

EXPLANATORY STATEMENT

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

Standards for Registered Training Organisations Amendment (VET Workforce Support) Instrument 2024

AUTHORITY

Section 185 of the *National Vocational Education and Training Regulator Act 2011* (**the Act**) empowers the Minister, by legislative instrument (with the agreement of the Ministerial Council), to make standards for NVR registered training organisations. Section 22(1) of the Act provides that an NVR registered training organisation must comply with the Standards for NVR Registered Training Organisations. Section 186 of the Act empowers the Minister to make, by legislative instrument, requirements for assessing whether a person is a fit and proper person, as agreed by the Ministerial Council. The Fit and Proper Person Requirements are currently included at Schedule 3 of the *Standards for Registered Training Organisations (RTOs) 2015* (**Standards for RTOs**).

Section 191 of the Act specifies that the Ministerial Council is to give its agreement by resolution of the Ministerial Council and passed in accordance with the procedures determined by the Ministerial Council. Currently the Ministerial Council is constituted by the Skills and Workforce Ministerial Council.

The *Standards for Registered Training Organisations Amendment (VET Workforce Support) Instrument 2024* (**the Instrument**) is made under subsections 185(1) and 186(1) of the Act and amends the Standards for RTOs.

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.

PARLIAMENTARY SCRUTINY

Instruments made under subsections 185(1) and 186(1) of the Act are not subject to disallowance or sunseting because they are prescribed by regulation as exempt from disallowance and sunseting for the purposes of paragraph 44(2)(b) and 54(2)(b) of the *Legislation Act 2003* (see Item 23A, paragraph (d) of the table in section 10 of the *Legislation*

(Exemptions and Other Matters) Regulation 2015, and Item 44A, paragraph (d) of the table in section 12 of the Legislation (Exemptions and Other Matters) Regulation 2015)).

This is consistent with subsection 44(1) of the *Legislation Act 2003* which provides that an instrument will not be subject to disallowance where 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.

It is appropriate for the Instrument to be exempt from sunseting and disallowance because of the nature of the intergovernmental scheme (known as the National VET Scheme) that the Instrument and the Act facilitates. The National VET scheme is underpinned by referrals of constitutional power from states and territories (excluding Western Australia and Victoria) to allow for the Commonwealth to regulate the VET sector. The Act's commencement followed the then Council of Australian Governments' decision to establish a new approach to national regulation for the VET sector. The Act was enacted consistent with the *Intergovernmental Agreement for Regulatory Reform in VET*, thereby facilitating the establishment and operation of an intergovernmental scheme involving the Commonwealth and referring States for the purposes of VET regulation.

Legislative instruments made under the Act, including the Instrument, are governed by the consultation requirements at s 191 of the Act. These requirements mean that, for the purposes of making various legislative instruments under the Act, including the Instrument, the Commonwealth must obtain the agreement of the Ministerial Council by resolution of the Council passed in accordance with the procedures determined by the Council under section 191 of the Act.

To comply with these requirements, the Department consulted with states and territories on the Instrument through the Skills Senior Officials' Network (SSON) VET Reforms Working Group, which is comprised of senior officials from each state and territory government department responsible for VET. Feedback from the SSON VET Reforms Working Group was incorporated into the revised instrument prior to the Ministerial Council, (currently the Skills and Workforce Ministerial Council), agreeing to the Instrument. The department also consulted with the Western Australian Training and Accreditation Council and the Victorian Registration Quality Authority, despite those states not having referred their powers under the Act. Therefore, any potential disallowance of legislative instruments made under subsection 185(1) and 186(1) of the Act may discourage state and territory support for the VET regulatory framework, given that substantial and robust consultation is required to be undertaken with states and territories in making legislative instruments under subsection

185(1) and 186(1). A disallowance might be perceived as the Commonwealth Parliament unilaterally disallowing instruments that are part of a multilateral outcome.

