

## **EXPLANATORY STATEMENT**

Issued by the authority of Stuart Robert, Minister for Employment, Workforce, Skills, Small and Family Business

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

*National Vocational Education and Training Regulator (Charges) Amendment (Governance and Other Matters) Determination 2021*

### **AUTHORITY**

Subsection 6B(1) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the **Act**) empowers the Minister to, by legislative instrument, determine an amount of National VET Regulator annual registration charge for a financial year, or a method for working out such an amount, payable by a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* (the **NVETR Act**) applies, for the purposes of that section.

Paragraph 6B(2)(b) of the Act requires the Minister to get the Ministerial Council's agreement to the amount of the charge or to the method. As the *National Vocational Education and Training Regulator (Charges) Amendment (Governance and Other Matters) Determination 2021* (the **Instrument**) does not amend the amount of the charge or the method, agreement from the Ministerial Council is not required.

Subsection 9(2) of the Act requires the Minister to, by legislative instrument, determine the formula for calculating a charge payable under Part 2 of the Act.

Subsection 12(2) of the Act requires the Minister to, by legislative instrument, determine the formula for calculating a charge payable under Part 3 of the Act.

Section 13 of the Act empowers the Minister to, by legislative instrument, determine the circumstances in which the National VET Regulator may, on behalf of the Commonwealth:

- (a) allow a charge under the Act to be paid in instalments; or
- (b) waive a charge under the Act, in whole or in part.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant, or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

### **PURPOSE AND OPERATION**

The Instrument amends the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)* (the **Determination**) to omit references to "ASQA" and "ASQA's

Chief Commissioner” and substitute them with references to “National VET Regulator” where relevant, so that the Determination is consistent with the Act. The Instrument also makes some minor amendments to the Determination to reflect current drafting practices.

## **BACKGROUND**

The NVETR Act establishes the National VET Regulator and, along with the Act and associated legislation, provides a framework for the regulation of vocational education and training (**VET**). The Determination determines:

- an amount of National VET Regulator annual registration charge for the purposes of Part 1A of the Act;
- the formulas for calculating charges payable under Parts 2 or 3 of the Act; and
- the circumstances in which any of those charges may be waived in whole or in part under Part 4 of the Act.

In late 2019, the Australian Government engaged experts to conduct a rapid review of the Australian Skills Quality Authority’s (**ASQA**’s) regulatory practices and processes. In March 2020, the final report from that rapid review was provided to the Australian Government (as at 16 March 2021, the ASQA rapid review final report could be accessed at <https://www.dese.gov.au/nci/resources/asqa-rapid-review-final-report>). The final report concluded that, while ASQA’s overarching vision and purpose remained appropriate, some adjustments to its practices were needed to improve its engagement and communication with the sector and to ensure its regulatory approach is guided by regulatory necessity, risk and proportionality.

On 1 January 2021, Parts 1 and 2 of Schedule 1 to the *National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020* commenced. Those amendments strengthened the National VET Regulator’s governance arrangements in line with the rapid review recommendations. Relevantly, the amendments replaced the existing Chief Commissioner / Chief Executive Officer and two Commissioners governance arrangement with a single independent statutory office holder, known as the National VET Regulator.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (OBPR Reference ID: [25471]).

## **COMMENCEMENT**

The Instrument commences the day after it is registered on the Federal Register of Legislation.

## **CONSULTATION**

The National VET Regulator and the state and territory governments have been consulted regarding the making of the Instrument. No concerns were raised.

Clause 5.2.1 of the *Intergovernmental Agreement for Regulatory Reform in Vocational Education and Training* states that the Commonwealth will consult with states and territories on proposals to make amendments to the National VET Regulator legislation. The Australian Government undertakes this consultation with the states and territories through the Skills Senior Officials' Network (SSON). SSON is comprised of senior officials from each state and territory government department responsible for VET.

Representatives from the VET sector have not been consulted regarding the making of the Instrument. This is because the Instrument makes largely technical amendments to align terminology with the Act and does not impact or affect the types or value of charges payable.

# NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (CHARGES) AMENDMENT (GOVERNANCE AND OTHER MATTERS) DETERMINATION 2021

## EXPLANATION OF PROVISIONS

### Section 1 – Name

1. This section provides that the name of the Instrument is the *National Vocational Education and Training Regulator (Charges) Amendment (Governance and Other Matters) Determination 2021*.

### Section 2 – Commencement

2. This section provides that the whole of the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation.

### Section 3 – Authority

3. This section provides that the Instrument is made under of subsections 6B(1), 9(2) and 12(2), and section 13 of the Act.

### Section 4 – Schedules

4. This section 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 – Amendments

#### Item 1 – Making words

5. This item omits the words “*National Vocational Education and Training Regulator Act 2011*” from the Determination’s making words, substituting them with “*National Vocational Education and Training Regulator (Charges) Act 2012*”.

