

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR
(TRANSITIONAL PROVISIONS) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations, Senator the Honourable Chris Evans)

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (TRANSITIONAL PROVISIONS) BILL 2010

GENERAL OUTLINE

The National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010 provides for the successful implementation of the National Vocational Education and Training Regulator Bill 2010 and the smooth transfer of regulatory responsibility from the states and territories to the new body.

The Bill is a crucial part of the establishment of the National VET Regulator (NVR), one of the principle goals of which is to provide a consistent and cohesive regulatory environment for businesses operating in the NVR sector, as well as certainty and confidence for students undertaking a VET course of study.

The Bill contains provisions for the transference of all registered training organisations (RTOs) regulated by the States to regulation under the NVR. The Bill also allows for the continuation of a number of actions taken by State-registered RTOs and in train at the point of transfer, including the changing of the scope of their registration, re-registration, and withdrawal of registration to be completed by the NVR.

The Bill establishes that relevant decisions made by State regulators persist with the effect of essentially being made by the NVR.

Similar scope is provided in the Bill concerning the transference of accreditation and suspension of courses from referring States and Territories.

Provisions are made in the bill for the continuation of other legal issues, such as legislative instruments and things done by, or in relation to, a state regulator in the transition period before commencement.

The Bill also contains provisions to facilitate the transference of information from State and Territory Regulators to the NVR. It also ensures that State and Territory staff can be transferred to the NVR under conditions which ensure that they are not unduly disadvantaged.

This Transitional Bill reflects the intent of the Council of Australian Governments (COAG) for a smooth process of transition to national regulation of vocational education and training.

FINANCIAL IMPACT STATEMENT

The NVR will be financed by Parliamentary appropriation. In this regard, the FMA Act will allow the Minister for Finance and Administration, or his or her delegate, to issue drawing rights as to the amounts in which, and the times at which, money may be drawn by the NVR. The NVR will have appropriations of \$94.9m made available to it between commencement in 2011 and June 2014.

The NVR will be able to cost recover through a number of specific services it will provide. It is expected that its cost recovery activities will return \$39.9m to the Budget during over the period January 2011 and June 2014.

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NOTES ON ITEMS

For ease of description, this Explanatory Memorandum uses the following terms:

‘Bill’ means this Bill, i.e. the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010*.

‘Main Bill’ means the *National Vocational Education and Training Regulator Bill 2010*. (The Bill describes the *National Vocational Education and Training Regulator Bill 2010* as ‘the new law’, however this Explanatory Memorandum describes it as the Main Bill).

‘NVR RTO’ means an NVR registered training organisation

‘NVR’ means the National VET Regulator.

‘RTO’ means a registered training organisation.

‘SVR’ means a State VET Regulator.

‘VR of a Territory’ means a VET Regulator of a Territory.

Clause 1 - Short title

This clause provides for the Bill, when it is enacted, to be cited as the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2010*.

Clause 2 - Commencement

This clause inserts a three column table setting out commencement information for various provisions of the Bill. Each provision of the Bill specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for clauses 1 to 3 and any other provisions of the Bill not otherwise covered by the table to commence on Royal Assent; and for Schedule 1 to commence immediately after clause 3 of the Main Bill commences.

A note makes it clear that these commencement times will not be amended by any later amendments of the Bill.

Clause 3 – Schedule(s)

This clause provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in applicable items of the Schedule concerned, and any other item in a Schedule to the Bill has effect according to its terms.

Schedule 1 – Transitional Provisions

Part 1

Preliminary

Outline of Part

Part 1 of the Schedule defines a number of terms used in the Bill.

Detailed explanation

Item 1 – Interpretation

This item defines a number of terms that appear in the Bill including:

‘commencement’ is defined as the day this item commences.

‘new law’ is defined as the *National Vocational Education and Training Regulator Act 2010*. (As noted above the new law is referred to as the Main Bill in this Explanatory Memorandum).

‘record’ in relation to an RTO registered by a SVR, is defined as meaning a document or object in any form (including electronic) that is, or has been, kept by the NVR because of any information or matter it contains or can be obtained from it or its connection with any event, person, circumstance or thing.

‘relevant commencement day’ is defined as meaning:

- for a referring State covered by paragraph 5(1)(a) of the Main Bill (referring State is defined in clause 5 of the Main Bill) - the day that the legislation passed by the Parliament of the State referring the matters covered by subclause 5(3) and (5) of the Main Bill to the Commonwealth Parliament receives Royal Assent in the State; or
- for a State covered by subclause 7(2) of the Main Bill – the day that the legislation passed by the State Parliament adopting the relevant version of the Main Bill and the relevant version of this Bill and referring the matter covered by subclause 5(5) to the Commonwealth Parliament comes into force; or
- for a non-referring State (the meaning of non-referring State is defined in clause 3 of the Main Bill) in respect of an RTO mentioned in subitem 26(2) or 27(4) - the day that the NVR registers the organisation; or

- for a Territory – the day this item commences.

