

## **EXPLANATORY STATEMENT**

Issued by the authority of Brendan O'Connor, Minister for Skills and Training

***National Vocational Education and Training Regulator (Charges) Act 2012***

***National Vocational Education and Training Regulator (Charges) Determination 2022***

### **AUTHORITY**

The *National Vocational Education and Training Regulator (Charges) Determination 2022* (the instrument) is made under subsection 6B(1), subsection 9(2), subsection 12(2) and paragraph 13(b) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Act).

Subsection 6B(1) of the Act empowers the Minister to, by legislative instrument, determine an amount of National VET Regulator annual registration charge for a financial year, or a method for working out such an amount, payable by a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies, for the purposes of that section. Paragraph 6B(2)(b) of the Act prohibits the Minister from determining the amount of the charge or method unless the Ministerial Council has agreed to the amount or method. The Ministerial Council has agreed to the method set out in the Instrument in accordance with section 191 of the *National Vocational Education and Training Regulator Act 2011*.

Subsection 9(2) of the Act requires the Minister to, by legislative instrument, determine the formula for calculating a charge payable under Part 2 of the Act (a charge for a compliance audit).

Subsection 12(2) of the Act requires the Minister to, by legislative instrument, determine the formula for calculating a charge payable under Part 3 of the Act (a charge for the investigation of a complaint about an NVR registered training organisation).

Paragraph 13(b) of the Act empowers the Minister to, by legislative instrument, determine the circumstances in which the National VET Regulator (the Regulator) may, on behalf of the Commonwealth, waive a charge under the Act (in whole or in part).

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 54(1)(a) of the *Legislation Act 2003* has the effect of exempting an instrument from sunseting (see Part 4 of the *Legislation Act 2003*) if the enabling legislation for the instrument:

- facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
- authorises the instrument to be made by the body or for the purposes of the body or scheme.

The Act and the *National Vocational Education and Training Regulator Act 2011* establishes a national scheme for the regulation of vocational education and training, giving effect to the matters set out in the *Intergovernmental Agreement for Regulatory Reform in Vocational Education and Training*. Given the instrument facilitates the operation of, and is made for the purposes of, this intergovernmental scheme, the instrument is not subject to sunseting.

## **PURPOSE AND OPERATION**

The instrument gives effect to the Australian Government’s decision that, from 1 July 2022, the Regulator to recover the costs of the majority of its regulatory activities.

The Australian Government announced in its 2018-19 Budget that the Regulator would transition from partial cost recovery to full cost recovery. This transition was deferred to 2021-22 as part of a package of measures announced in April 2020 to lift financial pressures on vocational education and training providers impacted by the COVID-19 pandemic.

The instrument repeals and replaces the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)* to determine:

- an updated method for working out an amount of National VET Regulator annual registration charge for a financial year payable by a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies, for the purposes of that section;
- an updated formula for calculating a charge for a compliance audit;
- an updated formula for calculating a charge for the investigation of a complaint about an NVR registered training organisation; and
- the circumstances in which the National VET Regulator may, on behalf of the Commonwealth, waive a charge under the Act (in whole or in part).

The updated methods and formulas for these charges support the Regulator’s transition to full cost recovery, and are consistent with the Australian Government Charging Framework (which, as of 9 June 2022, could be accessed at <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-money-property/managing-money/australian-government-charging-framework>).

## REGULATORY IMPACT

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (OBPR Reference ID: 23083).

## COMMENCEMENT

The instrument commences on 1 July 2022.

## CONSULTATION

The Australian Government Department of Education, Skills and Employment (**the department**) worked closely with the Australian Skills Quality Authority (**ASQA**) in the preparation of the instrument.

ASQA has consulted extensively with representatives from the vocational education and training sector. ASQA commenced this consultation in November 2019 with a consultation paper (which, as of 9 June 2022, could be accessed at

[https://www.asqa.gov.au/sites/default/files/2019-11/ASQA%20Fees%20and%20charges%20proposal%202020-21%20Consultation%20paper\\_0.pdf](https://www.asqa.gov.au/sites/default/files/2019-11/ASQA%20Fees%20and%20charges%20proposal%202020-21%20Consultation%20paper_0.pdf)). Following the Australian Government's decision to

defer the Regulator's transition to full cost recovery, ASQA recommenced consultation in December 2021 and, in early 2022, sought feedback on its draft 2022-23 cost recovery implementation statement (which, as of 9 June 2022, could be accessed at

<https://www.asqa.gov.au/sites/default/files/2022-01/ASQA%20draft%20Cost%20Recovery%20Implementation%20Statement%20from%20July%202022%20v1.pdf>) through its website, as well as through targeted engagement by way of its stakeholder liaison group and provider roundtable cost recovery working group.

