



# **National Vocational Education and Training Regulator Act 2011**

**No. 12, 2011**

**An Act to establish the National Vocational  
Education and Training Regulator, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **National Vocational Education and Training Regulator Act 2011**

**No. 12, 2011**

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**An Act to establish the National Vocational  
Education and Training Regulator, and for related  
purposes**

*[Assented to 12 April 2011]*

The Parliament of Australia enacts:

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*National Vocational Education and Training Regulator Act 2011 No. 12, 2011 1*

Section 1

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## Part 1—Introduction

### Division 1—Preliminary

#### 1 Short title

This Act may be cited as the *National Vocational Education and Training Regulator Act 2011*.

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2011
2. Sections 3 to 15	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2011 (see F2011L00972)
3. Parts 2 to 12	At the same time as the provision(s) covered by table item 2.	1 July 2011
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	



- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## Division 2—Definitions

### 3 Definitions

In this Act:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*Australia*, when used in a geographical sense, includes the external Territories.

*Australian Qualifications Framework* has the same meaning as in the *Higher Education Support Act 2003*.

*authorised officer* means a person appointed as an authorised officer under section 89.

*Chief Commissioner* means the Chief Commissioner appointed in accordance with subsection 162(4).

*Chief Executive Officer* means the Chief Commissioner: see section 179.

*civil penalty provision* means a subsection, or a section that is not divided into subsections, that has set out at its foot the words “civil penalty” and one or more amounts in penalty units.

*Commissioner* means a person appointed as a Commissioner under subsection 162(1).

*committee of management* of an unincorporated association means a body (however described) that governs, manages or conducts the affairs of the association.

*Commonwealth authority* means:

- (a) a Department of the Commonwealth; or
- (b) a body (other than the National VET Regulator), whether incorporated or not, established for a public purpose by or under a law of the Commonwealth.

***compliance audit*** means an audit carried out under subsection 35(1).

***corresponding State law*** means a law of a State, the Australian Capital Territory or the Northern Territory declared by the regulations to correspond to particular provisions of this Act or the regulations, including such a law as amended from time to time.

***course*** means a course of vocational education and training.

***Data Provision Requirements*** has the meaning given by section 187.

***Education Minister***, in relation to a State or Territory, means the relevant Minister of the State or Territory with responsibility for vocational education and training.

***enforcement powers*** has the meaning given by section 68.

***enforcement warrant*** means:

- (a) a warrant issued under section 86; or
- (b) a warrant signed by a magistrate under section 87.

***evidential material*** means:

- (a) in relation to an offence against this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act:
  - (i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
  - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or
  - (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing the offence; and
- (b) in relation to a contravention of a civil penalty provision:
  - (i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or

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- (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or
- (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening the civil penalty provision.

***executive officer***, in relation to a registered training organisation, means:

- (a) a person, by whatever name called and whether or not a director of the organisation, who is concerned in, or takes part in, the management of the organisation; or
- (b) if the organisation is a body corporate:
  - (i) a person who, at any time during a period for which the organisation is registered, owns 15% or more of the organisation; or
  - (ii) a person who, at any time during a period for which the organisation is registered, is entitled to receive 15% or more of dividends paid by the organisation; or
- (c) an administrator, receiver and manager, or liquidator of the organisation (other than a receiver and manager, or liquidator, appointed by a court); or
- (d) if the organisation is a body corporate—the administrator of a deed of company arrangement executed by an organisation; or
- (e) if the organisation is a body corporate—a trustee or other person administering a compromise or arrangement made between the organisation and another person or other persons.

***Federal Court*** means the Federal Court of Australia.

***Federal Magistrate***, other than in section 91, means a Federal Magistrate in relation to whom a consent under subsection 91(1) and a nomination under subsection 91(2) are in force.

***Financial Viability Risk Assessment Requirements*** has the meaning given by section 158.

***Fit and Proper Person Requirements*** has the meaning given by section 186.

***former registered training organisation*** means:

- (a) an organisation that was an NVR registered training organisation; or
- (b) a training organisation that was listed, at any time before this section commences, on a register (now known as the National Register) as being registered in a referring State or a Territory.

***high managerial agent*** of a registered training organisation means an employee or agent of the organisation with duties of such responsibility that his or her conduct may fairly be assumed to represent the organisation in relation to the business of providing courses.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***lawyer*** means:

- (a) a barrister; or
  - (b) a solicitor; or
  - (c) a barrister and solicitor; or
  - (d) a legal practitioner;
- of the High Court or of the Supreme Court of a State or Territory.

***magistrate*** includes a Federal Magistrate of the Federal Magistrates Court.

***member of the staff of the Regulator*** means:

- (a) a person referred to in subsection 182(1); or
- (b) a person whose services are made available to the National VET Regulator as mentioned in subsection 183(1).

***Ministerial Council*** means the body known as the Ministerial Council for Tertiary Education and Employment on the day on which this definition commences.

***monitoring powers*** has the meaning given by section 67.

Section 3

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**monitoring warrant** means a warrant issued under section 85.

**National Register** means the register maintained by the Department, or another person prescribed by the regulations, and referred to in section 216.

**National VET Regulator** means the body established by section 155.

**non-referring State** has the meaning given by section 7.

**NVR registered training organisation** means a training organisation that is registered by the National VET Regulator as a registered training organisation under this Act.

**penalty unit** has the meaning given by section 4AA of the *Crimes Act 1914*.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**person assisting** an authorised officer has the meaning given by section 69.

**premises** includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

**referred VET matters** has the meaning given by section 6.

**referring State** has the meaning given by section 5.

**registered provider** has the same meaning as in the *Education Services for Overseas Students Act 2000*.

**registered training organisation** means a training organisation listed on the National Register as a registered training organisation.

**reviewable State decision** has the meaning given by section 197.

**Risk Assessment Framework** has the meaning given by section 190.

***scope of registration***, in relation to an NVR registered training organisation, means the things that an organisation is registered to do. It will allow an NVR registered training organisation to:

- (a) both:
  - (i) provide training and assessments resulting in the issue of VET qualifications or VET statements of attainment by the organisation; and
  - (ii) provide assessments resulting in the issue of VET qualifications or VET statements of attainment by the organisation; or
- (b) provide assessments resulting in the issue of VET qualifications or VET statements of attainment by the organisation.

***Secretary*** means the Secretary of the Department.

***Standards for NVR Registered Training Organisations*** has the meaning given by section 185.

***Standards for VET Accredited Courses*** has the meaning given by section 188.

***Standards for VET Regulators*** has the meaning given by section 189.

***State or Territory authority*** means:

- (a) a State or Territory; or
- (b) a body, whether incorporated or not, established by or under a law of a State or a Territory.

***trading corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***Transitional Act*** means the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011*.

***VET*** means Vocational Education and Training.

***VET accredited course*** means:

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- (a) if the National VET Regulator has delegated to a body the function of accrediting a course—a course accredited by the body under the delegation; or
- (b) in any other case—a course accredited by the National VET Regulator.

**VET course** means:

- (a) the units of competency of a training package that is endorsed by the Ministerial Council; or
- (b) the modules of a VET accredited course; or
- (c) the modules of a course accredited by a VET Regulator of a non-referring State.

**VET information** means information that is held by the National VET Regulator and relates to the performance of the Regulator's functions.

**VET qualification** means a testamur, relating to a VET course, given to a person confirming that the person has achieved learning outcomes and competencies that satisfy the requirements of a qualification.

**VET Quality Framework** means the following:

- (a) the Standards for NVR Registered Training Organisations;
- (b) the Australian Qualifications Framework;
- (c) the Fit and Proper Person Requirements;
- (d) the Financial Viability Risk Assessment Requirements;
- (e) the Data Provision Requirements.

**VET Regulator** means:

- (a) the National VET Regulator; and
- (b) a body of a non-referring State that is responsible for the kinds of matters dealt with by this Act.

**VET statement of attainment**, in relation to units of competency or modules of a VET course, means a statement given to a person confirming that the person has satisfied the requirements of units of competency or modules specified in the statement.



**VET student** means a student enrolled in all or part of a VET course at a registered training organisation.

**VET student records:**

- (a) in relation to a registered training organisation, means a document, or an object, in any form (including any electronic form) that is, or has been, kept by a person because of its connection with a current or former VET student of the organisation; and
- (b) in relation to a former registered training organisation, means a document, or an object, in any form (including any electronic form) that is, or has been, kept by a person because of its connection with a former VET student of the organisation.

**warrant** means a monitoring warrant or an enforcement warrant.

### **Division 3—Constitutional basis for this Act and the Transitional Act**

#### **4 Constitutional basis for this Act and the Transitional Act**

##### *Application in a referring State*

- (1) The application of this Act and the Transitional Act in a referring State is based on:
  - (a) the legislative powers that the Commonwealth Parliament has under the Constitution (other than paragraph 51(xxxvii)); and
  - (b) the legislative powers that the Commonwealth Parliament has because of a reference or an adoption by the Parliament of the referring State under paragraph 51(xxxvii) of the Constitution.

Note: For when this Act applies in a referring State, see subsections 8(1) and (2).

##### *Application in a Territory*

- (2) The application of this Act and the Transitional Act in a Territory is based on:
  - (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
  - (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Act and the Transitional Act apply in the Territory as a law of the Commonwealth.

Note: For when this Act applies in a Territory, see subsection 8(3).

##### *Application in a non-referring State*

- (3) The application of this Act and the Transitional Act in a non-referring State is based on:

- (a) the legislative powers that the Commonwealth Parliament has under paragraph 51(xx) of the Constitution; and
- (b) the legislative powers that the Commonwealth Parliament has under paragraph 51(xix) of the Constitution; and
- (c) the legislative powers that the Commonwealth Parliament has under paragraph 51(i) of the Constitution; and
- (d) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
- (e) the other legislative powers that the Commonwealth Parliament has under the Constitution (other than paragraph 51(xx), 51(xix) or 51(i) or section 122).

Note: This Act only applies to certain organisations in a non-referring State, see subsection 8(4).

*Application outside Australia*

- (4) The operation of this Act and the Transitional Act outside Australia is based on:
  - (a) the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
  - (b) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
  - (c) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Note: See also section 15.

## **5 Meaning of *referring State***

*Meaning of referring State*

- (1) A State is a ***referring State*** if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:
  - (a) has referred the matters covered by subsections (3) and (5) to the Commonwealth Parliament; or
  - (b) has:

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- (i) adopted the relevant version of this Act and the relevant version of the Transitional Act; and
  - (ii) referred the matter covered by subsection (5) to the Commonwealth Parliament.
- (2) A State is a *referring State* even if the State's referral law provides that:
  - (a) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (5) is to terminate in particular circumstances; or
  - (b) the adoption of the relevant version of this Act or the relevant version of the Transitional Act is to terminate in particular circumstances; or
  - (c) the reference to the Commonwealth Parliament of a matter covered by subsection (3) or (5) has effect only:
    - (i) if and to the extent that the matter is not included in the legislative powers of the Commonwealth Parliament (otherwise than by a reference under section 51(xxxvii) of the Constitution); or
    - (ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

*Reference covering the relevant versions of this Act and the Transitional Act*

- (3) This subsection covers the matters to which the referred provisions relate, to the extent of the making of laws with respect to those matters by including the referred provisions in the relevant version of this Act and the relevant version of the Transitional Act.
- (4) A State stops being a referring State if:
  - (a) in the case where the Parliament of the State has referred to the Commonwealth Parliament the matters covered by subsection (3)—that reference terminates; or
  - (b) in the case where the Parliament of the State has adopted the relevant version of this Act and the relevant version of the Transitional Act—the adoption terminates.

*Amendment references*

- (5) This subsection covers the referred VET matters to the extent of the making of laws with respect to those matters by making express amendments of this Act or the Transitional Act.
- (6) A State stops being a referring State if:
  - (a) the State's amendment reference terminates; and
  - (b) subsection (7) does not apply to the termination.
- (7) A State does not cease to be a referring State because of the termination of its amendment reference if:
  - (a) the termination is effected by the Governor of that State fixing a day by Proclamation as the day the reference terminates; and
  - (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day the Proclamation is published; and
  - (c) that State's amendment reference, and the amendment reference of every other State, terminates on the same day.

*Definitions*

- (8) In this section:

***amendment reference***, of a State, means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matter covered by subsection (5).

***express amendment*** of this Act or the Transitional Act means the direct amendment of the text of this Act or the Transitional Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act or the Transitional Act.

***referral law***, of a State, means the Act of the State that refers the matter covered by subsection (5) to the Commonwealth Parliament.

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*referred provisions* means:

- (a) the relevant version of this Act; and
- (b) the relevant version of the Transitional Act;

to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

*relevant version of the Transitional Act* means the Transitional Act as originally enacted.

*relevant version of this Act* means:

- (a) if, at the time the State's referral law was enacted, this Act had not been enacted—this Act as originally enacted; or
- (b) otherwise—this Act as originally enacted, and as later amended by an Act that is enacted before the enactment of the State's referral law.

*State law* means:

- (a) any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time; or
- (b) the general law, being the principles and rules of common law and equity to the extent that they have effect in the State from time to time.

## 6 Meaning of *referred VET matters*

(1) In this Act, *referred VET matters* means:

- (a) the registration and regulation of vocational education and training organisations; and
- (b) the accreditation or other recognition of vocational education and training courses or programs; and
- (c) the issue and cancellation of vocational education and training qualifications or statements of attainment; and
- (d) the standards to be complied with by a vocational education and training regulator; and
- (e) the collection, publication, provision and sharing of information about vocational education and training; and
- (f) the investigative powers, sanctions and enforcement in relation to any of the above.

- (2) However, *referred VET matters* does not include the matter of making a law that excludes or limits the operation of a law of a referring State or a Territory to the extent that the law of the referring State or Territory makes provision with respect to:
- (a) primary or secondary education (including the education of children subject to compulsory school education); or
  - (b) tertiary education that is recognised as higher education and not vocational education and training; or
  - (c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships; or
  - (d) the qualifications or other requirements to undertake or carry out any business, occupation or other work (other than that of a vocational education and training organisation); or
  - (e) the funding by referring States or Territories of vocational education and training; or
  - (f) the establishment or management of any agency of the State or Territory that provides vocational education and training.

### **7 Meaning of *non-referring State***

- (1) A State is a *non-referring State* if the State is not a referring State.

Note: For the meaning of *referring State*, see section 5.

- (2) A State is taken not to be a *non-referring State* for the period mentioned in subsection (4) if the Minister determines, by legislative instrument, that the State is covered by this subsection.
- (3) The Minister may make a determination under subsection (2) in relation to a State if:
- (a) before the day this section commences, he or she has obtained the written agreement of the relevant Education Minister for the State; and
  - (b) the written agreement requires, for the purposes of paragraph 51(xxxvii) of the Constitution, the relevant Education Minister for the State to introduce legislation into the Parliament of the State that:
    - (i) adopts the relevant version of this Act and the relevant version of the Transitional Act; and

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- (ii) refers the matter covered by subsection 5(5) to the Commonwealth Parliament.

Note: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to a determination (see section 44 of that Act).

- (4) The period referred to in subsection (2) in relation to a State is the period beginning on the day this section commences and ending on the earlier of:
  - (a) the day that the legislation passed by the Parliament of the State:
    - (i) adopting the relevant version of this Act and the relevant version of the Transitional Act; and
    - (ii) referring the matter covered by subsection 5(5) of this Act to the Commonwealth Parliament;comes into force; and
  - (b) the last day of the 12 month period beginning on the day this section commences.

