

## **EXPLANATORY STATEMENT**

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

*National Vocational Education and Training Regulator Act 2011*

*National Vocational Education and Training Regulator Amendment Regulations 2022*

### **AUTHORITY**

Section 235 of the *National Vocational Education and Training Regulator Act 2011* (the NVETR Act) empowers the Governor-General to make regulations prescribing matters:

- required or permitted by the NVETR Act to be prescribed; or
- necessary or convenient to be prescribed for carrying out or giving effect to the NVETR Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that, 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.

Paragraph 9(3)(b) of the NVETR Act provides that an NVR registered training organisation is subject to a law inside the scope of immunity (see subsection 9(1) of the NVETR Act) if that law is specified in regulations made for the purposes of that paragraph and as agreed by the Ministerial Council. The Ministerial Council has agreed to the text of the *National Vocational Education and Training Regulator Amendment Regulations 2022* (the instrument) that specifies Division 2 of Part 5.4 of the *Education and Training Reform Act 2006* (Vic) (the ETR Act) as such a law.

### **PURPOSE AND OPERATION**

The instrument makes minor amendments to the *National Vocational Education and Training Regulator Regulations 2011* to specify, for the purposes of paragraph 9(3)(b) of the NVETR Act, that an NVR registered training organisation is subject to Division 2 of Part 5.4 of the ETR Act. The purpose of this change is to make clear that students under placements for the purposes of Part 5.4 of the ETR Act are entitled to compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (the WIRC Act).

### **BACKGROUND**

The NVETR Act establishes the National VET Regulator (the Regulator) and provides a legislative framework for the regulation of vocational education and training. The NVETR Act applies differently in States that have referred power to the Commonwealth for the

purposes of section 51(xxxvii) of the Constitution, being New South Wales, Queensland, South Australia, and Tasmania. In the other jurisdictions, being Victoria and Western Australia, the NVETR Act relies on other heads of Commonwealth legislative power (see section 4 of the NVETR Act). In non-referring States, the NVETR Act applies on a more limited basis reflecting the scope of those powers (see subsection 8(4) of the NVETR Act).

NVR registered training organisations are training organisations that are registered by the Regulator under the NVETR Act. An NVR registered training organisation operating in Victoria or Western Australia – both non-referring States – is not subject to the laws of Victoria or Western Australia that relate to, among other things, the registration or regulation of vocational education and training organisations (paragraph 9(1)(a) of the NVETR Act).

The application of the NVETR Act in Victoria might arguably result in an undesirable gap in the scope of the workers compensation scheme in the WIRC Act; the scheme may, arguably, not cover students who are on practical placements as part of a course of study with an education provider that is an NVR registered training organisation. This is because:

- The WIRC Act entitles *workers* to compensation for workplace injuries. Included within the definition of *worker* is a ‘post-secondary student of a TAFE provider within the meaning of Division 2 of Part 5.4 of the ETR Act while employed under a practical placement agreement under that Part’ (refer to Part 1 of Schedule 1 of the WIRC Act).
- Division 1 of Part 5.4 of the ETR Act regulates vocational education and training organisations. Paragraph 9(1)(a) of the NVETR Act may then exclude the ETR Act’s operation to the extent that it applies to NVR registered training organisations. This could mean that an NVR registered training organisation may not employ anyone under a practical placement agreement *under* Division 2 of Part 5.4 of the ETR Act, and that no such person is a worker for the purposes of the WIRC Act. A person that falls into this category may then, arguably, not be entitled to compensation under the WIRC Act.

## **COMMENCEMENT**

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

## **CONSULTATION**

The Australian Government Department of Education, Skills and Employment worked closely with the Victorian Government Department of Education and Training in the preparation of the instrument.

All state and territory governments were consulted on the instrument in accordance with the arrangements set out in the *Intergovernmental Agreement for Regulatory Reform in Vocational Education and Training*. Clause 5.2 of that agreement states that the Australian Government will consult with state and territory governments on proposals to make amendments to the National VET Regulator legislation. The Australian Government Department of Education, Skills and Employment completes that consultation through the Skills Senior Official's Network, which consists of senior officials from each state and territory government department responsible for vocational education and training. State and territory governments raised no concerns in relation to the instrument.

