

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR  
(CHARGES) BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Science and  
Research)

# NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (CHARGES) BILL 2012

## GENERAL OUTLINE

The object of the National Vocational Education and Training Regulator (Charges) Bill 2012 is to enable the National VET Regulator, known as the Australian Skills Quality Authority, to charge NVR registered training organisations for compliance audits and substantiated complaint investigations conducted by the Regulator.

The National VET Regulator commenced from 1 January 2011 with responsibility for registering and monitoring NVR registered training organisations. The Regulator is established under the *National Vocational Education and Training Regulator Act 2011* (the main Act) with the power to examine quality concerns in all areas of the VET sector. NVR registered training organisations must comply with registration standards at all times.

The main method by which the Regulator monitors ongoing compliance with registration standards is by conducting compliance audits and investigating complaints about NVR registered training organisations. These additional monitoring activities are part of a robust regulatory framework designed to improve quality of the VET sector and lead to better training outcomes.

The Regulator is established on a cost recovery basis – initially funded by partial cost recovery. The regulator's cost recovery arrangements are consistent with the *Australian Government Cost Recovery Guidelines* and include fees and charges for the regulatory activities it undertakes. Application-based fees are authorised by the main Act. Some fees applied from 1 July 2011, while others will progressively apply in line with the Regulator's implementation path to full cost recovery by 2014-15. The purpose of this Bill is to authorise charges for services that are not application-based (additional monitoring activities).

The Regulator's cost recovery arrangements, including the charges that will be authorised by this Bill, were subject to extensive consultation in 2011. Feedback from those consultations assisted in designing the final fee and charge structure and ensuring that the new cost arrangements were appropriate for the VET sector. The fee and charge structure, including the consultation process, is explained in a Cost Recovery Impact Statement which has been publicly available since the commencement of the National VET Regulator.

## FINANCIAL IMPACT STATEMENT

The Regulator is financed by Parliamentary appropriations of \$94.9 m between 2011 and 2015 and funded on a progressively cost neutral basis.

Charges for additional monitoring activities are part of the Regulator's cost recovery arrangements. Current estimates anticipate that these charges for will amount to \$2.1 m in 2012-13 and rise to an ongoing level of \$5.4 m in 2013-14.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (CHARGES) BILL 2012**

This Bill 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 Bill**

The Bill will enable the National VET Regulator to charge registered training organisations for compliance audits and the investigation of complaints which are substantiated. The charges are payable by the organisation registered as a VET provider with the National VET Regulator.

#### **Human rights implication**

##### *Right to education*

The Bill engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights.

The Bill will enable the National VET Regulator to charge for compliance audits and the investigation of substantiated complaints which are conducted by the National VET Regulator, ASQA. These charges will support ASQA's regulatory functions by allowing it to recover costs for the regulatory functions it undertakes and fulfil its budgetary obligations.

#### **Conclusion**

The Bill is compatible with human rights as it will support regulatory functions in the VET sector, ensuring improved quality and greater integrity in the VET system.

# NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR (CHARGES) BILL 2012

## NOTES ON CLAUSES

### Part 1–Preliminary

#### 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 (Charges) Act 2011*.

#### Clause 2 - Commencement

Subclause 2(1) 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:

- Sections 1 and 2 and anything in the Bill not covered elsewhere to commence on the day the Bill (once enacted) receives the Royal Assent;
- Sections 3 to 14 to commence on 1 January 2013.

A Note makes it clear that these commencement times will not be amended by any later amendments of the Bill (once enacted).

Subclause 2(2) provides that information in column 3 of the table does not form part of the Bill. Information in column 3 may be inserted or varied in any published version of the Bill (once enacted).

#### Clause 3 - Definitions

Clause 3 provides that an expression contained in the Bill has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

#### Clause 4 – Act to bind Crown

The effect of this clause is to bind the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory in respect of this Bill.

### **Clause 5 – Extension of Act to external territories**

This clause provides that the Bill will apply in every external Territory of Australia. Section 17 of the *Acts Interpretation Act 1901*, together with section 122 of the *Commonwealth of Australia Constitution Act 1901*, defines external Territory to broadly mean Territories not otherwise included within Australia, which are governed by the Commonwealth of Australia. This means, for example, that the Bill will cover the Indian Ocean Territories (Cocos (Keeling) Island and Christmas Island) and Norfolk Island.

### **Clause 6 – Extra-territorial application**

This clause provides that unless the contrary intention appears, the Bill will extend to acts, omission, matters and things done outside Australia in relation to: all or part of a VET course; or a VET qualification.

## **Part 2 – Charge for compliance audit**

### **Items 7, 8 and 9**

These items will specify that a charge is payable for the cost and expenses incurred by the National VET Regulator in conducting a compliance audit.

Item 7 provides that a charge will be payable for the cost and expenses incurred by the Regulator in conducting the audit and, if the audit is conducted outside Australia in whole or in part, any reasonable expenses incurred by the regulator relating to the audit or part of the audit.

Item 9 requires the Minister to make a legislative instrument determining the formula for calculating a charge payable under this Part.

The charges payable in accordance with this Part were subject to extensive consultation in 2011 and the feedback from this process assisted in designing the final charge structure. The formula for calculating a charge payable in accordance with this Part and details of the consultation process is explained in a Cost Recovery Impact Statement which has been publicly available since the commencement of the National VET Regulator.

Item 8 provides that the charge is payable by the registered training organisation who is subject to the compliance audit.

## **Part 3 – Charge for the investigation of a complaint about an NVR registered training organisation**

### **Items 10, 11 and 12**

These items will specify that a charge is payable where the National VET Regulator investigates a complaint about an NVR registered training organisation and the complaint is substantiated.

Item 10 provides that a charge will be payable for:

- (a) The costs and expenses incurred by the Regulator in conducting the investigation; and
- (b) any compliance audit conducted as part of the investigation; and
- (c) if the investigation or compliance audit is conducted outside Australia, in whole or in part, any reasonable expenses incurred by the Regulator relating to the investigation or compliance audit, or part of the investigation or compliance audit.

Item 12 requires the Minister to make a legislative instrument determining the formula for calculating a charge payable in accordance with this Part.

The charges payable in accordance with this Part were subject to extensive consultation in 2011 and the feedback from this process assisted in designing the final charge structure. The formula for calculating a charge payable in accordance with this Part and details of the consultation process is explained in a Cost Recovery Impact Statement which has been publicly available since the commencement of the National VET Regulator.

Item 11 provides that the charge is payable by the registered training organisation who is subject to the investigation.

## **Part 4–Miscellaneous**

### **Item 13 – Circumstances in which charge may be paid by instalments or waived**

Item 13 will allow the Minister to determine, by legislative instrument, the circumstances in which the National VET Regulator may:

- allow a charge payable under the Act to be paid by instalments; or
- waive, in whole or in part, a charge that would otherwise be payable under the Act.

### **Item 14 – Regulations**

Item 14 includes a regulation making power which will allow regulations to be made prescribing matters