

EXPLANATORY STATEMENT

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

National Vocational Education and Training Regulator Act 2011

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

AUTHORITY

Subsection 157(1) of the *National Vocational Education and Training Regulator Act 2011* (**Act**) sets out the functions of the National Vocational Education and Training (**VET**) Regulator (**Regulator**). Those functions include, among other things, any other function relating to VET that is set out in a legislative instrument made under paragraph 157(1)(p) of the Act. The *National Vocational Education and Training Regulator (Other Functions) Instrument 2022* (**Other Functions Instrument**) sets out those other functions.

The *National Vocational Education and Training Regulator (Other Functions) (Repeal) Instrument 2022* (**this Instrument**) is made under section 157(1)(p) of the Act and repeals the Other Functions Instrument. In addition to the power to make this Instrument under paragraph 157(1)(p), 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.

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. As, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, the power to repeal the conferral of a function under paragraph 157(1)(p) of the Act is exercisable in a like manner as the power to confer that function, the Ministerial Council was asked to agree to the text of this Instrument. The Ministerial Council agreed to the text of this Instrument in accordance with section 191 of the Act.

Paragraphs 44(2)(b) and 54(2)(b) of the *Legislation Act 2003* (**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 repeal the Other Functions Instrument.

The Act expressly contemplates a role for the Ministerial Council in endorsing the units of competency of a training package for the purposes of the definition of 'VET course' in

subsection 3(1) of the Act. An endorsed training package's units of competency are then subject to the regulatory regime the Act imposes in respect of VET courses.

The Australian Industry and Skills Committee currently assists the Ministerial Council to perform its endorsement role. On 31 December 2022, the Committee will cease performing this role.

The Other Functions Instrument empowers the Regulator to assist the Ministerial Council to perform its endorsement role by conferring on the Regulator 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.

The Commonwealth, state, and territory governments agreed that the Regulator would perform this assistance role on an interim basis. As such, the Other Functions Instrument only confers those functions on the Regulator from 1 January 2023 until 31 December 2024.

Following a change of government at the Commonwealth level and further consultation with stakeholders, the Commonwealth, state, and territory governments agreed that further consideration should be given to who should assist the Ministerial Council to perform its endorsement role, meaning that the Regulator should no longer have the functions set out in the Other Functions Instrument.

REGULATORY IMPACT

The Office of Best Practice Regulation (**OBPR**) has been consulted and advised that the proposal will have no more than a minor regulatory impact (OBPR ID: OBPR22-03204).

COMMENCEMENT

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

CONSULTATION

Between November 2020 and April 2021, the then Australian Government Department of Education, Skills and Employment consulted with hundreds of stakeholders (including business leaders, union leaders, employers, and registered training organisations) on achieving better industry engagement with the VET sector. As of October 2022, details as to stakeholder views can be accessed at <https://www.skillsreform.gov.au/blog/moving-towards-better-industry-engagement-in-vet/>.

Following the change of government at the Commonwealth level, stakeholders provided further feedback about who should assist the Ministerial Council to perform its endorsement role. To address this feedback, and to avoid any delays to the commencement

of the VET system reforms on 1 January 2023, the Department of Employment and Workplace Relations will temporarily perform this role until further consideration is given to who should perform this role on a permanent basis.

Feedback from stakeholders informed the development of this Instrument, so business leaders, union leaders, employers, and registered training organisations have not been consulted on its text. The Department of Employment and Workplace Relations will continue to consult with those stakeholders about who should assist the Ministerial Council to perform its endorsement role on a permanent basis.

Skills Ministers from the Commonwealth, state and territory governments have been consulted on and have agreed, in accordance with section 191 of the Act, to the text of this Instrument.

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

EXPLANATION OF PROVISIONS

Section 1: Name

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

Section 2: Commencement

2. This section provides that the whole of this Instrument commences on the day after this Instrument is registered.

Section 3: Authority

3. This section provides that this Instrument is made under paragraph 157(1)(p) of the *National Vocational Education and Training Regulator Act 2011*.

Section 4: Schedules

4. This section provides that each instrument that is specified in a Schedule to this Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Instrument has effect according to its terms.

SCHEDULE 1 – REPEALS

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

Item 1: The whole of the instrument

5. This item repeals the whole of the Other Functions Instrument. This is because, following a change of government at the Commonwealth level and further consultation with stakeholders, the Commonwealth, state, and territory governments agreed that further consideration should be given to who should assist the Ministerial Council to perform its endorsement role, meaning the National Vocational Education and Training Regulator will no longer have the functions set out in that instrument.