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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL VOCATIONAL EDUCATION AND TRAINING
REGULATOR AMENDMENT BILL 2015**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Assistant Minister for Education and
Training, Senator the Honourable Simon Birmingham)**

National Vocational Education and Training Regulator Amendment Bill 2015

OUTLINE

The *National Vocational Education and Training Regulator Act 2011* and the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* were passed by Parliament on 24 March 2011.

These Acts established a National VET Regulator (the Regulator) for the vocational education and training sector, now known as the Australian Skills Quality Authority, to operate from 1 July 2011. The Regulator has regulatory responsibility for registered training organisations in referring states and territories. In non-referring states, Victoria and Western Australia, the Regulator has responsibility for training organisations offering training to international students, and for registered training organisations also operating in a referring state or a territory.

This Bill contains amendments to the *National Vocational Education and Training Regulator Act 2011* that support ongoing reform measures, including reducing regulatory burden for NVR registered training organisations, protecting the integrity of the VET system, giving the Regulator capacity to respond to emerging issues, and technical amendments to improve the efficiency and operation of the Act and, consequently, the Regulator.

FINANCIAL IMPACT STATEMENT

The financial impact of the measures in the Bill is expected to be nil or insignificant. The amendments in the Bill form part of the broader vocational education and training reforms. The amendments are expected to create administrative efficiencies for the Regulator and the registered training organisations it regulates.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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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

A high quality vocational education and training (VET) sector is fundamental to a skilled workforce and a productive economy. The purpose of the National Vocational Education and Training Regulator Amendment Bill (the Bill) is to amend the *National Vocational Education and Training Act 2011* (the NVETR Act), to introduce measures to protect the integrity of the VET system, to provide better balance between protection and regulation of the VET system and to make amendments to improve the efficiency and operation of the NVETR Act and consequently the Australian Skills Quality Authority (the Regulator).

The main measures in the Bill include:

- enhancing quality in the VET sector
- improving transparency in the marketing of VET courses
- reducing regulatory burden through extension of registration periods
- administrative amendments to existing provisions identified as needing clarification.

Analysis of human rights implications

Right to education

The Bill engages the right to education contained in article 13 of the *International Covenant on Economic, Social and Cultural Rights*. Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

The measures in the Bill seek to protect the integrity of the VET sector. The VET sector needs strong quality assurance in order to deliver high quality

training outcomes for students. An individual's qualifications should be a reliable measure for employers about the knowledge and skills that they possess, regardless of where they were trained. The Bill will implement a number of measures that will improve VET, which will in turn benefit both the individuals receiving training, and the broader economy.

Right to freedom of opinion and expression

The Bill engages the right to freedom of opinion and expression contained in article 19 of the *International Covenant on Civil and Political Rights*.

Schedule 1 of the Bill includes a provision which places additional requirements on the content of advertisements that relate to VET courses (item 3 – sections 123A and 123B). This measure is designed to provide greater transparency in the marketing of VET courses. It will enable prospective learners to clearly identify who is responsible for the VET course, allowing them to seek redress if required against the organisation responsible for their learning. The imposition is relatively minor; the advertisement or offer must identify the name and registration number of the registered training organisation responsible for the VET course. No other additional prescriptions around how this is to be done will be imposed.

The proposed limitation on the right to freedom of expression is reasonable and appropriate, and adapted to achieving the legitimate purpose of increased transparency in the VET sector. The Commonwealth does not seek to restrict the right to expression in regards to vocational education, but rather to put in place obligations to protect vulnerable learners.

Right to privacy and reputation

The Bill engages the right to privacy and reputation contained in article 17 of the *International Covenant on Civil and Political Rights*.

Schedule 1 of the Bill includes a provision that clarifies the Regulator's ability to share information collected in the course of its operations (item 12 – section 205A). An individual's privacy is protected by the requirement to notify a person in writing if their private information is disclosed. Item 12 repeals and substitutes section 205A of the NVETR Act, which currently allows the Regulator to disclose VET information to the Tertiary Education Quality and Standards Agency (TEQSA) to enable it to perform or exercise its functions or powers. New section 205A enables the Regulator to disclose VET information to Royal Commissions, or to Commonwealth or state or territory authorities if disclosure is necessary for the receiving authority to perform or exercise its functions or powers. It is necessary to amend the provision so that the Regulator can share VET information beyond TEQSA. This will improve the Regulator's ability to cooperate with other government entities, such as the Australian Competition and Consumer Commission, in removing dishonest providers from the VET sector. New Section 205A contains an additional safeguard – namely that when the Regulator discloses VET information that is

personal information to a Royal Commission, it must provide details to the person concerned.