**8 When application of this Act takes effect**

*Referring States*

- (1) This Act applies in a referring State covered by paragraph 5(1)(a) on and after the later of the following:
  - (a) the day that the legislation passed by the Parliament of the State referring the matters covered by subsections 5(3) and (5) to the Commonwealth Parliament receives the Royal Assent;
  - (b) the day this section commences.
- (2) This Act applies in a referring State covered by paragraph 5(1)(b) on and after the day that legislation passed by the Parliament of the State:
  - (a) adopting the relevant version of this Act and the relevant version of the Transitional Act; and
  - (b) referring the matter covered by subsection 5(5) to the Commonwealth Parliament;comes into force.



*Territories*

- (3) This Act applies in a Territory on and after the day this section commences.

*Non-referring States*

- (4) This Act applies in relation to a training organisation that operates in a non-referring State on and after the day this section commences if:
- (a) the organisation is a registered provider (other than a secondary school); or
  - (b) the organisation provides all or part of a VET course in the non-referring State and a referring State or a Territory; or
  - (c) the organisation provides all or part of 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.

Note: Paragraph (a)—*registered provider* is defined, see section 3.

- (5) In addition to its effect apart from this subsection, subsection (4) also has the effect it would have if each reference to an organisation were, by express provision, confined to a trading corporation.

## **9 Immunity from State and Territory laws**

*Laws of referring States*

- (1) An NVR registered training organisation that operates in a referring State is not subject to a law of the referring State that relates to a referred VET matter (other than a law that applies whether or not a person is a training organisation).

*Laws of a Territory*

- (2) An NVR registered training organisation that operates in a Territory is not subject to a law of the Territory that relates to a referred VET matter (other than a law that applies whether or not a person is a training organisation).

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*Laws of non-referring States*

- (3) To the extent that a registered training organisation is an NVR registered training organisation that operates in a non-referring State, the organisation is not subject to a law of the non-referring State that relates to:
- (a) the registration and regulation of vocational education and training organisations (other than secondary schools); or
  - (b) the accreditation or other recognition of vocational education and training courses or programs; or
  - (c) the issue and cancellation of vocational education and training qualifications or statements of attainment; or
  - (d) the collection, publication, provision and sharing of information about vocational education and training; or
  - (e) the investigative powers, sanctions and enforcement in relation to any of the above;
- other than a law that applies whether or not a person is a training organisation.

**10 When this Act does not apply—exclusion by a law of a referring State or a Territory**

- (1) This section applies if a law of a referring State, or of a Territory, declares a matter to be an excluded matter for the purposes of this section in relation to:
- (a) the whole of this Act; or
  - (b) a specified provision of this Act; or
  - (c) this Act, other than a specified provision; or
  - (d) this Act, otherwise than to a specified extent.
- (2) This Act, other than this section and Part 2 (Registration), does not apply in relation to the excluded matter to the extent provided by the declaration.
- (3) Subsection (2) does not apply to a declaration to the extent prescribed by the regulations.

## **11 Addressing inconsistency between Commonwealth and State and Territory laws**

- (1) This section has effect despite anything else in this Act or the Transitional Act.
- (2) This section applies to the interaction between a provision (the *displacement provision*) of a law of a referring State or a Territory and a provision (the *Commonwealth provision*) of this Act or the Transitional Act only if the displacement provision is declared by a law of the State or Territory to be a VET legislation displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision).
- (3) The Commonwealth provision does not:
  - (a) prohibit the doing of an act; or
  - (b) impose a liability (whether civil or criminal) for doing an act;if the displacement provision specifically permits, authorises or requires the doing of that act.
- (4) The Commonwealth provision does not operate in or in relation to the State or Territory to the extent necessary to ensure that no inconsistency arises between:
  - (a) the Commonwealth provision; and
  - (b) the displacement provision to the extent to which the displacement provision would, apart from this subsection, be inconsistent with the Commonwealth provision.

Note: The displacement provision is not covered by this subsection if subsection (3) applies to the displacement provision: if that subsection applies there would be no potential inconsistency to be dealt with by this subsection.

- (5) Subsections (3) and (4) do not apply in relation to the displacement provision to the extent to which the regulations provide that those subsections do not apply in relation to the displacement provision.

## **Division 4—General application of this Act and the Transitional Act**

### **12 Acts bind the Crown**

- (1) This Act and the Transitional Act bind the Crown in each of its capacities.
- (2) This Act and the Transitional Act do not make the Crown liable to be prosecuted for an offence or to any pecuniary penalty.

### **13 Acts not to apply so as to exceed Commonwealth power**

- (1) Unless the contrary intention appears, if a provision of this Act or the Transitional Act:
  - (a) would, apart from this section, have an application (an *invalid application*) in relation to:
    - (i) one or more particular persons, things, matters, places, circumstances or cases; or
    - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; because of which the provision exceeds the Commonwealth's legislative power; and
  - (b) also has at least one application (a *valid application*) in relation to:
    - (i) one or more particular persons, things, matters, places, circumstances or cases; or
    - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; that, if it were the provision's only application, would be within the Commonwealth's legislative power;it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:

- (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act or the Transitional Act, as the case may be, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
  - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.
- (3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section applies to a provision of this Act and the Transitional Act, whether enacted on or after the day this section commences.

#### **14 Extension of Acts to external Territories**

This Act and the Transitional Act extend to every external Territory.

#### **15 Extra-territorial application**

Unless the contrary intention appears, this Act and the Transitional Act extend to acts, omissions, matters and things done outside Australia in relation to:

- (a) all or part of a VET course; or
- (b) a VET qualification.

## **Part 2—Registration**

### **Division 1—Registering as an NVR registered training organisation**

#### **Subdivision A—Applying for registration**

#### **16 Application for registration**

- (1) A person may apply to the National VET Regulator for registration, including renewal of registration, as an NVR registered training organisation.
- (2) A body that is part of a State or Territory may apply to the National VET Regulator for registration, including renewal of registration, of the body as an NVR registered training organisation.
- (3) An application for registration must be in a form approved by the National VET Regulator and must be accompanied by:
  - (a) any information or documents that the Regulator requires; and
  - (b) the application fee determined by the Minister, by legislative instrument, under section 232.

#### **17 Registration**

##### *Grant of application for registration*

- (1) The National VET Regulator may grant an application for registration.
- (2) In deciding whether to grant an application, the National VET Regulator must consider whether the applicant complies with:
  - (a) the VET Quality Framework; and
  - (b) the applicable conditions of registration set out in Subdivision B of this Division.

- (3) When considering the application, the National VET Regulator may conduct an audit of any matter relating to the application.
- (4) The National VET Regulator may charge a registration assessment fee for considering the application.

*Period of registration*

- (5) If the National VET Regulator grants an application, the Regulator must also determine the period for which the applicant is registered. The period must not be more than 5 years.

Note: For renewals of registration, see section 31.

*Conditions of registration*

- (6) If the National VET Regulator considers it appropriate to do so, the Regulator may impose one or more conditions under subsection 29(1) to which an organisation's registration is subject.

Note: An NVR registered training organisation is also subject to statutory conditions, see Subdivision B of this Division.

## **18 National VET Regulator to notify applicant of decision on registration**

The National VET Regulator must, within 30 days of its decision to grant or reject an application for registration as an NVR registered training organisation, notify the applicant, in writing, of:

- (a) the decision; and
- (b) if the Regulator rejects the application—the reasons for the decision; and
- (c) if the Regulator grants the application—the following:
  - (i) the applicant's scope of registration;
  - (ii) the period for which the organisation is registered;
  - (iii) any conditions imposed on the organisation's registration under subsection 29(1);
  - (iv) the registration fee payable by the applicant and, if the fee is to be payable in instalments, the amount of each instalment and the date on which it is to be paid.

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Note: Subparagraphs (c)(i) to (iii)—in relation to each NVR registered training organisation, these details are included on the National Register, see section 216.

#### **19 National VET Regulator to issue certificate of registration**

- (1) After registering an applicant as an NVR registered training organisation, the National VET Regulator must give the applicant a certificate of registration.
- (2) A certificate of registration must state the matters prescribed by the regulations.
- (3) A certificate of registration is prima facie evidence of the matters stated in it.

#### **20 Commencement and duration of registration**

- (1) An applicant's registration:
  - (a) commences:
    - (i) if it is a renewal of registration—on the day after the day on which the NVR registered training organisation's previous registration expired; or
    - (ii) in any other case—on the day specified in a written notice given to the applicant; and
  - (b) subject to subsection (2), expires at the end of the period determined by the National VET Regulator, unless the applicant's registration is cancelled or withdrawn before that time.

Note: The period of an NVR registered training organisation's registration may be shortened, see paragraph 36(2)(c).

- (2) The National VET Regulator may, in exceptional circumstances, extend an NVR registered training organisation's registration without the organisation needing to apply to have its registration renewed.
- (3) If an NVR registered training organisation's registration is so extended, a reference in this Act to the period of an NVR registered training organisation's registration is to be read as a reference to that period as so extended.



## **Subdivision B—Conditions of registration**

### **21 Complying with conditions**

An NVR registered training organisation must:

- (a) comply with the conditions set out in sections 22 to 28; and
- (b) comply with any conditions imposed on the organisation's registration under subsection 29(1).

Note: Failure to comply with a condition of registration is a contravention of a civil penalty provision, see section 111.

### **22 Condition—compliance with the VET Quality Framework**

- (1) An NVR registered training organisation must comply with the Standards for NVR Registered Training Organisations.
- (2) An NVR registered training organisation must comply with the Australian Qualifications Framework.
- (3) An NVR registered training organisation must comply with the Data Provision Requirements.

### **23 Condition—satisfying Fit and Proper Person Requirements**

An NVR registered training organisation must satisfy the Fit and Proper Person Requirements.

### **24 Condition—satisfying the Financial Viability Risk Assessment Requirements**

An NVR registered training organisation must satisfy the Financial Viability Risk Assessment Requirements.

### **25 Condition—notifying National VET Regulator of material changes**

- (1) An NVR registered training organisation must notify the National VET Regulator, in writing, if:

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- (a) an event occurs that would significantly affect the organisation's ability to comply with the VET Quality Framework; or
  - (b) the name or contact details of an executive officer or high managerial agent of the organisation change; or
  - (c) there are other substantial changes to the operations of the organisation.
- (2) The notice must be given to the National VET Regulator as soon as practicable after the NVR registered training organisation becomes aware of a matter mentioned in subsection (1).

**26 Condition—other information must be provided**

- (1) An NVR registered training organisation must give the National VET Regulator such information as the Regulator requests, by notice in writing, for the purposes of this Act.
- (2) A notice must specify the period within which the information requested is to be given.

**27 Condition—cooperation**

An NVR registered training organisation must cooperate with the National VET Regulator, at least to the extent that:

- (a) it is necessary for the Regulator to perform its functions; or
- (b) it is necessary to facilitate the Regulator's performance of its functions.

**28 Condition—compliance with directions given by the National VET Regulator**

- (1) An NVR registered training organisation must comply with any general directions given by the National VET Regulator, in writing, to organisations on the way in which the VET Quality Framework or other conditions of this Subdivision are to be complied with.
- (2) The National VET Regulator must publish a general direction on its website.

## **29 Other conditions**

- (1) The National VET Regulator may impose other conditions on an NVR registered training organisation's registration. Such conditions need not be imposed at the time of registration.
- (2) The National VET Regulator may vary a condition imposed under subsection (1).

## **30 National VET Regulator to notify NVR registered training organisation of change in conditions of registration**

The National VET Regulator must, within 30 days of its decision to impose or vary a condition on an NVR registered training organisation's registration, notify the organisation, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the period for which the condition is imposed.

Note: Details of conditions imposed on an NVR registered training organisation's registration are included on the National Register, see section 216.

## **Subdivision C—Renewing registration**

### **31 Renewal of registration**

- (1) The National VET Regulator may renew an NVR registered training organisation's registration under section 17 if the organisation makes an application for renewal:
  - (a) at least 90 days before the day the organisation's registration expires; or
  - (b) within such shorter period as the Regulator allows.
- (2) An application must be accompanied by the application fee determined by the Minister, by legislative instrument, under section 232.
- (3) An NVR registered training organisation's registration is taken to continue until the organisation's application is decided.

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- (4) An NVR registered training organisation may apply for renewal of registration during a period when all or part of its scope of registration is suspended.

## **Division 2—Changing the scope of registration**

### **32 Application for change of scope of registration**

- (1) If an NVR registered training organisation wishes to offer all or part of a VET course that is not within its scope of registration, the organisation may apply to the National VET Regulator to change its scope of registration to include the VET course or part of the VET course.
- (2) An application must be in a form approved by the National VET Regulator and must be accompanied by:
  - (a) any information or documents that the Regulator requires; and
  - (b) the application fee determined by the Minister, by legislative instrument, under section 232.

### **33 Change of scope of registration**

- (1) The National VET Regulator may grant an application for a change in the applicant's scope of registration.
- (2) In deciding whether to grant an application, the National VET Regulator must consider:
  - (a) the applicant's ability to provide the VET course, or part of the VET course, in accordance with the VET Quality Framework; and
  - (b) the other VET courses, or parts of VET courses, offered by the applicant; and
  - (c) whether the applicant complies with:
    - (i) the VET Quality Framework; and
    - (ii) the other conditions of registration set out in Subdivision B of Division 1 of this Part.
- (3) If the National VET Regulator grants an application, the Regulator must determine the day from which the VET course, or part of the VET course, may be delivered by the applicant.

**34 National VET Regulator to notify applicant of decision on change of scope of registration**

The National VET Regulator must, within 30 days of its decision to grant or reject an application for a change in scope of registration, notify the applicant, in writing, of:

- (a) the decision; and
- (b) if the Regulator rejects the application—the reasons for the decision; and
- (c) if the Regulator grants the application—the following:
  - (i) the applicant's new scope of registration;
  - (ii) the day from which the new VET course, or part of the new VET course, may be delivered by the applicant;
  - (iii) the period for which the organisation is registered;
  - (iv) any conditions imposed on the provider's registration under subsection 29(1).

Note: Paragraph (c)—in relation to each NVR registered training organisation, these details are included on the National Register, see section 216.

## **Division 3—Ensuring compliance with the VET Quality Framework**

### **Subdivision A—Audits**

#### **35 Audits**

- (1) The National VET Regulator may, at any time, conduct a compliance audit of an NVR registered training organisation's operations to assess whether the organisation continues to comply with the VET Quality Framework.
- (2) The National VET Regulator may also review or examine any aspect of an NVR registered training organisation's operations to determine any systemic issues relating to the quality of vocational education and training.

### **Subdivision B—Administrative sanctions**

#### **36 Sanctions**

- (1) This Subdivision applies if:
  - (a) after natural justice requirements have been satisfied, the National VET Regulator is satisfied that it is appropriate to impose one or more sanctions on an NVR registered training organisation; or
  - (b) in exceptional circumstances, the National VET Regulator is satisfied that it is appropriate to impose one or more sanctions on an NVR registered training organisation without satisfying natural justice requirements.
- (2) The National VET Regulator may do one or more of the following:
  - (a) give a written direction to an NVR registered training organisation requiring the organisation to rectify a breach of a condition on the organisation's registration;

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- (b) give a written direction to an NVR registered training organisation requiring the organisation to notify its VET students, in writing, of a matter set out in the direction;
  - (c) shorten the period of an NVR registered training organisation's registration;
  - (d) amend an NVR registered training organisation's scope of registration;
  - (e) suspend all or part of an NVR registered training organisation's scope of registration under section 38;
  - (f) cancel an NVR registered training organisation's registration under section 39.
- (3) In determining what action to take in relation to an NVR registered training organisation, the National VET Regulator may have regard to:
- (a) the organisation's conduct, or circumstances existing, before the Regulator had cause to consider imposing a sanction on the organisation (including before the commencement of this section); and
  - (b) if section 37 applies—the organisation's conduct, or circumstances existing, since the Regulator gave the organisation a written notice as mentioned in that section.