Further justification for this disallowance exemption is provided under the Explanatory Memorandum for the [Legislation \(Exemptions and Other Matters\) Amendment \(Sunsetting and Disallowance Exemptions\) Regulation 2016](#) (refer to commentary for Item 3).

PURPOSE AND OPERATION

Under section 22 of the Act, an NVR registered training organisation must comply with the Standards for RTOs as a condition of their registration, as part of their compliance with the VET Quality Framework as defined at section 3 of the Act.

The Instrument amends Part 1 (Glossary), Part 2, Part 4, Schedule 1 and Schedule 2 of the Standards for RTOs. The purpose of the amendments is to provide immediate benefits to the VET sector ahead of longer-term revisions to the Standards intended to take effect from January 2025. These immediate benefits involve amending the Standards for RTOs to facilitate the expansion of the VET workforce pool to address trainer and assessor workforce shortages and reflect the latest training products from the updated Training and Education (TAE) Training Package, and to provide greater clarity about regulatory expectations. The Instrument also makes minor amendments to existing requirements that RTOs ensure their managerial staff are fit and proper persons; and ensures the clauses specified in the table at Schedule 1 are consistent with those specified in the body of the Standards for RTOs.

The Instrument also makes consequential amendments to Schedule 2 to ensure that the requirements for RTO independent validation are consistent with the proposed amendments made to clause 1.25.

The Instrument will:

- Reflect the updated TAE Training Package to incorporate the latest versions of training and assessment credentials. The Instrument will list the updated Certificate IV in Training and Assessment and Diploma of VET and a range of new and updated skill sets which enable individuals to deliver training under supervision. RTOs will be required to ensure that the skill set held by those working under supervision is relevant to their role with regard to the learner cohort, and that those persons responsible for supervision hold specified credentials. This will allow for a greater number of persons to undertake training and assessment, whilst maintaining integrity in the VET sector.

- Enable people who hold a qualification in education that enables registration as a secondary school teacher to be engaged as trainers and/or assessors by enabling the following two scenarios:
 - Those holding a university degree or higher qualification that would enable registration as a secondary school teacher in any state or territory will be able to deliver training under supervision in any VET context.
 - Those holding a university degree or higher qualification that would enable registration as a secondary school teacher in any state or territory and holding the Assessor Skill Set or the VET Delivered to School Students Teacher Enhancement Skill Set will be able to train and assess in any VET context without supervision (i.e. be a fully qualified trainer and assessor).
- Ensure consistency between requirements relating to the Assessor Skill Set and the VET Delivered to School Students Teacher Enhancement Skill Set. Requirements that apply to delivery of the Assessor Skill Set will also be applied to delivery of the VET Delivered to School Students Teacher Enhancement Skill Set, including requiring independent validation of assessment for delivery, and requiring those delivering the skill set to hold a TAE Diploma or a higher-level qualification in adult education.
- Introduce a definition of the term ‘industry expert’ in order to add more clarity around the meaning of the term, and expanding the permitted use of industry experts by enabling them to assist in the delivery of training (in addition to assessment) alongside qualified trainers and assessors.
- Enable people actively working towards the Certificate IV or Diploma from the TAE Training Package – as specified at Item 8 of the table to Schedule 1 – to deliver training and contribute to assessment under supervision of a trainer. To be ‘actively working towards’ an individual would need to be:
 - enrolled, and have commenced training in, the relevant training and assessment credential, and
 - making satisfactory progress to enable the credential to be completed within two years from commencement.
- Strengthen integrity by clarifying RTOs’ obligations around fit and proper persons, to ensure RTOs assure themselves that high managerial agents and executive officers (and any persons who exercise a degree of control or influence over the management or direction of the RTO) are appropriate to oversee the operations of the RTO.

