



National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021

made under subsection 158(1) of the

National Vocational Education and Training Regulator Act 2011

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021* that shows the text of the law as amended and in force on 23 September 2021 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1	Preliminary	
	1 Name	2
	2 Commencement	2
	3 Authority	2
	4 Definitions	2
Part 2	Context and intent of these requirements	
	5 Context	3
	6 Intent	3
Part 3	Financial viability risk assessment requirements	
	7 Obligation to submit to assessment at initial registration	4
	8 Obligation to submit to assessment at any time	4
	9 National VET Regulator may waive requirement where risk is considered low	4
Part 4	Form and content of financial viability risk assessment	
	10 Assessment to be in required form	4
	11 Assessment to be against common indicators	5
	12 Reviews to have regard to Standards	5
	13 Information to be assessed	5
	14 Assessment to consider size and scope of operations	6
Schedule 1—Repeals		7
	<i>Financial Viability Risk Assessment Requirements 2011</i>	7
Endnotes		7
	Endnote 1—About the endnotes	7
	Endnote 2—Abbreviation key	8
	Endnote 3—Legislation history	9
	Endnote 4—Amendment history	10

Part 1 Preliminary

1 Name

This instrument is the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	On the day after it is registered	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 158(1) of the *National Vocational Education and Training Regulator Act 2011*.

4 Definitions

In this instrument:

Act means the *National Vocational Education and Training Regulator Act 2011*.

Financially viable means the ability of an organisation to generate sufficient income to meet operating payments, debt commitments and, where applicable, to allow growth while delivering quality training and assessment services and outcomes.

Financial viability risk means the assessed financial performance, operations, and capacity of an organisation as an ongoing concern to deliver quality training and assessment services and outcomes for the duration of its registration, and the potential of its losing this capacity.

- (2) The requirements of this legislative instrument apply to:

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- (a) all organisations seeking registration under the Act and
 - (b) all training organisations registered under the Act.

NVR registered training organisation has the same meaning as in the Act.

National VET Regulator has the same meaning as in the Act.

An independent qualified auditor is:

- a) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or
- b) a person registered as a company auditor or a public accountant under a law in force in a State, the Australian Capital Territory or the Northern Territory; or
- c) a member of the Institute of Chartered Accountants in Australia, or of the Australian Society of Certified Practising Accountants; or
- d) a person approved by the Minister in writing as a qualified auditor for the purposes of the *Higher Education Support Act 2003*; and
- e) a person independent from the entity it is auditing.

Note: For the purpose of this legislative instrument, a qualified auditor will be considered to be independent from the entity it is auditing if the qualified auditor meets the independence requirements specified in Part 2M.4, Division 3, of the *Corporations Act 2001* as though the qualified auditor is an individual qualified auditor or an audit company and the body corporate seeking approval as a VET provider is the audited body under that Act.

Part 2 Context and intent of these requirements

5 Context

- (1) The Act in Section 158 requires the National VET Regulator to make the requirements relating to the financial viability of NVR registered training organisations. The requirements are to be made by legislative instrument and are to be known as the “Financial Viability Risk Assessment Requirements”.
- (2) The legislative instrument applies to NVR registered training organisations. Section 24 makes it a condition of registration that an NVR registered training organisation must satisfy the Financial Viability Risk Assessment Requirements.

6 Intent

- (1) The National VET Regulator requires an NVR registered training organisation to demonstrate its financial viability at any point in time, upon request.
- (2) The assessment of an organisation’s financial viability risk is directed at evaluating the likelihood of its business continuity, and its capacity to achieve

Part 4

Form and content of financial viability risk assessment

10 Assessment to be in required form

Financial data and information must be submitted to the qualified independent financial auditor nominated by the National VET Regulator in a format that is in accordance with Australian Accounting Standards.

11 Assessment to be against common indicators

- (1) The assessment of financial viability risk will be undertaken by assessing common indicators of financial performance and position. These may include but are not limited to the following indicators:
 - a) Liquidity– including current ratio and cash flow assessments
 - b) Solvency – including debt to assets assessment, debt to equity assessment
 - c) Economic Dependency – for example, reliance upon government funded training, or reliance on a particular cohort of students (e.g. overseas students)
 - d) Revenue, profit and cash flow
 - e) Commercial risk
 - f) Audit opinion
 - g) Contingencies
 - h) Compliance with all of its statutory obligations (for example: GST, taxation, superannuation, Companies Code)
 - i) Compliance with accounting standards
 - j) Accounting policies – impact of the organisation’s accounting policies on its financial risk.

12 Reviews to have regard to standards

Independent reviews of financial projections will have regard to the standard *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued by the Auditing and Assurance Standards Board on 30 May 2017, as existing from time to time.

Note: The Auditing and Assurance Standards Board standards could in 2021 be viewed on the Auditing and Assurance Standards Board website (www.auasb.gov.au).

13 Information to be assessed

- (1) Information that could be used to assess the common indicators in section 11 and to make a determination about financial viability risk may include, but not be limited to:
 - (a) Independent reviews of financial projections including underlying assumptions

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- (b) Business planning including forecast income streams and forecast expenditure
 - (c) Assets and liabilities
 - (d) Financial statements audited by an independent qualified auditor
 - (e) Financial records for the previous 12 months, including profit and loss, balance sheets
 - (f) Cash flow and bank accounts
 - (g) Short term budgets and forecasts, including assumptions
 - (h) Information on current and projected student enrolments, including assumptions
 - (i) Tax records
 - (j) Information about current debts and debtors, credits and creditors, loans and repayment
 - (k) Plans, and information on any legal disputes
 - (l) Inter-company dealings, transfers, ownerships and loans
 - (m) Contingent liabilities
 - (n) Ultimate ownership details
 - (o) Post reporting activities (includes activities that relate to the period after accounts have been audited that would have a material impact on the organisation's operations, viability or ownership).

14 Assessment to consider size and scope of operations

In managing the financial viability risk of an organisation, the National VET Regulator may take into consideration the size and scope of its operations.

Schedule 1—Repeals

Financial Viability Risk Assessment Requirements 2011

1 The whole of the instrument

Repeal the instrument.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021	29 July 2021 (F2021L01040)	30 July 2021 (s 2(1) item 1)	
National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Amendment Instrument 2021	22 Sept 2021 (F2021L01309)	23 Sept 2021 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 12	rs F2021L01309
Schedule 1	
Schedule 1	rep LA s 48C