**37 Natural justice requirements**

- (1) For the purpose of paragraph 36(1)(a), before making a decision to do any of the things mentioned in subsection 36(2) in relation to an NVR registered training organisation, the National VET Regulator must give the organisation a written notice:
- (a) stating that the Regulator intends to make a decision to do a thing mentioned in that subsection and the reasons for the proposed decision; and
  - (b) inviting the organisation to give the Regulator a written response to the notice:
    - (i) if the Regulator considers that the circumstances require urgent action—within a period specified in the notice, which must be at least 24 hours; or
    - (ii) in any other case—within a period specified in the notice, which must be at least 72 hours.



- (2) After considering any response received within that period, if the National VET Regulator still considers that the decision should be made, the Regulator:
- (a) may make the decision; and
  - (b) must give the NVR registered training organisation concerned written notice of the decision.

### **38 Suspension**

- (1) The National VET Regulator may, by notice in writing, suspend all or part of an NVR registered training organisation's scope of registration.

Note: Details relating to an NVR registered training organisation whose scope of registration is suspended are included on the National Register, see section 216.

- (2) During the period of suspension, the National VET Regulator may require the NVR registered training organisation to do something, not to do something, or both. This may include restrictions on:
- (a) enrolling a student in a VET course or part of a VET course; or
  - (b) allowing a VET student to begin a VET course or part of a VET course; or
  - (c) publishing or broadcasting an advertisement relating to a VET course or any part of a VET course; or
  - (d) causing to be published or broadcast an advertisement relating to a VET course or any part of a VET course.

Note: Failure to comply with the National VET Regulator's requirements is an offence and a contravention of a civil penalty provision, see sections 101 and 102 respectively.

### **39 Cancellation**

- (1) The National VET Regulator may, by notice in writing, cancel an NVR registered training organisation's registration in any circumstances that the Regulator considers it appropriate to do so, including for failure to pay a registration fee.

Note: Details relating to an NVR registered training organisation whose registration is cancelled are included on the National Register, see section 216.

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- (2) An organisation whose registration is cancelled under this Act must return its certificate of registration to the National VET Regulator within 10 days of the day the cancellation takes effect.

Note: Failure to return a certificate of registration is a contravention of a civil penalty provision, see section 112.

- (3) An organisation whose registration is cancelled under this Act may not apply for registration as an NVR registered training organisation for 2 years, or such shorter period as the National VET Regulator considers appropriate, after the day the cancellation takes effect.

**40 Other enforcement action**

To avoid doubt, the National VET Regulator may take action, or cause action to be taken, under Part 6 (which deals with enforcement) in addition to, or instead of, doing anything it may do under this Subdivision.

## **Division 4—Requests for reassessment**

### **41 Requests for reassessment**

- (1) This section applies if, under this Part, the National VET Regulator has:
  - (a) deferred making a decision to change an NVR registered training organisation's scope of registration; and
  - (b) identified issues that the organisation would need to address before the Regulator would be satisfied that the organisation has done whatever is required for the organisation's scope of registration to be changed.
- (2) This section also applies if, under this Part, the National VET Regulator has identified issues that an NVR registered training organisation would need to address before the Regulator would be satisfied that the organisation has done whatever is required for:
  - (a) a condition imposed on the organisation's registration to be varied or removed; or
  - (b) the organisation's scope of registration to be changed; or
  - (c) the organisation's suspension to be lifted.
- (3) The NVR registered training organisation may request, in writing, that the National VET Regulator reassess its position in relation to the issues identified by the Regulator.
- (4) A request must:
  - (a) describe the actions taken by the NVR registered training organisation to address the issues identified by the National VET Regulator; and
  - (b) be accompanied by the reassessment fee determined by the Minister, by legislative instrument, under section 232.

## **Division 5—Withdrawing registration**

### **42 Withdrawing registration**

- (1) An NVR registered training organisation may withdraw its registration by giving written notice of withdrawal to the National VET Regulator.
- (2) If the National VET Regulator is satisfied, in all the circumstances, that it is appropriate to allow an NVR registered training organisation's registration to be withdrawn, the Regulator must advise the organisation, by notice in writing, of the day from which the withdrawal takes effect.
- (3) An organisation whose registration is withdrawn under this Act must return its certificate of registration to the National VET Regulator within 10 days of the day the withdrawal takes effect.

Note: Failure to return a certificate of registration is a contravention of a civil penalty provision, see section 112.

## **Part 3—Accreditation of courses**

### **Division 1—Applying for accreditation**

#### **43 Application for accreditation**

- (1) A person may apply to the National VET Regulator for the accreditation of a course as a VET accredited course.
- (2) An application must be in a form approved by the National VET Regulator and must be accompanied by:
  - (a) any information or documents that the Regulator requires; and
  - (b) the application fee determined by the Minister, by legislative instrument, under section 232.

#### **44 Accreditation of course**

##### *Grant of application for accreditation of course*

- (1) The National VET Regulator may grant an application for the accreditation of a course.
- (2) In deciding whether to grant an application, the National VET Regulator must consider whether the course meets:
  - (a) the Standards for VET Accredited Courses; and
  - (b) the Australian Qualifications Framework.

##### *Period of accreditation*

- (3) If the National VET Regulator grants an application, the Regulator must also determine the period for which the course is accredited. The period must not be more than 5 years.

Note: For renewals of accreditation, see section 50.

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*Conditions of accreditation*

- (4) If the National VET Regulator considers it appropriate to do so, the Regulator may impose one or more conditions under subsection 48(1) on the accreditation of a course.

**45 National VET Regulator to notify applicant of decision on accreditation of course**

The National VET Regulator must, within 30 days of its decision to grant or reject an application for the accreditation of a course as a VET accredited course, notify the applicant, in writing, of:

- (a) the decision; and
- (b) if the Regulator rejects the application—the reasons for the decision; and
- (c) if the Regulator grants the application—the following:
  - (i) the period for which the course is accredited;
  - (ii) any conditions imposed on the accreditation of the course under subsection 48(1).

Note: Paragraph (c)—in relation to each VET accredited course, these details are included on the National Register, see section 216.

**46 Commencement and duration of accreditation**

- (1) Accreditation of a course:
- (a) commences:
    - (i) if it is a renewal of the course's accreditation as a VET accredited course—on the day after the day on which the VET accredited course's previous accreditation expired; or
    - (ii) in any other case—on the day specified in a written notice given to the applicant; and
  - (b) subject to subsection (2), expires at the end of the period determined by the National VET Regulator, unless the accreditation of the VET accredited course is cancelled before that time.
- (2) The National VET Regulator may, in exceptional circumstances, extend the period for which a VET accredited course is accredited

without the person in respect of whom the course is accredited  
needing to apply for the accreditation of the course to be renewed.

- (3) If the accreditation of a VET accredited course is so extended, a reference in this Act to the period for which a course is accredited is to be read as a reference to that period as so extended.

## **Division 2—Conditions of accreditation**

### **47 Complying with conditions**

A person must comply with any conditions imposed on the accreditation of a VET accredited course under subsection 48(1).

Note: Failure to comply with a condition is a contravention of a civil penalty provision, see section 130.

### **48 Conditions**

- (1) The National VET Regulator may impose conditions on the accreditation of a VET accredited course. Such conditions need not be imposed at the time of the course's accreditation.
- (2) The National VET Regulator may vary a condition imposed under subsection (1).

### **49 National VET Regulator to notify relevant person of change in conditions of accreditation**

The National VET Regulator must, within 30 days of its decision to impose or vary a condition on the accreditation of a VET accredited course, notify the person in respect of whom the course is accredited, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the period for which the condition is imposed.

Note: Details of conditions imposed on the accreditation of a VET accredited course are included on the National Register, see section 216.



## **Division 3—Renewing accreditation**

### **50 Renewal of accreditation**

- (1) The National VET Regulator may renew the accreditation of a VET accredited course under section 44 if the person in respect of whom the course is accredited makes an application for renewal:
  - (a) at least 90 days before the day accreditation of the course expires; or
  - (b) within such shorter period as the Regulator allows.
- (2) An application must be accompanied by the application fee determined by the Minister, by legislative instrument, under section 232.
- (3) The accreditation of a VET accredited course is taken to continue until the person's application is decided.

## **Division 4—Amending VET accredited courses**

### **51 Amending VET accredited courses**

- (1) The National VET Regulator may, at any time while a VET accredited course is accredited, amend the course if the Regulator considers it necessary to do so.
- (2) The National VET Regulator may take such action:
  - (a) on its own initiative; or
  - (b) if:
    - (i) an application is made by the person in respect of whom the VET accredited course is accredited; and
    - (ii) the Regulator is satisfied that it is appropriate to amend the course.
- (3) An application must be:
  - (a) in a form approved by the National VET Regulator; and
  - (b) accompanied by:
    - (i) any information or documents that the Regulator requires; and
    - (ii) the application fee determined by the Minister, by legislative instrument, under section 232.

## **Division 5—Cancelling accreditation**

### **52 Cancelling accreditation**

- (1) The National VET Regulator may cancel the accreditation of a VET accredited course.
- (2) The National VET Regulator may take such action on its own initiative if the Regulator is satisfied that:
  - (a) the VET accredited course does not meet:
    - (i) the Standards for VET Accredited Courses; or
    - (ii) the Australian Qualifications Framework; or
  - (b) the person in respect of whom the course is accredited no longer has the capacity to satisfy the Standards for VET Accredited Courses; or
  - (c) the person in respect of whom the course is accredited no longer exists.
- (3) The National VET Regulator may also take such action if:
  - (a) an application is made by the person in respect of whom the VET accredited course is accredited; and
  - (b) the Regulator is satisfied that it is appropriate to cancel the accreditation of the course.
- (4) An application must be:
  - (a) in a form approved by the National VET Regulator; and
  - (b) accompanied by:
    - (i) any information or documents that the Regulator requires; and
    - (ii) the application fee determined by the Minister, by legislative instrument, under section 232.

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**53 National VET Regulator to notify relevant persons of proposed cancellation**

- (1) If the National VET Regulator proposes to cancel the accreditation of a VET accredited course, the Regulator must advise, in writing, the following of the proposed cancellation:
  - (a) each NVR registered training organisation that has the course within its scope of registration;
  - (b) the VET Regulator of each non-referring State.
- (2) Advice given under subsection (1) must state the day from which the proposed cancellation is to take effect.
- (3) Advice given under paragraph (1)(a) to an NVR registered training organisation must also:
  - (a) advise the organisation how it is to treat VET students in the VET accredited course; and
  - (b) if the proposed cancellation would affect any conditions imposed on the organisation's registration under subsection 29(1)—state what conditions will be imposed on the organisation's registration from the day the proposed cancellation takes effect.

**54 When cancellation takes effect**

- (1) Cancellation of the accreditation of a VET accredited course takes effect on a day determined by the National VET Regulator.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a determination (see sections 44 and 54 of that Act).
- (2) However, the day determined by the National VET Regulator must:
  - (a) be at least 30 days after advice is given to each affected person, as required by section 53; and
  - (b) take into account the needs of all VET students affected by the cancellation.

## **Part 4—National VET Regulator's power to issue and cancel VET qualifications etc.**

### **Division 1—Issue of VET qualifications and VET statements of attainment**

#### **55 National VET Regulator may issue VET qualifications and VET statements of attainment**

- (1) The National VET Regulator may issue a VET qualification to a person who is a current or former VET student if the Regulator is satisfied, on reasonable grounds, that the person has successfully completed the requirements of the qualification.
- (2) The National VET Regulator may issue a VET statement of attainment to a person in relation to units of competency or modules of a VET course if the Regulator is satisfied, on reasonable grounds, that the person has successfully completed the requirements of the units of competency or modules of the VET course.
- (3) The National VET Regulator may only issue a VET qualification or VET statement of attainment in relation to an NVR registered training organisation in exceptional circumstances.
- (4) The National VET Regulator may issue a VET qualification or VET statement of attainment in relation to a former registered training organisation at any time.
- (5) To avoid doubt, subsection (3) may apply in relation to a time when an organisation was not an NVR registered training organisation.

## **Division 2—Cancellation of VET qualifications and VET statements of attainment**

### **Subdivision A—Cancellation**

#### **56 National VET Regulator may cancel VET qualifications and VET statements of attainment**

- (1) The National VET Regulator may cancel a VET qualification or VET statement of attainment issued to a person by an NVR registered training organisation or former registered training organisation if the Regulator is satisfied on reasonable grounds that:
  - (a) the organisation did not provide, or arrange for another person to provide, all or part of the assessment necessary for the person to achieve the learning outcomes or competencies required for:
    - (i) the qualification; or
    - (ii) the units of competency or modules specified in the statement; or
  - (b) the qualification or statement was issued by the organisation:
    - (i) in error; or
    - (ii) because of a document or representation that was false or misleading, or was obtained or made in any other improper way; or
  - (c) it was outside the organisation's scope of registration to issue the qualification or statement to the person; or
  - (d) it is appropriate, in all the circumstances, because of action the Regulator has taken, or is taking, in relation to:
    - (i) the VET course, or part of the VET course, to which the qualification relates; or
    - (ii) the organisation, in respect of the VET course, or part of the VET course, to which the qualification relates; or
    - (iii) part of the VET course to which the statement relates; or

- (iv) the organisation, in respect of part of the VET course to which the statement relates.
- (2) However, the National VET Regulator may only take action under subsection (1) in relation to an NVR registered training organisation if:
  - (a) the Regulator gives the organisation a written direction requiring the organisation to:
    - (i) cancel the VET qualification or VET statement of attainment; and
    - (ii) notify the person concerned, in writing, of the cancellation;  
within a period specified in the direction; and
  - (b) the organisation fails to comply with the direction within the period specified in the direction.
- (3) To avoid doubt, if an NVR registered training organisation has been given a written direction under paragraph (2)(a), the organisation may cancel the relevant VET qualification or VET statement of attainment even if the organisation's scope of registration no longer allows the organisation to issue the qualification or statement.
- (4) The National VET Regulator may take action under subsection (1) in relation to a former registered training organisation at any time.

### **57 National VET Regulator to notify person concerned of proposed cancellation**

- (1) Before the National VET Regulator cancels a person's VET qualification or VET statement of attainment, the Regulator must give the person a written notice:
  - (a) stating that the Regulator intends to cancel the person's qualification or statement and the reasons for the proposed cancellation; and
  - (b) inviting the person to give the Regulator a written response to the notice:

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- (i) if the Regulator considers that the circumstances require urgent action—within a period specified in the notice, which must be at least 24 hours; or
    - (ii) in any other case—within a period specified in the notice, which must be at least 14 days.
  - (2) If the National VET Regulator is unable to give notice to a person personally, the Regulator may give a notice mentioned in subparagraph (1)(b)(ii) in any other way it considers appropriate, including by:
    - (a) publishing the notice on its website; or
    - (b) publishing the notice in:
      - (i) a national daily newspaper that circulates throughout Australia; and
      - (ii) a regional daily newspaper of the State or Territory in which the person concerned is believed to reside.
- Note: See also section 28A of the *Acts Interpretation Act 1901* (which deals with service of documents).
- (3) To avoid doubt, the National VET Regulator may not give a notice mentioned in subparagraph (1)(b)(i) in a way mentioned in subsection (2).

**58 National VET Regulator's consideration of response**

- (1) After considering any response received within a period specified in a notice, if the National VET Regulator still considers that the VET qualification or VET statement of attainment should be cancelled, the Regulator must cancel the qualification or statement.
- (2) If the National VET Regulator cancels a VET qualification or VET statement of attainment, the Regulator must:
  - (a) give the person concerned written notice of the decision; and
  - (b) require the person concerned to return the qualification or statement to the Regulator:
    - (i) in the case of a notice mentioned in subparagraph 57(1)(b)(i)—within 7 days after the date of that notice; or



- (ii) in the case of a notice mentioned in subparagraph 57(1)(b)(ii)—within 30 days after the date of that notice or within 30 days after the date the notice is published, as the case requires.

