

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Skills and Training

### ***National Vocational Education and Training Regulator Act 2022***

#### ***National Vocational Education and Training Regulator (Fees) Determination 2022***

#### **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 (the **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.

The *National Vocational Education and Training Regulator (Fees) Determination 2022* (the **Instrument**) repeals the existing *Australian Skills Quality Authority instrument fixing fees No.1 of 2013 (2013 Fees Instrument)*, sets new fee amounts and sets out further matters in accordance with section 232 of the Act. As new fee amounts are specified in the Instrument and the fees fall under the parameters of subsection 232(2) of the Act, the agreement of the Ministerial Council to the new fee amounts is required.

The Commonwealth, state and territory Skills Ministers, when meeting together, constitute the 'Ministerial Council' for the purposes of the Act. On 29, March 2022 the Commonwealth Skills Minister wrote to the other members of the Ministerial Council informing them of the proposed fee amounts and seeking their agreement. The Ministerial Council's agreement to the proposed fee amounts was subsequently obtained in accordance with section 191 of the Act.

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 primary purpose of the Instrument is to repeal the 2013 Fees Instrument and replace it with the Instrument, which determines new amounts of fees the National VET Regulator may charge for goods or services it provides in performing its functions under the Act and *Education Services for Overseas Students Act 2000* (the **ESOS Act**).

In addition to repealing the 2013 Fees Instrument, the Instrument also repeals the *Australian Skills Quality Authority Instrument Fixing Fees Amendment Determination (No. 1) 2018* as this instrument amended the 2013 Fees Instrument and is no longer relevant.

The Instrument implements the Australian Government's decision that the Regulator recovers the full cost of legislated regulatory activities from 1 July 2022. To implement this decision, a revised schedule of fees is required.

Following improvements to the Regulator's cost recovery model, revisions have been made to the amounts the Regulator charges in relation to legislated fees for provider registration and course accreditation. The revised amounts were the subject of extensive consultation with providers and vocational education and training (VET) stakeholders (refer consultation below). The impact of implementation of full cost recovery to the VET sector is effectively controlled through a schedule of fees that represents the efficient overall cost of providing regulatory services to regulated entities. The Regulator's cost model was developed in consultation with the Department of Finance to ensure alignment with the Australian Government Charging Framework and the Cost Recovery Guidelines.

## **Background**

The Act establishes the National VET Regulator and the associated listed entity for the purposes of the finance law (within the meaning of the *Public Governance Performance and Accountability Act 2013*), being the Australian Skills and Quality Authority (**ASQA**). The Act and its related legislation provide a framework for the regulation of vocational education and training (**VET**) across Australia to ensure nationally consistent standards and quality delivery in skills training to students.

The Australian Government Budget 2018-2019 required ASQA to transition from a partial cost recovery agency, in relation to its regulatory activities, to full cost recovery from

2020-21. As such ASQA was required to implement a revised schedule of fees from July 2020. However, a subsequent decision of the Australian Government deferred full cost recovery until 1 July 2022, in response to the financial pressures on providers impacted by the COVID-19 pandemic.

## **REGULATORY IMPACT**

The Office of Best Practice Regulation (**OBPR**) confirmed that a Regulation Impact Statement is not required for ASQA to move to full cost recovery nor for the preparation of legislative instruments (OBPR reference: 23083).

## **COMMENCEMENT**

The instrument will commence 1 July 2022, in accordance with the Government decision to implement full cost recovery from that date.

## **CONSULTATION**

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 National VET Regulator and the state and territory governments have been consulted regarding the making of the Instrument. No concerns were raised.

On 29, March 2022, the Commonwealth Skills Minister wrote to the other members of the Ministerial Council, comprising state and territory skills ministers, informing them of the proposed fee amounts and seeking their agreement. The Ministerial Council's agreement to the proposed fee amounts was subsequently obtained in accordance with section 191 of the Act.

Representatives from the VET sector were also consulted regarding the proposed fees. ASQA commenced stakeholder consultation regarding its move to full cost recovery in November 2019, following the Australian Government's Budget 2018-19 decision that it transition from partial to full cost recovery from 2020-21. ASQA worked to implement a revised schedule of fees from 1 July 2020. The Government subsequently deferred its decision to move ASQA to full cost recovery to 1 July 2022 in response to the pandemic. ASQA continued engagement with stakeholders in December 2021, working on its proposed 2022-23 Cost Recovery Implementation Statement (**CRIS**). From 5 January to 9 February 2022, ASQA conducted public consultations on the CRIS via its website and through targeted engagement with its core consultation groups - the Stakeholder Liaison Group and Provider Roundtable Cost Recovery Working Group. ASQA worked closely with the Department of Finance (DoF) on the cost model outlined in the CRIS. The final cost model was agreed by DoF on 18 February 2022 and the CRIS was agreed by the Commonwealth Skills Minister on 17 March 2022.

# NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (FEES) DETERMINATION 2022

## EXPLANATION OF PROVISIONS

### **Section 1: Name**

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

### **Section 2: Commencement**

This section provides that the whole of the instrument commences on 1 July 2022.

### **Section 3: Authority**

This section provides that the instrument is made under section 232 of the Act.

### **Section 4: Definitions**

This section provides the definitions of key terms and provides that certain specified expressions used in the Instrument have the same meaning as in the Act.