#### Items 2 – 4

6. These items omit references to “Charges” to promote consistency with current drafting practices.

#### Item 2 – Section 7 Definitions

7. This item repeals section 7 and substitutes it with new section 7.
8. A note at the beginning of new section 7 provides that a number of expressions used in the Determination are defined in section 3 of the NVETR Act, including “Australian Qualifications Framework”, “compliance audit”, “National VET Regulator”, “NVR registered training organisation”, “registered provider” and “VET accredited course”.
9. New section 7 defines “Act”, “ASQA”, “Auditor”, “Australian Skills Quality Authority”, “Compliant Officer”, “ELICOS”, “National VET Regulator annual registration charge”, “NVETR Act”, “qualification”, “training package” and “units of competency”.
10. This item effectively repeals the definitions of “ASQA official travel costs” and “reasonable expenses” as these phrases are not used in the Determination.
11. This item is linked to the changes in sections 28, 29, 40 and 41 of the *National Vocational Education and Training Regulator Amendment (Governance and Other*

*Matters) Act 2020* that relate to the National VET Regulator’s governance arrangements, and promotes consistency with current drafting practices.

Items 3 – 18

12. These items make minor amendments to align the language used in the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)* with the language used in the *National Vocational Education and Training Regulator (Charges) Act 2012*. These items omit references to “ASQA” and “ASQA’s Chief Commissioner” and substitute them with “the National VET Regulator”. These items also omit references to “Charges”.

## 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) Amendment (Governance and Other Matters) Determination 2021*

The *National Vocational Education and Training Regulator (Charges) Amendment (Governance and Other Matters) Determination 2021* (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

The purpose of the Instrument is to amend the *National Vocational Education and Training Regulator (Charges) Amendment (Governance and Other Matters) Determination 2021* (the **Determination**) to omit references to “ASQA” and “ASQA’s Chief Commissioner” and substitute them with “National VET Regulator” where relevant, so that the Determination is consistent with the *National Vocational Education and Training Regulator Act 2011* (the **NVETR Act**). The Instrument also makes some minor amendments to the Determination to reflect current drafting practices.

In late 2019, the Australian Government engaged experts to conduct a rapid review of the Australian Skills Quality Authority’s (**ASQA**’s) regulatory practices and processes. The final report from that rapid review concluded that, while ASQA’s overarching vision and purpose remained appropriate, some adjustments to its practices were needed to improve its engagement and communication with the sector and to ensure its regulatory approach is guided by regulatory necessity, risk and proportionality.

On 1 January 2021, Parts 1 and 2 of Schedule 1 to the *National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020* commenced. Those amendments strengthened the National VET Regulator’s governance arrangements in line with the ASQA rapid review recommendations. Relevantly, the amendments replaced the Chief Commissioner / Chief Executive Officer and two Commissioners with a single independent statutory office holder, known as the National VET Regulator.

### Human rights implications

The Instrument engages the following human rights:

- the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) (read with Article 2) and Article 1 of the International Labour Organization’s Human Resources Development Convention (**ILO Convention No. 142**); and
- the right to work in Article 6 of the ICESCR (read with Article 2) and Article 1 of the International Labour Organization’s Employment Policy Convention (**ILO Convention No. 122**).

## Right to education

The Instrument engages Article 1(1) of ILO Convention No. 142, which provides that each member shall adapt and develop comprehensive and coordinated policies and programs of vocational guidance and vocational training closely linked with employment.

The Instrument engages Article 2(1) of the ICESCR, which provides that each state party to that covenant undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in that covenant by all appropriate means, including particularly the adoption of legislative measures.

Relevantly:

- Article 13(1) provides that parties to the covenant recognise the right of everyone to education; agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms; and agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all the nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace; and
- Article 13(2)(b) provides that secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

The Instrument amendments flow from governance changes in the NVETR Act that were designed to improve and enhance the National VET Regulator's ability to regulate the vocational education and training (**VET**) sector, leading to improvements in students' educational outcomes. These amendments promote consistency with the new governance arrangements in the NVETR Act, generally having a positive impact on the right to education and promoting that right.

## Right to work

The Instrument engages Article 1(1) of ILO Convention No. 122, which provides that, with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each member shall declare and pursue, as a major goal, an active policy to promote full, productive and freely chosen employment.

The Instrument engages Article 2(1) of the ICESCR. Relevantly:

- Article 6(1) of the ICESCR provides that State Parties recognise the right to work;
- Article 6(2) of the ICESCR sets out the steps to be taken by State Parties to achieve full realisation of that right, including providing technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

The Instrument amendments flow from governance changes in the NVETR Act that were designed to improve and enhance the National VET Regulator's ability to regulate the VET sector, leading to improvements in students' educational outcomes and ultimately their preparedness to take up opportunities to work. These amendments promote consistency with the governance arrangements in the NVETR Act, generally having a positive impact on the right to work and promoting that right.

### **Conclusion**

The Instrument is compatible with human rights as it promotes the right to education and the right to work under the ICESCR and ILO conventions listed above.

**Minister for Employment, Workforce, Skills, Small and Family Business, Stuart Robert**