

Explanatory Statement

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

Purpose and Authority

The *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021* (the Instrument) is made under subsection 158(1) of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act). That subsection requires the National VET Regulator (also known as the Chief Executive Officer of the Australian Skills Quality Authority or ASQA), by legislative instrument, to make requirements relating to the financial viability of NVR registered training organisations. Subsection 158(2) of the NVETR Act provides the Financial Viability Risk Assessment Requirements means the requirements under subsection (1) (the Requirements).

The Instrument remakes the *Financial Viability Risk Assessment Requirements 2011* (the former Instrument) in the same terms (save for form changes associated with new templates) and repeals the former Instrument.

The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. Sunsetting legislative instruments generally cease to have effect after ten years unless further action is taken to extend their operation, such as remaking the instrument.

The former Instrument sunsets on 1 October 2021.

The Instrument forms part of the VET Quality Framework. As defined in section 3 of the NVETR Act, the VET Quality Framework is comprised of the Standards for NVR Registered Training Organisations, the Australian Qualifications Framework, the Fit and Proper Person Requirements, the Financial Viability Risk Assessment Requirements and the Data Provision Requirements.

The Instrument applies to all NVR registered training organisations from 1 July 2011. The *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* sets out the dates from which state and territory registered training organisations are taken to be NVR registered training organisations for the purposes of the NVETR Act. NVR registered training organisations must comply with the Requirements as a condition of registration under section 24 of the NVETR Act.

Further, the National VET Regulator is required to consider whether an applicant for registration under the NVETR Act complies with the VET Quality Framework and the applicable conditions of registration including section 24.

Commencement

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

Consultation

The Instrument remakes the former Instrument so there are no changes to the content of the Requirements. ASQA meets regularly with key external stakeholders through various forums where remaking the Instrument has been discussed.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has confirmed that as the Instrument is unlikely to have more than a minor regulatory impact, a Regulatory Impact Statement is not required. OBPR reference: 44217.

Disallowance

Subsection 158(4) of the NVETR Act provides that despite anything in section 44 of the Legislation Act, section 42 of that Act (disallowance) applies to the Requirements.

Accordingly, the Instrument is subject to disallowance.

Abbreviations used in this Explanatory Statement

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

the former Instrument means the *Financial Viability Risk Assessment Requirements 2011*.

the Requirements means the Financial Viability Risk Assessment Requirements as made under subsection 158(1) of the NVETR Act

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

Detailed Explanation of Amendments and Provisions

AMENDMENTS

There are no amendments to the Requirements of the former Instrument.

PROVISIONS

Part 1 – Preliminary

Sections 1 to 4 of the Instrument are formal provisions providing for the name, commencement, authority and definitions for the Instrument.

Section 1 states the name of the Instrument as the *National Vocational Education and Training Regulator (Financial Viability Risk Assessment Requirements) Instrument 2021*.

Section 2 provides for the Instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 states that the Instrument is made under subsection 158(1) of the NVETR Act.

Section 4 provides for definitions as used in the Instrument.

Part 2 – Context and Intent of the Requirements

Subsection 5(1) provides that the National VET Regulator is required to make requirements relating to the financial viability of NVR registered training organisations, to be known as the “Financial Viability Risk Assessment Requirements”.

Subsection 5(2) provides that the Instrument applies to NVR registered training organisations and section 24 of the NVETR Act makes it a condition of registration that these organisations must satisfy the Requirements.

Subsection 6(1) provides that the National VET Regulator requires an NVR registered training organisation to demonstrate its financial viability at any point in time, upon request.

Subsection 6(2) provides that the assessment of an organisation’s financial viability is directed at evaluating the likelihood of its business continuity, and its capacity to achieve quality outcomes and in particular, the assessment informs a judgement about whether the organisation has the financial resources to do each of the things listed in (a) to (e).

Part 3 – Financial viability risk assessment requirements

Subsection 7(1) provides that an organisation seeking registration must submit to an assessment of financial viability risk by a qualified independent financial auditor (as defined in section 4) nominated by the National VET Regulator, as part of the assessment of the application for

registration and under **subsection 7(3)** this applies to parent organisations, affiliated companies or organisations that have a vested interest in the organisation.

Subsection 7(2) provides that the assessment will include an assessment of the source and reliability of the evidence supporting the assumptions underlying the projections.

Section 8 provides that an NVR registered training organisation must submit to an assessment of financial viability risk by a qualified independent financial auditor nominated by the National VET Regulator or at other times during the registration period as determined by the National VET Regulator in accordance with the Risk Assessment Framework and this obligation applies to parent organisations, affiliated companies or organisations that have a vested interest in the organisation.

Section 9 provides that where it considers the financial viability risk of an organisation is low the National VET regulator may waive the requirement for a financial viability risk assessment but this does not remove the obligation in section 8 to submit to a future assessment if the National VET Regulator requires it.

Part 4 – Form and content of financial viability risk assessment

Section 10 provides that 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.

Section 11 provides that assessment of financial viability risk is undertaken by assessing common indicators of financial performance and position and may include but is not limited to the indicators as listed a) through to j).

Section 12 provides that independent reviews of financial projections will have regard to the Australian Audit and Assurance Standards, *AUS 804 The Audit of Prospective Financial Information* and *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

Section 13 provides that 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 is not limited to that listed in (a) through to (o).

Section 14 provides that 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

Section 1 of Schedule 1 repeals the whole of the former instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 and at the request of the Parliamentary Joint Committee on Human Rights

Summary of instrument

The Instrument is made under subsection 158(1) of the NVETR Act. That subsection requires the National VET Regulator, by legislative instrument, to make requirements relating to the financial viability of NVR registered training organisations. Subsection 158(2) of the NVETR Act provides that the requirements are to be known as the Financial Viability Risk Assessment Requirements.

The purpose of the Instrument is to repeal and remake the former Instrument before its sunsets on 1 October 2021.

Analysis of human rights implications

Right to education

The Instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 13 recognises 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.

In addition, paragraph 13(2)(b) recognises that secondary education, in all 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.

Right to work

The Instrument engages the right to work contained in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 6 recognises that in order to fully achieve the realisation of the right to work, there should be available technical and vocational guidance and training programmes, policies and techniques.

The objective of the Instrument is to ensure that an NVR registered training organisation is able to demonstrate its financial viability at any point in time and properly manage any risks going to its continued financial solvency as a going concern. Maintaining financial viability impacts on an organisation's capacity to achieve quality outcomes for students undertaking a course of vocational education and training with the organisation.

This objective is aimed at supporting the vocational education and training sector, and therefore promotes both the right to education and the right to work.

Conclusion

This 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*.