In its capacity as the Ministerial Council, the Skills Ministers' Meeting has agreed – in accordance with section 191 of the NVETR Act – to the text of the instrument that specifies Division 2 of Part 5.4 of the ETR Act for the purposes of paragraph 9(3)(b) of the NVETR Act. The Skills Ministers' Meeting consists of ministers from the Australian Government and state and territory governments with portfolio responsibility for skills issues.

The Regulator was also consulted in the preparation of the instrument. The Regulator raised no concerns in relation to the instrument.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (OBPR Reference ID: 17176).

## 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 Amendment Regulations 2022*

This disallowable 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 of the disallowable legislative instrument**

Section 235 of the *National Vocational Education and Training Regulator Act 2011* (the NVETR Act) empowers the Governor-General to make regulations prescribing matters:

- required or permitted by the NVETR Act to be prescribed; or
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This disallowable instrument makes minor amendments to the *National Vocational Education and Training Regulator Regulations 2011* to specify, for the purposes of paragraph 9(3)(b) of the NVETR Act, that an NVR registered training organisation is subject to Division 2 of Part 5.4 of the *Education and Training Reform Act 2006* (Vic) (the ETR Act). The purpose of this change is to make clear that students under placements for the purposes of Part 5.4 of the ETR Act are entitled to compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (the WIRC Act).

The Ministerial Council has agreed to the text of this disallowable instrument that specifies Division 2 of Part 5.4 of the ETR Act for the purposes of paragraph 9(3)(b) of the NVETR Act.

### **Human rights implications**

The disallowable instrument engages the following rights:

- the right to education 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* (the 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* (the ILO Convention No. 122).

### Right to education

Article 2(1) of the ICESCR provides that each State Party to the ICESCR 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.

Article 13(1) of the ICESCR provides that the State 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.

Article 13(2)(b) of the ICESCR 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.

Article 1(1) of the ILO Convention 142 provides that each State Party to the convention shall adopt and develop comprehensive and coordinated policies and programs of vocational guidance and vocational training, closely linked with employment.

This disallowable instrument promotes the right to education by clarifying that students under placements for the purposes of Part 5.4 of the ETR Act are entitled to compensation under the WIRC Act. This improves access to vocational education and training courses in Victoria and improves outcomes for certain students in Victoria.

### Right to work

Article 6(1) of the ICESCR provides that State Parties to the convention recognised the right to work (which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept) and take appropriate steps to safeguard this right.

Article 6(2) of the ICESCR sets out the steps to be taken by the State Parties to achieve the 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.

Article 1(1) of the ILO Convention No. 122 provides that (among other things), 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.

This disallowable instrument promotes the right to education by clarifying that students under placements for the purposes of Part 5.4 of the ETR Act are entitled to compensation under the WIRC Act. This improves access to vocational education and training courses in Victoria and improves outcomes for certain students in Victoria, ultimately boosting preparedness for work opportunities.

### **Conclusion**

This disallowable instrument is compatible with human rights as it promotes the protection of human rights.

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

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR AMENDMENT  
REGULATIONS 2022**

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. Section 1 provides that the name of the instrument is the *National Vocational Education and Training Regulator Amendment Regulations 2022*.

## **Section 2: Commencement**

2. Section 2 provides that the instrument commences on the day after it is registered.

## **Section 3: Authority**

3. Section 3 provides that the instrument is made under the NVETR Act.

## **Section 4: Schedules**

4. Section 4 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**

### ***National Vocational Education and Training Regulator Regulations 2011***

#### **Item 1**

5. Item 1 of Schedule 1 to the instrument inserts a new Part 1A – Laws outside scope of immunity from State and Territory Laws – after Part 1. A new regulation 3A in new Part 1A provides that, for the purposes of paragraph 9(3)(b) of the NVETR Act, Division 2 of Part 5.4 of the ETR Act is specified. The intent of new regulation 3A is to make clear that students under placements for the purposes of that Part are entitled to compensation under the WIRC Act.

#### **Item 2**

6. Item 2 of Schedule 1 to the instrument inserts a new regulation 19 in Part 5 to clarify that new regulation 3A applies, in relation to an organisation, on or after the commencement of the instrument.