**EXPLANATORY STATEMENT**

*Australian Skills Quality Authority Instrument Fixing Fees Amendment Determination (No. 1) 2018*

**Authority**

The *Australian Skills Quality Authority Instrument Fixing Fees Amendment Determination (No.1) 2018* (Fees Determination) is made by the Minister for Education and Training under section 232 of the *National Vocational Education and Training Regulator Act 2011* (the NVETR Act)*.*

Section 232 of the NVETR Act provides that the Minister may, by legislative instrument, determine:

* amounts of fees the National VET Regulator (the Australian Skills Quality Authority (ASQA)) may charge for goods or services it provides in performing its functions (other than the service mentioned in subsection 35(2) of the NVETR Act)
* determine the way in which a fee is to be worked out
* determine others matters relating to the payment of fees

**Purpose**

The primary purpose of the Fees Determination is to amend the *Australian Skills Quality Authority instrument fixing fees No. 1 of 2013* (2013 Fees Instrument), to determine the amounts of fees ASQA may charge for goods or services it provides in performing its functions under the NVETR Act.

The Fees Determination enables ASQA to continue its risk-based approach to regulating the vocational education and training (VET) sector, and follows consultation with sector stakeholders. This supports ASQA to ensure Australia’s VET sector delivers the highest possible quality training and assessment so students and employers can have confidence that VET qualifications are a reliable measure of an individual’s knowledge and skills. The Fees Determination also makes minor technical and definitional amendments to improve the clarity of the 2013 Fees Instrument.

**Background**

ASQA operates on a cost recovery basis in accordance with the Australian Government Charging Framework (Charging Framework). The Charging Framework requires entities to amend their Cost Recovery Implementation Statement (CRIS) to reflect any changes to the cost recovery model and to update financial and non‑financial performance information to ensure fees reflect the efficient overall costs of regulatory activities. The measures in the Fees Determination reflect amendments made to the ASQA’s CRIS for 2018-19 in accordance with the Charging Framework.

Subsections 44(1) and 54(1) of the *Legislation Act 2003* (Legislation Act) provide that instruments are not subject to disallowance and sunsetting where the enabling legislation facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States. The NVETR Act established ASQA to facilitate an intergovernmental scheme for national VET regulation, giving effect to the Intergovernmental Agreement for Regulatory Reform in VET (IGA). Consequently, the Fees Determination is not subject to disallowance or sunsetting

In accordance with subsection 15J(2) of the Legislation Act, as the Fees Determination is not a disallowable instrument a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required.

**Commencement**

The Fees Determination commences on the later of:

1. 1 July 2018; or
2. the day after the Fees Determination is registered on the Federal Register of Legislation.

For the avoidance of doubt, the fees set out in the Fees Determination only apply in respect of applications received by ASQA for the matters set out in section 5 of the Fees Determination on, or after, the commencement of the Fees Determination, and the fees previously specified in the 2013 Fees Instrument continue to apply to applications received prior to that date.

**Regulation Impact Statement**

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

**Consultation**

In the context of its 2018-19 Cost Recovery Implementation Statement (CRIS), ASQA consulted on proposed fees and charges with state and territory governments and the wider VET sector in late 2017. The consultation proposed a simplified fee structure aimed at incentivising compliance by providing fee relief to compliant registered training organisations.

The cost recovery model outlined in the 2018-19 CRIS was agreed by the Department of Finance and ASQA on 24 May 2018.

Subsection 232(2) of the NVETR Act provides that the Minister must get the Ministerial Council’s (currently the Council of Australian Governments (COAG) Industry and Skills Council (CISC)) agreement to the amount of a fee that relates to:

* the goods or services in respect of registration as an NVR registered training organisation, or
* the goods or services provided to NVR registered training organisation, or
* goods or services in respect of the accreditation of a course as a VET accredited course, or VET accredited courses.

The Skills Senior Officials Network (SSON) were consulted to seek their approval to progress the amounts of fees to CISC. CISC Ministers were consulted in May and June 2018 and agreed to the amounts of the fees.

ASQA was consulted on the content of the Fees Determination.

**Detailed explanation of provisions**

Section 1 – Name

This section provides that the title of the instrument is the *Australian Skills Quality Authority Instrument Fixing Fees Amendment Determination (No.1) 2018.*

Section 2 – Commencement

The section provides that the instrument commences on the later date of the following:

(a) 1 July 2018; or

(b) the day after the instrument is registered on the Federal Register of Legislation.

However, if the fees set out in the instrument apply in respect of applications received by ASQA for the matters set out in section 5 prior to commencement of the instrument, the fees specified in the 2013 Fees Instrument continue to apply.

Section 3 – Authority

Section 3 provides that the instrument is made under section 232 of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act)*.*

Section 4 – Purpose

Section 4 provides that the purposes of the instrument are to determine new fees that may be charged by ASQA for goods and services it provides in performing its functions under the NVETR Act and in performing its functions as an ESOS Agency under the *Education Services for Overseas Students Act 2000*, and to amend the 2013 Fees Instrument.

Section 5 – Amendments to the *Australian Skills Quality Authority instrument fixing fees No. 1 of 2013*

Subsection 5(1) of the Fees Determination repeals the definition of Qualification in section 6 of the 2013 Fees Instrument and substitutes a new definition to align with the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)*.

Subsection 5(2) of the Fees Determination repeals Schedule A in Part 2 of the 2013 Fees Instrument and substitutes new Schedule A determining the fee structure for fees that may be charged by ASQA for good and services it provides.

Subsection 5(3) of the Fees Determination amends Schedule B in Part 2 of the 2013 Fees Instrument by determining matters relating to the payment of fees listed in Schedule A.