Right to minimum guarantees in criminal proceeding

The Bill engages the right to minimum guarantees in criminal proceedings contained in article 14 of the *International Covenant on Civil and Political Rights*. Article 14(g) recognises the right not to be compelled to testify against oneself or to confess guilt.

Schedule 1 of the Bill contains an administrative amendment to the provision relating to self-incrimination (item 22 – paragraphs 65(2)(e) and (f)). This amendment does not alter the existing right regarding self-incrimination but rather clarifies that an individual's rights exist for both civil and criminal proceedings. The amendment will make it easier for an individual to understand their rights when reading the NVETR Act.

Right to a fair hearing

The Bill engages the right to a fair hearing contained in article 14(1) of the *International Covenant on Civil and Political Rights*.

Schedule 1 of the Bill contains a measure relating to the issuing of a written direction to comply with conditions of registration (item 13 – section 35A). The amendment enables the Regulator to better use tools available in relation to issuing written notices through streamlining the processes before a written direction to comply with the NVETR Act is issued. This measure does not remove any common law natural justice rights; it removes the requirement to follow prescriptive steps in regards to issuing a notice of intention to issue a written direction. The requirement to issue a notice of intention remains in place for administrative sanctions. The decision to issue a written direction will remain a reviewable decision.

Conclusion

The Bill is compatible with human rights because it advances human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 provides for the Bill, once enacted, to be cited as the *National Vocational Education and Training Regulator Amendment Act 2015*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in 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 the following commencement times:

- Sections 1 to 3 and anything else in the Bill that is not covered by the table commence on the day the Bill, once enacted, receives the Royal Assent.
- Schedules 1 and 2 commence on the day after the Bill, once enacted, receives the Royal Assent.

A note explains that the commencement times in the table will not be amended should the provisions of this Act be amended by any future Act.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Bill but that information is not part of the Bill.

Clause 3

This clause provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

List of abbreviations used in this Explanatory Memorandum

Regulator means the National VET Regulator – the Australian Skills Quality Authority.

NVETR Act means the *National Vocational Education and Training Regulator Act 2011*.

VET means vocational education and training.

Schedule 1 *Vocational education and training*

Summary

Schedule 1 to the Bill would make amendments to the NVETR Act to address a range of issues, including to:

- insert or clarify definitions for **Ministerial Council, registered training organisation, registration code, Quality Standards** and **VET information**
- extend the operation of penalty provisions to trading corporations
- create a new offence of prohibiting a person from advertising or offering to provide all or part of a VET course without including the name and registration code of the responsible registered training organisation
- extend the period of registration able to be granted by the Regulator from 5 to 7 years
- provide that the Minister may, by legislative instrument, make Quality Standards
- provide that it is a condition of registration that an NVR registered training organisation must satisfy the Quality Standards
- state to whom, and for what purpose, the Regulator may disclose VET information
- improve the processes around the Regulator issuing a written direction
- clarify that a person employed in a court of a state or territory may issue a search warrant if authorised under a law to do so.

Schedule 1 would also provide for application and transitional provisions for some of these amendments.

Background

The Bill is designed to address a number of concerns that have arisen in the course of the Regulator carrying out its functions under the NVETR Act.

Quality Standards

Concerns have been raised about the ability of the VET sector to respond to emerging issues promptly and effectively, which has the potential to impact upon the quality of training offered by registered training organisations. Quality Standards will address the quality of training by establishing a new standard to address emerging issues which impact on the quality and integrity

of training for individuals and students. The Quality Standards will provide a method by which unanticipated changes in the VET sector may be quickly addressed.

It is the Government's intention that in establishing the Quality Standard consultation would take place with key stakeholders including state and territory ministers, and industry, before the standard is made.

A Quality Standard would be instituted where current standards are not sufficient for a particular issue that affects the quality of outcomes for students.