### **Section 5: Schedules**

This section provides that any instruments specified in a Schedule to the *National Vocational Education and Training Regulator (Fees) Determination 2022* Instrument are repealed according to the Schedule.

## **PART 2 – FEES**

### **Section 6: Fees in relation to the registration and renewal of NVR registered training organisations**

Section 6 sets out the amounts of fees that the National VET Regulator may charge for the registration and renewal of an NVR registered training organisation in accordance with subsection 232(1) of the Act.

Table 1 sets out the name of the fee which may be charged, the corresponding service being provided by reference to the relevant section of the Act, and the corresponding fee amount the Regulator is authorised to impose.

### **Section 7: Fees in relation to the performance of functions by the National VET Regulator as an ESOS Agency**

Section 7 sets out the fees the Regulator may charge for performing its functions as an ESOS Agency in accordance with subsection 232(1) of the Act.

Table 2 sets out the name of the fee which may be charged, the corresponding service being provided by reference to the relevant section of the ESOS Act, and the corresponding fee amount the Regulator is authorised to impose.

### **Section 8: Fees in relation to the accreditation of a course as a VET accredited course**

Section 8 of this Instrument sets out the fees the Regulator may charge for services relating to the accreditation of VET courses, in accordance with subsection 232(1) of the Act.

Table 3 sets out the name of the fee which may be charged, the corresponding service being provided by reference to the relevant section of the Act, and the corresponding fee amount that the Regulator is authorised to impose.

### **Section 9: Fees in relation to applications for reconsideration of decisions**

Section 9 sets out the fee payable if a person is dissatisfied with a reviewable decision made under the Act and they apply to the National VET Regulator to reconsider the decision under section 200 of the Act.

## **PART 3 – WAIVER OF FEES**

### **Section 10: Application of this part**

Section 10 states that part 3 of this Instrument is made under subsection s 232(5)(c) of the Act. This part specifies the circumstances in which fees (determined in accordance with subsection 232(1) of the Act) may be paid in instalments, waived or set off against another amount payable.

### **Section 11: Withdrawal of application**

Section 11 specifies that the Regulator must waive a fee paid in accordance with Part 2 of the Instrument, if the associated application is withdrawn before the Regulator has commenced work on the application. The result of a fee waiver in these circumstances is that the fee will be refunded to the applicant (refer to commentary on section 14 below).

### **Section 12: Application to change scope and add courses**

Section 12 specifies which fees must be waived if an NVR Registered Training Organisation applies to change the scope of their registration under the NVETR Act and add one or more courses to their registration under the ESOS Act. If this occurs, the lower of the respective application and assessment fees that apply will be waived.

### **Section 13: Special Circumstances**

Section 13 provides for circumstances in which the Regulator is able to waive the whole or part of a fee on account of special circumstances. In some of these cases the Regulator has the discretion to decide whether or not to waive the fee. These include if the Regulator determines:

- there are special or unusual circumstances that render the payment of the fee unreasonable or inequitable (paragraph 13(1)(a)); or
- the amount of the fee that remains unpaid would be uneconomical to pursue (paragraph 13(1)(b)).

Subsection 13(2) provides that the Regulator must waive the relevant fee if the Regulator determines it is not appropriate to consider an application made under section 200 of the Act, because the relevant decision is not a reviewable decision.

Subsection 13(3) confirms that circumstances related to the COVID-19 pandemic are special or unusual circumstances which could potentially cause the fee to be unreasonable or inequitable for the purposes of paragraph 13(1)(a).

Subsection 13(4) provides examples of circumstances that would not constitute special or unusual circumstances for the purposes of paragraph 13(1)(a).

#### **Schedule 14: Refund of waived fees**

Section 14 provides that the Regulator must refund any Part 2 fees that have already been paid by a person under the Act or the ESOS Act, where the Regulator decides to waive those fees.

### **PART 4 – MISCELLANEOUS**

#### **Schedule 15: Delegated functions**

Section 15 clarifies that a person will not be liable to pay fees under the Act in respect of goods and services that are provided by an entity external to the Regulator. This applies if the Regulator has delegated the provision of goods and services to an external entity under subsection 224(2), 225(1) or 226(1) of the Act.

#### **Schedule 16: Set off fees**

Section 16 applies for the purposes of paragraph 232(5)(b) of the Act and specifies the circumstances in which fees (determined in accordance with subsection 232(1) of the Act) may be set off against another amount payable.

If the amount owed by the Regulator to a person exceeds the amount of the fee or fees that the person owes the Regulator, this section allows the Regulator to reduce the amount it refunds to that person, by setting off the amount it owes against the fee or fees payable.

If the amount owed by the Regulator to a person is less than the amount the person owes to the Regulator, this section allows the Regulator to reduce the amount of the fee or fees it seeks from that person, rather than refund an amount owed to the person. This is achieved by setting off the amount the Regulator owes against the fee or fees payable.

A worked example is provided under subsection 16(2). This explains how a set off under section 16 would work in practice.

### **SCHEDULE 1 – REPEALS**

This Schedule repeals the whole of the *Australian Skills Quality Authority Instrument Fixing Fees No. 1 of 2013* instrument and the *Australian Skills Quality Authority Instrument Fixing Fees Amendment Determination (No. 1) 2018*. These instruments will not be required if the

*National Vocational Education and Training Regulator (Fees) Determination 2022* is made, as the new instrument provides for all necessary matters under section 232 of the Act and will replace the old instruments.