### **59 When cancellation takes effect**

- (1) Subject to subsection (2), the cancellation of a person's VET qualification or VET statement of attainment takes effect:
  - (a) in the case of a notice mentioned in subparagraph 57(1)(b)(i)—7 days after the date of the notice; and
  - (b) in the case of a notice mentioned in subparagraph 57(1)(b)(ii)—30 days after the date of the notice or 30 days after the date the notice is published, as the case requires.
- (2) If:
  - (a) a person has applied to the Administrative Appeals Tribunal for review of the National VET Regulator's decision to cancel the person's VET qualification or VET statement of attainment within the relevant 30 day period, as mentioned in subparagraph 58(2)(b)(ii); and
  - (b) the person notifies the Regulator, in writing, of that fact within the relevant 30 day period; and
  - (c) the decision of the Tribunal affirms the National VET Regulator's cancellation decision;cancellation of the qualification or statement takes effect when the appeal is finally determined or otherwise disposed of.

### **Subdivision B—Civil penalties**

#### **60 Civil penalty—failure to return VET qualification or VET statement of attainment**

- (1) A person contravenes this subsection if:
  - (a) the person is given a notice as mentioned in subparagraph 57(1)(b)(i); and
  - (b) the person fails to return his or her VET qualification or VET statement of attainment to the National VET Regulator

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within 7 days after the date of the notice mentioned in that subparagraph.

Civil penalty: 100 penalty units.

- (2) A person contravenes this subsection if:
- (a) the person is given a notice as mentioned in subparagraph 57(1)(b)(ii) (other than in a way mentioned in subsection 57(2)); and
  - (b) the person fails to return his or her VET qualification or VET statement of attainment to the National VET Regulator within 30 days after the date of the notice.

Civil penalty: 100 penalty units.

- (3) A person contravenes this subsection if:
- (a) the National VET Regulator gives a notice in a way mentioned in subsection 57(2); and
  - (b) the person to whom the notice relates is aware of it; and
  - (c) the person fails to return the VET qualification or VET statement of attainment to the Regulator within 30 days after the date the notice is published.

Civil penalty: 100 penalty units.

- (4) A person contravenes this subsection if:
- (a) the cancellation of a person's VET qualification or VET statement of attainment takes effect as mentioned in subsection 59(2); and
  - (b) the person fails to return the qualification or statement to the National VET Regulator within 7 days after the day that cancellation takes effect.

Civil penalty: 100 penalty units.

*Exception*

- (5) Subsections (2) and (3) do not apply if paragraphs 59(2)(a) and (b) apply.

**61 Civil penalty—use of cancelled VET qualification or VET statement of attainment**

A person contravenes this section if:

- (a) the person purports to hold a VET qualification or VET statement of attainment; and
- (b) the qualification or statement has been cancelled.

Civil penalty:        240 penalty units.

## **Part 5—Investigative powers**

### **Division 1—Requiring people to give information and produce documents or things**

#### **Subdivision A—Requests by National VET Regulator**

#### **62 Request to person who is, or was, connected with a registered training organisation**

- (1) For the purposes of this Act, the National VET Regulator may request a person who is, or was, connected with an NVR registered training organisation or former registered training organisation:
  - (a) to give the Regulator the information specified in the request; or
  - (b) to produce to the Regulator the documents or things specified in the request;if the Regulator has reason to believe that the person is capable of giving the information or producing the documents or things.
- (2) The National VET Regulator may require that information to be provided under paragraph (1)(a) is to be provided in writing.
- (3) The National VET Regulator's request must:
  - (a) be served on the person; and
  - (b) be in writing and signed by the Chief Commissioner; and
  - (c) specify the period within which the person must comply with the request.
- (4) The period specified under paragraph (3)(c) must be at least 14 days after the notice is served on the person, or within such shorter period (but not less than 24 hours) as the National VET Regulator considers reasonably necessary.
- (5) The person must:
  - (a) give the information; or
  - (b) produce the documents or things;

within the time specified in the request, or within such further time as the National VET Regulator allows.

Note: Failure to comply with a request is an offence, see section 64.

### **63 National VET Regulator may retain documents and things**

- (1) If a document or thing is produced to the National VET Regulator in accordance with a request under section 62, the Regulator:
  - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary:
    - (i) for the purposes of this Act; or
    - (ii) for the purposes of an investigation to which the document or thing relates; or
    - (iii) to enable evidence to be secured for the purposes of a prosecution or civil penalty proceedings.
- (2) While the National VET Regulator retains the document or thing, the Regulator must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

### **Subdivision B—Offence and related provisions**

#### **64 Failure to comply with National VET Regulator's request**

A person commits an offence if:

- (a) the person is given a request under section 62; and
- (b) the person fails to comply with the request.

Penalty: 30 penalty units.

#### **65 Self-incrimination etc.**

- (1) A person is not excused from:
  - (a) giving information; or
  - (b) producing a document or thing;

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when requested to do so under section 62 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

- (2) However, in the case of an individual, none of the following:
- (a) the information given;
  - (b) the document or thing produced;
  - (c) the giving of the information or the producing of the document or thing;
  - (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or thing;
- is admissible in evidence against the individual in:
- (e) criminal proceedings, other than:
    - (i) proceedings for an offence against section 64; or
    - (ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
    - (iii) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; and
  - (f) civil proceedings for a contravention of a civil penalty provision.

## **Division 2—Searches of premises**

### **Subdivision A—Exercising monitoring or enforcement powers**

#### **66 Authorised officer may enter premises by consent or under a warrant**

- (1) For the purpose of finding out whether this Act has been, or is being, complied with or assessing the correctness of information provided under this Act, an authorised officer may:
  - (a) enter any premises; and
  - (b) exercise the monitoring powers set out in section 67.
- (2) If an authorised officer has reasonable grounds for suspecting that there may be evidential material on any premises, the authorised officer may:
  - (a) enter the premises; and
  - (b) exercise the enforcement powers set out in section 68.
- (3) However, an authorised officer is not authorised to enter the premises under this section unless:
  - (a) the occupier of the premises has consented to the entry and the authorised officer has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a warrant.

Note: If entry to the premises is with the occupier's consent, the authorised officer must leave the premises if the consent ceases to have effect, see section 72.

#### **67 Monitoring powers of authorised officers**

- (1) The following are the *monitoring powers* that an authorised officer may exercise in relation to premises under section 66:
  - (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine any activity conducted on the premises;

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- (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
- (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
- (h) the powers set out in subsections (2), (3) and (5).

*Operating electronic equipment*

- (2) The **monitoring powers** include the power to operate electronic equipment on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to determining whether there has been compliance with this Act or to assessing the correctness of information provided under this Act.
- (3) The **monitoring powers** include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
  - (a) the power to operate electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the information to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed, in writing, by the occupier of the premises;



and remove the disk, tape or other storage device from the premises.

- (4) An authorised officer may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

*Securing things if entry to premises is under a monitoring warrant*

- (5) If entry to the premises is under a monitoring warrant, the **monitoring powers** include the power to secure a thing for a period not exceeding 24 hours if:
- (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an authorised officer believes on reasonable grounds that the thing affords evidence of:
    - (i) the commission of an offence against this Act or the contravention of a civil penalty provision or both; or
    - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; and
  - (c) the authorised officer believes on reasonable grounds that:
    - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (ii) the circumstances are serious and urgent.
- (6) If an authorised officer believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (8) The provisions of this Division relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.

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- (9) The 24 hour period may be extended more than once.

**68 Enforcement powers of authorised officers**

- (1) The following are the **enforcement powers** that an authorised officer may exercise in relation to premises under section 66:
- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the authorised officer has reasonable grounds for suspecting may be on the premises;
  - (b) if entry to the premises is under an enforcement warrant:
    - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
    - (ii) the power to seize evidential material of that kind if the authorised officer finds it on the premises;
  - (c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);
  - (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
  - (e) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
  - (f) the powers set out in subsections (2), (3) and (6).

*Powers relating to electronic equipment*

- (2) The **enforcement powers** include the power to operate electronic equipment on the premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it; contains evidential material referred to in paragraph (1)(a) or (b).

- (3) The *enforcement powers* include the following powers in relation to evidential material described in subsection (2) found in the exercise of the power under that subsection:
- (a) if entry to the premises is under an enforcement warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed, in writing, by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An authorised officer may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (5) An authorised officer may seize equipment or a disk, tape or other storage device as mentioned in paragraph (3)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (3)(b) or to transfer the evidential material as mentioned in paragraph (3)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

*Seizing other evidential material*

- (6) If:
- (a) entry to the premises is under an enforcement warrant; and

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- (b) the authorised officer, in the course of searching for the kind of evidential material specified in the warrant, finds a thing that the authorised officer believes on reasonable grounds to be other evidential material; and
  - (c) the authorised officer believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
- then the *enforcement powers* include seizing the thing.

## **69 Persons assisting authorised officers**

*Authorised officers may be assisted by other persons*

- (1) An authorised officer may, in entering premises under section 66 and in exercising monitoring powers or enforcement powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a *person assisting* the authorised officer.

*Powers of a person assisting the authorised officer*

- (2) A person assisting the authorised officer may:
  - (a) enter the premises; and
  - (b) exercise monitoring powers or enforcement powers in relation to the premises, but only in accordance with a direction given to the person by the authorised officer.
- (3) A power exercised by a person assisting the authorised officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised officer.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

## **70 Use of force in executing a warrant**

In executing a warrant, an authorised officer executing the warrant and a person assisting the authorised officer may use such force against things as is necessary and reasonable in the circumstances.

**71 Authorised officer may ask questions and seek production of documents**

- (1) If an authorised officer is authorised to enter premises because the occupier of the premises consented to the entry, the authorised officer may ask the occupier to:
- (a) answer any questions relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that are put by the authorised officer; and
  - (b) produce any document relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that is requested by the authorised officer.
- (2) If an authorised officer is authorised to enter premises under a warrant, the authorised officer may require any person on the premises to:
- (a) answer any questions relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that are put by the authorised officer; and
  - (b) produce any document relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that is requested by the authorised officer.

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*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2);  
and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

**Subdivision B—Obligations and incidental powers of authorised officers**

**72 Consent**

- (1) An authorised officer must, before obtaining the consent of an occupier of premises for the purposes of paragraph 66(3)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised officer entered premises because of the consent of the occupier of the premises, the authorised officer, and any person assisting the authorised officer, must leave the premises if the consent ceases to have effect.

**73 Announcement before entry under warrant**

- (1) An authorised officer must, before entering premises under a warrant:
  - (a) announce that he or she is authorised to enter the premises;  
and
  - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and

- (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
  - (a) an authorised officer does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the authorised officer must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

#### **74 Authorised officer to be in possession of warrant**

##### *Monitoring warrant*

- (1) If a monitoring warrant is being executed in relation to premises, an authorised officer executing the warrant must be in possession of the warrant or a copy of the warrant.

##### *Enforcement warrant*

- (2) If an enforcement warrant is being executed in relation to premises, an authorised officer executing the warrant must be in possession of:
  - (a) the warrant issued by the magistrate under section 86 or a copy of the warrant as so issued; or
  - (b) the form of warrant completed under subsection 87(6) or a copy of the form as so completed.

#### **75 Details of warrant etc. to be given to occupier**

- If:
  - (a) a warrant is being executed in relation to premises; and

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- (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; an authorised officer executing the warrant must, as soon as practicable:
- (c) do one of the following:
  - (i) if the warrant was issued under section 85 or 86—make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it);
  - (ii) if the warrant was signed under section 87—make a copy of the form of warrant completed under subsection 87(6) available to the occupier or other person; and
- (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under this Division.

**76 Expert assistance to operate electronic equipment**

- (1) This section applies to premises to which a warrant relates.

*Monitoring powers*

- (2) If entry to the premises is under a monitoring warrant and an authorised officer believes on reasonable grounds that:
  - (a) there is on the premises information relevant to:
    - (i) determining whether there has been compliance with this Act; or
    - (ii) assessing the correctness of information provided under this Act;that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the information may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or other means.



*Enforcement powers*

- (3) If entry to the premises is under an enforcement warrant and an authorised officer believes on reasonable grounds that:
- (a) there is on the premises evidential material of the kind specified in the warrant that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the evidential material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.

*Notice to occupier*

- (4) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment under subsection (2) or (3) and of the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (5) The equipment may be secured:
- (a) until the 24 hour period ends; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.

*Extensions*

- (6) If an authorised officer believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

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- (8) The provisions of this Division relating to the issue of monitoring warrants or enforcement warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24 hour period may be extended more than once.

**77 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Division:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Federal Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:

*damage*, in relation to data, includes damage by erasure of data or addition of other data.

## **Subdivision C—Occupier’s rights and responsibilities**

### **78 Occupier entitled to observe execution of warrant**

- (1) If:
  - (a) a warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the occupier or other person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **79 Occupier to provide authorised officer with facilities and assistance**

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an authorised officer executing the warrant; and
  - (b) any person assisting the authorised officer; with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## **Subdivision D—General provisions relating to seizure**

### **80 Copies of seized things to be provided**

- (1) If an enforcement warrant is being executed and an authorised officer seizes:

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- (a) a document, film, computer file or other thing that can be readily copied; or
- (b) a storage device, the information in which can be readily copied;

the authorised officer must, if requested to do so by the occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.

- (2) However, subsection (1) does not apply if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

**81 Receipts for things seized**

- (1) If a thing is seized under this Division, an authorised officer must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

**82 Return of seized things**

- (1) Subject to any contrary order of a court, if an authorised officer seizes a thing under this Division, an authorised officer must take reasonable steps to return it if:
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) the period of 60 days after its seizure ends;whichever happens first, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If, apart from this subsection, an authorised officer would be required to take reasonable steps to return a thing under subsection (1) because of paragraph (1)(b), the authorised officer is not required to do so if:

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the thing may continue to be retained because of an order under section 83; or
  - (c) the Commonwealth, the National VET Regulator or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.
- (3) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

### **83 Magistrate may permit a thing to be retained**

- (1) An authorised officer may apply to a magistrate for an order permitting the retention of the thing for a further period if:
- (a) before the end of 60 days after the seizure; or
  - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation in respect of:
    - (i) an offence against this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; or
    - (ii) a contravention of a civil penalty provision; or
    - (iii) both an offence mentioned in subparagraph (i) and a civil penalty provision; or
  - (b) to enable evidence of an offence mentioned in paragraph (a) or a civil penalty provision to be secured for the purposes of a prosecution, civil penalty proceedings or both;

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the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).

- (3) Before making the application, the authorised officer must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the authorised officer believes to have such an interest of the proposed application.

**84 Disposal of things**

If:

- (a) a thing is seized under this Division; and
  - (b) apart from this section, an authorised officer would be required to take reasonable steps to return the thing to a person; and
  - (c) either:
    - (i) the authorised officer cannot, despite making reasonable efforts, locate the person; or
    - (ii) the person has refused to take possession of the thing;
- the National VET Regulator may dispose of the thing in such manner as the Regulator considers appropriate.

Note: If the operation of this section would result in an acquisition of property otherwise than on just terms, see section 234.

