

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR
AMENDMENT BILL 2011**

EXPLANATORY MEMORANDUM

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

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR AMENDMENT BILL 2011

GENERAL 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 regulator for the vocational education and training sector, now known as the Australian Skills Quality Authority (ASQA) to operate from 1 July 2011. They set out the regulatory framework within which ASQA operates. ASQA is taking over the regulatory functions of state and territory regulators in referring states and territories. In non-referring states, Victoria and Western Australia, it has responsibility for registered training organisations which offer training to international students, or which also operate in a referring state or territory.

This Bill contains amendments to the *National Vocational Education and Training Regulator Act 2011* that address concerns expressed by stakeholders and the Senate Standing Committees on Scrutiny of Bills and Education Employment and Workplace Relations. Due to the nature of the referral of powers these amendments were not able to be made at the time of passage of the main Act.

The amendments contained in this Bill have been the subject of public consultations held on 20-21 April and 9-10 August 2011.

FINANCIAL IMPACT STATEMENT

ASQA is financed by Parliamentary appropriation. In this regard, the *Financial Management and Accountability Act 1997* 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 ASQA.

ASQA will have appropriations of \$94.9 million made available to it between commencement in 2011 and June 2014. ASQA will be able to cost recover through a number of specific services it will provide. Current estimates anticipate that ASQA's cost recovery activities will return \$39.9 million to the Budget during over the period January 2011 and June 2014.

There is no additional financial impact arising from the measures contained in this Bill.

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR AMENDMENT BILL 2011

NOTES ON CLAUSES

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 Amendment 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 to 3 to commence on Royal Assent; and
- Schedule 1 to commence on a day to be proclaimed, or if any of the provisions in Schedule 1 do not commence within 6 months from Royal Assent, they commence on the day after that 6 month period expires.

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 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

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

‘ASQA’ means the Australian Skills Quality Authority (the *National Vocational Education and Training Regulator Regulations 2011* provide that the national VET regulator may also be known as 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

Amendments

Summary

The Bill would make amendments to the NVETR Act to address issues that have been raised by VET stakeholders and the Senate's Standing Committees for the Scrutiny of Bills and on Education, Employment and Workplace Relations.

Schedule 1 would make a number of amendments to the NVETR Act including the following:

- to add an objects clause (new clause 2A)
- to repeal and substitute section 9 to clarify which laws of the states and territories apply to registered training organisations
- to insert a note at the end of subsection 16(1) to state that it is an offence under section 116 to offer or provide all or part of a VET course without registration
- to amend subsection 35(1) to clarify that ASQA can conduct compliance audits in order to assess whether ASQA registered training organisations continue to comply with both the NVETR Act and the VET Quality Framework
- to limit the circumstances where ASQA can take action on its own initiative to amend a VET accredited course, including being satisfied that the action is reasonable in the circumstances (section 51)
- to amend the provisions relating to the cancellation by ASQA of a VET qualification or statement of attainment and the civil penalty for failure to return it – by clarifying ASQA's obligation to give notice to the person concerned to return the cancelled qualification or statement of attainment (sections 58–60)
- to provide that an authorised officer may use force against a thing when executing a warrant if this is necessary and reasonable in the circumstances and the person apparently in charge of it has been given a prior reasonable opportunity to open, move or deal with it, or where the circumstances render it impossible to provide such an opportunity (section 70)
- to provide that the Minister may, by legislative instrument, determine the experience, training and qualification requirements for authorised officers and that the Chief Commissioner must not appoint persons as authorised officers unless they satisfy these experience, training and qualification requirements (if any) (section 89)
- to provide that instruments making provision for Financial Viability Risk Assessment Requirements, Standards for NVR Registered Training Organisations, Fit and Proper Person Requirements, Data Provision Requirements, Standards for VET Accredited Courses, Standards for VET Regulators and the Risk Assessment Framework may apply, adopt or

incorporate matters in other instruments as in force from time to time (section 158 and new section 191A)

- allow ASQA to disclose VET information to the Tertiary Education Quality and Standards Agency (new section 205A).

Schedule 1 would also provide for application and transitional provisions for some of these amendments and allow the Governor-General to make regulations prescribing matters of a transitional nature relating to section 9.