The Regulator consulted all state and territory governments on the updated method and formulas in accordance with the arrangements set out in the *Intergovernmental Agreement for Regulatory Reform in Vocational Education and Training*. Clause 5.2.1 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. This consultation is undertaken through the Skills Senior Official's Network, which consists of senior officials from each state and territory government responsible for vocational education and training. State and territory governments were consulted on 5 January 2022 and raised no concerns in relation to the updated method and formulas.

In its capacity as the Ministerial Council, the Skills Ministers' Meeting has agreed – in accordance with section 191 of the *National Vocational Education and Training Regulator Act 2011* – to the updated method for working out an amount of National VET Regulator annual registration charge. The Skills Ministers' Meeting consists of ministers from the

Australian Government and state and territory governments with portfolio responsibility for skills matters.

## 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 (Charges) Determination 2022*

The *National Vocational Education and Training Regulator (Charges) Determination 2022* (the 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**

#### Authority

Subsection 6B(1) of the *National Vocational Education and Training Regulator (Charges) Act 2012* (the Act) empowers the Minister to, by legislative instrument, determine an amount of National VET Regulator annual registration charge for a financial year, or a method for working out such an amount, payable by a person to whom section 232A of the National Vocational Education and Training Regulator Act 2011 applies, for the purposes of that section.

Subsection 9(2) of the Act requires the Minister to, by legislative instrument, determine the formula for calculating a charge payable under Part 2 of the Act (a charge for a compliance audit).

Subsection 12(2) of the Act requires the Minister to, by legislative instrument, determine the formula for calculating a charge payable under Part 3 of the Act (a charge for the investigation of a complaint about an NVR registered training organisation).

Paragraph 13(b) of the Act empowers the Minister to, by legislative instrument, determine the circumstances in which the National VET Regulator (the Regulator) may, on behalf of the Commonwealth, waive a charge under the Act (in whole or in part).

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.

#### Purpose and operation

The instrument gives effect to the Australian Government's decision that, from 1 July 2022, the Regulator continues its transition to recover the costs of the majority of its regulatory activities.

The Australian Government announced in its 2018-19 Budget that the Regulator would transition from partial cost recovery to full cost recovery. This transition was deferred to

2021-22 as part of a package of measures announced in April 2020 to lift financial pressures on vocational education and training providers impacted by the COVID-19 pandemic.

The instrument repeals and replaces the *National Vocational Education and Training Regulator (Charges) Determination 2013 (No. 1)* and determines:

- an updated method for working out an amount of National VET Regulator annual registration charge for a financial year payable by a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies, for the purposes of that section;
- an updated formula for calculating a charge for a compliance audit;
- an updated formula for calculating a charge for the investigation of a complaint about an NVR registered training organisation; and
- the circumstances in which the National VET Regulator may, on behalf of the Commonwealth, waive a charge under the Act (in whole or in part).

The updated methods and formulas for these charges support the Regulator's transition to full cost recovery, and are consistent with the Australian Government Charging Framework (which, as of 9 June 2022, could be accessed at <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-money-property/managing-money/australian-government-charging-framework>).

### **Human rights implications**

The 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* (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* (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.

The updated charge method and formulas in the instrument help to implement new arrangements for the Regulator to recover the majority of the costs associated with its regulatory activities, in turn promoting more effective regulation in the sector. This seeks to ensure that NVR registered training organisations and relevant ESOS agencies are properly resourced to fulfil their ongoing obligations in an efficient and effective manner so that the quality and integrity of Australia's vocational education and training system is maintained. A strong vocational and education system promotes and supports the right to education.

#### *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.

The updated charge method and formulas in the instrument help to implement new arrangements for the Regulator to recover the majority of the costs associated with its regulatory activities, in turn promoting more effective regulation in the sector. This seeks to ensure that NVR registered training organisations and relevant ESOS agencies are properly resourced to fulfil their ongoing obligations in an efficient and effective manner so that the quality and integrity of Australia's vocational education and training system is maintained. A

strong vocational and education system boosts preparedness for employment opportunities, in turn promoting and supporting the right to work.