'show cause notice' is defined as meaning a written notice given to an RTO that sets out the grounds on which a SVR is giving the notice, and invites the organisation to give a written response to the SVR addressing those grounds, and if applicable when the response must be provided.

'TVET Australia' is defined as meaning TVET Australia Limited (ABN 99 062 758 632)

Item 1 also makes clear that:

- an expression used in the Schedule that is also used in the Main Bill has the same meaning in the Schedule as it has in the Main Bill (subitem 1(2))
- unless the context otherwise requires, a reference in the Schedule to a SVR includes a reference to a VET Regulator of a Territory (subitem 1(3))
- in relation to a SVR of a non-referring State, a reference in this Schedule to an RTO registered by the SVR of a non-referring State or an RTO registered in a non-referring State is to be read as a reference to an RTO that:
 - is a registered provider (other than a secondary school); or
 - provides all or part of a VET course in the non-referring State and a referring State or a Territory; or
 - provides a VET course in the non-referring State and offers all or part of a VET course in a referring State or a Territory to be provided in the referring State or Territory; (subitem 1(4)).

Subitem 1(5) provides that in addition to its effect apart from subitem 1(5), subitem 1(4) also has the effect it would have if each reference to an RTO were, by express provisions, confined to a trading corporation.

Part 2

Continuation of existing registrations etc.

Outline of Part

Part 2 of the Bill sets out the arrangements regarding existing registrations of training organisations which will apply after the commencement of the Main Bill in referring states, non-referring States and the Territories. It also specifies arrangements regarding applications for registration or re-registration made to a SVR before the relevant commencement day. It further specifies arrangements regarding applications for change of scope of registration, or for withdrawal of registration, made before the relevant commencement day.

Detailed explanation

Division 1 – Continuation of existing registrations etc.

Item 2 – Registration of registered training organisations – referring States

This item provides for registration by the NVR of RTOs in referring States. There are two ways in which this can occur. One is where the relevant SVR transfers the organisation's registration to the NVR and provides the NVR with a copy of relevant records, and provides written confirmation of the transfer and provision of records to the RTO which the RTO provides to the NVR. In this situation the NVR would simply update the National Register (see clause 216 of the Main Bill about the National Register). A second way is where the above does not occur in which case the RTO would need to apply to the NVR for registration under the Main Bill.

If written confirmation of transfer and provision of records was provided by a SVR but the records had not in fact been provided to the NVR (for example because of loss of the records) then the RTO would be notified by the NVR that the records had not been transferred and would need to apply to the NVR for registration under the Main Bill within the timeframe specified in this item. The NVR would make a decision on whether to grant or reject the application and notify the RTO accordingly.

Subitem 2(1) provides that this item applies to an RTO that it, immediately before the relevant commencement day, registered in a referring State.

- Subitem 2(2) provides that within 90 days of the relevant commencement day the RTO must either apply to the NVR for registration under the Main Bill, or seek written confirmation from the relevant SVR that: the organisation's registration has been transferred to the NVR; and
- the SVR has given to the NVR a copy of records of a kind specified in a determination made by the NVR.

That confirmation must be provided to the NVR.

Subitem 2(2) does not apply if the organisation and the NVR are given written notice by the SVR within 90 days of commencement that the SVR has transferred the organisation's registration to the NVR, and provided a copy of records of a kind specified in a determination made by the NVR before commencement (subitem 2(3)).

Subitem 2(4) provides that if the organisation gives the NVR written confirmation as mentioned in subitem 2(2) but the records have not been provided by the SVR to the NVR then:

- the NVR must give written notice to the organisation of that; and
- the organisation must within 90 days of being notified apply to the NVR for registration under the Main Bill.

Subitem 2(5) provides that the organisation is taken to be an NVR RTO for the period beginning on the relevant commencement day and ending:

- on the day which the NVR notifies the organisation of its decision under the Main Bill to grant or reject its application; or
- when the NVR updates the National Register to record that the organisation is now registered by the NVR.

Notes to the item indicate that:

- a NVR RTO is registered under clause 17 of the Main Bill (Note 1)
- subparagraph 2(5)(b)(i) may apply in the circumstances described in subitem 2(4) (Note 2)
- records relating to an RTO that applies for registration still need to be provided by the relevant State regulator as provided by item 27 (Note 3).