Background

The NVETR Act, which received Royal Assent on 12 April 2011, established a national VET regulator to regulate the VET sector and sets out the regulatory framework within which the national VET regulator will operate. The NVETR Act also establishes that the national VET regulator will derive its power from a referral of powers in referring states and from the Constitution in non-referring states and territories and that it will take over the regulatory functions of state regulators in referring states and territories. In non-referring states, the national VET regulator will have responsibility for registered training organisations which offer training to international students, or which also operate in a referring state or territory.

The *National Vocational Education and Training Regulator Regulations 2011* provide that the national VET regulator may also be known as the Australian Skills Quality Authority (which is commonly known as ASQA). Among other things, ASQA has responsibilities and powers for the registration and audit of registered training organisations and the accreditation of courses in the VET sector.

In its Alert Digest No 1 of 2011, the Senate Standing Committee for the Scrutiny of Bills commented on the NVETR Act in its draft form. This report raised a number of issues, including whether:

- the wide scope of power available to ASQA to amend accredited courses under section 51 should be reconsidered
- the civil penalty provided for in section 60 (failure to return a VET qualification or VET statement of attainment) is appropriate
- section 70, which concerns the use of force in executing a warrant, should be more narrowly defined and its exercise made more accountable
- consideration has been given to the inclusion of a legislative provision specifying the qualification and training procedures for persons appointed as authorised officers under section 89.

The Senate Standing Committee on Education, Employment and Workplace Relations also undertook an inquiry into the NVETR Act in its draft form. The Committee's report contained a number of recommendations including that, after enactment, subclauses 60(1) and (2) be amended to include a requirement that the person know that the VET qualification or statement of attainment (whatever is applicable) has been cancelled.

During the Education, Employment and Workplace Relations Committee’s inquiry, a number of stakeholders raised concerns about the lack of objects at the beginning of the NVETR Act and about the ability of ASQA to use force under section 70 of the Act.

At the time of the passage of the NVETR Act, the Minister for Tertiary Education and Employment tabled a number of amendments to the Explanatory Memorandum that addressed many of the concerns of both Committees. The Minister also committed to making a number of amendments to the NVETR Act to meet identified concerns of stakeholders and the Senate Standing Committees. Amendments could not be made to the NVETR Act prior to passage through Parliament due to the nature of the referral of powers under which the legislation was introduced.

Detailed explanation

Part 1—Amendments

National Vocational Education and Training Regulator Act 2011

Item 1 – At the end of Division 1 of Part 1

The report of the Senate Standing Committee on Education, Employment and Workplace Relations into the NVETR Act (in its draft form) noted that “several major players in the sector noted the lack of an objects clause in the bill.” While the Committee’s report acknowledged that the intergovernmental agreement did include objects and that an objects clause is not always necessary, it also considered that the lack of objects in the public domain either through the NVETR Act or the intergovernmental agreement was unfortunate.

Item 1 would address these concerns by adding an objects clause as a new section 2A. The objects of the NVETR Act would be as follows:

- to provide for national consistency in the regulation of VET
- to regulate VET using a standards-based quality framework and, when appropriate in the circumstances, risk assessments [Note 1 would clarify that the standards-based framework means instruments that are made by the Ministerial Council, the Minister, or ASQA]
- to protect and enhance VET quality, flexibility and innovation and Australia’s reputation for VET both within Australia and internationally
- to provide a regulatory framework to encourage and promote a VET system that is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population
- to protect students undertaking, or proposing to undertake, Australian VET by ensuring the provision of quality VET

- to facilitate people being able to have access to accurate information relating to the quality of VET.

Note 2 to new section 2A would clarify that the objects are subject to the constitutional basis for the NVETR Act which is dealt with in Division 3 of Part 1 of the Act (see especially section 4).

These objects were drafted following circulation of a consultation paper to stakeholders and meetings held with stakeholders in April and August 2011.

Item 2 – Section 9

Item 2 would repeal and substitute section 9 of the NVETR Act to clarify which laws of the states and territories apply to registered training organisations. The effect of the new section 9 would be to confer immunity on ASQA registered training organisations operating in any state or territory from state or territory laws dealing with certain matters and to clarify that immunity is not conferred in relation to state or territory laws dealing with other listed matters.