- Make the following minor clarifications and amendments:
 - Allow people involved in delivery of training and assessment of the training product being validated to also be involved in the validation processes, however they cannot be solely responsible for determining validation outcomes.
 - Change language in clause 1.27 to ‘training products’ instead of ‘training packages’, given the term ‘training products’ appropriately captures accredited courses as well as training packages.
 - Expand the definition of ‘educational and support services’ to include ‘wellbeing services’ as a type of support service an RTO may provide for the purposes of clause 1.3, 1.7 and 5.2.
 - Make consequential amendments to Schedule 2 to ensure that the amended requirements in clause 1.25 (i.e. those concerning the Assessor Skill Set or Teacher Enhancement Skill Set from the Training and Education Training Package) are accurately reflected in the RTO independent validation requirements.

REGULATORY IMPACT

The Office of Impact Analysis (OIA) has advised that an Impact Analysis is not required. OIA reference ID: OIA23-05991.

COMMENCEMENT

The Instrument commences on 1 March 2024.

CONSULTATION

The National VET Regulator, Western Australia Training Accreditation Council, Victoria Registration and Qualification Authority and state and territory governments have been consulted regarding the making of the Instrument. Feedback was considered and incorporated into the Instrument where appropriate.

**STANDARDS FOR REGISTERED TRAINING ORGANISATIONS AMENDMENT (VET
WORKFORCE SUPPORT) INSTRUMENT 2024**

EXPLANATION OF PROVISIONS

Clause 1: Name of legislative instrument

1. This clause provides that the name of the Instrument is the *Standards for Registered Training Organisations Amendment (VET Workforce Support) Instrument 2024 (the Instrument)*.

Clause 2: Commencement

2. This clause provides that the whole of the Instrument commences on 1 March 2024.

Clause 3: Authority

3. This clause provides that the Instrument is made under subsections 185(1) and 186(1) of the Act.

Clause 4: Schedule

4. This clause provides that any instruments specified in a Schedule to the Instrument are amended or repealed according to the Schedule. The Instrument consists of one schedule which amends the *Standards for Registered Training Organisations (RTOs) 2015 (the Standards for RTOs)*.

Schedule 1 – Amendments

Item 1: Part 1, Glossary

This item inserts the following new definitions into the Glossary of the Standards for RTOs:

- **Actively working towards** means an individual is enrolled in, has commenced, and is making satisfactory progress toward completing within two years of commencement, a specified training and assessment credential.
- **Industry expert** means an individual who has relevant specialised industry or subject matter expertise who is engaged by the RTO on the basis of that expertise. Industry experts must have relevant vocational competencies and current industry skills directly relevant to the training and assessment being provided.

- **Teacher Enhancement Skill Set** means TAESS00024 VET Delivered to School Students Teacher Enhancement Skill Set and includes any successors to this skill set.

The definition of ‘actively working towards’ informs the meaning of proposed paragraph 1.18(a) of the Instrument, which operates to expand clause 1.17 to include individuals who are actively working towards a credential specified in proposed table Item 8 of Schedule 1. This will allow, for the purposes of clause 1.17, these individuals to deliver training and assessment under trainer supervision.

The definition of ‘industry expert’ is intended to clarify which individuals will be considered industry experts for the purposes of clause 1.13. Specifically, the definition clarifies the vocational competencies and industry skills that the individual must possess for the purposes of being considered an ‘industry expert’.

The definition of ‘Teacher Enhancement Skill Set’ is used for the purposes of ensuring that delivery and validation requirements imposed on the assessor skill set under clauses 1.23 and 1.25 are also imposed on the TAESS00024 skill set, or a successor to that skill set (as set out on the National Register of VET). This is a quality control to reflect the expansion of the categories of individuals who can deliver training and assessment for the purposes of clauses 1.14 and 1.15 to include individuals who hold the TAESS00024 skill set in addition to a relevant degree in secondary teaching. Consequential amendments have also been made to Schedule 2 (see commentary for Item 18, below) to ensure that the inclusion of the ‘Teacher Enhancement Skill Set’ at clause 1.25 is accurately reflected in the RTO independent validation requirements.