It is also useful to note that continuation of registration includes all aspects of an organisation's registration, such as any conditions that might be imposed on registration at the time of transfer. See also Part 4 of this Bill, which concerns references to, and things done by or in relation to, a VET Regulator.

Item 3 – Registration of registered training organisations – non-referring States

This item contains provisions in relation to an RTO that is, immediate before commencement, registered in a non-referring State which are equivalent to those in item 2.

Item 4 – Registration of registered training organisations—Territories

This item provides that if an RTO was, immediately before the relevant commencement day, registered under a Territory law, the organisation is taken to be an NVR RTO for the period beginning on the relevant commencement day and ending when:

- the organisation’s registration would expire under the relevant Territory law but for this item; or
- the organisation’s registration is cancelled under subclause 39(1) of the Main Bill; or
- the withdrawal of the organisation’s registration under clause 42 of the Main Bill takes effect

whichever occurs first.

A note to this item indicates that an NVR RTO is registered under clause 17 of the Main Bill.

Item 5 – Conditions of registration etc.

Subitem 5(1) makes clear that if an RTO is taken to be an NVR RTO under Division 1 of the Schedule, then:

- any condition on the organisation or its registration, before the relevant commencement day, requiring a fee to be paid to the relevant State or Territory or SVR continues in force as if it were imposed under the Main Bill, and such a fee is, on and after the relevant commencement day, payable to the NVR even if the State or Territory law that imposed the fee or allowed the fee to be imposed is amended or repealed; and
- the NVR may, in accordance with the Main Bill, impose conditions on the organisation’s registration, as if the organisation had applied for registration and the NVR had decided to grant the application.

Subitem 5(2) provides that an inference that an RTO complies with the VET Quality Framework is not to be made only because the organisation is taken to be an NVR RTO under Division 1 of the Schedule.

Item 6 – Suspension of registered training organisations

This item provides that if an RTO (in a referring State or a Territory, or in a non-referring State) is taken to be an NVR RTO under Division 1 of the Schedule, and the organisation’s registration, immediately before the relevant commencement day, was suspended, then the suspension continues until:

- the NVR is satisfied that the organisation has done whatever is required for the suspension to be lifted (which may be something that was not required by the relevant SVR); or

- the NVR takes action about the suspension under the Main Bill.

The item contains a note that a reference to a SVR includes a reference to the VR of a Territory.

Division 2 – Applications for registration or renewal of registration

Item 7 - Pending applications for registration—referring States and Territories

Subitem 7(1) provides that if a training organisation has, before the relevant commencement day, applied to a SVR of a referring State or of a Territory for registration; which is not decided before the relevant commencement day, then the NVR must decide the application under the Main Bill within 6 months after the relevant commencement day.

Subitem 7(1) also provides that if the NVR decides to grant the application then:

- the NVR must register the organisation as an NVR RTO under clause 17 of the Main Bill; and
- the NVR must notify the organisation of its decision in accordance with clause 18 of the Main Bill.

Subitem 7(1) further provides that if the NVR rejects the application it must notify the organisation of its decision in accordance with clause 18 of the Main Bill.

Notes to subitem 7(1) indicate that a reference to a SVR includes a reference to a VET Regulator of a Territory, and direct the reader's attention to subitem 11(4) which provides that the NVR is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 11(1).

Subitem 7(2) makes clear that, if the NVR decides to grant the application, the NVR may, in accordance with the Main Bill, impose conditions on the organisation's registration.

Item 8 – Pending applications for registration – non-referring States

This item contains provisions in relation to a training organisation in a non-referring State which are equivalent to those in item 7.

Item 9 – Pending applications renewal of registration – referring States and territories

Subitem 9(1) provides that if an RTO registered in a referring State or a Territory has applied to a SVR for renewal of its registration and the SVR has not decided the application before the relevant commencement day, then the NVR must decide the application under the Main Bill within 6 months after the relevant commencement day.

Subitem 9(1) also provides that if the NVR decides to grant the application then:

- the NVR must register the organisation as an NVR RTO under clause 17 of the Main Bill; and
- the NVR must notify the organisation of its decision in accordance with clause 18 of the Main Bill.

Subitem 9(1) further provides that, if the NVR decides to reject the application, it must notify the organisation of its decision in accordance with clause 18 of the Main Bill.

Notes to subitem 9(1) indicate that a reference to a SVR includes a reference to a VET Regulator of a Territory, and direct the reader's attention to subitem 11(4) which provides that the NVR is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 11(1).

Subitem 9(2) makes clear that if the NVR decides to grant the application, the NVR may, in accordance with the Main Bill, impose conditions on the organisation's registration.