**Conclusion**

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

**Minister for Skills and Training, the Hon Brendan O'Connor MP**



**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (CHARGES)  
DETERMINATION 2022**

**EXPLANATION OF PROVISIONS**

**Part 1 – Preliminary**

**Section 1      Name**

Section 1 provides that the name of the instrument is the *National Vocational Education and Training Regulator (Charges) Determination 2022*.

**Section 2      Commencement**

Section 2 provides that the whole of the instrument commences on 1 July 2022.

**Section 3      Authority**

Section 3 provides that the instrument is made under subsection 6B(1), subsection 9(2), subsection 12(2) and paragraph 13(b) of the *National Vocational Education and Training Regulator (Charges) Act 2012*.

**Section 4      Definitions**

Section 4 defines expressions used in the instrument. The note at the beginning of the section identifies a number of terms defined in the *National Vocational Education and Training Regulator Act 2003*, including *compliance audit*, *Data Provision Requirements*, *National VET Regulator*, *NVR registered training organisation* and *VET course*.

**Act** is defined to mean the *National Vocational Education and Training Regulator (Charges) Act 2012*.

**National VET Regulator annual registration charge** is defined to mean the charge imposed by Part 1A of the Act.

**Number of reported students for the previous calendar year** is defined to mean the number of unique student enrolments in a VET course or part of a VET course as reported by a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies for the previous calendar year in accordance with the person's reporting obligations under the Data Provision Requirements.

Section 232A of the *National Vocational Education and Training Regulator Act 2011* applies to a person if:

- (a) the person starts or continues to be registered during a financial year under that Act as an NVR registered training organisation; or
- (b) both:
  - (i) the person starts or continues to be registered during a financial year under the *Education Services for Overseas Students Act 2000* as a registered provider; and
  - (ii) the National VET Regulator is the ESOS agency for the registered provider (within the meaning of that Act).

Subsection 187(1) of the *National Vocational Education and Training Regulator Act 2011* empowers the Minister to, by legislative instrument, make Data Provision Requirements. As of 9 June 2022, those requirements could be accessed at <https://www.legislation.gov.au/Series/F2020L01517>.

***Number of VET courses the organisation is registered to offer on the first day of the financial year*** is defined to mean the number of unique VET courses a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies is registered to offer on the first day of the financial year, in accordance with its registration under:

- (a) the *National Vocational Education and Training Regulator Act 2011*;
- (b) the *Education Services for Overseas Students Act 2000*; or
- (c) both the *National Vocational Education and Training Regulator Act 2011* and the *Education Services for Overseas Students Act 2000*,

as applicable.

## **Section 5 Schedules**

Section 5 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.

## **Part 2 – Determination of National VET Regulator annual registration charge**

### **Section 6 Method for working out amount of charge**

Section 6 determines the method for working out the amount of National VET Regulator annual registration charge payable by a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies for the financial year commencing on 1 July 2022 and each later financial year.

Subsection 6(1) provides that the amount of National VET Regulator annual registration charge payable by such a person for such a financial year is worked out using the following table:

<b>Item</b>	<b>If the number VET courses the organisation is registered to offer on the first day of the financial year is...</b>	<b>and the number of reported students for the previous calendar year is...</b>	<b>the amount payable for the financial year is...</b>
1	0 to 4	0 to 99	\$1,500
		100 to 249	\$2,300
		250 to 499	\$3,400
		500 to 900	\$5,100
		1000 or more	\$7,700
2	5 to 10	0 to 99	\$4,400
		100 to 249	\$5,300
		250 to 499	\$6,300
		500 to 900	\$7,500
		1000 or more	\$9,000
3	11 to 25	0 to 99	\$7,900
		100 to 249	\$8,700
		250 to 499	\$9,700
		500 to 900	\$10,700
		1000 or more	\$11,900
4	26 to 50	0 to 99	\$11,300
		100 to 249	\$12,500
		250 to 499	\$13,800
		500 to 900	\$15,300
		1000 or more	\$16,900
5	51 or more	0 to 99	\$15,900
		100 to 249	\$17,600
		250 to 499	\$19,500
		500 to 900	\$21,600
		1000 or more	\$23,900

Subsection 6(2) provides that, if a person to whom section 232A of the *National Vocational Education and Training Regulator Act 2011* applies both:

- (a) starts or continues to be registered during the financial year under the *National Vocational Education and Training Regulator Act 2011* as an NVR registered organisation; and
- (b) starts or continues to be registered during the financial year under the *Education Services for Overseas Students Act 2000* as a registered provider and the National VET Regulator is the ESOS agency for the registered provider,

the person is taken to discharge their liability to pay a charge for both registrations by paying the applicable amount of the relevant charge at subsection (1) once.