Item 2: Part 1, Glossary

This item inserts paragraph (ja) into the definition of ‘Educational and support services’ in the glossary. This makes it clear that ‘wellbeing services’ are included as an educational and support service for the purposes of the Standards for RTOs. It is envisaged that wellbeing services will include personal support services and resources to assist with learners’ physical, mental, and emotional wellbeing. This generally means that obligations on RTOs to provide sufficient educational and support services (as set out in clauses 1.3 and 1.7) may include the provision of wellbeing services by RTOs.

Item 3: Part 2, clause 1.11

This item repeals and replaces clause 1.11 such that the existing requirement that certain individuals who have a collection of skills, competencies and credentials as prescribed at paragraph 1.11(a) continue to be responsible for undertaking ongoing systematic validation of RTO assessment practices and judgements for the purposes of clause 1.9.

However, the other existing requirement, that no person taking part in the systemic validation may be directly involved in the particular instance of delivery and assessment, has been removed. These persons would be able to take part in the systemic validation provided they are not solely responsible for determining the outcomes of the validation. This expanded operation is provided for in proposed paragraph 1.11(b).

The purpose of amending clause 1.11 is to expand the categories of individuals who are permitted to undertake systemic validation for the purposes of clause 1.9, thereby reducing administrative burden for RTOs, whilst still ensuring independent oversight of validation outcomes.

Item 4: Part 2, clause 1.13

This item operates to amend clause 1.13 such that it reads:

“...Industry experts may also assist in ***training delivery and/or*** the assessment judgement, working alongside the trainer and/or assessor to conduct the ***training and/or*** assessment.” (proposed amendments emphasised)

Therefore, this item expands the role of industry experts such that they can undertake training delivery, as well as assessment judgements, but only when working alongside a trainer or assessor.

The intent of this item is to allow for industry experts, who have niche expertise they can utilise to supplement training delivery, to assist in the provision of training, whilst ensuring that qualified trainers/assessors continue to exercise professional oversight of the training/assessment delivery.

Item 5: Part 2, paragraph 1.18(a)

Clause 1.17 of the Standards for RTOs allows for RTOs to engage individuals who are not trainers or assessors under the supervision of a trainer, provided that the individual does not determine assessment outcomes.

Item 5 repeals and substitutes paragraph 1.18(a) such that, for the purposes of clause 1.17, the individual must also hold a training and assessment credential specified in Item 6 of Schedule 1, that is relevant to the learner cohort which the individual is involved in training and assessing, or must be actively working towards a training and assessment credential

specified in Item 8 of Schedule 1. These requirements are additional to those set out in the rest of clause 1.18 and clauses 1.19 to 1.20.

The purpose of this amendment is to allow for specified individuals, including those who are ‘actively working towards’ (as defined in the Glossary) a credential specified in proposed Item 8 of Schedule 1, to deliver training and assessment under supervision for the purposes of clause 1.17. This will allow for RTOs to engage would-be trainers and assessors to learn on the job undertaking training and contributing to assessment, whilst ensuring that the training and assessment is the subject of proper oversight and supervision from a suitably qualified trainer and assessor (who will also be responsible for the final determination of assessment outcomes).

Item 6: Part 2, clause 1.23

This item omits the reference in clause 1.23 to “Item 1” in the table at Schedule 1 of the Standards for RTOs. The purpose of this amendment is to remove reference to the credential (TAE40110 Certificate IV in Training and Assessment) at Item 1 of Schedule 1 in clause 1.23. This is because this credential is no longer current, and therefore is not relevant for the purposes of the credentials specified in clause 1.23.