Subitem 9(3) provides that the organisation is taken to be an NVR RTO for the period beginning on the relevant commencement day and ending:

- on the day on which the NVR makes its decision; or
- if the NVR determines a longer period under subitem 11(1) - on the last day of that period; or
- if the NVR does not determine a longer period under subitem 11(1) - on the day that occurs 6 months after the relevant commencement day

whichever occurs first.

A note to subitem 9(3) provides that if the NVR does not determine a longer period as mentioned in subparagraph 9(3)(b)(iii), the organisation's registration will be taken to be renewed for 2 years as mentioned in subitem 11(5).

Subitem 9(4) provides that an inference that an organisation complies with the VET Quality Framework is not to be made only because the organisation is taken to be an NVR RTO for the period mentioned in subitem 9(3).

Item 10 – Pending applications for renewal of registration – non-referring States

This item contains provisions in relation to an RTO in a non-referring State which are equivalent to those in item 9.

Item 11 – Extension of time for considering applications

Subitem 11(1) provides that if the NVR is satisfied that, for reasons beyond its control, a decision on an application cannot be made within the 6 month period mentioned in paragraph 7(1)(c), 8(1)(c), 9(1)(c) or 10(1)(c) the NVR may determine a longer period, of no more than 6 months, within which it must make a decision on an application.

Subitem 11(2) provides that if the NVR determines a longer period, it must do so not later than 6 weeks before the expiry of the 6 month period mentioned in paragraph 7(1)(c), 8(1)(c), 9(1)(c) or 10(1)(c), whichever applies.

Subitem 11(3) provides that if the NVR determines a longer period under subitem 11(1), it must, within 7 days of making the determination, give the training organisation written notice of the determination and reasons for it.

Subitem 11(4) provides that if:

- a decision is not made within the 6 month period mentioned in paragraph 7(1)(c), 8(1)(c), 9(1)(c) or 10(1)(c) and the NVR does not determine a longer period; or
- the NVR determines a longer period but does not make a decision within that period;
- the NVR is taken to have granted the application.

Subitem 11(5) provides that if the NVR is taken to have granted an application as mentioned in subitem 11(4), the organisation to which the application relates is taken to have been registered or had its registration renewed for 2 years beginning on the first day after the 6 month period.

Subitem 11(6) provides that an inference that an organisation complies with the VET Quality Framework is not to be made only because the organisation is taken to have been registered as an NVR RTO for the period mentioned in subitem 11(5).

Division 3 – Applications for changes of scope of registration

Item 12 – Pending applications for change of scope of registration—referring States and Territories

Subitem 12(1) provides that this item applies to an RTO that is, immediately before the relevant commencement day, registered in a referring State or a Territory.

Subitem 12(2) provides that, if an RTO has, before the relevant commencement day, applied to a SVR to change its scope of registration and the SVR has not decided the

application before the relevant commencement day then the NVR must decide the application under the Main Bill as soon as practicable. If the NVR decides to grant the application, it must determine the day from which the VET course may be delivered by the organisation and must also notify the organisation of its decision in accordance with clause 34 of the Main Bill. Similarly, if the NVR decides to reject the application, it must notify the organisation of its decision in accordance with clause 34 of the Main Bill.

A note to subitem 12(2) indicates that a reference to a SVR includes a reference to a VET Regulator of a Territory.

Subitem 12(3) makes clear that if the NVR decides to grant the application, it may impose conditions on the organisation's registration in accordance with the Main Bill

Item 13 Pending applications for change of scope of registration – non-referring States

This item contains provisions in relation to a training organisation in a non-referring State which are equivalent to those in item 12.

Division 4 – Applications for withdrawal of registration

Item 14 – Pending applications for withdrawal of registration—referring States and Territories

Subitem 14(1) provides that this item applies to an RTO that is, immediately before the relevant commencement day, registered in a referring State or a Territory.

Subitem 14(2) provides that if an RTO has, before the relevant commencement day, applied to a SVR to have its registration withdrawn, and the SVR has not decided the application before the relevant commencement day; then:

- if the NVR is satisfied, in all the circumstances, that it is appropriate to allow the withdrawal, the NVR must allow the registration to be withdrawn; and
- the NVR must give written notice to the organisation of its decision and, if the organisation's registration is to be withdrawn, the day the withdrawal takes effect.

A note to this item indicates that a reference to a SVR includes a VET Regulator of a Territory.

Subitem 14(3) provides that if an RTO's registration is withdrawn under this item and the organisation was issued with a certificate of registration then the RTO must return the certificate to the NVR within 10 days of the withdrawal taking effect.

Item 15 – Pending applications for withdrawal of registration—non-referring States

This item contains provisions in relation to an RTO that is, immediately before commencement, registered in a non-referring State which are equivalent to those in item 14.