Subsection 6(3) provides that, if section 232A of the *National Vocational Education and Training Regulator Act 2011* does not apply to a person at the start of a financial year and that section begins to apply to the person during that year, the following proportion of the charge worked out at subsection (1) is payable in relation to that year:

Number of whole months remaining in the financial year after the day section 232A applies to person

12

A note at the bottom of subsection 6(3) clarifies that, if a person ceases to be registered under either the *National Vocational Education and Training Regulator Act 2011* or the *Education Services for Overseas Students Act 2000* during a financial year, such that the person is no longer registered under either of those Acts, a pro rata refund worked out on the same basis is payable to the person. The note directs the reader to see subsection 232A(4) of the *National Vocational Education and Training Regulator Act 2011*.

### **Part 3 – Charge for compliance audit**

#### **Section 7      Amount and calculation of charge**

Section 7 determines the amount and calculation of a charge for the National VET Regulator conducting a compliance audit of an NVR registered training organisation's operations.

Subsection 7(1) provides that the amount of a charge for a compliance audit payable by an NVR registered training organisation for the financial year commencing on 1 July 2022 and each later year is to be worked out according to the formula in subsection (2).

Subsection 7(2) provides that the amount of charge payable is \$250 per hour the National VET Regulator spends on conducting the compliance audit, with charges applied in 15-minute increments on a pro-rata basis.

## **Part 4 – Charge for the investigation of a complaint about an NVR registered training organisation**

### **Section 8 Amount and calculation of charge**

Section 8 determines the amount and calculation of a charge the National VET Regulator investigating a complaint about an NVR registered training organisation, where the National VET Regulator finds that the complaint is substantiated.

Subsection 8(1) provides that the amount of charge payable by an NVR registered training organisation for the financial year commencing on 1 July 2022 and each later financial year is to be worked out according to the formula set out in subsection (2), subject to subsections (3) and (4).

Subsection 8(2) provides that the amount of charge payable is:

- (a) \$250 per hour the National VET Regulator spends on conducting the investigation, with charges applied in 15-minute increments on a pro-rata basis; plus
- (b) if a compliance audit is conducted as part of the investigation, \$250 per hour the Regulator spends on conducting the audit, with charges applied in 15-minute increments on a pro-rata basis.

Subsection 8(3) provides that there is no charge payable for the Regulator investigating a complaint if the total time the Regulator spends on conducting the investigation is less than 30 minutes.

Subsection 8(4) provides that there is no charge payable for the Regulator conducting a compliance audit as part of an investigation into a complaint if the total time the Regulator spends on conducting the audit is less than 30 minutes.

## **Part 5 – Circumstances in which a charge may be waived**

### **Section 9      Circumstances in which a charge may be waived in whole or in part**

Section 9 determines the circumstances in which a charge imposed by the Act may be waived in whole or in part.

Subsection 9(1) provides that the National VET Regulator may waive a charge under the Act, in whole or in part, where the Regulator determines that:

- (a) special or unusual circumstances exist which cause the charge to be unreasonable or inequitable; or
- (b) it would be uneconomical to pursue the amount of the charge that remains unpaid.

Subsection 9(2) provides that the following circumstances do not constitute special or unusual circumstances:

- (a) where the person required to pay the charge did not consent to the compliance audit or complaint investigation that resulted in the imposition of a charge; or
- (b) where the person required to pay the charge does not agree with the outcome of the compliance audit or complaint investigation that resulted in the imposition of a charge; or
- (c) where the person required to pay the charge ceases to exist, or ceases to be registered under either the *National Vocational Education and Training Regulator Act 2011* or the *Education Services for Overseas Students Act 2000*.

Subsection 9(3) clarifies that circumstances related to the COVID-19 pandemic are special or unusual circumstances which could cause the charge to be unreasonable or inequitable for the purposes of paragraph (1)(a).