

EXPLANATORY STATEMENT

National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Determination 2017

Authority

The instrument is made by the Assistant Minister for Vocational Education and Skills and Parliamentary Secretary to the Minister for Education and Training under subsection 6B(1) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Charges Act).

Purpose

The primary purpose of the National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Determination 2017 (Charges Determination) is to amend the National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1) (2013 Charges Determination) to determine an amount, or method for working out an amount, of a National VET Regulator annual registration charge (the charge) payable for a financial year under Part 1A of the Charges Act. It also identifies the circumstances in which the charge may be waived in whole or in part under Part 4 of the Charges Act.

The charge is payable by National VET Regulator registered training organisations (as defined in the *National Vocational Education and Training Regulator Act 2011* (NVETR Act)), and registered providers within the meaning of the *Education Services for Overseas Students Act 2000* (ESOS Act) where the National VET Regulator is the ESOS agency for the provider in relation to a course within the provider's registration under the ESOS Act.

The Charges Determination also makes minor technical and definitional amendments to improve the clarity.

The Charges Act provides that before determining an amount of charge or method for working out such an amount, the Minister must be satisfied that the determination will result in recovering no more than the likely costs incurred by the National VET Regulator in performing its functions. The Minister must also have obtained the Ministerial Council's agreement to the amount of the charge or the method for working out that amount.

Subsection 6B(3) of the Charges Act provides that a legislative instrument under subsection 6B(1) of the Charges Act is a disallowable instrument.

Commencement

The Charges Determination commences on the later of:

- (a) the start of the day after the instrument is registered; and
- (b) the same time as Schedule 1 to the *National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Act 2017* commences.

However, the provisions do not commence at all if the *National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Act 2017* does not commence.

Consultation

The Department of Education and Training consulted the Skills Senior Officials Network (SSON) to seek their approval to progress the current, unchanged amounts of the annual charge to the Council of Australian Governments (COAG) Industry and Skills Council (CISC) for approval. CISC Ministers were consulted in May and June 2017 and unanimously agreed to the calculation and amount of the charge.

The National VET Regulator was consulted on the content of the instrument.

Regulation Impact Statement

These amendments form part of broader legislative amendments to the National Vocational Education and Training Regulator legislative framework. In that context the Office of Best Practice Regulation (OBPR) confirmed that a Regulation Impact Statement (RIS) is not required (OBPR reference: 21502).

Explanation of provisions

Contents

Section 1 of the instrument states the instrument's name.

Section 2 provides that the instrument commences in accordance with column 2 of the table: that is on the later of:

- (a) the start of the day after the instrument is registered; and
- (b) the same time as Schedule 1 to *the National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Act 2017* commences.

However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

Section 3 provides that the instrument is made under subsection 6B(1) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (Charges Act). The note to this section clarifies that as a result of subsection 6B(3) of the Charges Act, section 44 (legislative instruments that are not subject to disallowance) of the *Legislation Act 2003* does not apply. Therefore this instrument determining the National VET Regulator annual registration charge made under subsection 6B(1) of the Charges Act is disallowable.

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Annual registration charge

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

Section 1 repeals sections 3–6 of the 2013 Charges Determination and inserts new sections 5 and 6.

New section 5 expands the authority provisions to include subsection 6B(1) of the Charges Act.

New section 6 expands the purpose of the instrument to include determining an amount of the National VET Regulator annual registration charge for the purposes of Part 1A of the Charges Act.

Section 2 inserts additional terms and definitions used throughout the instrument.

Section 3 repeals the note in section 7 of the 2013 Charges Determination and inserts Note 1 to provide clarity on the use of the term “units of competency”. Note 2 alerts the reader that a number of expressions used in the instrument have the same meaning as in the Charges Act and that expressions used in the Charges Act have the same meaning as in the NVETR Act.

Section 4 inserts new Part 1A - National VET Regulator annual registration charge (the charge) into the 2013 Charges Determination.

7A provides that for the purpose of section 6B of the Charges Act, Part 1A determines an amount or amounts of the charge payable by a person under sections 7B and 7C.

7B specifies the charge amount determined for registration as an NVR registered training organisation (NVR RTO).

7B(1) provides that section 7B applies to a person if the person starts or continues to be registered during a financial year as an NVR RTO, in relation to a particular registration.

7B(2) clarifies that where a person has two or more different registrations as an NVR RTO under the NVETR Act, the section applies in relation to each of those registrations.

7B(3) prescribes the amount of the charge payable for each registration as an NVR RTO under the NVETR Act, for the financial year, as the amount set out in the table subject to subsection 7B(5). The amount of the charge is calculated by referring to the number of “qualifications”.

7B(4) provides that the number of qualifications is the number of qualifications within a scope of registration under the NVETR Act on the first day of the financial year. If the registration under the NVETR Act starts after the first day of the financial year, the number of qualifications is calculated on the first day of the first whole month after the registration under the NVETR Act commences.