Part 3

Continuation of existing course accreditations etc.

Outline of Part

Part 3 of the Bill covers arrangements regarding the continuation of existing course accreditations and suspension of a course accreditation which was in place immediately before the relevant commencement day. It also specifies arrangements regarding applications for accreditation or re-accreditation of a course made to a SVR before the relevant commencement day.

Detailed explanation

Division 1 – Continuation of existing accreditations etc.

Item 16 – Accreditation of VET accredited courses continue in force

Subitem 16(1) provides that if, immediately before the relevant commencement day, a course was accredited by the SVR of a referring State, or the VET Regulator of a Territory, the course is taken to be a VET accredited course for the period beginning on the relevant commencement day and ending on the day on which:

- the course's accreditation would expire under the relevant State or Territory law but for this subitem; or
- the course's accreditation is cancelled under subclause 52(1) of the Main Bill.

A note to subitem 16(1) indicates that a course is accredited as a VET accredited course under clause 44 of the Main Bill.

Subitem 16(2) makes clear that, if a course is taken to be a VET accredited course under subitem (1), the NVR may, in accordance with the Main Bill, impose conditions on the accreditation of the VET accredited course.

Subitem 16(3) provides that an inference that a course meets the Standards for VET accredited courses or the Australian Qualifications Framework is not to be made only because the course is taken to be a VET accredited course under subitem (1).

Item 17 – Suspension of a course’s accreditation

This item provides that, if a course is taken to be a VET accredited course under item 16, and the course’s accreditation, immediately before commencement, was suspended, then the suspension continues until:

- the NVR is satisfied that the person or entity in respect of whom the course is accredited has done whatever is required for the suspension to be lifted (which may be something that was not required by the relevant SVR); or
- the NVR takes action about the suspension under the Main Bill.

A note to this item indicates that a reference to a SVR includes a VR of a Territory.

Division 2 – Applications for accreditation or renewal of accreditation of a course

Item 18 – Pending applications for accreditation—referring States and Territories

Subitem 18(1) provides that if a person or entity has, before the relevant commencement day, applied to a SVR of a referring State or the VR of a Territory for accreditation of a course, and the SVR has not decided the application before the relevant commencement day, the NVR must decide the application under the Main Bill within 6 months after the relevant commencement day.

Subitem 18(1) also provides that if the NVR decides to grant the application:

- it must accredit the course as a VET accredited course under clause 44 of the Main Bill; and
- it must notify the person or entity of its decision in accordance with clause 45 of the Main Bill.

Subitem 18(1) further provides that if the NVR decides to reject the application, it must notify the person or entity of its decision in accordance with clause 45 of the Main Bill.

Notes to subitem 18(1) indicate that a reference to a SVR includes a reference to a VET Regulator of a Territory, and direct the reader’s attention to subitem 20(4), which provides that the NVR is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 20(1).

Subitem 18(2) makes clear that if the NVR decides to grant the application, it may, in accordance with the Main Bill, impose conditions on the course’s accreditation.

Item 19 – Pending applications for renewal of accreditation – referring States and Territories

Subitem 19(1) provides that if a person or entity in respect of whom a VET accredited course is accredited has applied to a SVR of a referring State or the VR of a Territory for renewal of accreditation of the course, and the SVR has not decided the application before the relevant commencement day, then the NVR must decide the application under the Main Bill within 6 months after the relevant commencement day.

Subitem 19(1) also provides that if the NVR decides to grant the application:

- it must accredit the course as a VET accredited course under clause 44 of the Main Bill; and
- it must notify the person or entity of its decision in accordance with clause 45 of the Main Bill; and

Subitem 19(1) further provides that, if the NVR decides to reject the application, it must notify the person or entity of its decision in accordance with clause 45 of the Main Bill.

Notes to subitem 19(1) indicate that a reference to a SVR includes a reference to a VET Regulator of a Territory, and direct the reader's attention to subitem 20(4), which provides that the NVR is taken to have granted the application if it does not make a decision within 6 months after the relevant commencement day or a longer period determined under subitem 20(1).

Subitem 19(2) makes clear that if the NVR decides to grant the application, it may, in accordance with the Main Bill, impose conditions on the course's accreditation.

Subitem 19(3) provides that the course is taken to be a VET accredited course for the period beginning on the relevant commencement day, and ending:

- on the day on which the NVR makes its decision; or
- if the NVR determines a longer period under subitem 20(1) - on the last day of that period; or
- if the NVR does not determine a longer period under subitem 20(1) - on the day that occurs 6 months after the relevant commencement day

whichever occurs first.