Advertising or offering VET courses

Concerns have been raised about the surreptitious manner in which VET courses are marketed. It can be, at times, unclear to students enrolling online who is responsible for their course. The purpose of the amendment to be made by the Bill is to provide greater transparency in the marketing of VET by requiring those persons marketing VET courses, including brokers, to be explicit in their communication and advertising to prospective learners about which organisation will be responsible for issuing the qualification or statement of attainment.

Administrative improvements

The Regulator has, in the course of carrying out its functions, identified a number of areas where administrative improvements may reduce regulatory burden and improve efficiency. Combined with feedback from stakeholders from across the VET sector, the Bill will provide a number of administrative improvements, to streamline processes and to reduce regulatory burden on the sector.

Detailed explanation

Part 1 – Advertising or offering VET courses

National Vocational Education and Training Regulator Act 2011

Item 1

This item inserts a definition of **registration code** in section 3. The definition of registration code is intended to provide greater clarity about what must be included in an advertisement or offer for all or part of a VET course. The registration code for a registered training organisation is the code entered on the National Register for the organisation.

Item 2

This item adds a new subsection 8(6) which extends the operation of the penalty provisions contained in Subdivisions B and C of Division 1 of Part 6 to trading corporations. This will ensure that the penalties provided for in Subdivisions B and C of Division 1 of Part 6 will apply to trading corporations, as well as training organisations. This amendment will facilitate the Regulator's ability to respond to issues arising from entities that are not training organisations.

Item 3

This item inserts new sections 123A and 123B. New section 123A provides that it is an offence for a person to publish or broadcast or continue to publish or broadcast an advertisement relating to all or part of a VET course, cause an advertisement relating to all or part of a VET course to be published or broadcast or continue to be published or broadcast, or offer to provide or continue to offer to provide all or part of a VET course, or make a representation or continue to make a representation about the availability of all or part of a VET course without including the name and registration code of the registered training organisation that will issue a VET qualification or VET statement of attainment relating to the VET course or the part of the VET course. Such an offence gives rise to a penalty of 60 penalty units.

New section 123B relates to the same conduct but, instead of providing for an offence, provides for a civil penalty of 120 civil penalty units.

These amendments are designed to ensure that prospective learners are fully informed about the registered training organisation that will be issuing the record of their learning. It is intended that a prospective student should easily be able to identify who is responsible for the VET course, noting that the placement of the registered training organisation's name and code would depend on the type of media being used. The penalties are consistent with benchmarks outlined in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, as well as existing penalties in the NVETR Act, such as section 122.

Item 4

This item inserts the new section 123A into the table in section 133A, creating a new table item 12A. The purpose of this addition is to ensure that an executive officer of a registered training organisation which contravenes section 123A will be personally liable for the offence.

Item 5

This item inserts a new section 233A, which ensures that no action may be taken against a person for refusing or failing to publish or broadcast an advertisement, or make an offer, if doing so is prohibited by the NVETR Act.

Part 2 – Period of registration

National Vocational Education and Training Regulator Act 2011

Item 6

This item amends subsection 17(5) to extend the period of registration that the Regulator may grant from 5 years up to a period of 7 years. The purpose of this amendment is to reduce the regulatory burden on NVR registered training organisations by extending the time period between re-registrations.

Part 3 – Quality Standards

National Vocational Education and Training Regulator Act 2011

Item 7

This item inserts a definition of ***Quality Standards*** in section 3 of the NVETR Act, which will carry the meaning ascribed to that term in new section 231A.

Item 8

This item will amend the definition of ***VET Quality Framework*** in section 3 to ensure it also encompasses the Quality Standards.

Item 9

This item amends section 22 to add compliance with the Quality Standards as a condition of registration. It ensures that NVR registered training organisations must comply with the Quality Standards as a condition of registration.

Item 10

This item inserts a new section 231A to provide the Minister with the power to make standards relating to quality in the VET sector, which will be known as the Quality Standards. This amendment will allow the Minister to make a standard that is responsive to emerging issues in the sector that impact on the quality and integrity of training for individuals and students.

It is the Government's intention that in establishing the Quality Standard consultation would take place with key stakeholders including state and territory ministers, and industry, before the standard is made.

A Quality Standard would be instituted where current standards are not sufficient for a particular issue that effects the quality of outcomes for students.