**Subdivision E—Warrants**

**85 Monitoring warrants**

*Application for warrant*

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

*Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably

necessary that one or more authorised officers should have access to the premises for the purpose of:

- (a) determining whether this Act has been, or is being, complied with; or
  - (b) assessing the correctness of information provided under this Act.
- (3) However, the magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

*Content of warrant*

- (4) The warrant must:
- (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state that the warrant is issued for the purpose of:
    - (i) determining whether this Act has been, or is being, complied with; or
    - (ii) assessing the correctness of information provided under this Act; and
  - (d) authorise one or more authorised officers (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Subdivisions A and B of this Division in relation to the premises; and
  - (e) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

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**86 Issue of enforcement warrants**

*Application for warrant*

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

*Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

*Content of warrant*

- (4) The warrant must:
- (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) specify the kind of evidential material that is to be searched for under the warrant; and
  - (d) name one or more authorised officers; and
  - (e) authorise the authorised officer or authorised officers so named:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Subdivisions A, B and D of this Division in relation to the premises; and
  - (f) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (g) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to be in force.



## **87 Enforcement warrants by telephone, fax etc.**

### *Application for warrant*

- (1) An authorised officer may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 86 in relation to premises:
  - (a) in an urgent case; or
  - (b) if the authorised officer believes, on reasonable grounds, that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

### *Voice communication*

- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

### *Information*

- (3) Before applying for the warrant, the authorised officer must prepare information (of the kind mentioned in subsection 86(2)) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the authorised officer may apply for the warrant before the information is sworn or affirmed.

### *Signing of warrant*

- (4) If the magistrate is satisfied:
  - (a) after considering the terms of the information; and
  - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 86 if the application had been made under that section.

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*Informing authorised officer*

- (5) If the magistrate completes and signs the warrant, the magistrate must inform the authorised officer, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
  - (b) the day on which, and the time at which, the warrant was signed.

*Form of warrant*

- (6) The authorised officer must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form:
- (a) the name of the magistrate; and
  - (b) the day on which, and the time at which, the warrant was signed.

*Completed form of warrant to be given to magistrate*

- (7) The authorised officer must also, not later than the day after the day on which the warrant ceased to be in force or the day of execution of the warrant, whichever is earlier, send to the magistrate:
- (a) the form of warrant completed by the authorised officer; and
  - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

*Attachment*

- (8) The magistrate must attach to the documents provided under subsection (7) the warrant signed by the magistrate.

*Authority of warrant*

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:

- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

### **88 Offence relating to warrants by telephone, fax etc.**

An authorised officer commits an offence if:

- (a) the authorised officer states in a document that purports to be a form of warrant under section 87 the name of a magistrate, unless that magistrate signed the warrant; or
- (b) the authorised officer states on a form of warrant under that section a matter that, to the authorised officer's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
- (c) the authorised officer purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised officer knows:
  - (i) has not been approved by a magistrate under that section; or
  - (ii) departs in a material particular from the terms of a warrant signed by a magistrate under that section; or
- (d) the authorised officer gives to a magistrate a form of warrant under that section that is not the form of warrant that the authorised officer purported to execute.

Penalty: Imprisonment for 2 years.

### **Subdivision F—Appointment of authorised officers and issue of identity cards**

#### **89 Appointment of authorised officers**

- (1) The Chief Commissioner may, in writing, appoint a member of the staff of the Regulator as an authorised officer for the purposes of this Act.

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- (2) The Chief Commissioner must not appoint a person as an authorised officer unless the Chief Commissioner is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an authorised officer.
- (3) An authorised officer must, in exercising powers as an authorised officer, comply with any directions of the Chief Commissioner.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

**90 Identity cards**

- (1) The Chief Commissioner must issue an identity card to an authorised officer.

*Form of identity card*

- (2) The identity card must:
  - (a) be in the form approved by the Chief Commissioner; and
  - (b) contain a recent photograph of the authorised officer.

*Offence*

- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Chief Commissioner.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence: card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

*Authorised officer must carry card*

- (6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

**Subdivision G—Powers of magistrates**

**91 Federal Magistrates—consent to nomination**

- (1) A Federal Magistrate may, by writing, consent to be nominated by the Minister under subsection (2).
- (2) The Minister may, by writing, nominate a Federal Magistrate in relation to whom a consent is in force under subsection (1) to be a magistrate for the purposes of this Act.
- (3) A nomination under subsection (2) is not a legislative instrument.

**92 Magistrates—personal capacity**

*Powers conferred personally*

- (1) A power conferred on a magistrate by this Division is conferred on the magistrate:
- (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

*Powers need not be accepted*

- (2) The magistrate (other than a Federal Magistrate) need not accept the power conferred.

*Protection and immunity*

- (3) A magistrate exercising a power conferred by this Division has the same protection and immunity as if he or she were exercising the power:
- (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## **Part 6—Enforcement**

### **Division 1—Offences and civil penalty provisions**

#### **Subdivision A—Conduct by NVR registered training organisations**

##### **93 Offence—providing all or part of VET course outside scope of registration**

An NVR registered training organisation commits an offence if:

- (a) the organisation provides all or part of a VET course; and
- (b) the VET course, or part of the VET course, is not within the organisation's scope of registration.

Penalty: 120 penalty units.

##### **94 Civil penalty—providing all or part of VET course outside scope of registration**

An NVR registered training organisation contravenes this section if:

- (a) the organisation provides all or part of a VET course; and
- (b) the VET course, or part of the VET course, is not within the organisation's scope of registration.

Civil penalty: 240 penalty units.

##### **95 Offence—issuing VET qualification outside scope of registration**

An NVR registered training organisation commits an offence if:

- (a) the organisation purports to issue a VET qualification; and
- (b) the qualification relates to a VET course that is not within the organisation's scope of registration.

Penalty: 300 penalty units.

**96 Civil penalty—issuing VET qualification outside scope of registration**

An NVR registered training organisation contravenes this section if:

- (a) the organisation purports to issue a VET qualification; and
- (b) the qualification relates to a VET course that is not within the organisation's scope of registration.

Civil penalty: 600 penalty units.

**97 Offence—issuing VET statement of attainment outside scope of registration**

An NVR registered training organisation commits an offence if:

- (a) the organisation purports to issue a VET statement of attainment; and
- (b) the statement relates to part of a VET course that is not within the organisation's scope of registration.

Penalty: 300 penalty units.

**98 Civil penalty—issuing VET statement of attainment outside scope of registration**

An NVR registered training organisation contravenes this section if:

- (a) the organisation purports to issue a VET statement of attainment; and
- (b) the statement relates to part of a VET course that is not within the organisation's scope of registration.

Civil penalty: 600 penalty units.

**99 Offence—advertising all or part of VET course outside scope of registration**

An NVR registered training organisation commits an offence if:

- (a) the organisation:
  - (i) publishes or broadcasts an advertisement; or

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- (ii) causes to be published or broadcast an advertisement;  
and
- (b) the advertisement makes a representation that the organisation provides, or will provide, all or part of a VET course; and
- (c) the VET course, or part of the VET course, is not within the organisation's scope of registration.

Penalty: 120 penalty units.

**100 Civil penalty—advertising all or part of VET course outside scope of registration**

An NVR registered training organisation contravenes this section if:

- (a) the organisation:
  - (i) publishes or broadcasts an advertisement; or
  - (ii) causes to be published or broadcast an advertisement;  
and
- (b) the advertisement makes a representation that the organisation provides, or will provide, all or part of a VET course; and
- (c) the VET course, or part of the VET course, is not within the organisation's scope of registration.

Civil penalty: 240 penalty units.

**101 Offence—certain conduct prohibited while scope of registration suspended**

- (1) An NVR registered training organisation commits an offence if:
  - (a) all or part of the organisation's scope of registration is suspended; and
  - (b) during the period of suspension, the National VET Regulator requires the organisation to do something; and
  - (c) the organisation does not do that thing.

Penalty: 120 penalty units.



- (2) An NVR registered training organisation commits an offence if:
- (a) all or part of the organisation's scope of registration is suspended; and
  - (b) during the period of suspension, the National VET Regulator requires the organisation not to do something; and
  - (c) the organisation does that thing.

Penalty: 120 penalty units.

**102 Civil penalty—certain conduct prohibited while scope of registration suspended**

- (1) An NVR registered training organisation contravenes this subsection if:
- (a) all or part of the organisation's scope of registration is suspended; and
  - (b) during the period of suspension, the National VET Regulator requires the organisation to do something; and
  - (c) the organisation does not do that thing.

Civil penalty: 240 penalty units.

- (2) An NVR registered training organisation contravenes this subsection if:
- (a) all or part of the organisation's scope of registration is suspended; and
  - (b) during the period of suspension, the National VET Regulator requires the organisation not to do something; and
  - (c) the organisation does that thing.

Civil penalty: 240 penalty units.

**103 Offence—issuing VET qualification without providing adequate assessment**

- (1) An NVR registered training organisation commits an offence if:
- (a) the organisation issues a VET qualification; and
  - (b) the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation; and

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- (c) the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

Penalty: 120 penalty units.

- (2) An NVR registered training organisation commits an offence if:
  - (a) the organisation issues a VET qualification; and
  - (b) the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation and another registered training organisation; and
  - (c) in respect of the requirements of the qualification relating to the organisation, the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

Penalty: 120 penalty units.

**104 Civil penalty—issuing VET qualification without providing adequate assessment**

- (1) An NVR registered training organisation contravenes this subsection if:
  - (a) the organisation issues a VET qualification; and
  - (b) the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation; and
  - (c) the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

Civil penalty: 240 penalty units.

- (2) An NVR registered training organisation contravenes this subsection if:
  - (a) the organisation issues a VET qualification; and
  - (b) the requirements of the qualification relate to assessment provided, or purportedly provided, by the organisation and another registered training organisation; and
  - (c) in respect of the requirements of the qualification relating to the organisation, the organisation did not provide, or arrange

for another person to provide, the assessment necessary for a VET student to satisfy the requirements of the qualification.

Civil penalty: 240 penalty units.

**105 Offence—issuing VET statement of attainment without providing adequate assessment**

- (1) An NVR registered training organisation commits an offence if:
- (a) the organisation issues a VET statement of attainment; and
  - (b) the units of competency or modules specified in the statement relate to assessment provided, or purportedly provided, by the organisation; and
  - (c) the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of those units of competency or modules.

Penalty: 120 penalty units.

- (2) An NVR registered training organisation commits an offence if:
- (a) the organisation issues a VET statement of attainment; and
  - (b) the units of competency or modules specified in the statement relate to assessment provided, or purportedly provided, by the organisation and another registered training organisation; and
  - (c) in respect of the units of competency or modules relating to the organisation, the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of those units of competency or modules.

Penalty: 120 penalty units.

**106 Civil penalty—issuing VET statement of attainment without providing adequate assessment**

- (1) An NVR registered training organisation contravenes this subsection if:
- (a) the organisation issues a VET statement of attainment; and

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- (b) the units of competency or modules specified in the statement relate to assessment provided, or purportedly provided, by the organisation; and
- (c) the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of those units of competency or modules.

Civil penalty: 240 penalty units.

- (2) An NVR registered training organisation contravenes this subsection if:

- (a) the organisation issues a VET statement of attainment; and
- (b) the units of competency or modules specified in the statement relate to assessment provided, or purportedly provided, by the organisation and another registered training organisation; and
- (c) in respect of the units of competency or modules relating to the organisation, the organisation did not provide, or arrange for another person to provide, the assessment necessary for a VET student to satisfy the requirements of those units of competency or modules.

Civil penalty: 240 penalty units.

**107 Offence—issuing VET qualification without ensuring adequate assessment**

An NVR registered training organisation commits an offence if:

- (a) the organisation issues, or purports to issue, a VET qualification to a VET student; and
- (b) the organisation did not satisfy itself that the VET student had successfully satisfied the requirements of the qualification.

Penalty: 120 penalty units.

**108 Civil penalty—issuing VET qualification without ensuring adequate assessment**

An NVR registered training organisation contravenes this section if:

- (a) the organisation issues, or purports to issue, a VET qualification to a VET student; and
- (b) the organisation did not satisfy itself that the VET student had successfully satisfied the requirements of the qualification.

Civil penalty: 240 penalty units.

**109 Offence—issuing VET statement of attainment without ensuring adequate assessment**

An NVR registered training organisation commits an offence if:

- (a) the organisation issues, or purports to issue, a VET statement of attainment to a VET student; and
- (b) the organisation did not satisfy itself that the VET student had successfully satisfied the requirements of the units of competency or modules specified in the statement.

Penalty: 120 penalty units.

**110 Civil penalty—issuing VET statement of attainment without ensuring adequate assessment**

An NVR registered training organisation contravenes this section if:

- (a) the organisation issues, or purports to issue, a VET statement of attainment to a VET student; and
- (b) the organisation did not satisfy itself that the VET student had successfully satisfied the requirements of the units of competency or modules specified in the statement.

Civil penalty: 240 penalty units.

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**111 Civil penalty—breach of condition of registration**

- (1) An NVR registered training organisation contravenes this subsection if:
- (a) a condition of the organisation's registration, as mentioned in section 21, is of a kind prescribed by the regulations for the purposes of this paragraph; and
  - (b) the organisation does an act or omits to do an act; and
  - (c) the act or omission breaches the condition.

Civil penalty: 240 penalty units.

- (2) An NVR registered training organisation contravenes this subsection if:
- (a) a condition of the organisation's registration, as mentioned in section 21, is of a kind prescribed by the regulations for the purposes of this paragraph; and
  - (b) the organisation does an act or omits to do an act; and
  - (c) the act or omission breaches the condition.

Civil penalty: 120 penalty units.

**112 Civil penalty—failure to return certificate of registration**

- (1) A former registered training organisation contravenes this subsection if:
- (a) the organisation's registration has been cancelled under this Act; and
  - (b) the organisation fails to return its certificate of registration to the National VET Regulator within 10 days of the day the cancellation takes effect.

Civil penalty: 120 penalty units.

- (2) A former registered training organisation contravenes this subsection if:
- (a) the organisation's registration has been withdrawn under this Act; and

- (b) the organisation fails to return its certificate of registration to the National VET Regulator within 10 days of the day the withdrawal takes effect.

Civil penalty: 120 penalty units.

### **113 Geographical jurisdiction**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to each offence against this Subdivision.

### **Subdivision B—Conduct that is prohibited if not an NVR registered training organisation**

#### **114 Offence—falsely claiming to be an NVR registered training organisation**

A person commits an offence if:

- (a) the person holds himself, herself or itself out as an NVR registered training organisation; and
- (b) the person is not an NVR registered training organisation.

Penalty: 300 penalty units.

#### **115 Civil penalty—falsely claiming to be an NVR registered training organisation**

A person contravenes this section if:

- (a) the person holds himself, herself or itself out as an NVR registered training organisation; and
- (b) the person is not an NVR registered training organisation.

Civil penalty: 600 penalty units.

#### **116 Offence—providing, or offering to provide, all or part of a VET course without registration**

- (1) A person commits an offence if:

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- (a) the person provides, or offers to provide, all or part of a VET course in a referring State or a Territory; and
- (b) the person is not an NVR registered training organisation.

Penalty: 300 penalty units.

- (2) A person commits an offence if:
  - (a) the person is a registered provider (other than a secondary school); and
  - (b) the person provides, or offers to provide, all or part of a VET course in a non-referring State; and
  - (c) the person is not an NVR registered training organisation.

Penalty: 300 penalty units.

Note: Paragraph (a)—*registered provider* is defined, see section 3.

**117 Civil penalty—providing, or offering to provide, all or part of a VET course without registration**

- (1) A person contravenes this subsection if:
  - (a) the person provides, or offers to provide, all or part of a VET course in a referring State or a Territory; and
  - (b) the person is not an NVR registered training organisation.

Civil penalty: 600 penalty units.

- (2) A person contravenes this subsection if:
  - (a) the person is a registered provider (other than a secondary school); and
  - (b) the person provides, or offers to provide, all or part of a VET course in a non-referring State; and
  - (c) the person is not an NVR registered training organisation.

