

EXPLANATORY STATEMENT

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

National Vocational Education and Training Regulator Act 2011

Australian Skills Quality Authority Instrument Fixing Fees Amendment (Governance and Other Matters) Determination 2021

AUTHORITY

Subsection 232(1) of the *National Vocational Education and Training Regulator Act 2011* (the **Act**) empowers the Minister to, by legislative instrument, determine the amounts of fees the National VET Regulator may charge for goods or services the Regulator provides in performing the Regulator's functions (other than the service mentioned in subsection 35(2) of the Act).

Subsection 232(5) of the Act empowers the Minister to, in a determination made under subsection 232(1), determine other matters relating to the payment of fees, including:

- (a) the circumstances in which fees may be paid in instalments; and
- (b) the circumstances in which fees may be set off against another amount payable; and
- (c) the circumstances in which fees may be waived.

Subsection 232(2) of the Act requires the Minister to get the Ministerial Council's agreement to the amount of a fee that:

- (a) relates to goods or services in respect of registration as an NVR registered training organisation; or
- (b) relates to goods or services provided to NVR registered training organisations; or
- (c) relates to goods or services in respect of:
 - (i) the accreditation of a course as a VET accredited course; or
 - (ii) VET accredited courses.

As the *Australian Skills Quality Authority Instrument Fixing Fees Amendment (Governance and Other Matters) Determination 2021* (the **Instrument**) does not amend the amount of such fees, agreement from the Ministerial Council is not required.

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.

The regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of the *Legislation Act 2003* provide that section 42 and Part 4 of that Act do not apply in relation to an

instrument made under subsection 232(1) of the Act. As such, an instrument made under subsection 232(1) is not subject to disallowance or sunseting.

PURPOSE AND OPERATION

The Instrument amends the *Australian Skills Quality Authority Instrument Fixing Fees No. 1 of 2013* (the **Principal Instrument**) to omit references to “ASQA” and substitute them with references to “National VET Regulator” where relevant, so that the Principal Instrument is consistent with the Act. The Instrument also makes some minor amendments to the Principal Instrument to reflect current drafting practices.

BACKGROUND

The Act establishes the National VET Regulator and, along with associated legislation, provides a framework for the regulation of vocational education and training (**VET**). The Principal Instrument determines the amounts of fees the National VET Regulator may charge for goods or services the National VET Regulator provides in performing the Regulator’s functions, along with certain other matters for the purposes of subsection 232(5) 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 are 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* (the **Amendment Act**) commenced. Those amendments strengthened the National VET Regulator’s governance arrangements in line with the rapid review recommendations. Relevantly, the amendments replaced the 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 fees payable.

**AUSTRALIAN SKILLS QUALITY AUTHORITY INSTRUMENT FIXING FEES 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 *Australian Skills Quality Authority Instrument Fixing Fees 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 subsections 232(1) and 232(5) 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 – Paragraph 5(a)

5. This item makes a minor amendment to paragraph 5(a), substituting “Australian Skills Quality Authority” with “National VET Regulator”.

Item 2 – Paragraph 5(a)

6. This item makes a minor amendment to paragraph 5(a), substituting “it” with “the Regulator”.

Item 3 – Paragraph 5(a)

7. This item makes a minor amendment to paragraph 5(a), substituting “its” with “the Regulator’s”.

Item 4 – Section 6 Definitions

This item repeals section 6 and substitutes it with a new section 6.

8. A note at the beginning of new section 6 provides that a number of expressions used in the Principal Instrument are defined in section 3 of the Act, including “Australian Qualifications Framework”, “National VET Regulator”, “NVR registered training organisation”, “registered provider”, “registered training organisation” and “VET accredited course”.

9. New section 4 defines “Act”, “ASQA”, “CRICOS”, “delivery site”, “ELICOS”, “ESOS Act”, “ESOS Agency”, “qualification”, “RTO”, “training package” and “units of competency”.
10. This item effectively repeals the definitions of “ASQAnet” and “NVR”, as these terms are not used in the Principal Instrument.
11. This item is linked to the changes in sections 28, 29, 40 and 41 of the Amendment Act that relate to the National VET Regulator’s governance arrangements, and promotes consistency with current drafting practices.

Item 5 – 23

12. These items make minor amendments to align the language used in the Principal Instrument with the language used in the *National Vocational Education and Training Regulator Act 2011*. These items omit references to “ASQA” and substitute them with “the National VET Regulator”.