New subsection 9(1) would, subject to new subsections 9(2) and (3), provide that ASQA registered training organisations that operate in a state or a territory are not subject to laws of that state or territory that relate to the following matters:

- the registration and regulation of VET organisations
- the accreditation or other recognition of VET courses or programs
- issuing and cancelling VET qualifications or statements of attainment
- collecting, publishing, providing and sharing information about VET
- investigative powers and sanctions and enforcement in relation to these matters.

New subsection 9(2) would provide that ASQA registered training organisations are subject to the following state or territory laws to the extent that such laws relate to the following matters:

- primary or secondary education (which includes compulsory school education for children)
- tertiary education that is recognised as higher education and not recognised as VET
- the rights and obligations of people who provide or undertake apprenticeships or traineeships
- qualifications or other requirements that are needed in order to undertake or carry out any business, occupation or other work (except for that which relates to a VET organisation)
- the funding of VET by the state or territory
- establishing or managing any state or territory agency that provides VET.

New subsection 9(3) would provide that ASQA registered training organisations are subject to a state or territory law specified in new subsection 9(2) if:

- the law would apply regardless of whether or not the person it applies to is a training organisation; or
- the law is specified in regulations made under subsection 9(3) after having been first agreed to by the Ministerial Council (a Note draws the reader's attention to section 191, which explains that the Ministerial Council would give agreement by resolution of the Council passed in accordance with Council procedures).

These amendments have been made in consultation with the states and territories to address concerns raised by some states during the Senate Standing Committee on Education Employment and Workplace Relations' inquiry that the NVETR Act unintentionally overrides laws in non-referring states which were meant to be excluded. Whilst the NVETR Act does not do this, the amendment has been made to provide further clarification. The amendments also introduce a mechanism for specific laws in non-referring states to be excluded at the request of non-referring states.

Item 3 – At the end of subsection 16(1)

Subsection 16(1) of the NVETR Act provides that a person may apply to ASQA for registration (or renewal of registration) as an NVR registered training organisation.

Item 3 would add a note at the end of subsection 16(1) which simply draws reference to section 116 which provides that it is an offence to provide or offer to provide all or part of a VET course without being registered.

This note has been added to address the concerns of stakeholders that the NVETR Act does not specifically require registration of a training organisation seeking to offer nationally recognised training. The note alerts the reader to the fact that it is an offence to offer nationally recognised training (a VET course) without being a registered training organisation.

Item 4 – Subsection 35(1)

Subsection 35(1) of the NVETR Act allows ASQA, at any time, to conduct compliance audits of ASQA registered training organisations to see if they continue to comply with the VET Quality Framework. The VET Quality Framework is defined in section 3 as meaning:

- the Standards for NVR [ie ASQA] Registered Training Organisations (see section 185)
- the Australian Qualifications Framework
- the Fit and Proper Person Requirements (see section 186)
- the Financial Viability Risk Assessment Requirements (see section 158)
- the Data Provision Requirements (see section 187).

Item 4 would amend subsection 35(1) by making it clear that ASQA may, at any time, conduct compliance audits of ASQA registered training organisations to see if they comply with the requirements of the NVETR Act as a whole, or with the requirements of the VET Quality Framework in particular.

For example, the amendment to subsection 35(1) would allow ASQA, if necessary, to conduct a compliance audit to assess whether an organisation has been complying with conditions imposed on an organisation under section 29.

Item 5 – Paragraph 51(2)(a)

Section 51 of the NVETR Act allows ASQA to amend VET accredited courses if ASQA considers it is necessary to do so. It may do this on its own initiative, or in response to an application that is made by the person in respect of whom the VET accredited course is accredited (and ASQA considers it is appropriate to make the amendment).

In its Alert Digest No 1 of 2011, the Senate Standing Committee for the Scrutiny of Bills noted that this power seemed unnecessarily broad and queried whether it could be more narrowly defined to better reflect the intended use of the power (which the Explanatory Memorandum to the NVETR Act explains is unlikely to result in the substantial re-writing or amendment of courses, but is likely to be used to correct specific errors that have been identified, or in response to changes in applicable standards or legislation to which the course refers).