Civil penalty: 600 penalty units.

Note: Paragraph (a)—*registered provider* is defined, see section 3.

**118 Offence—issuing VET qualification**

A person commits an offence if:

- (a) the person purports to issue a VET qualification; and



(b) the person is not a registered training organisation.

Penalty: 300 penalty units.

### **119 Civil penalty—issuing VET qualification**

A person contravenes this section if:

- (a) the person purports to issue a VET qualification; and
- (b) the person is not a registered training organisation.

Civil penalty: 600 penalty units.

### **120 Offence—issuing VET statement of attainment**

A person commits an offence if:

- (a) the person purports to issue a VET statement of attainment;  
and
- (b) the person is not a registered training organisation.

Penalty: 300 penalty units.

### **121 Civil penalty—issuing VET statement of attainment**

A person contravenes this section if:

- (a) the person purports to issue a VET statement of attainment;  
and
- (b) the person is not a registered training organisation.

Civil penalty: 600 penalty units.

## **Subdivision C—Other prohibited conduct**

### **122 Offence—making false or misleading representation in advertisement**

A person commits an offence if:

- (a) the person makes a representation that relates to:
  - (i) all or part of a VET course; or
  - (ii) a course that is held out as being a VET course; or

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- (iii) part of a course that is held out as being part of a VET course; or
- (iv) a VET qualification; or
- (v) a qualification that is held out as being a VET qualification; and
- (b) the representation is made in connection with an advertisement; and
- (c) the representation is false or misleading in a material particular.

Penalty: 60 penalty units.

**123 Civil penalty—making false or misleading representation in advertisement**

A person contravenes this section if:

- (a) the person makes a representation that relates to:
  - (i) all or part of a VET course; or
  - (ii) a course that is held out as being a VET course; or
  - (iii) part of a course that is held out as being part of a VET course; or
  - (iv) a VET qualification; or
  - (v) a qualification that is held out as being a VET qualification; and
- (b) the representation is made in connection with an advertisement; and
- (c) the representation is false or misleading in a material particular.

Civil penalty: 120 penalty units.

**124 Offence—making false or misleading representation relating to VET course or VET qualification**

A person commits an offence if:

- (a) the person makes a representation that relates to:
  - (i) all or part of a VET course; or
  - (ii) a course that is held out as being a VET course; or

- (iii) part of a course that is held out as being part of a VET course; or
  - (iv) a VET qualification; or
  - (v) a qualification that is held out as being a VET qualification; and
- (b) the representation is false or misleading in a material particular.

Penalty: 60 penalty units.

### **125 Civil penalty—making false or misleading representation relating to VET course or VET qualification**

A person contravenes this section if:

- (a) the person makes a representation that relates to:
  - (i) all or part of a VET course; or
  - (ii) a course that is held out as being a VET course; or
  - (iii) part of a course that is held out as being part of a VET course; or
  - (iv) a VET qualification; or
  - (v) a qualification that is held out as being a VET qualification; and
- (b) the representation is false or misleading in a material particular.

Civil penalty: 120 penalty units.

### **126 Offence—purporting to issue VET qualification**

A person commits an offence if:

- (a) the person purports to issue a qualification as a VET qualification; and
- (b) the qualification is not a VET qualification.

Penalty: 300 penalty units.

### **127 Civil penalty—purporting to issue VET qualification**

A person contravenes this section if:

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- (a) the person purports to issue a qualification as a VET qualification; and
- (b) the qualification is not a VET qualification.

Civil penalty: 600 penalty units.

**128 Offence—purporting to issue VET statement of attainment**

A person commits an offence if:

- (a) the person purports to issue a statement as a VET statement of attainment; and
- (b) the statement is not a VET statement of attainment.

Penalty: 300 penalty units.

**129 Civil penalty—purporting to issue VET statement of attainment**

A person contravenes this section if:

- (a) the person purports to issue a statement as a VET statement of attainment; and
- (b) the statement is not a VET statement of attainment.

Civil penalty: 600 penalty units.

**130 Civil penalty—breach of condition of accreditation**

A person contravenes this section if:

- (a) a VET accredited course is accredited in respect of the person; and
- (b) a condition is imposed on the accreditation of the course; and
- (c) the person does an act or omits to do an act; and
- (d) the act or omission breaches the condition.

Civil penalty: 120 penalty units.

**131 Civil penalty—using a bogus VET qualification or VET statement of attainment**

- (1) A natural person contravenes this subsection if:
  - (a) the person obtains a qualification; and

- (b) the person knows, or a reasonable person in the circumstances could be expected to know, that the qualification is not a VET qualification; and
- (c) the person purports to hold the qualification as a VET qualification.

Civil penalty: 240 penalty units.

- (2) A natural person contravenes this subsection if:
  - (a) the person obtains a statement of attainment; and
  - (b) the person knows, or a reasonable person in the circumstances could be expected to know, that the statement is not a VET statement of attainment; and
  - (c) the person purports to hold the statement as a VET statement of attainment.

Civil penalty: 240 penalty units.

### **132 Geographical jurisdiction**

To the extent that an offence against this Subdivision applies in relation to a VET qualification, section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to the offence.

### **Subdivision D—Executive officers**

#### **133 Liability of executive officer of registered training organisation**

- (1) An executive officer of a registered training organisation commits an offence if:
  - (a) the organisation commits an offence; and
  - (b) the officer knew that the offence would be committed; and
  - (c) the officer was in a position to influence the conduct of the organisation in relation to the commission of the offence; and
  - (d) the officer failed to take all reasonable steps to prevent the commission of the offence.

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- (2) The maximum penalty for an offence against subsection (1) is one-fifth of the maximum penalty that could be imposed for the offence committed by the registered training organisation.
- (3) An executive officer of a registered training organisation contravenes this subsection if:
  - (a) the organisation contravenes a civil penalty provision; and
  - (b) the officer knew that the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the organisation in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (4) The maximum civil penalty for a contravention of subsection (3) is one-tenth of the maximum penalty that could be imposed for the contravention of the civil penalty provision by the registered training organisation.

**134 Reasonable steps to prevent offence or contravention**

- (1) For the purposes of section 133, in determining whether an executive officer of a registered training organisation failed to take all reasonable steps to prevent the commission of an offence, or the contravention of a civil penalty provision, by the organisation, a court is to have regard to:
  - (a) what action (if any) the officer took towards ensuring that the organisation's employees, agents and contractors had a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations, in so far as those requirements affected the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the organisation was committing an offence against, or otherwise contravening, this Act or the regulations.
- (2) This section does not limit the generality of section 133.

## **Subdivision E—Partnerships**

### **135 Liability of partners in partnerships**

- (1) An offence against Subdivision A, B or C of this Division that would otherwise be committed by a partnership is taken to have been committed by each partner in the partnership, at the time the offence is committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the partner).
- (2) A civil penalty provision in Subdivision A, B or C of this Division that would otherwise be contravened by a partnership is taken to have been contravened by each partner in the partnership, at the time of the conduct constituting the contravention, who:
  - (a) engaged in the conduct; or
  - (b) aided, abetted, counselled or procured the conduct; or
  - (c) was in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act or omission of the partner).
- (3) If a partner in a partnership commits an offence, the penalty that may be imposed on the partner must not exceed an amount equal to the maximum penalty that could be imposed on an individual for committing the same offence.
- (4) If a partner in a partnership contravenes a civil penalty provision, the civil penalty that may be imposed on the partner must not exceed an amount equal to the maximum penalty that could be imposed on an individual for the same contravention.
- (5) For the purposes of subsections (1) and (2), to establish that a partnership engaged in particular conduct, it is sufficient to show that the conduct was engaged in by a partner:
  - (a) in the ordinary course of the business of the partnership; or

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- (b) within the scope of the actual or apparent authority of the partner.
- (6) For the purposes of subsection (1), to establish that a partnership had a particular state of mind when it engaged in particular conduct, it is sufficient to show that a relevant partner had the relevant state of mind.

Note: For other provisions relating to partnerships, see Division 2 of Part 12.

**Subdivision F—Unincorporated associations**

**136 Liability of members of unincorporated associations**

- (1) An offence against Subdivision A, B or C of this Division that would otherwise be committed by an unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence is committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the member).
- (2) A civil penalty provision of Subdivision A, B or C of this Division that would otherwise be contravened by an unincorporated association is taken to have been contravened by each member of the association's committee of management, at the time of the conduct constituting the contravention, who:
  - (a) engaged in the conduct; or
  - (b) aided, abetted, counselled or procured the conduct; or
  - (c) was in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act or omission of the member).
- (3) If a member of an unincorporated association's committee of management commits an offence, the penalty that may be imposed on the member must not exceed an amount equal to the maximum



penalty that could be imposed on an individual for committing the same offence.

- (4) If a member of an unincorporated association's committee of management contravenes a civil penalty provision, the civil penalty that may be imposed on the member must not exceed an amount equal to the maximum penalty that could be imposed on an individual for the same contravention.
- (5) For the purposes of subsection (1), to establish that an unincorporated association had a particular state of mind when it engaged in particular conduct, it is sufficient to show that a relevant member of the association's committee of management had the relevant state of mind.

Note: For other provisions relating to unincorporated associations, see Division 3 of Part 12.

## Division 2—Civil penalty proceedings

### Subdivision A—Obtaining an order for a civil penalty

#### 137 Federal Court or Federal Magistrates Court may impose pecuniary penalty

##### *Application for order*

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the National VET Regulator may apply on behalf of the Commonwealth to the Federal Court or the Federal Magistrates Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

##### *Court may order wrongdoer to pay pecuniary penalty*

- (2) If the Federal Court or the Federal Magistrates Court is satisfied that the wrongdoer has contravened the civil penalty provision, the court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the court determines is appropriate (but not more than the amount specified for the provision).

##### *Determining amount of pecuniary penalty*

- (3) In determining the pecuniary penalty, the Federal Court or the Federal Magistrates Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found to have engaged in any similar conduct by the court in proceedings under this Act.

*Civil evidence and procedure rules apply*

- (4) The Federal Court or the Federal Magistrates Court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for an order under this section.

Note: The standard of proof in civil proceedings is the balance of probabilities, see section 140 of the *Evidence Act 1995*.

*Conduct contravening 2 or more provisions*

- (5) If conduct contravenes 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person for the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty for the same conduct.

### **138 Involvement in contravening civil penalty provision**

- (1) A person must not:
- (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) conspire to contravene a civil penalty provision.
- (2) This Act applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

### **139 Recovery of a pecuniary penalty**

If the Federal Court or the Federal Magistrates Court orders a person to pay a pecuniary penalty, the Commonwealth may enforce the order as if it were a judgment of the court.

### **140 Gathering information for application for pecuniary penalty**

- (1) This section applies if it appears to the National VET Regulator that a person (the *wrongdoer*) may have contravened a civil penalty provision.

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- (2) If the National VET Regulator, on reasonable grounds, suspects that a person other than the wrongdoer can give information relevant to an application for a pecuniary penalty order relating to the contravention, whether or not such an application has been made, the Regulator may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application.
- (3) Subsection (2) does not apply in relation to a duly qualified lawyer who is acting, or has acted, for the wrongdoer.
- (4) If a person fails to give assistance as required under subsection (2), the Federal Court or the Federal Magistrates Court may, on the application of the National VET Regulator, order the person to comply with the requirement.
- (5) A person commits an offence if:
  - (a) under subsection (2), the National VET Regulator requires the person to give all reasonable assistance in connection with an application for a pecuniary penalty order for a contravention of a civil penalty provision; and
  - (b) the person fails to give the assistance.

Penalty: 30 penalty units.

- (6) A requirement made under subsection (2) is not a legislative instrument.

**141 Continuing and multiple contraventions of civil penalty provisions**

- (1) If, under this Act, an act or thing is required to be done within a particular period or before a particular time, then, unless the contrary intention appears, the obligation to do that act or thing continues, even if the period has expired or the time has passed, until the act or thing is done.
- (2) If a refusal or failure to comply with a requirement described in subsection (1) contravenes a civil penalty provision, a person contravenes the provision on each day during which the person refuses or fails to comply with that requirement, including the day

the Federal Court or the Federal Magistrates Court orders the person to pay a pecuniary penalty for any of the contraventions or any later day.

- (3) Proceedings against a person for any number of orders to pay pecuniary penalties for contraventions of a civil penalty provision that are founded on the same facts, or form, or are part of, a series of contraventions of the same or a similar character, may be joined.
- (4) The Federal Court or the Federal Magistrates Court may make a single order to pay a pecuniary penalty for all the contraventions described in subsection (3), but the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.
- (5) Subsection (1) does not affect the application of section 4K of the *Crimes Act 1914* in relation to any law of the Commonwealth.

### **Subdivision B—Civil penalty proceedings and criminal proceedings**

#### **142 Civil proceedings after criminal proceedings**

The Federal Court or the Federal Magistrates Court must not order a person to pay a pecuniary penalty for contravening a civil penalty provision if the person has been convicted of an offence against this Act constituted by conduct substantially the same as the conduct constituting the contravention.

#### **143 Criminal proceedings during civil proceedings**

- (1) Proceedings for an order for a person to pay a pecuniary penalty for contravening a civil penalty provision are stayed if:
  - (a) criminal proceedings are started, or have already been started, against the person for an offence against this Act; and
  - (b) the offence is constituted by conduct substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed when the criminal proceedings (including any

appeals) for the offence against this Act end with the conviction of the person of the offence.

#### **144 Criminal proceedings after civil proceedings**

Criminal proceedings may not be started against a person for conduct substantially the same as conduct contravening a civil penalty provision if the person has been ordered to pay a pecuniary penalty under this Act for the contravention.

#### **145 Evidence given in proceedings for civil penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual for an offence if:

- (a) the individual previously gave the information or produced the documents in proceedings against the individual for a pecuniary penalty order for a contravention of a civil penalty provision whether or not the order was made; and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

## **Division 3—Enforceable undertakings**

### **146 Acceptance of undertakings**

- (1) The National VET Regulator may accept a written undertaking given by a person if the Regulator considers that the person has committed an offence against this Act or contravened a civil penalty provision.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the National VET Regulator.
- (3) The National VET Regulator may, by written notice given to the person, cancel the undertaking.
- (4) The National VET Regulator may publish the undertaking on the National Register.

### **147 Enforcement of undertakings**

- (1) If the National VET Regulator considers that a person who gave an undertaking under section 146 has breached any of its terms, the Regulator may apply to:
  - (a) the Federal Court; or
  - (b) the Federal Magistrates Court;for an order under subsection (2).
- (2) If a court mentioned in subsection (1) is satisfied that the person has breached a term of the undertaking, the court may make one or more of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

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- (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the court considers appropriate.



## **Division 4—Infringement notices**

### **148 Infringement notices in respect of offences**

- (1) The regulations may provide for a person who is alleged to have committed an offence against this Act to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum penalty prescribed for that offence.

### **149 Infringement notices in respect of civil penalty provisions**

- (1) The regulations may provide for a person who is alleged to have contravened a civil penalty provision to pay to the Commonwealth, as an alternative to civil penalty proceedings against the person, a specified penalty.
- (2) The penalty must not exceed one-tenth of the maximum penalty prescribed for contravening that provision.

## **Division 5—Injunctions**

### **150 Injunctions**

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct that would be in contravention of this Act, the Federal Court or the Federal Magistrates Court may, on the application of the National VET Regulator, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be in contravention of this Act;the Federal Court or the Federal Magistrates Court may, on the application of the National VET Regulator, grant an injunction requiring the person to do that act or thing.

### **151 Interim injunctions**

If an application is made to the Federal Court or the Federal Magistrates Court for an injunction under section 150, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind mentioned in that section.