Part 4 – Operational improvements

Division 1 – Disclosure of VET information

National Vocational Education and Training Regulator Act 2011

Item 11

This item repeals the definition of ***VET information*** in section 3, and replaces it with a new definition. The new definition of ***VET information*** is information held by the Regulator relating to the performance of its functions and includes information and documents it collects in the course of exercising its powers and functions under the NVETR Act, or in administering the NVETR Act. This amendment clarifies what information held by the Regulator constitutes VET information for the purposes of the NVETR Act.

Item 12

This item repeals and substitutes section 205A of the NVETR Act, which currently allows the Regulator to disclose VET information to the Tertiary Education Quality and Standards Agency to enable it to perform or exercise its functions or powers. New section 205A enables the Regulator to disclose VET information to Royal Commissions, or to Commonwealth or state and territory authorities if the Regulator is satisfied disclosure is necessary for the receiving authority to perform or exercise its functions or powers. It is necessary to amend the provision to improve the Regulator's ability to cooperate with a range of other government entities in removing dishonest providers from the VET sector. For example, this provision will enable the Regulator to share VET information with state and territory consumer protection authorities.

New section 205A contains an additional safeguard – namely that when the Regulator discloses VET information that is personal information to a Royal Commission, it must provide details to the person concerned.

Division 2 – Directions to rectify breaches of conditions

National Vocational Education and Training Regulator Act 2011

Item 13

This item inserts a new Subdivision AA in Division 3 of Part 2, consisting of new section 35A concerning directions to rectify breaches of conditions. New section 35A provides that the Regulator is able to issue a written direction to an NVR registered training organisation when it determines it is appropriate to rectify a breach of a condition of the organisation's registration. In determining whether it is appropriate to provide a written direction, the Regulator may

have regard to the organisation's conduct or circumstances before the Regulator had reason to consider giving a direction (including before new section 35A commences). This provides flexibility to the Regulator in determining when to issue a written direction, without being required to issue a notice of intention. This provision streamlines the processes required for the Regulator to issue a written direction. This measure does not remove any common law natural justice rights.

New subsection 35A(3) makes it clear that the Regulator may also take enforcement action under Part 6 in addition to, or instead of, giving a section 35A direction.

Item 14

This item repeals paragraph 36(2)(a) in its entirety, as new section 35A (see item 13) deals with the subject matter of this paragraph.

Division 3 – Requests for information, documents or things

National Vocational Education and Training Regulator Act 2011

Item 15

This item replaces the heading of section 62 with “Requests for information, documents or things”. This amendment is so that the heading better indicates the contents of the section.

Item 16

This item amends subsection 62(1) to insert “, or with an organisation that holds itself out, or has at any time held itself out, as such an organisation” after “former registered training organisation”. This broadens the scope of section 62, and allows the Regulator to request information from a person connected with an organisation currently or previously holding itself out to be a registered training organisation, rather than just persons from NVR registered training organisations or former registered training organisations.

Division 4 – VET Quality Framework

National Vocational Education and Training Regulator Act 2011

Item 17

This item replaces “Australian Qualifications Framework” with “VET Quality Framework” in paragraph 209(1)(c). The purpose of this amendment is to allow the Regulator to release information to the public if satisfied that this will encourage compliance with all of the requirements of the NVETR Act, not just the Australian Qualifications Framework. The VET Quality Framework is

defined in section 3 as meaning: the Standards for NVR Registered Training Organisations; the Australian Qualifications Framework; the Fit and Proper Person Requirements; the Financial Viability Risk Assessment Requirements; and the Data Provision Requirements. Item 8 also includes the Quality Standards in the definition of the **VET Quality Framework**.

Part 5 – Administrative changes

Division 1 – Registered training organisations

National Vocational Education and Training Regulator Act 2011

Item 18

This item inserts a note after the definition of **registered training organisation** in section 3 to make it clear that the definition of registered training organisation is inclusive of all registered training organisations, not just those registered by the Regulator.

Division 2 – Issuing officer

National Vocational Education and Training Regulator Act 2011

Item 19

This item broadens the definition of **issuing officer** in section 3, to include a person employed in a court of a State or Territory who is authorised under a law to issue search warrants.

This amendment is intended to include persons, other than magistrates, that a state or territory has authorised to issue search warrants under that state or territory's law. It is expected these will be quasi-judicial officers such as registrars and justices of the peace.