7B(5) specifies the formula to calculate the charge where an NVR RTO’s registration starts after the first day of a financial year. The amount is calculated by multiplying the amount under subsection (3) by the number of remaining whole months in the financial year after the start of registration, divided by 12. The note to 7B(5) alerts the reader to pro rata refund amounts where the registration ends during a financial year, as provided for under subsection 232A(4) of the NVETR Act.

7C specifies the charge amount determined for registration as a registered provider if the National VET Regulator is an ESOS agency for the provider within the meaning of the ESOS Act.

7C(1) provides that 7C applies to a person if the person starts or continues to be registered during a financial year as a registered provider (within the meaning of the ESOS Act) in relation to a particular registration and the National VET Regulator is the ESOS agency for the provider in relation to the course (or courses) covered by that registration. The note to 7C(1) alerts the reader to the definition of “registered provider” under Part 2 of the ESOS Act and section 3 of the NVETR Act.

7C(2) clarifies that where a person has two or more registrations as a registered provider, the section applies in relation to each of those registrations.

7C(3) prescribes the amount of the charge payable for each registration as a registered provider, for the financial year, as the amount set out in the table subject to subsection 7C(5). The amount of the charge is calculated by referring to the number of “qualifications”.

7C(4) provides that, the number of qualifications is the number of courses, where the National VET Regulator is the ESOS agency for the provider in relation to those courses, on the first day of the financial year. If the registration starts after the first day of the financial year, the number of qualifications is calculated by reference to the first day of the first whole month after the registration under the ESOS Act starts. The note to subsection 7C(4) clarifies that this section applies to a course if the National VET Regulator is the ESOS agency for the registered provider in relation to that course.

7C(5) specifies the formula to calculate the charge where the registered provider’s registration starts after the first day of a financial year. The amount is calculated by multiplying the amount under subsection (3) by the number of remaining whole months in the financial year after the start of registration, divided by 12. The note alerts the reader to pro rata refund amounts where the registration ends during a financial year, as provided for under subsection 232A(4) of the NVETR Act.

7D identifies the circumstances in which the National VET Regulator annual registration charge may be waived in whole or in part. It provides that where special or unusual circumstances exist which would cause the charge to be unequitable or unreasonable in the opinion of the National VET Regulator’s Chief Commissioner, the charge may be waived. Similarly, if in the opinion of the National VET Regulator’s Chief Commissioner, the unpaid amount of the charge is so small that it would not be economical to pursue, the charge may be waived.

7D(2) outlines the circumstances that do not constitute grounds for waiving the charge including where:

- the person liable to pay the charge is a body that ceases to exist
- the person liable to pay the charge stops being registered as an NVR RTO or registered provider
- the person liable to pay the charge stops carrying on business as an NVR RTO or registered provider.

Section 5 is a technical amendment which repeals the heading *Part 2* and substitutes a new heading – *Part 2 – Compliance audit and investigation charge*.

Section 6 repeals redundant headings as a result of the amendments in section 5.

Statement of Compatibility with Human Rights

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

This 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*.

Summary

Section 232A of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) imposes a National VET Regulator annual registration charge (the charge) on regulated providers.

Section 6B of the *National Vocational Education and Training Regulator (Charges) Act 2012* (Charges Act) provides that the Minister may, by legislative instrument, determine the charge for a financial year, payable by a person registered under the NVETR Act as an NVR registered training organisation or as a registered provider (within the meaning of the *Education Services for Overseas Students (ESOS) Act 2000*) where the National VET Regulator is the ESOS agency for the provider.

The National Vocational Education and Training (Charges) Amendment (Annual Registration Charge) Determination 2017 (Charges Determination) amends the National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1) to determine an amount, or method for working out an amount, of the charge payable for a financial year by NVR registered training organisations or registered providers. It also identifies the circumstances in which the charge may be waived in whole or in part under Part 4 of the Charges Act.

In determining the charge the Minister must be satisfied that the amount will recover no more than the likely costs incurred by the National VET Regulator as a result of performing its functions. The Minister must also obtain the Ministerial Council's agreement to the amount of the charge or the method for calculating that amount.

The Charges Determination also makes minor technical and definitional amendments to improve the clarity of the instrument.

The Australian Skills Quality Authority Instrument Fixing Fees Amendment (Annual Registration Charge) Determination 2017 (Fees Determination) amends the *Australian Skills Quality Authority Instrument Fixing Fees No. 1 of 2013* to remove the two annual registration fees; the annual NVR registered training organisation registration fee and the annual CRICOS registration fee which are replaced by the charge under this determination. A constitutional risk was identified as the previous annual fees were not provided for in an appropriate taxation Act, as such moving them to the Charges Act rectified this and aligns the legislation with the Australian Government Charging Framework.

Human rights implications

The Charges Determination determines an amount, or method for working out an amount, of a National VET Regulator annual registration charge payable for a financial year by NVR registered training organisations or registered providers. The amounts are unchanged from those previously collected as fees so there is no additional regulatory or financial burden. The Charges Determination does not raise any human rights issues and is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.