### **152 Discharge etc. of injunctions**

The Federal Court or the Federal Magistrates Court may discharge or vary an injunction granted under this Division.

### **153 Certain limits on granting injunctions not to apply**

#### *Restraining injunctions*

- (1) The power of the Federal Court or the Federal Magistrates Court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any other person if the first-mentioned person engages in conduct of that kind.

#### *Performance injunctions*

- (2) The power of the Federal Court or the Federal Magistrates Court to grant an injunction requiring a person do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any other person if the first-mentioned person refuses or fails to do that act or thing.

### **154 Other powers of the Federal Court or Federal Magistrates Court unaffected**

The powers conferred on the Federal Court or the Federal Magistrates Court under this Division are in addition to, and not

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instead of, any other powers of the court, whether conferred by this Act or otherwise.

## **Part 7—National Vocational Education and Training Regulator**

### **Division 1—Establishment, functions and powers of Regulator**

#### **155 Establishment**

- (1) The National Vocational Education and Training Regulator (*National VET Regulator*) is established by this section.
- (2) The National VET Regulator may also be known by a name specified in the regulations.
- (3) Each State and Territory Education Minister must be consulted if the National VET Regulator is to be abolished.

#### **156 Constitution**

The National VET Regulator consists of:

- (a) a Chief Commissioner; and
- (b) 2 Commissioners.

Note: The National VET Regulator does not have a legal identity separate from the Commonwealth.

#### **157 Functions of the National VET Regulator**

- (1) The National VET Regulator has the following functions:
  - (a) to register an organisation as an NVR registered training organisation;
  - (b) to accredit courses that may be offered and/or provided by registered training organisations;
  - (c) to carry out compliance audits of NVR registered training organisations;

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- (d) to promote, and encourage the continuous improvement of, a registered training organisation's capacity to provide a VET course or part of a VET course;
- (e) if requested to do so by the Minister, or on the Regulator's own initiative, to advise and make recommendations to the Minister on matters relating to vocational education and training;
- (f) if requested to do so, in writing, by the Education Minister for a State or Territory, or on the Regulator's own initiative, to advise and make recommendations to the Education Minister for the State or Territory on specific matters relating to vocational education and training in the State or Territory;
- (g) if requested to do so, in writing, by the Chair of the Ministerial Council, or on the Regulator's own initiative, to advise and make recommendations to the Ministerial Council on general matters relating to vocational education and training in all jurisdictions;
- (h) to collect, analyse, interpret and disseminate information about vocational education and training;
- (i) to publish performance information, of a kind prescribed by the regulations, relating to NVR registered training organisations;
- (j) to conduct training programs relating to the regulation of registered training organisations and/or the accreditation of courses;
- (k) to enter into arrangements with occupational licensing bodies, other industry bodies, or both, for the purpose of ensuring compliance by NVR registered training organisations with this Act;
- (l) to cooperate with a regulatory authority of another country that has responsibility relating to the quality or regulation of vocational education and training for all, or part, of the country;
- (m) to develop relationships with its counterparts in other countries;
- (n) to develop key performance indicators, to be agreed by the Minister, against which the Regulator's performance can be assessed each financial year;

- (o) to develop service standards that the Regulator must meet in performing its functions;
  - (p) any other function relating to vocational education and training that is set out in a legislative instrument made by the Minister;
  - (q) such other functions as are conferred on the Regulator by or under:
    - (i) this Act; or
    - (ii) the *Education Services for Overseas Students Act 2000* or any other law of the Commonwealth;
  - (r) to do anything incidental to, or conducive to, the performance of any of the above functions.
- (2) When preparing advice for the purpose of paragraphs (1)(f) and (g), the National VET Regulator may consult with VET Regulators in non-referring States.
- (3) The Minister must not set out a function in a legislative instrument under paragraph (1)(p) unless the Ministerial Council has agreed to the function.
- Note 1: For how the Ministerial Council gives agreement, see section 191.
- Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that sets out a function (see sections 44 and 54 of that Act).
- (4) In performing the National VET Regulator's functions, the Regulator must apply the Risk Assessment Framework.
- (5) In performing the National VET Regulator's functions, the Regulator must have regard to any reports or information it receives about matters relating to this Act.
- (6) A failure to comply with the requirements of subsection (4) or (5) in relation to the performance of a function of the National VET Regulator does not affect the validity of the performance of the function.
- (7) The National VET Regulator has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
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Note: Other functions may be conferred on the National VET Regulator by State law, see Division 2 of Part 8.

**158 Financial Viability Risk Assessment Requirements**

- (1) The National VET Regulator must, by legislative instrument, make requirements relating to the financial viability of NVR registered training organisations.
- (2) The requirements are to be known as the *Financial Viability Risk Assessment Requirements*.

**159 Independence of the National VET Regulator**

Subject to section 160, the National VET Regulator is not subject to direction from anyone in relation to the performance of its functions or the exercise of its powers.

**160 Minister may give directions to the National VET Regulator**

- (1) The Minister may, by legislative instrument, give a direction to the National VET Regulator if the Minister considers that the direction is necessary to protect the integrity of the VET sector.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) However, the Minister must not give a direction about, or in relation to:
  - (a) the registration of a particular person or body as an NVR registered training organisation; or
  - (b) the accreditation of a particular course as a VET accredited course; or
  - (c) a particular NVR registered training organisation; or
  - (d) a person in respect of whom a particular VET accredited course is accredited.
- (3) The National VET Regulator must comply with a direction given under subsection (1).



**161 National VET Regulator has privileges and immunities of the Crown**

The National VET Regulator has the privileges and immunities of the Crown.

## Division 2—Appointment of Commissioners

### 162 Appointment

- (1) A Commissioner is to be appointed by the Governor-General by written instrument, on a full-time basis.

Note: A Commissioner is eligible for reappointment, see the *Acts Interpretation Act 1901*.

- (2) A person may only be appointed as a Commissioner if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
- (3) However, a person who is, or has been at any time in the 2 years before an appointment is made, an executive officer of a registered training organisation is not eligible for appointment as a Commissioner.
- (4) The Governor-General must appoint a Commissioner to be the Chief Commissioner.
- (5) The Governor-General may appoint another Commissioner to be the Deputy Chief Commissioner.

### 163 Term of appointment

A Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

### 164 Remuneration and allowances

- (1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is determined by the Minister.
- (2) A Commissioner is to be paid the allowances that are prescribed by the regulations.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **165 Leave of absence**

- (1) A Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **166 Outside employment**

A Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.

### **167 Disclosure of interests to the Minister**

- (1) A Commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires and that conflict or could conflict with the proper performance of the National VET Regulator's functions.
- (2) The notice must be given to the Minister as soon as practicable after the Commissioner becomes aware of the potential for conflict of interest.

### **168 Other terms and conditions**

A Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

### **169 Resignation**

- (1) A Commissioner may resign his or her appointment by giving the Governor-General a written resignation.
- (2) If the Chief Commissioner resigns, he or she also resigns his or her position as the Chief Executive Officer.

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Note: Subsection (2) does not prevent a person who is both the Chief Commissioner and Chief Executive Officer from being reappointed only as a Commissioner.

- (3) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

**170 Termination of appointment**

- (1) The Governor-General may terminate the appointment of a Commissioner:
- (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) if the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (d) if the Commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 166); or
  - (e) if the Commissioner fails, without reasonable excuse, to comply with section 167 or subsection 175(1).
- (2) The Minister must terminate the appointment of a Commissioner if the Commissioner becomes an executive officer of a registered training organisation.

**171 Acting Chief Commissioner**

- (1) If a Deputy Chief Commissioner is appointed, the Deputy Chief Commissioner is to act as the Chief Commissioner:
- (a) during a vacancy in the office of the Chief Commissioner (whether or not an appointment has previously been made to the office); or

- (b) during any period, or during all periods, when the Chief Commissioner:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to the Deputy Chief Commissioner when purporting to act under this section is not invalid merely because the occasion to act had not arisen or had ceased.

Note: See the *Acts Interpretation Act 1901*.

### **172 Acting Commissioners**

- (1) If a Deputy Chief Commissioner is appointed, the Governor-General may, by written instrument, appoint a person to act as the Deputy Chief Commissioner:
  - (a) during a vacancy in the office of the Deputy Chief Commissioner; or
  - (b) during any period, or during all periods, when the Deputy Chief Commissioner:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Governor-General may, by written instrument, appoint a person to act as a Commissioner (other than the Chief Commissioner or Deputy Chief Commissioner):
  - (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Commissioner:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or

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**Division 2** Appointment of Commissioners

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- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Note: See the *Acts Interpretation Act 1901*.

## **Division 3—National VET Regulator procedures**

### **Subdivision A—Meetings**

#### **173 Times and places of meetings**

- (1) The Chief Commissioner must ensure that such meetings as are necessary for the efficient performance of the National VET Regulator's functions are held.
- (2) Meetings are to be held at such times and places as the Chief Commissioner decides.
- (3) The Chief Commissioner must convene a meeting if requested, in writing, by the other 2 Commissioners.

#### **174 Conduct of meetings**

##### *Presiding at meetings*

- (1) The Chief Commissioner presides at all meetings at which he or she is present.
- (2) If the Chief Commissioner is not present at a meeting, a person appointed by the Chief Commissioner must be present and preside.

##### *Quorum*

- (3) At a meeting of the National VET Regulator, a quorum is constituted by 2 Commissioners.

##### *Rules of procedure*

- (4) The National VET Regulator may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

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*Voting*

- (5) The person presiding at a meeting of the National VET Regulator has a deliberative vote but, if the votes are equal, does not have a casting vote.

*Minutes*

- (6) The National VET Regulator must ensure that minutes of its meetings are kept.

**175 Disclosure of interests**

- (1) If a Commissioner has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, at a meeting, the Commissioner must disclose the nature of that interest to the other Commissioners.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Commissioner's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the National VET Regulator otherwise determines, the Commissioner:
  - (a) must not be present during the Regulator's deliberation on the matter; and
  - (b) must not take part in the Regulator's decision on the matter.
- (5) For the purposes of making a determination under subsection (4), the Commissioner:
  - (a) must not be present during any of the National VET Regulator's deliberations for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting.



## **Subdivision B—Decisions without meetings**

### **176 Decisions without meetings**

- (1) A decision is taken to have been made at a meeting of the National VET Regulator if:
  - (a) without meeting, a majority of Commissioners indicate agreement with the proposed decision in accordance with the method determined by the Regulator under subsection (2); and
  - (b) all Commissioners were informed of the proposed decision, or reasonable efforts were made to inform all Commissioners of the proposed decision.
- (2) Subsection (1) applies only if the National VET Regulator:
  - (a) has determined that it applies; and
  - (b) has determined the method by which Commissioners are to indicate agreement with proposed decisions.

### **177 Record of decisions**

The National VET Regulator must keep a record of decisions made in accordance with section 176.

**Division 4—Ensuring compliance with the Standards for  
VET Regulators**

**178 National VET Regulator to cooperate with assessments**

The National VET Regulator must cooperate with the Ministerial Council when the Council assesses whether the Regulator continues to comply with the Standards for VET Regulators.

## **Division 5—Chief Executive Officer**

### **179 Chief Executive Officer**

- (1) There is to be a Chief Executive Officer of the National VET Regulator.
- (2) The Chief Commissioner is the Chief Executive Officer.

### **180 Functions and powers of the Chief Executive Officer**

- (1) The Chief Executive Officer is responsible for the management and administration of the National VET Regulator.
- (2) All acts and things done in the name of, or on behalf of, the National VET Regulator by the Chief Executive Officer are taken to have been done by the Regulator.

### **181 Minister may give directions to Chief Executive Officer**

- (1) The Minister may, by legislative instrument, give written directions to the Chief Executive Officer about the performance of his or her functions.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) The Chief Executive Officer must comply with a direction under subsection (1).
- (3) Subsection (2) does not apply to the extent that the direction relates to the Chief Executive Officer's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the National VET Regulator.

## **Division 6—Staff and consultants**

### **182 Staff**

- (1) The staff of the National VET Regulator are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Chief Executive Officer and the staff of the National VET Regulator together constitute a Statutory Agency; and
  - (b) the Chief Executive Officer is the Head of that Statutory Agency.

### **183 Staff to be made available to the National VET Regulator**

- (1) The National VET Regulator is to be assisted by:
  - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the Regulator in connection with the performance of its functions or the exercise of its powers; and
  - (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Chief Executive Officer may arrange with the appropriate State or Territory authority or officer of a State or Territory authority to make officers or employees available to the National VET Regulator to perform services in connection with the performance of the Regulator's functions or the exercise of its powers.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person or persons to whom the arrangement relates.

- (4) When performing services for the National VET Regulator under this section, a person is subject to the directions of the Chief Executive Officer.

#### **184 Consultants**

- (1) To assist the National VET Regulator in the performance of its functions, the Chief Executive Officer may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants.
- (2) Consultants are to be engaged on the terms and conditions that the Chief Executive Officer determines in writing.

## Part 8—Commonwealth-State arrangements

### Division 1—Role of Ministerial Council

#### Subdivision A—NVR registered training organisations

##### 185 Standards for NVR Registered Training Organisations

- (1) The Minister may, by legislative instrument, make standards for NVR registered training organisations, as agreed by the Ministerial Council.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the standards (see sections 44 and 54 of that Act).

- (2) The agreed standards are to be known as the ***Standards for NVR Registered Training Organisations***.

##### 186 Fit and Proper Person Requirements

- (1) The Minister may, by legislative instrument, make requirements for assessing whether a person is a fit and proper person, as agreed by the Ministerial Council.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the requirements (see sections 44 and 54 of that Act).

- (2) The agreed requirements are to be known as the ***Fit and Proper Person Requirements***.

##### 187 Data Provision Requirements

- (1) The Minister may, by legislative instrument, make requirements for data provision, as agreed by the Ministerial Council.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the requirements (see sections 44 and 54 of that Act).

- (2) The agreed requirements are to be known as the *Data Provision Requirements*.

### **Subdivision B—VET accredited courses**

#### **188 Standards for VET Accredited Courses**

- (1) The Minister may, by legislative instrument, make standards for VET accredited courses, as agreed by the Ministerial Council.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the standards (see sections 44 and 54 of that Act).

- (2) The agreed standards are to be known as the *Standards for VET Accredited Courses*.

### **Subdivision C—VET Regulators**

#### **189 Standards for VET Regulators**

- (1) The Minister may, by legislative instrument, make standards for VET Regulators, as agreed by the Ministerial Council.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that makes the standards (see sections 44 and 54 of that Act).

- (2) The agreed standards are to be known as the *Standards for VET Regulators*.

#### **190 Risk Assessment Framework**

- (1) The Minister may, by writing, make guidelines for the National VET Regulator to use when assessing risk, as agreed by the Ministerial Council.

- (2) The agreed guidelines are to be known as the *Risk Assessment Framework*.

- (3) The guidelines made under subsection (1) are not a legislative instrument.

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**Division 1** Role of Ministerial Council

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**Subdivision D—Miscellaneous**

**191 How the Ministerial Council gives agreement**

The Ministerial Council is to give its agreement, for the purposes of a provision of this Act, by resolution of the Council passed in accordance with the procedures determined by the Council.



## **Division 2—Conferral of functions and powers by State law**

### **Subdivision A—Conferral of functions and powers**

#### **192 Commonwealth consent to conferral of functions etc. on the National VET Regulator by corresponding State laws**

- (1) A corresponding State law may confer functions or powers, or impose duties, on the National VET Regulator.
- (2) Subsection (1) does not authorise the conferral of a function or power, or the imposition of a duty, by a corresponding State law to the extent to which:
  - (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the National VET Regulator; or
  - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) Subsection (1) does not extend to a function, power or duty of a kind specified in regulations made for the purposes of this subsection.
- (4) This Act is not intended to exclude or limit the operation of a corresponding State law that confers any functions or powers, or imposes any duties, on the National VET Regulator to the extent to which that law:
  - (a) is consistent with subsections (1) to (3); and
  - (b) is capable of operating concurrently with this Act.

