliance audit or complaint investigation that resulted in the imposition of a charge; or
 - (c) where the NVR registered training organisation required to pay the charge ceases to exist, or ceases to be an NVR registered training organisation, or ceases to carry on business as a registered training organisation.

PART 4 OTHER

10 Rounding

- (1) When determining, for the purposes of subsections 8(1) and 8(2), the amount of the charge payable for an investigation or compliance audit where the hourly rate is \$250 per hour, the following amounts will apply in the following circumstances:
 - (a) if the time taken to complete the investigation or compliance audit is less than 30 minutes, the total amount payable will be zero dollars; and
 - (b) if the time taken to complete the investigation or compliance audit is less than one hour but equal to or greater than 30 minutes, the total amount payable will be \$125.