Item 5 would repeal and substitute paragraph 51(2)(a). The effect of this would be that, when ASQA takes action on its own initiative to amend a VET accredited course, it must be satisfied that the action is reasonable in the circumstances and:

- updates information in the course; or
- corrects false or misleading information in the course; or
- has been requested by an occupational licensing body, or another industry body, that either deals with or has an interest in matters relating to the content of the course.

These matters would be additional to the unchanged requirement in subsection 51(1) that ASQA must consider it necessary to make the amendment. New paragraph 51(2)(a) would only apply to amendments of accredited courses made on or after the commencement of Schedule 1 of this Bill.

Items 6 to 14 – Subsection 58(2); Subsection 59(1); Paragraph 59(2)(a); Paragraph 59(2)(b); Subsections 60(1), (2) and (3); Before subsection 60(4); Paragraph 60(4)(a); Subsection 60(5); At the end of section 61

Sections 56 to 61 of the NVETR Act provide for the cancellation of VET qualifications or statements of attainment by ASQA as follows:

- section 56 allows ASQA to cancel VET qualifications and VET statements of attainment in certain circumstances
- before doing so, section 57 requires ASQA to notify the person concerned and invite the person to provide a written response
- subsection 58(1) allows ASQA, after considering any response received, to cancel the VET qualification or statement of attainment
- under subsection 58(2), it must then give the person concerned written notice of its decision and require the person to return the VET qualification or statement of attainment within the timeframe set out in the notice
- section 59 sets out when the cancellation takes effect
- section 60 provides for civil penalties for the failure to return VET qualifications or statements of attainment to ASQA
- section 61 provides for civil penalties for using cancelled VET qualifications or statements of attainment.

In its Alert Digest No 1 of 2011, the Senate Standing Committee for the Scrutiny of Bills queried the level of the civil penalties in sections 60 and 61. The Minister subsequently provided further information to the Committee. This included an explanation that, whilst the level of maximum penalty would not always be imposed, it is appropriate in light of the fact that where persons hold themselves out as possessing a VET qualification or statement of attainment that has been cancelled, it may have serious implications for the public – for example in licensed occupations such as health industries, security, construction and trades which rely heavily upon the presentation of qualifications.

The Senate Education, Employment and Workplace Relations Committee's report on the NVETR Act in its draft form recommended that, after enactment, subclauses 60(1) and (2) be amended to include a requirement that the person know that the VET qualification or statement of attainment has been cancelled.

Items 6 to 14 would amend these provisions relating to the cancellation by ASQA of a VET qualification or statement of attainment to clarify ASQA's obligation to give notice to the person concerned and the requirement for that person to return the cancelled qualification or statement of attainment.

Item 6 would repeal subsection 58(2) and insert new subsections 58(2), (3) and (4). New subsection 58(2) would provide that, if ASQA cancels a VET qualification or statement of attainment, the person concerned must return it to ASQA within the timeframe specified in subsection 59(1) (see Item 7). A note to new subsection 58(2) would explain that this requirement will not be effective unless the person has been

given a notice of the decision to cancel the VET qualification or statement of attainment.

New subsection 58(3) would provide that new subsection 58(2) would cease to apply if and when new paragraphs 59(2)(a), (aa) and (b) apply (see Item 8). A note to new subsection 58(3) would explain that subsection 59(2) concerns seeking review of decisions to cancel VET qualifications or statements of attainment.

New subsection 58(4) would require ASQA to take reasonable steps to give the person concerned written notice of ASQA's decision to cancel a VET qualification or statement of attainment and of the requirement in subsection 58(2) to return the qualification or statement.

Item 7 would repeal and substitute subsection 59(1). New subsection 59(1) would provide that, subject to subsection 59(2) (which would be amended by Items 8 and 9), the cancellation of a person's VET qualification or statement of attainment is effective at the end of either:

- the period of 7 days from when the person has been given a notice under subsection 58(4) of the cancellation decision. This 7 day period applies where the person was given notice of the intention to cancel under subparagraph 57(1)(b)(i) – ie where ASQA considers the circumstances require urgent action and has allowed the person at least 24 hours to respond (new paragraph 59(1)(a)); or
- the period of 30 days from when the person has been given a notice under subsection 58(4) of the cancellation decision. This 30 day period applies where the person was given notice of the intention to cancel under subparagraph 57(1)(b)(ii) – ie where ASQA does not consider the circumstances require urgent action and has allowed the person 14 days to respond (new paragraph 59(1)(b)).