A note to subitem 19(3) indicates that if the NVR does not determine a longer period as mentioned in subparagraph 19(3)(b)(iii), the accreditation of the course will be taken to be renewed for 2 years as mentioned in item 20(5).

Subitem 19(4) makes clear that an inference that a course meets the Standards for VET accredited courses or the Australian Qualifications Framework is not to be made only because the course is taken to be a VET accredited course for the period mentioned in subitem 19(3).

Item 20 – Extension of time for considering applications

Subitem 20(1) provides that, if the NVR is satisfied that, for reasons beyond its control, a decision cannot be made within the 6 month period mentioned in paragraph 18(1)(c) or 19(1)(c), the NVR may determine a longer period, of no more than 6 months, within which it must make a decision on an application.

Subitem 20(2) provides that, if the NVR determines a longer period, it must do so not later than 6 weeks before the expiry of the 6 month period mentioned in paragraph 18(1)(c) or 19(1)(c), whichever is applicable.

Subitem 20(3) provides that, if the NVR determines a longer period (than 6 months), it must, within 7 days of doing so, provide the person concerned with written notice of and reasons for the determination.

Subitem 20(4) provides that if:

- a decision is not made within the 6 month period mentioned in paragraph 18(1)(c) or 19(1)(c) and the NVR does not determine a longer period; or
- the NVR determines a longer period but does not make a decision within that period;
- the NVR is taken to have granted the application.

Subitem 20(5) provides that if the Regulator is taken to have granted an application, as mentioned subitem 20(4), the course to which the application relates is taken to be a VET accredited course for 2 years beginning on the first day after the 6 month period.

Subitem 20(6) makes clear that to avoid doubt, an inference that a course meets the Standards for Vet accredited courses or the Australian Qualifications Framework is not to be made only because the course is taken to be a VET accredited course for the period mentioned in subitem 20(5).

Part 4

References to, and things done by, or in relation to, a VET Regulator

Outline of Part

Part 4 of the Bill covers matters including the effect of references to a SVR in instruments in force immediately before the relevant commencement day, and things done by or in relation to a SVR.

Detailed explanation

Item 21 – Things done by, or in relation to, a VET Regulator

The effect of subitems 21(1) and (2) is that that, if a thing was done by, or in relation to, the SVR of a referring State, or by the VR of a Territory, then the thing is taken after the relevant commencement day, to have been done by, or in relation to, the NVR. Subitem 21(3) provides that, if a thing was done by, or in relation to, a SVR of a non-referring State in respect of an RTO registered by the SVR, then the thing is taken after commencement to have been done by, or in relation to, the NVR in respect of the organisation.

Subitem 21(4) provides that subitems 21(1), 21(2) and 21(3) only apply to things done by or in relation to a SVR in respect of a matter dealt with by the Main Bill. A note to subitem 21(4) indicates that a reference to a SVR includes a VR of a Territory.

Subitem 21(5) provides that the Minister may, by writing, determine that subitem 21(1), 21(2) or 21(3) does not apply in relation to a specified thing done by, or in relation to, a SVR.

Subitem 21(6) makes clear that doing a thing includes making an instrument. Other examples of things for the purpose of this item would include the placing of a condition of registration on an RTO, or providing a delegation of powers to an RTO.

Subitem 21(7) provides that a determination under subitem 21(5) is not a legislative instrument. This provision is to assist readers, as the instrument would not be a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Item 22 – Show cause notices – referring States and Territories

Subitem 22(1) provides that this item applies to an RTO that is, immediately before the relevant commencement day, registered in a referring State or a Territory.

Subitem 22(2) provides that if, before the relevant commencement day, a SVR had given an RTO a show cause notice, then, within 60 days after the relevant commencement day, the NVR must decide what action to take in relation to the organisation under the Main Bill.

Subitem 22(2) also provides that if the NVR takes action it must notify the organisation that it is doing so in response to the show cause notice, and if the NVR does not take action it must within 30 days of deciding not to take action, give written notice to the organisation that no further action will be taken regarding the show cause notice.

A note to subitem 22(2) states that a reference to a SVR includes a VR of a Territory.

Subitem 22 (3) provides that, if a decision is not made within 60 days after the relevant commencement day, the NVR is taken to have decided not to take action under the Main Bill in relation to the organisation.

Subitem 22 (4) provides that, if a SVR required a person to provide evidence, information or any document and this was not provided to it before the relevant commencement day then it must be provided to the NVR.

Item 23 – Show cause notices – non-referring States

This item contains provisions in relation to a training organisation in a non-referring State which are equivalent to those in item 22.

