

EXPLANATORY STATEMENT

National Vocational Education and Training Regulator (Charges) Amendment Determination (No. 1) 2018

Authority

The *National Vocational Education and Training Regulator (Charges) Amendment Determination (No.1) 2018* (Charges Determination) is made by the Minister for Education and Training under subsections 9(2), and 12(2) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Charges Act).

Subsection 9(2) of the Charges Act requires the Minister to determine, by legislative instrument, the formula for calculating a charge payable for a compliance audit conducted by the National VET Regulator (the Australian Skills Quality Authority (ASQA)) under Part 2 of the Charges Act.

Subsection 12(2) of the Charges Act requires the Minister to determine, by legislative instrument, the formula for calculating a charge payable for the investigation of a complaint about an NVR registered training organisation by ASQA, under Part 3 of the Charges Act.

Purpose

The primary purpose of the Charges Determination is to amend the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1)* (2013 Charges Determination) to determine the formulas for working out the charge payable for a compliance audit conducted by ASQA under Part 2 of the Charges Act, and the charge payable for the investigation of a complaint about an NVR registered training organisation under Part 3 of the Charges Act.

The Charges Determination will enable 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 Charges Determination also makes minor technical and definitional amendments to the 2013 Charges Determination to improve its clarity.

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 Charges Determination reflect amendments made to 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 sunseting where the enabling legislation

facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States. The *National Vocational Education and Training Regulator Act 2011* (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). The Charges Act is a part of the national VET regulation legislative framework and enables ASQA to charge NVR registered training organisations for the performance of some of its functions. Consequently, the Charges Determination is not subject to disallowance or sunseting.

In accordance with subsection 15J(2) of the Legislation Act, as the Charges 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 Charges Determination commences on the later of:

- (a) 1 July 2018; or
- (b) the day after the Charges Determination is registered on the Federal Register of Legislation.

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 Skills Senior Officials Network (SSON) were consulted to seek their approval to progress the formulas for determining the audit and compliance investigation charges to the Council of Australian Governments (COAG) Industry and Skills Council (CISC) for approval. CISC Ministers were consulted in May and June 2018 and agreed to the formulas for determining the audit and complaint investigation charges.

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

ASQA was consulted on the content of the Charges Determination.

Detailed explanation of provisions

Section 1 – Name

This section provides that the title of the instrument is the *National Vocational Education and Training Regulator (Charges) Amendment Determination (No.1) 2018* (Charges Determination).

Section 2 – Commencement

This section provides that the Charges Determination 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 a compliance audit or complaint investigation has commenced but is not completed, prior to commencement of the instrument, the charges specified in the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1)* (2013 Charges Determination) will continue to apply until that audit or complaint investigation is completed.

Section 3 – Authority

Section 3 provides that the Charges Determination is made under subsections 9(2) and 12(2) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (Charges Act).

Section 4 – Purpose

Section 4 provides that the purposes of the Charges Determination are to determine new formulas for calculating the charges payable under Parts 2 and 3 of the Charges Act, and to amend the 2013 Charges Determination.

Section 5 – Amendments to the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No.1)*

Paragraph 5(1)(a) inserts additional terms and definitions in the 2013 Charges Determination.

Paragraph 5(1)(b) repeals and replaces the heading in Part 2 of the 2013 Charges Determination.

Paragraph 5(1)(c) repeals section 8 of the 2013 Charges Determination and inserts new section 8 determining the calculation formulas for compliance audit and complaint investigation charges.

Paragraph 5(1)(d) repeals section 10 of the 2013 Charges Determination and inserts new section 10 determining the calculation formula for Auditor and Complaint Officer charges for a part hour.