Subsection 59(2) qualifies the subsection 59(1) timing of when the cancellation of a person's VET qualification or statement of attainment takes effect. **Item 8** would repeal paragraph 59(2)(a) and substitute new paragraphs 59(2)(a) and (aa). The effect of this would be that where, apart from subsection 59(2), paragraph 59(1)(b) would apply and the person has applied to the Administrative Appeals Tribunal for review of ASQA's decision to cancel his or her VET qualification or statement of attainment (within the 30 day period), and the Tribunal subsequently upholds ASQA's cancellation decision – then the cancellation takes effect when the appeal has been finally determined or otherwise disposed of. In other words, the cancellation decision is stayed until this occurs.

It should be noted that where ASQA has regarded the matter as urgent under subparagraph 57(1)(b)(i) and then decides to cancel the person's VET qualification or statement of attainment, the fact that the person might later make an application to the Administrative Appeals Tribunal to seek review of the cancellation decision does not serve to stay the cancellation decision until after the appeal has been finally determined or otherwise disposed of.

Item 9 is a consequential amendment to Item 8 and would replace a reference to “the relevant 30 day period” with a reference to “that 30-day period” (ie the 30 day period mentioned in new paragraph 59(2)(a)).

Item 10 would repeal subsections 60(1), (2) and (3) and substitute a new subsection 60(1). New subsection 60(1) would provide that a person is liable for a civil penalty if the person’s VET qualification or statement of attainment has been cancelled, the cancellation has taken effect under subsection 59(1) and the person has not complied with the requirement in subsection 58(2) to return the qualification or statement. The maximum civil penalty would be 100 penalty units (currently \$11,000) (this is same level of civil penalty as presently exists under section 60).

Note 1 to new subsection 60(1) would explain that the cancellation will not take effect unless the person has been given notice of the decision to cancel under subsection 59(1). In other words, the person will have knowledge of the cancellation.

Note 2 to new subsection 60(1) would explain that the requirement in subsection 58(2) to return a cancelled VET qualification or statement of attainment (see Item 6) can cease to apply if the person concerned seeks a review of the cancellation decision and notifies ASQA accordingly – as per subsection 58(3).

Item 11 would insert the heading “Civil penalty – review sought” before subsection 60(4).

Item 12 would make minor changes to paragraph 60(4)(a) so that it reads as follows: “the cancellation of the person’s VET qualification or VET statement of attainment takes effect under subsection 59(2); and”.

Subsection 60(5) provides that subsections 60(2) and (3) do not apply if paragraphs 59(2)(a) and (b) apply. Item 10 would repeal subsections 60(2) and (3). **Item 13** would repeal subsection 60(5), which would become redundant due to the effect of Item 10.

Item 14 would add a note to the end of section 61 which provides for a civil penalty for purporting to hold a VET qualification or statement of attainment that has been cancelled. The Note would explain that such a cancellation takes effect under subsection 59(1) or (2).

Items 15 and 16 – Section 70

Section 70 provides that an authorised officer (and a person assisting the authorised officer), when executing a warrant may use such force against things that is necessary and reasonable in the circumstances. This is consistent with section 3G of the *Crimes Act 1914*.

In its Alert Digest No 1 of 2011, the Senate Standing Committee for the Scrutiny of Bills queried whether section 70 (in its draft form) could be more narrowly drafted and whether its exercise could be made more accountable.

Items 15 and 16 would narrow the power to use force when executing a warrant by providing that that an authorised officer (and a person assisting the authorised officer), when executing a warrant, may use such force against a thing that is necessary and reasonable in the circumstances if:

- the person who is apparently in charge of the thing (if there is such a person) has been given a prior reasonable opportunity to open it, move it, or otherwise deal with it; or
- it is not possible in the circumstances to give the person such an opportunity.

This approach is consistent with other Commonwealth legislation such as:

- subsection 185(3C) of the *Customs Act 1901*
- subsection 3U (d) of the *Crimes Act 1914*
- subsection 245F(11) of the *Migration Act 1958*.

A Note would make it clear that the use of force under the subsection does not authorise the use of force against a person.

