

## **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*

*National Vocational Education and Training Regulator (Other Functions) Instrument 2022*

### **AUTHORITY**

Subsection 157(1) of the *National Vocational Education and Training Regulator Act 2011* (the **Act**) sets out the functions of the National Vocational Education and Training (**VET**) Regulator (the **Regulator**), including any other function relating to VET that is set out in a legislative instrument made by the Minister for the purposes of paragraph 157(1)(p). Subsection 157(3) of the Act prohibits the Minister from setting out a function under paragraph 157(1)(p) unless the Ministerial Council has agreed to the function. The Ministerial Council has agreed to the text of the *National Vocational Education and Training Regulator (Other Functions) Instrument 2022* (the **Instrument**) that sets out the Regulator's other functions in accordance with section 191 of the Act.

Paragraphs 44(2)(b) and 54(2)(b) of the *Legislation Act 2003* (the **Legislation Act**) have the effect of exempting certain instruments, prescribed by regulation, from disallowance (section 42 of the Legislation Act) and sunseting (Part 4 of the Legislation Act). Item 23A of the table in section 10 and item 44A of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* exempt an instrument made under paragraph 157(1)(p) of the Act from disallowance and sunseting.

### **PURPOSE AND OPERATION**

The purpose of the Instrument is to set out that the Regulator will have the following other functions relating to VET:

- to receive and assess proposed training packages;
- to make recommendations to the Ministerial Council about the endorsement of proposed training packages; and
- to educate, and engage and consult with, industry bodies about training packages.

It is expected that the Regulator having these functions will:

- assist the Ministerial Council to decide whether to endorse the units of competency of a training package.
- promote quality in the VET system, ensuring the Regulator is aware of emerging issues for industry, and that industry bodies have access to education, guidance and

best practice information about training packages. This will be pivotal during the establishment period of the new industry engagement arrangements described below.

The Commonwealth, state and territory governments have agreed that the Regulator will initially have these functions on a temporary basis, subject to a post implementation review of the new industry engagement arrangements. Accordingly, the Instrument provides that the Regulator will cease to have the functions on 31 December 2024.

## **BACKGROUND**

While the strength of Australia's VET system is internationally recognised, improvements are needed to ensure it continues to respond to the needs of industry and learners, now and into the future.

Employers have indicated that the VET system is not currently working for them as well as it could be, with National Centre for Vocational Education Research data showing employer satisfaction with VET has fallen from 89.2 per cent in 2011 to 78.7 per cent in 2021. As of 1 March 2022, *Employers use and views of the VET system* could be accessed at <https://www.ncver.edu.au/research-and-statistics/publications/all-publications/employers-use-and-views-of-the-vet-system-2021>.

The time spent developing training packages and bringing them to market continues to be an issue. It takes on average 18 months to update a training package, with about a third of training packages taking more than two years.

This Instrument reflects legislative changes needed to implement the fundamental overhaul of Australia's VET system agreed by the Commonwealth, state and territory governments and announced in October 2021. As of 1 March 2022, *Ministerial Statement – 27 October 2021* regarding this announcement could be accessed at <https://www.dese.gov.au/skills-reform/resources/ministerial-statement-27-october-2021>.

That overhaul includes, from 1 January 2023:

- the establishment of a national network of industry-owned and industry-led organisations, known as Industry Clusters, which will, among other things, develop training packages for consideration by the Regulator. This new Industry Clusters model will replace the 67 Industry Reference Committees and six Skills Services Organisations, and will ensure courses and qualifications in the VET sector are driven by, and better meet the needs of, industry, as well as learners.
- the establishment of a new independent training package assurance function, replacing the Australian Industry and Skills Committee.

These reforms will improve the performance, efficiency, transparency, and confidence in the VET sector, ensuring:

- Australians can access high quality and relevant training; and
- employers can access the skilled workers they need.

## REGULATORY IMPACT

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (OBPR Reference ID: 43858).

## COMMENCEMENT

The Instrument commences on 1 January 2023. Prior to this date, the Regulator will establish systems and processes to support its performance of the functions from 1 January 2023.

## CONSULTATION

Public consultations were held between November 2020 and April 2021 on how industry can be better engaged in the VET system. Over 114 stakeholders (including peak bodies, unions, regulators, employers and VET providers) made a submission, 268 completed a survey and 416 attended a webinar or meeting.

Stakeholders in those consultations supported the need for reforms to the way training packages are developed, and for an independent expert body to assess training packages against national policies and standards. As of 1 March 2022, details about those consultations could be accessed at <https://www.skillsreform.gov.au/blog/moving-towards-better-industry-engagement-in-vet/>.

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, including the Act and legislative instruments made under the Act. 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 responsible for VET. SSON has commented on, and was involved in the preparation of, the Instrument.