Part 5

Rights of review of certain decisions

Outline of Part

Part 5 of the Bill relates to rights of review by the Administrative Appeals Tribunal, under Division 1 of Part 9 of the Main Bill, for review of certain decisions of the NVR under the Main Bill. It makes clear that such rights exist regarding decisions under corresponding provisions of this Bill.

Detailed explanation

Item 24 – Rights of review of certain decisions

The item provides that, to avoid doubt, an application may be made to the Administrative Appeals Tribunal under Division 1 of Part 9 of the Main Bill for review of any of the following decisions of the NVR:

- a decision under clause 17 of the Main Bill, as applied by one of the following provisions of this Schedule, to register an organisation as an NVR RTO:
 - paragraph 7(1)(d)
 - paragraph 8(1)(d)
 - paragraph 9(1)(d)
 - paragraph 10(1)(d)

- a decision under clause 17 of the Main Bill, as applied by one of the following provisions of this Schedule, not to register an as an NVR RTO:
 - paragraph 7(1)(e)
 - paragraph 8(1)(e)
 - paragraph 9(1)(e)
 - paragraph 10(1)(e)

- a decision under subclause 29(1) of the Main Bill, as applied by one of the following provisions of this Schedule, to impose a condition on an NVR RTO's registration:
 - paragraph 5(1)(c)
 - subitem 7(2)
 - subitem 8(2)
 - subitem 9(2)
 - subitem 10(2)
 - subitem 12(3)

- subitem 13(3)
- a decision under clause 44 of the Main Bill, as applied by one of the following provisions of this Schedule, to accredit a course as a VET accredited course:
 - paragraph 18(1)(d)
 - paragraph 19(1)(d)
- a decision under clause 44 of the Main Bill, as applied by one of the following provisions of this Schedule, not to accredit a course as a VET accredited course:
 - paragraph 18(1)(e)
 - paragraph 19(1)(e)
- a decision under clause 48(1) of the Main Bill, as applied by one of the following provisions of this Schedule, to impose a condition on a VET accredited course's accreditation:
 - subitem 16(2)
 - subitem 18(2)
 - subitem 19(2)
- a decision under clause 33 of the Main Bill, as applied by paragraph 12(2)(d) or 13(2)(d) of this Schedule, to change an NVR RTO's scope of registration
- a decision under clause 33 of the Main Bill, as applied by paragraph 12(2)(e) or 13(2)(e) of this Schedule, not to change an NVR RTO's scope of registration
- a decision under clause 42 of the Main Bill, as applied by paragraph 14(2)(c) or 15(2)(c) of this Schedule, to allow an RTO to withdraw its registration
- a decision under clause 42 of the Main Bill, as applied by paragraph 14(2)(d) or 15(2)(d) of this Schedule, not to allow an RTO to withdraw its registration
- a decision under subitem 11(1) or 20(1) of this Schedule to determine a longer period within which the NVR may make a decision on an application.

Part 6

Treatment of staff employed by VET Regulators etc

Outline of Part

Part 6 of the Bill relates to arrangements regarding the engagement of employees from a SVR of a referring State, or of a Territory, to the NVR. Part 6 does not limit the operation of item 31 (which relates to transitional regulations).

Detailed explanation

Item 25 – Engagement of staff

Subitem 25(1) provides that regulations under item 31 may provide for:

- Engagement of an employee from a SVR, the VR of a Territory, or TVET Australia on terms and conditions substantially similar to, and, on an overall basis, no less favourable than their employment terms and conditions with the relevant regulator or TVET Australia immediately before engagement; or
- staffing procedures of a SVR of a referring State, a SVR of a non-referring State, or a VR of a Territory to apply or continue to apply regarding processes begun but not completed before the relevant commencement day, or regarding things done by or in relation to such a regulator or employee of that regulator before the relevant commencement day or commencement;
- staffing procedures of TVET Australia to apply or continue to apply regarding processes begun but not completed by commencement, or regarding things done by or in relation to TVET Australia or employee of TVET Australia before commencement; or
- staffing procedures of the NVR to apply regarding
 - in the case of a referring State or a Territory - processes begun but not completed by the relevant commencement day;
 - in the case of a non-referring State or TVET Australia – processes begun before, but not completed by, commencement; or
 - things done by, for or in relation to a SVR of a referring State before the relevant commencement day; or
 - things done by, for or in relation to the VR of a Territory before the relevant commencement day; or

- things done by, for or in relation to a SVR of a non-referring State before commencement; or
- things done by, for or in relation to TVET Australia before commencement.

Subitem 26(2) provides that regulations made for the purpose of this item have effect despite the *Public Service Act 1999*.