Item 17 – Subsection 89(2)

Under subsection 89(1) of the NVETR Act, the Chief Commissioner of ASQA can, by writing, appoint ASQA staff members as authorised officers for the purposes of the Act. Subsection 89(2) stipulates that the Chief Commissioner must not do so unless satisfied that the person has suitable qualifications and experience.

In its Alert Digest No 1 of 2011, the Senate Standing Committee for the Scrutiny of Bills queried whether consideration has been given to specifying the qualifications of and training procedures for authorised officers.

Item 17 would repeal subsection 89(2) and insert new subsections 89(2) and (2A), the combined effect of which would be that the Minister may, by legislative instrument, determine the experience, training and qualification requirements (if any) for authorised officers and the Chief Commissioner must not appoint persons as authorised officers unless satisfied that they meet these training and qualification requirements.

While there is not a single qualification that is mandatory for authorised officers to have in order to perform their functions, there is likely to be a range of qualifications that will be appropriate and indeed desirable for authorised officers. The appropriateness of these qualifications will in part depend on the relevant experience and training that a person has when considered in totality.

For example, the Minister may determine by legislative instrument that an authorised officer must have the experience, training and qualifications that are appropriate for appointment to a particular Australian Public Service officer level. The legislative instrument may also stipulate that all authorised officers must participate in compulsory internal training as part of an induction procedure within the national VET regulator.

Item 18 – Section 107 (heading)

Item 18 would amend the heading to section 107 so that it more accurately reflects the content of the section. The new heading would be “Offence – issuing VET qualification without ensuring student satisfied requirements”.

Item 19 – Section 108 (heading)

Item 19 would amend the heading to section 108 so that it more accurately reflects the content of the section. The new heading would be “Civil penalty – issuing VET qualification without ensuring student satisfied requirements”.

Item 20 – Section 109 (heading)

Item 20 would amend the heading to section 109 so that it more accurately reflects the content of the section. The new heading would be “Offence – issuing VET statement of attainment without ensuring student satisfied requirements”.

Item 21 – Section 110 (heading)

Item 21 would amend the heading to section 110 so that it more accurately reflects the content of the section. The new heading would be “Civil penalty – issuing VET statement of attainment without ensuring student satisfied requirements”.

Item 22 – At the end of section 158

Item 22 would insert a new subsection 158(3) into the NVETR Act. New subsection 158(3) would provide that the Financial Viability Risk Assessment Requirements may make provision for a matter by applying, adopting or incorporating matters contained in another instrument or writing that is in force or exists from time to time. This would be despite the effect of subsection 14(2) of the *Legislative Instruments Act 2003*.

Under the Legislative Instruments Act, unless a contrary intention appears, subsection 14(2) prohibits a legislative instrument (such as the Financial Viability Risk Assessment Requirements) from making provision in relation to a matter by applying, adopting or incorporating any matter contained in another instrument or other writing as in force from time to time.

Applying, adopting or incorporating matters that are contained in other instruments or writing that are in force from time to time is necessary because these documents may change from time to time. For example, the Financial Viability Risk Assessment Requirements refer to the Australian Audit and Assurance Standards (the Standards), which are made by the Audit and Assurances Standards Board under the provisions of the *Corporations Act 2001*. The current Standards are publically available online, making it easier for organisations to comply with the current Standards rather than those which were in force at a particular time in the past.

Items 23 to 34

Item 34 would insert a new section 191A into the NVETR Act. New subsection 191A(1) would provide that each of the following instruments may make provision for a matter by applying, adopting or incorporating matters contained in another instrument or writing that is in force or exists from time to time:

- the Standards for NVR Registered Training Organisations (see section 185)
- the Fit and Proper Person Requirements (see section 186)
- the Data Provision Requirements (see section 187)
- the Standards for VET Accredited Courses (see section 188)
- the Standards for VET Regulators (see section 189)
- the Risk Assessment Framework (see section 190).

New subsection 191A(2) would provide that subsection 191A(1) has effect notwithstanding subsection 14(2) of the *Legislative Instruments Act 2003* and subsection 46AA(2) of the *Acts Interpretation Act 1901*.

