

## EXPLANATORY STATEMENT

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

### ***National Vocational Education and Training Regulator (Authorised Officer Requirements) Determination 2023***

#### **AUTHORITY**

Subsection 89(2A) of the *National Vocational Education and Training Regulator Act 2011* (**the Act**) empowers the Minister to, by legislative instrument, determine the experience, training and qualification requirements for authorised officers. Under subsection 89(2) of the Act, the National VET Regulator (**the Regulator**) must not appoint a person as an authorised officer unless the person satisfies the experience, training and qualification requirements specified in a legislative instrument under subsection 89(2A) of the Act.

The *National Vocational Education and Training Regulator (Authorised Officer Requirements) Determination 2023* (**the Determination**) is made under subsection 89(2A) of the Act and repeals the existing *ASQA Authorised Officer Requirements 2012* (**the 2012 Requirements**). The Determination updates the appointment and certification requirements for appointment as an authorised officer.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), 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**

Authorised officers exercise investigative powers under Part 5 of the Act – these are referred to as **monitoring powers**, or **enforcement powers**. These powers include searching, examining, recording, taking documentary extracts and operating electronic equipment. Part 5 of the Act additionally empowers authorised officers to enter premises by consent or under execution of a warrant, and seek the production of documents.

The purpose of the Determination is to specify (pursuant to subsection 89(2A) of the Act) the experience, training, and qualification requirements for persons to be appointed as authorised officers under subsection 89(1) of the Act, and to exercise those investigative powers conferred by the Act.

The Determination repeals and replaces the 2012 Requirements which is due to sunset on 1 April 2023. For the purposes of clarity and simplicity, the Determination consolidates the

authorised officer requirements concerning 'experience, training and qualifications' into section 6. They were previously divided across two sections in the 2012 Requirements.

The Determination additionally updates the name of the requisite authorised officer qualification (i.e. Certificate IV in Government Investigation), and provides further detail on the appropriate documentary requirements that a person must provide in order to meet the authorised officer appointment requirements.

### **REGULATORY IMPACT**

The Office of Impact Analysis (OIA) has advised that an Impact Analysis is not required. OIA reference ID: OBPR23-04078.

### **COMMENCEMENT**

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

### **CONSULTATION**

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

Representatives from the VET sector have not been consulted regarding the remaking of the Determination. This is because the amendments are technical in nature, relate only to matters concerning the appointment of authorised officers by the Regulator, and do not materially alter the existing requirements.

## 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 (Authorised Officer Requirements) Determination 2023

The *National Vocational Education and Training Regulator (Authorised Officer Requirements) Determination 2023 (the Determination)* 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 Legislative Instrument**

The Determination is made by the Minister under subclause 89(2A) of the *National Vocational Education and Training Regulator Act 2011 (the Act)* and operates to specify (pursuant to subsection 89(2A)) the experience, training, and qualification requirements for persons to be appointed as authorised officers under subsection 89(1) of the Act, and to exercise those investigative powers conferred by the Act.

The Determination repeals and replaces the existing *ASQA Authorised Officer Requirements 2012 (the 2012 Requirements)* which is due to sunset on 1 April 2023. For the purposes of clarity and simplicity, the Determination consolidates the authorised officer requirements concerning ‘experience, training and qualifications’ into section 6. They were previously divided across two sections in the 2012 Requirements.

The Determination additionally updates the name of the requisite authorised officer qualification (i.e. Certificate IV in Government Investigation), and provides further detail on the appropriate documentary requirements that a person must provide in order to meet the authorised officer appointment requirements.

#### **Human rights implications**

The Determination engages the following right:

- The right to work – Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.

#### Right to work

The Determination engages the right to work contained in article 6(1) of the International Covenant on Economic, Social and Cultural Rights. Article 6(1) recognises the right to work, which includes the right of everyone to the opportunity to earn a living by work which he or she freely chooses or accepts.

The objective of the Determination is to ensure that only suitably qualified and experienced persons, as specified in the Determination, will be appointed to exercise the monitoring and investigative powers under Part 5 of the Act. Given the nature of these powers set out in the

Act, suitably qualified and experienced persons are necessary to ensure the protection of other rights such as the right to privacy.

Additionally, the Determination assists in the opportunity to obtain work by clearly setting out the requirements and certification that a person must obtain in order to be considered for appointment as an authorised officer by the Regulator. Therefore, the Determination additionally provides an avenue to employment as an authorised officer for those persons who have completed a Certificate IV in Government Investigation, or have sufficient experience relevant to performing the functions of an authorised officer as set out in section 7 of the Determination.

The Determination is therefore compatible with the right to work.

### **Conclusion**

This Instrument is compatible with human rights because it advances the right to work by supporting the ability of suitably qualified and experienced persons to be appointed as authorised officers.

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

# NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (AUTHORISED OFFICER REQUIREMENTS) DETERMINATION 2023

## EXPLANATION OF PROVISIONS

### **Section 1: Name**

1. This section provides that the name of the Instrument is the *National Vocational Education and Training Regulator (Authorised Officer Requirements) Determination 2023*.

### **Section 2: Commencement**

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

### **Section 3: Authority**

3. This section provides that the Instrument is made under subsection 89(2A) of the Act.

### **Section 4: Definitions**

4. 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**

5. This section provides that any instruments specified in a Schedule to the *National Vocational Education and Training Regulator (Authorised Officer Requirements) Determination 2023* Instrument are repealed according to the Schedule.

### **Section 6: Experience, training and qualification requirements**

6. This section generally specifies the experience, training and qualification requirements for appointment as an authorised officer.
7. Subsection 6(1) specifies that a person is taken to have satisfied the requirements if the National VET Regulator is satisfied the person meets the criteria set out in subsections 6(2).
8. Paragraph 6(2)(a) provides that a person will satisfy the requirements where the person has completed a Certificate IV in Government Investigation (further information on this Certificate is available on the [myskills.gov.au](http://myskills.gov.au) website). Where a person has completed this Certificate, there are no other appointment requirements specified in the Instrument.
9. Paragraph 6(2)(b) relates to circumstances where a person does not yet hold a Certificate IV in Government Investigation. It provides that a person will satisfy the requirements if they can demonstrate sufficient experience relevant to performing the functions of an authorised officer in any area of experience listed at section 7

(subparagraph 6(2)(b)(i)); *and* completes a Certificate IV in Government Investigation within 12 months of being appointed (subparagraph 6(2)(b)(ii)).

10. In demonstrating this experience, the person must provide appropriate documentary evidence. A note to Paragraph 6(2)(b) provides some non-exhaustive examples of what may constitute appropriate documentary evidence.
11. Subsection 6(3) clarifies that a person will no longer satisfy the requirements where they do not complete a Certificate IV in Government Investigation within 12 months.

### **7: Areas of Experience**

12. Section 7 provides an exhaustive list of areas of experience relevant to the Authorised Officer role. For the purposes of meeting the appointment requirements under subparagraph 6(2)(b)(i), the National VET Regulator must be satisfied that a person has demonstrated and documented experience in at least one of these areas. Given the significance of the powers of authorised officers under part 5 of the Act, these areas of experience have been specified because they relate directly to the performance of an authorised officer's expected functions and duties.

### **SCHEDULE 1 – REPEALS**

13. This Schedule repeals the whole of the *ASQA Authorised Officer Requirements 2012* instrument. This instrument will not be required if the *National Vocational Education and Training Regulator (Authorised Officer Requirements) Determination 2023* is made, as the new instrument provides for all necessary matters under subsection 89(2A) of the Act and will replace the old instrument.