Subitem 26(3) provides that in this item ‘staffing procedures’ includes procedures and policies about:

- recruitment, promotion or performance management;
- inefficiency, misconduct, forfeiture of position, fitness for duty or loss of essential qualifications;
- disciplinary action, grievance processes or reviews of or appeals against staffing decisions; or
- transfers, resignation or termination of employment; or
- leave.

Part 7

Legal proceedings

Outline of Part

Part 7 of the Bill relates to substitution of the NVR for a SVR as a party to legal proceedings which were pending immediately before the relevant commencement day.

Detailed explanation

Item 26 – Substitution of National VET Regulator as a party to pending proceedings

Subitem 26 (1) provides that, if immediately before the relevant commencement day, the SVR of a referring State or the VR of a Territory was a party to proceedings described by subitem 26(3), and the proceedings were pending in any court or tribunal, then the NVR is substituted for the SVR after the relevant commencement day as a party to the proceedings.

A note to subitem 26(1) indicates that a reference to a SVR includes a reference to a VET Regulator of a Territory.

Subitem 26(2) provides that, if immediately before the relevant commencement day, a SVR of a non-referring State was a party to proceedings of a kind mentioned in subitem 26(3) in relation to a training organisation registered by the SVR and the proceedings were pending in any court or tribunal, then the NVR is substituted for the SVR in relation to the organisation.

Subitem 26(3) provides that subitems 26(1) and 26(2) only apply to proceedings that relate to a decision by a SVR about a matter dealt with by the Main Bill.

Part 8

Miscellaneous

Outline of Part

Part 8 of the Bill covers a small number of miscellaneous matters including arrangements regarding the transfer of the custody of records from a SVR to the NVR, and transitional regulations.

Detailed explanation

Item 27 – Transfer of custody of records

Subitem 27(1) provides that if any records of a kind specified in a determination made by the NVR relating to:

- an organisation that is taken to be an NVR RTO under this Schedule; or
- an organisation that is registered as an NVR RTO under the Main Bill because of this Schedule; or
- a course that is taken to be a VET accredited course under this Schedule;

are in the custody of a SVR immediately before the relevant commencement day, copies of the records must be transferred to the NVR as soon as practicable after the relevant commencement day.

A note to subitem 27(1) indicates that a reference to a SVR includes a reference to a VET Regulator of a Territory.

Subitem 27(2) provides that subitem 27(1) does not apply regarding records already transferred to the NVR as mentioned in subparagraph 2(2)(b)(ii) or subitem 2(3).

Subitem 27(3) provides that subitem 27(4) applies regarding training organisations in a non-referring State taken to be an NVR RTO under this Schedule, or registered as an NVR RTO under the Main Bill because of this Schedule.

Subitem 27(4) provides that copies of records, of a kind specified in a determination made by the NVR, relating to an organisation mentioned in subitem 27(3) in the custody of the SVR of the non-referring State immediately before commencement must be transferred to the NVR as soon as practicable after commencement.

Subitem 27(5) provides that subitem 27(4) does not apply regarding records that have already been transferred to the NVR, as mentioned in subparagraph 3(2)(b)(ii) or subitem 3(3).

Item 28 – Determinations about records

Subitem 28(1) provides that the NVR may for the purpose of this Schedule, determine the kind of records relating to an organisation or a course that must be provided by a SVR. A note to this subitem indicates that a reference to a SVR includes a VR of a Territory.

Subitem 28(2) provides that such a determination is not a legislative instrument. This subitem is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*, as they are not legislative in character.

Item 29 – Powers of National VET Regulator

The item provides that to avoid doubt, the NVR may take action under Part 4 of the Main Bill (which relates to the NVR's powers to issue and cancel VET qualifications and VET statements of attainment) in respect of:

- an organisation that is taken to be an NVR RTO under this Schedule; or
- an organisation that is registered as an NVR RTO under the Main Bill because of this Schedule

even though the organisation was not an NVR RTO at the time the events in respect of which action is to be taken occurred.

Item 30 – Transitional regulations

Subitem 30(1) provides that the Governor-General may make regulations prescribing matters required or permitted by this Schedule to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

Subitem 30(2) provides that the regulations may prescribe matters of a transitional nature:

- arising from the enactment of the Main Bill; or
- regarding the transition from the application of State and Territory laws, or the laws of a non-referring State, regulating the VET sector to application of the Main Bill.

Subitem 30(3) provides that the regulations may provide that items of this Schedule are taken to be modified as set out in the regulations, and have effect as if so modified.

Subitem 30(4) provides that the regulations may be expressed to take effect from a day before the regulations are registered under the *Legislative Instruments Act 2003*, despite subsection 12(2) of that Act.

Subitem 30(5) provides that subitems 30 (2) and (3) do not limit subitem 31(1).