Item 7: Part 2, clause 1.23

This item operates to amend clause 1.23 such that it omits the phrase “or any assessor skill set” and substitutes it with the phrase “the Assessor Skill Set or the Teacher Enhancement Skill Set”. This will mean the amended clause shall read: “To deliver the training and assessment credential specified in Item 2 of Schedule 1, ***“the Assessor Skill Set or the Teacher Enhancement Skill Set...”*** (proposed amendments emphasised).

This amendment incorporates the new Teacher Enhancement Skill Set (as defined in the Glossary) into clause 1.23 and ensures that the requirements in clause 1.23 will also apply in respect of the Teacher Enhancement Skill Set.

The term “Assessor Skill Set” has additionally been capitalised to ensure consistency of terminology throughout the Standards for RTOs.

Item 8: Part 2, clause 1.25

This item operates to amend clause 1.25 such that it reads: “...the Assessor Skill Set or the Teacher Enhancement Skill Set...”

The amendment has the effect of expanding the scope of the existing clause, by requiring RTOs, for the purposes of delivering the Teacher Enhancement Skill Set (as defined in the Glossary) from the Training and Education Training Package, to have undergone an independent validation in accordance with Schedule 2 (and the definitions of independent validation and validation).

The purpose of this amendment is to ensure that RTOs delivering the Teacher Enhancement Skill Set have the proper assessment processes in place to deliver the skill set.

The term “Assessor Skill Set” has additionally been capitalised to ensure consistency of terminology throughout the Standards for RTOs.

Item 9: Part 2, clause 1.27

This item replaces the reference in clause 1.27 to “package” with “product”. The purpose of this amendment is to ensure the exception in clause 1.27 concerning the delivery of superseded units of competency applies to all VET accredited courses as well as training packages.

Item 10: Part 4, clause 7.1

This item repeals clause 7.1 and substitutes it with a new clause which imposes an obligation on RTOs to ensure that its executive officers, high managerial agents and any persons who exercise a degree of control or influence over the management or direction of the RTO:

- have sufficient authority to ensure the RTO is consistently complying with the Standards for RTOs; and
- are assessed by the RTO as being fit and proper persons prior to and throughout their appointments (in accordance with the Fit and Proper Person Requirements, as defined in the Act (FPPRs)).

Proposed new clause 7.1 differs from the existing clause 7.1 so that in addition to the existing RTO responsibilities concerning ‘executive officers’ and ‘high managerial agents’, the relevant RTO responsibilities are extended to encompass any ‘persons who exercise a degree of control or influence over the management or direction of the RTO’. Proposed new clause 7.1 also more specifically details the obligations on RTOs, when compared with the existing provision. The term ‘persons who exercise a degree of control or influence over the management or direction of the RTO’ is used in the FPPRs and is intended to include influential persons within a particular RTO, including but not limited to managers and directors of the organisation.

The reason for amending clause 7.1 is to provide greater clarity about how the clause intersects with the FPPRs and ensure that an obligation is imposed upon RTOs to ensure that any individuals who exercise a degree of control or influence over the management or direction of the RTO are fit and proper persons. The FPPRs impose powers and obligations on the VET Regulator to undertake an assessment of RTOs' compliance with the FPPRs. Item 10 serves to ensure that a positive obligation is also imposed upon RTOs to routinely verify that certain individuals in positions of responsibility within the RTO continue to meet the FPPRs.

Item 11: Schedule 1, Table Item 1

This item omits Item 1 of the table to Schedule 1 and substitutes a new table Item 1 which specifies 'Not applicable' for the purposes of cells 2 and 3 of the table item.

The purpose of this item is to rectify the standard references in cells 2 and 3 to clearly specify that table Item 1 is not applicable for the purposes of the Standards for RTOs, given Item 1 of the table has become redundant. This will ensure consistency with the body of the Standards for RTOs given none of the standards in the body of the Standards for RTOs refer to Item 1 of the table at Schedule 1.