For example Section 3 of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* provides:

"authorised officer" means:

- (a) a Magistrate or a Children's Magistrate, or
- (b) a registrar of the Local Court, or
- (c) an employee of the Attorney General's Department authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.

Other state and territory legislation has similar provisions.

The purpose of the amendment is to allow applicable court processes to apply in the relevant jurisdiction.

Division 3 – Ministerial Council

National Vocational Education and Training Regulator Act 2011

Item 20

This item repeals and substitutes the definition of *Ministerial Council* in section 3 so that it means a body established by the Council of Australian Governments to deal with training and skills or, if there is no such body, the Ministerial Council will be as prescribed by the regulations under the NVETR Act.

Division 4 – Reviewable decisions

National Vocational Education and Training Regulator Act 2011

Item 21

This item repeals and substitutes section 199 which lists reviewable decisions of the Regulator. The new table now includes a column listing the provision under which the reviewable decision can be made. The purpose of this amendment is to provide increased clarity around reviewable decisions. The new section 199 also incorporates amendments made by item 13.

This item also includes an additional row in the table in section 199, clarifying that both changing and amending a registered training organisation's scope of registration are a reviewable decision. The purpose of the amendment is to clarify that both 'amending' and 'changing' scope of registration decisions are reviewable decisions.

Division 5 – Self-incrimination

National Vocational Education and Training Regulator Act 2011

Item 22

This item repeals and substitutes paragraphs 65(2)(e) and (f). The purpose of this amendment is to clarify that the immunity available under section 65 of the NVETR Act extends to civil proceedings for contravening a civil penalty provision as well as criminal proceedings. There is no change to an individual's rights under this section. This amendment clarifies a contradiction in the NVETR Act and its explanatory memorandum and expresses the section in a less confusing way.

Schedule 2 *Transitional provisions*

National Vocational Education and Training Regulator (Transitional Provisions) Act 2011

Item 1

This item replaces the heading at Schedule 1 of the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* with “Schedule 1—Transitional provisions relating to the National Vocational Education and Training Regulator Act 2011 as originally enacted”. This amendment is so that the heading better indicates the contents of the Schedule.

Item 2

This item creates a new Schedule 2 to the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* with the heading “Schedule 2—Transitional provisions relating to the National Vocational Education and Training Regulator Amendment Act 2015”. This new Schedule 2 consists of the following five items:

Item 1 of Schedule 2

The item inserts definitions of ***Amending Act*** and ***Principal Act*** in new Schedule 2. ***Amending Act*** means the *National Vocational Education and Training Regulator Amendment Act 2015* (once enacted) and ***Principal Act*** means the NVETR Act.

Item 2 of Schedule 2

This item is an interpretation provision and provides that expressions used in Schedule 2 that are also used in the NVETR Act have the same meaning as in the NVETR Act.

Item 3 of Schedule 2

This item is an application provision and ensures that the offence created by item 3 of Schedule 1 to this Bill (which inserts new sections 123A and 123B into the NVETR Act) will not apply to the display of an advertisement or an offer in a publication that was published before the commencement of item 3, and would not be reasonably practicable to be altered. This recognises that, in some circumstances, it may not be reasonably practicable to alter an advertisement, such as hard copy advertisements published in a telephone directory.

Item 4 of Schedule 2

This item is an application provision and allows the Regulator to grant a 7 year period of registration for a NVR registered training organisation, whether the application for registration was made before, on, or after the commencement of item 6 of Schedule 1 to this Bill (which amends subsection 17(5) to extend the period of registration that the Regulator may grant from 5 years up to a period of 7 years).

Item 5 of Schedule 2

This item is an application provision and provides that if, before the commencement of this item 5, the Regulator had given a NVR registered training organisation a written notice under section 37 of the NVETR Act, then sections 36 and 37 of the NVETR Act continue to apply, in relation to the making of the decision, despite the amendments to be made by items 13 and 14 of Schedule 1 to the Bill.

This provision provides certainty to NVR registered training organisations that have been given a written notice under section 37 of the NVETR Act before the commencement of the amendments in items 13 and 14.

Item 6 of Schedule 2

This item is an application provision which provides that amendments made by item 21 of Schedule 1 to this Bill (which repeals and substitutes the section 199 table of reviewable decisions) apply to decisions made before, on or after the commencement of item 21.

This provision provides certainty regarding amendments to reviewable decisions made by item 21.