The Ministerial Council has agreed to the text of the Instrument that sets out the Regulator's other functions. The Ministerial Council gave its agreement in accordance with section 191 of the Act.

The Regulator was also consulted in the preparation of the Instrument. The Regulator is supportive of the Instrument.

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (OTHER FUNCTIONS)  
INSTRUMENT 2022**

**EXPLANATION OF PROVISIONS**

**PART 1 – PRELIMINARY**

**Section 1: Name**

1. This section provides that the name of the Instrument is the *National Vocational Education and Training Regulator (Other Functions) Instrument 2022*.

**Section 2: Commencement**

2. This section provides that the whole of the Instrument commences on 1 January 2023. This commencement date will allow time to establish the Regulator’s systems to support its performance of the functions.

**Section 3: Authority**

3. This section provides that the Instrument is made under paragraph 157(1)(p) of the Act.

**Section 4: Definitions**

4. This section defines expressions used in the Instrument. The note at the beginning of the section explains that, in accordance with paragraph 13(1)(b) of the Legislation Act, a number of expressions used in the Instrument have the same meaning as in the Act as in force from time to time. This section defines expressions used in the Instrument. The note at the beginning of the section explains that, in accordance with paragraph 13(1)(b) of the Legislation Act, a number of expressions used in the Instrument have the same meaning as in the Act as in force from time to time.

**PART 2 – OTHER FUNCTIONS OF THE NATIONAL VET REGULATOR**

**Section 5: Other functions of the National VET Regulator**

5. This section confers on the Regulator, for the purposes of paragraph 157(1)(p) of the Act, other time-limited functions relating to vocational education and training.
6. Paragraph 5(1)(a) confers on the Regulator a function to receive and assess proposed training packages. Paragraph 5(1)(b) confers on the Regulator a function to make recommendations to the Ministerial Council about the endorsement of proposed training packages. For the purposes of these paragraphs, a proposed training package includes a new training package or any updates to an existing training package that has already been endorsed by the Ministerial Council.
7. In performing the functions set out in paragraphs 5(1)(a) and (b), the Regulator could, for example, assess the following matters before making a recommendation to the Ministerial Council:

- the units of competency of the proposed training package, which specify the standards of performance (including knowledge and skills) required in the workplace;
  - the assessment requirements of the proposed training package, which specify the evidence and required conditions for assessment in respect of a unit of competency;
  - the Australian Qualifications Framework qualification that is the outcome of meeting the assessment requirements of the proposed training package's units of competency;
  - the credit arrangements between the qualification and higher education qualifications, noting that a unit (or units) of competency may lead to a credit arrangement; or
  - any other matters set out by the Ministerial Council.
8. It is expected that the Ministerial Council would give guidance, in the form of standards or policies, to the Regulator on the matters it might assess a proposed training package against before making recommendations to the Ministerial Council.
9. In practice, it is expected that:
- Industry Clusters would periodically update existing, or develop new, training packages and give those proposed training packages to the Regulator.
  - the Regulator would assess each proposed training package it received against any standards or policies provided to it by the Ministerial Council.
  - if the Regulator decided a proposed training package did not meet those standards and policies, the Regulator would not give recommendations to the Ministerial Council about the endorsement of that proposed training package. The Regulator would instead give guidance to the relevant Industry Cluster where the training package is not meeting the relevant standards or policies. The Industry Cluster could then revise the proposed training package based on this feedback and give the revised proposed training package to the Regulator.
  - if the Regulator decided a proposed training package met the relevant standards or policies, it would give recommendations to the Ministerial Council about the endorsement of that proposed training package.
10. The Ministerial Council may consider the Regulator's recommendations when deciding whether to endorse the units of competency of a training package.
11. The Regulator's performance of these functions is a key mechanism in building strong checks and balances within the national training system. The Regulator's performance of these functions will give the Ministerial Council, and the national training system more

broadly, assurance that proposed training packages are fit-for-purpose and meet the needs of industry, training providers, employers, and learners.

12. Paragraph 5(1)(c) confers on the Regulator a function to educate, and engage and consult with, industry bodies (including Industry Clusters) about training packages. In performing this function, the Regulator could, for example:

- develop and communicate educational information about training packages; and
- support and guide industry bodies (including Industry Clusters) by providing those bodies with educational materials that outline how to develop fit-for-purpose training packages that meet industry needs and meet any relevant standards or policies.

13. Subsection 5(2) provides that the Regulator ceases to have the functions set out in subsection 5(1) on 31 December 2024. The Regulator may perform the functions until the end of that day on 31 December 2024 (see subsection 26(1) of the Acts Interpretation Act 1901), but must not perform the functions set out in subsection 5(1) after that time. This is because the Commonwealth, state and territory governments have agreed that the Regulator will initially have the functions set out in subsection 5(1) on a temporary basis, subject to a post implementation review of the new industry engagement arrangements.