Item 12: Schedule 1, cell at Table Item 2, column 3

This item amends the cell at column 3 of table Item 2, at Schedule 1 to include the TAE40122 Certificate IV in Training and Assessment (or its successor) credential for the purposes of clauses 1.11, 1.14, 1.15 and 1.24. The purpose of this amendment is to expressly include the superseding credential to TAE40116, for ease of reference.

Item 13: Schedule 1, Table Item 3

This item repeals and amends Schedule 1, Item 3 such that, for the purposes of clauses 1.14 and 1.15, the relevant training or assessment credentials are expanded to additionally refer to the option of holding a credential issued by a higher education provider (as defined in section 16-1 of the *Higher Education Support Act 2003*) which would enable the individual to satisfy the academic requirements for registration as a secondary school teacher in accordance with the registration requirements in at least one State or Territory, and one of the following credentials, or the successor to one of the following credentials:
TAESS00011/TAESS00019 - Assessor Skill Set or TAESS00024 - VET Delivered to School Students Teacher Enhancement Skill Set.

The purpose of this amendment is to expand the categories of individuals who can deliver/conduct training and assessment for the purposes of clauses 1.14 and 1.15.

Specifically, it is envisaged that by allowing for individuals who are capable of meeting the academic requirements for registration as high school teachers to be engaged as trainers and/or assessors, individuals with relevant educational experience and qualifications will be able to work across the VET sector more easily, thereby expanding the workforce pool.

Item 14: Schedule 1, Table Item 4

This item omits Item 4 of the table to Schedule 1 and substitutes a new table Item 1 which specifies 'Not applicable' for the purposes of cells 2 and 3 of the table item.

The purpose of this item is to rectify the standard references in cells 2 and 3 to clearly specify that table Item 4 is not applicable for the purposes of the Standards for RTOs, given Item 4 of the table has become redundant. This will ensure consistency with the body of the Standards for RTOs given none of the clauses in the body of the Standards for RTOs refer to Item 4 of the table at Schedule 1.

Item 15: Schedule 1, Table Item 6

This item repeals and substitutes Schedule 1, Item 6 to update the list of relevant credentials for the purposes of clause 1.18. It also expands the scope of clause 1.18 to include individuals who hold a credential issued by a higher education provider (as defined in section 16-1 of the *Higher Education Support Act 2003*) which would enable the individual to satisfy the academic requirements for registration as a secondary school teacher in accordance with the registration requirements in at least one State or Territory.

Item 16: Schedule 1, Table Item 7

This item repeals and substitutes new Schedule 1, Item 7, for the purposes of clause 1.23. The purpose of this amendment is to expressly include the superseding credential TAE50122, for ease of reference.

Item 17: Schedule 1, at the end of the Table

As noted above at Item 5, paragraph 1.18(a) is proposed to be amended to allow for specified individuals, including those who are 'actively working towards' (as defined in the Glossary) a credential specified in Item 8 of Schedule 1, to deliver training and assessment under supervision for the purposes of clause 1.17.

This item adds new Item 8 to the table in Schedule 1 and provides that one of the following training and assessment credentials (or its successor credential) will meet the requirements prescribed in proposed paragraph 1.18(a):

- *TAE40116/TAE40122 - Certificate IV in Training and Assessment;*
- *TAE50116/TAE50122 - Diploma of Vocational Education and Training; or*
- *TAE50216 - Diploma of Training Design and Development.*

Item 18: Schedule 2

This item repeals Schedule 2 and inserts a new Schedule 2 in a substantially similar form. The amendments made by this item involve making terminological and consequential amendments to Schedule 2 which serve to align the terms of Schedule 2 with the proposed amendments to clause 1.25. This includes amending Schedule 2 to include references to the “Teacher Enhancement Skill Set” and capitalising the term “Assessor Skill Set”.

These amendments will make it clear that, for the purposes of clause 1.25, the independent validation requirements under Schedule 2 will apply in respect of both the “Teacher Enhancement Skill Set” and the “Assessor Skill Set”.