Under the Legislative Instruments Act, unless a contrary intention appears, subsection 14(2) prohibits a legislative instrument (such as those listed in new subsection 191A(1)) from making provision in relation to a matter by applying, adopting or incorporating any matter contained in another instrument or other writing as in force from time to time. Subsection 46AA(2) of the Acts Interpretation Act makes a similar prohibition with respect to other instruments that are not legislative instruments. All of the instruments referred to in new section 191A are legislative instruments, with the exception of the Risk Assessment Framework (these are guidelines that may be made by the Minister as agreed by the Ministerial Council).

The amendment has been made to reflect the necessity for the instruments to refer to documents unique to the VET sector that are not legislative instruments, such as Training Packages and their associated guidelines, the Training Packages Development Handbook, the Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) and the Nationally Recognised Training (NRT) Logo Specifications.

Applying, adopting or incorporating matters that are contained in other instruments or writing that are in force from time to time is necessary for the following reasons:

- these are documents that are currently used in the regulation of the vocational educational and training sector and are widely consulted upon before any amendments are made to the content
- these are documents that are approved at a national level by bodies such as the Ministerial Council for Tertiary Education and Employment or the National Skills Standards Council or the National Training Statistics Committee
- the documents referred to are publicly available online on specific websites dedicated for this purpose.

For example, Training Packages are a set of nationally endorsed standards and qualifications used to recognise and assess the skills and knowledge people need to perform effectively in the workplace. Training Packages are a key resource for registered training organisations in the delivery of structured, accredited training.

The content of Training Packages may be updated from time to time to reflect the changing needs of industry. Training Packages have two parts: endorsed components and support materials. The endorsed components of Training Packages are currently approved by the National Skills Standards Council, which include national competency standards, national qualifications and assessment guidelines.

Up to date information about the content of Training Packages is found on the national register (www.training.gov.au) which also contains authoritative information about registered training organisations, recognised training products and the approved scope of each registered training organisation to deliver nationally recognised training. This is widely accessible and the changing nature of Training Packages is well understood by the VET sector.

The combined effect of **Items 23 to 33** would be to add a new note to subsections 185(1), 186(1), 187(1), 188(1), 189(1) and 190(1) – to explain that new section 191A should be referred to with respect to adopting matters contained in other instruments that are in force from time to time.

Item 35 – After section 205

Section 205 currently allows ASQA to disclose information *for the purpose of* administering laws relating to vocational education and training.

Item 35 would insert a new subsection 205A into the NVETR Act which would allow ASQA to disclose VET information it holds that relates to the performance of ASQA's functions to the Tertiary Education Quality Standards Agency (TEQSA) to enable TEQSA to carry out its functions or powers.

This new section would introduce a mechanism that allows for sharing of appropriate information between the two national tertiary education regulators, ASQA and TEQSA. It is also intended to minimise the regulatory burden on organisations so that information provided to ASQA by a dual sector provider can then be disclosed

directly to TEQSA and avoid duplication. For example, information that ASQA collects about a dual sector provider for the purpose of its education services for overseas students functions may be disclosed to TEQSA thereby reducing the number of times the provider has to supply information to regulators. TEQSA has similar powers found at section 194 of the *Tertiary Education Quality and Standards Agency Act 2011* which will enable TEQSA to provide information to ASQA for the purpose of enabling ASQA to carry out its functions or powers.

Part 2—Application and transitional provisions

Item 36 – Application of amendments – cancellation of qualifications and statements of attainment

Item 36 would provide that the amendments that this Bill would make to Division 2 of Part 4 of the NVETR Act (ie Items 6 to 14 of Part 1 of Schedule 1) would only apply to notices that may be given under subsections 57(1) or (2) on or after Schedule 1 commences.

Item 37 – Application of amendments – warrants

Item 37 would provide that the amendments that this Bill would make to section 70 of the NVETR Act (ie Items 15 and 16 of Part 1 of Schedule 1) would only apply to warrants issued on or after Schedule 1 commences.

Item 38 – Application of amendments – authorised officers

Item 38 would provide that the amendments that this Bill would make to section 89 of the NVETR Act (ie Item 17 of Part 1 of Schedule 1) would only apply to appointments that may be made on or after Schedule 1 commences.

Item 39 – Transitional regulations

Item 39 would allow the Governor-General to make regulations prescribing matters of a transitional nature (including savings or applications provisions) that would relate to the repeal and substitution of section 9 of the NVETR Act (by Item 2 of Part 1 of Schedule 1).