#### **193 Meaning of *imposes a duty***

For the purposes of this Act, a corresponding State law *imposes a duty* on the National VET Regulator if:

- (a) the corresponding State law confers a function or power on the Regulator; and

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- (b) the circumstances in which the function or power is conferred give rise to an obligation on the Regulator to perform the function or to exercise the power.

**194 When duty imposed**

*Application*

- (1) This section applies if a corresponding State law purports to impose a duty on the National VET Regulator.

*State legislative power sufficient to support duty*

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
  - (a) imposing the duty is within the legislative powers of the State concerned; and
  - (b) imposing the duty by the corresponding State law is consistent with the constitutional doctrines restricting the duties that may be imposed on the National VET Regulator.

Note: If this subsection applies, the duty will be taken to be imposed by force of the corresponding State law (the Commonwealth having consented under section 192 to the imposition of the duty by the corresponding State law).

*Commonwealth legislative power sufficient to support duty but State legislative powers are not*

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by force of the corresponding State law), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:

- (a) is within the legislative powers of the Commonwealth; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the National VET Regulator.
- (6) To avoid doubt, neither this Act nor any other law of the Commonwealth imposes a duty on the National VET Regulator to the extent to which imposing such a duty would:
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on the Regulator; or
  - (b) otherwise exceed the legislative power of the Commonwealth.
- (7) Subsections (1) to (6) do not limit section 192.

**195 Duty imposed by corresponding State law applying Commonwealth law**

- (1) This section:
- (a) applies only for the purposes of the application of the provisions of this Act or another law of the Commonwealth (with or without modification) as a law of a State by a provision of a corresponding State law; and
  - (b) does not apply for those purposes if the corresponding State law otherwise provides.
- (2) If the corresponding State law purports to impose a duty on the National VET Regulator to do a particular thing, the duty is taken to be imposed by the corresponding State law to the extent to which imposing the duty:
- (a) is within the legislative powers of the State; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Regulator.
- (3) To avoid doubt, the corresponding State law does not impose the duty on the National VET Regulator to the extent to which imposing the duty would:
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on the Regulator; or
  - (b) otherwise exceed the legislative powers of the State.

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- (4) If imposing on the National VET Regulator the duty to do that thing would:
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on the Regulator; or
  - (b) otherwise exceed the legislative powers of both the State and the Commonwealth;
- the corresponding State law is taken instead to confer on the Regulator a power to do that thing at the discretion of the Regulator.

**Subdivision B—Jurisdiction of federal courts**

**196 Conferral of jurisdiction on federal courts**

If:

- (a) a provision of a corresponding State law purports to apply a provision of a law of the Commonwealth (the *applied provision*) as a law of the State; and
- (b) the applied provision purports to confer jurisdiction in relation to a matter on a federal court;

the jurisdiction in relation to that matter is taken to be conferred on the court by this section.

**Subdivision C—Administrative decisions**

**197 Review of certain decisions under State laws**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a reviewable State decision.
- (2) A decision made by the National VET Regulator in the performance of a function, or the exercise of a power, conferred by a corresponding State law is a *reviewable State decision* if:
  - (a) the law under which the decision was made provides for review by the Administrative Appeals Tribunal; and
  - (b) the decision is declared by the regulations to be a reviewable decision for the purposes of this section.

- (3) For the purposes of subsection (1), the *Administrative Appeals Tribunal Act 1975* has effect as if a corresponding State law were an enactment.

**Subdivision D—Application to the Australian Capital Territory  
and the Northern Territory**

**198 Application to the Australian Capital Territory and the  
Northern Territory**

This Division applies to the Australian Capital Territory and the Northern Territory in the same way as it applies to a State.

## Part 9—Administrative law matters

### Division 1—Review of decisions

#### 199 Reviewable decisions

For the purposes of this Act, each of the following decisions of the National VET Regulator is a *reviewable decision*:

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##### Reviewable decisions

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- A decision to grant an application for registration (including renewal of registration) as an NVR registered training organisation.
- A decision determining the period for which an NVR registered training organisation is registered.
- A decision to impose a condition on an NVR registered training organisation's registration.
- A decision to reject an application for registration (including renewal of registration) as an NVR registered training organisation.
- A decision to vary a condition on an NVR registered training organisation's registration.
- A decision not to determine a shorter period for making an application for renewal of registration as an NVR registered training organisation.
- A decision to change, or refuse to change, an NVR registered training organisation's scope of registration.
- A decision to suspend all or part of an NVR registered training organisation's scope of registration.
- A decision to shorten the period of an NVR registered training organisation's registration.
- A decision to defer making a decision to change an NVR registered training organisation's scope of registration until the organisation addresses issues identified by the National VET Regulator.
- A decision not to allow an NVR registered training organisation's registration to be withdrawn.
- A decision to cancel an NVR registered training organisation's registration.
- A decision to grant an application for accreditation of a course (including renewal of

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**Reviewable decisions**

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accreditation) as a VET accredited course.

A decision to impose conditions on the accreditation of a VET accredited course.

A decision to vary a condition on the accreditation of a VET accredited course.

A decision to reject an application for accreditation of a course (including renewal of accreditation) as a VET accredited course.

A decision to amend a VET accredited course.

A decision to cancel the accreditation of a VET accredited course.

A decision to give a written direction to an NVR registered training organisation under paragraph 36(2)(a) or (b).

A decision to issue, or not issue, a VET qualification.

A decision to issue, or not issue, a VET statement of attainment.

A decision to cancel, or not cancel, a VET qualification.

A decision to cancel, or not cancel, a VET statement of attainment.

A decision to enter details on the register under subsection 216(4).

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**200 Applications for reconsideration of decisions**

- (1) This section applies to a reviewable decision if the decision is made by a person or body to whom a function or power is delegated under section 224 or 225.
- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the National VET Regulator for the Regulator to reconsider the decision.
- (3) The application must:
  - (a) be in a form approved in writing by the National VET Regulator; and
  - (b) set out the reasons for the application; and
  - (c) be accompanied by the fee (if any) determined by the Minister, by legislative instrument, under section 232.
- (4) The application must be made within:
  - (a) 30 days after the applicant is informed of the decision; or
  - (b) if, either before or after the end of that period of 30 days, the National VET Regulator extends the period within which the application may be made—the extended period.

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- (5) An approved form of an application may provide for verification by statutory declaration of statements in applications.

**201 Reconsideration by the National VET Regulator**

- (1) Upon receiving such an application, the National VET Regulator must:
- (a) reconsider the decision; and
  - (b) affirm, vary or revoke the decision.
- (2) The person who reconsiders the decision must be:
- (a) if a member of the staff of the Regulator made the decision under review—a Commissioner or a member of the staff of the Regulator who:
    - (i) was not involved in making the decision; and
    - (ii) occupies a position that is senior to that occupied by any person involved in making the decision; or
  - (b) in any other case—a Commissioner or a member of the staff of the Regulator who was not involved in making the decision.
- (3) The National VET Regulator’s decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (4) The National VET Regulator must give to the applicant a written notice stating its decision on the reconsideration. The notice must explain that the applicant may apply to the Administrative Appeals Tribunal for review of the Regulator’s decision on the reconsideration.
- (5) Within 30 days after making its decision on the reconsideration, the National VET Regulator must give the applicant a written statement of its reasons for its decision.

**202 Deadline for reconsideration**

- (1) The National VET Regulator must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.



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- (2) The National VET Regulator is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

**203 Review by the Administrative Appeals Tribunal**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a reviewable decision if the National VET Regulator has affirmed or varied the decision under section 201.
- (2) Applications may be made to the Administrative Appeals Tribunal for review of a reviewable decision if the decision was made by a person other than a member of the staff of the Regulator.

## **Division 2—Information management**

### **Subdivision A—Unauthorised disclosure**

#### **204 Unauthorised disclosure of VET information**

A person commits an offence if:

- (a) the person discloses VET information or produces a document; and
- (b) the person has the VET information or document because he or she is, or was, any of the following (an *entrusted person*):
  - (i) a Commissioner;
  - (ii) the Chief Executive Officer;
  - (iii) a member of the staff of the Regulator;
  - (iv) a consultant engaged under section 184; and
- (c) none of the following circumstances apply to the disclosure or production:
  - (i) it is made for the purposes of this Act or otherwise in connection with the performance of the person's duties as an entrusted person;
  - (ii) it is required or authorised by or under a law of the Commonwealth or a State or Territory.

Penalty: Imprisonment for 2 years.

### **Subdivision B—Information sharing**

#### **205 Disclosure of information by National VET Regulator**

- (1) For the purpose of administering laws relating to vocational education and training, the National VET Regulator may disclose information to:
  - (a) the Secretary; or
  - (b) a Commonwealth authority; or
  - (c) a State or Territory authority; or

- (d) a person who holds any office or appointment under a law of the Commonwealth, a State or Territory; or
  - (e) another VET Regulator; or
  - (f) the National Centre for Vocational Education Research (or any successor of that body).
- (2) If the National VET Regulator discloses personal information under subsection (1) (other than to a person or body mentioned in paragraph (1)(a), (b), (c) or (e)), the Regulator must advise the person about whom the information is disclosed, by notice in writing, of:
- (a) the disclosure; and
  - (b) the details of the personal information disclosed.

### **206 Advising State/Territory Education Ministers about concerns or proposed cancellation of registration**

- (1) The National VET Regulator may advise the Education Minister for a State or Territory if:
- (a) the Regulator has serious concerns about a registered training organisation that provides all or part of a VET course in the State or Territory concerned; or
  - (b) the Regulator proposes to cancel the registration of an NVR registered training organisation that provides all or part of a VET course in the State or Territory concerned; or
  - (c) an NVR registered training organisation has given written notice to the Regulator seeking to have its registration withdrawn.
- (2) If the National VET Regulator advises the Education Minister for a State or Territory under subsection (1), the Regulator may also advise:
- (a) a person who holds any office or appointment under a law of the Commonwealth, or under a law of the State or Territory concerned; or
  - (b) employees of the Commonwealth of the prescribed kind; or
  - (c) employees, of the prescribed kind, of the State or Territory concerned.

**207 Disclosure of information to occupational licensing bodies etc.**

- (1) If the National VET Regulator considers it appropriate to do so, the Regulator may disclose information to an occupational licensing body or other industry body (other than one covered by paragraph 205(1)(c)) that deals with, or has an interest in, matters relating to vocational education and training.
- (2) If the National VET Regulator discloses personal information under subsection (1), the Regulator must advise the person about whom the information is disclosed, by notice in writing, of:
  - (a) the disclosure; and
  - (b) the details of the personal information disclosed.

**208 Disclosure of information in accordance with international cooperative arrangements**

The National VET Regulator may disclose information relating to the assessment or regulation of registered training organisations to a regulatory authority of another country if:

- (a) Australia has cooperative arrangements with the country that relate to the assessment or regulation of training organisations; and
- (b) the disclosure of the information is consistent with those arrangements.

**209 Release of information to the public**

- (1) The National VET Regulator may release information to the public if the Regulator is satisfied that the release of the information:
    - (a) would reasonably inform a person's choice to enrol as a VET student with a registered training organisation; or
    - (b) would encourage improvement in the quality of vocational education and training services provided; or
    - (c) would encourage compliance with the Australian Qualifications Framework.
  - (2) The National VET Regulator may provide for the release of information under subsection (1) by authorising a person or body
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mentioned in paragraph 205(1)(b), (c) or (d) to release the information.

## **210 Disclosure of information to the National VET Regulator**

- (1) The National VET Regulator may, by notice in writing, request:
- (a) a Commonwealth authority; or
  - (b) a State or Territory authority; or
  - (c) a person who holds any office or appointment under a law of the Commonwealth, a State or Territory; or
  - (d) another VET Regulator; or
  - (e) an occupational licensing body or other industry body (other than one covered by paragraph (b)) that deals with, or has an interest in, matters relating to vocational education and training;

to disclose to the National VET Regulator information specified in the request.

- (2) For the purposes of:
- (a) paragraph 1(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*; and
  - (b) paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*; and
  - (c) a provision of a law of a State or Territory that provides that information that is personal may be disclosed if the disclosure is authorised by law;

the disclosure of personal information by a person in response to a request under this section is taken to be a disclosure that is authorised by law.

- (3) A person or body mentioned in paragraph (1)(b), (c) or (d) must disclose information requested under this section even if, despite subsection (2), disclosure would otherwise be prevented by a law of a State or Territory.

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**Subdivision C—VET student records**

**211 VET student records to be provided to National VET Regulator—executive officers etc.**

- (1) A person who possesses or controls VET student records relating to a training organisation or former registered training organisation must provide a copy of those records to the National VET Regulator if:
- (a) the person is, or was, an executive officer or high managerial agent of the organisation; and
  - (b) either:
    - (i) the organisation's registration has been cancelled and arrangements have not been made for the transfer of some or all of the records under section 213; or
    - (ii) the organisation has effectively ceased to operate (even though the organisation remains an NVR registered training organisation).
- (2) A person must provide a copy of VET student records to the National VET Regulator within:
- (a) if an organisation's registration has been cancelled—30 days of the day from which cancellation takes effect; and
  - (b) if an organisation has effectively ceased to operate—30 days of the day from which operations effectively ceased.
- (3) A person commits an offence if the person fails to comply with subsection (2).

Penalty: 150 penalty units.

- (4) A person contravenes this subsection if the person fails to comply with subsection (2).

Civil penalty: 300 penalty units.

**212 National VET Regulator may request VET student records to be provided to Regulator**

- (1) This section applies if the National VET Regulator considers that a person (other than someone mentioned in subsection 211(1)) may hold VET student records relating to a training organisation or former registered training organisation.
- (2) The National VET Regulator may request, by notice in writing, that the person provide a copy of those records to the Regulator within a period specified in the notice.

**213 Transfer of VET student records to another registered training organisation**

- (1) If a VET student transfers from one registered training organisation (the *first registered training organisation*) to an NVR registered training organisation (the *second registered training organisation*):
  - (a) the VET student may request the first registered training organisation to transfer the VET student records relating to the VET student to the second registered training organisation; or
  - (b) the second registered training organisation may request, in writing, the first registered training organisation to transfer the VET student records relating to the VET student because he or she has enrolled at the organisation.
- (2) The second registered training organisation must advise, by notice in writing, the National VET Regulator of the transfer of any VET student records.

**214 National VET Regulator's management of VET student records**

- (1) The National VET Regulator may provide a VET student record to a registered training organisation if:
  - (a) the person to whom the record relates enrolls at the organisation and requests, in writing, the Regulator to transfer it to the organisation; or

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- (b) the organisation requests, in writing, the Regulator to transfer it to the organisation because the person to whom the record relates has enrolled at the organisation.
- (2) If the National VET Regulator considers it appropriate to do so, the Regulator may provide a VET student record to a registered training organisation on its own initiative.
- (3) If the National VET Regulator discloses personal information under subsection (2), the Regulator must advise the person to whom the VET student record relates, by notice in writing, of:
  - (a) the disclosure; and
  - (b) the details of the personal information disclosed.



## Part 10—Reporting requirements

### 215 Annual report

#### *Annual report to be given to Minister*

- (1) The National VET Regulator must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister, for presentation to the Parliament, a report (an *annual report*) relating to the performance of the Regulator's functions during the year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

- (2) For the purposes of subsection (1), the period beginning on the day this section commences and ending on 30 June 2012 is taken to be a financial year.

#### *Contents of annual report*

- (3) The National VET Regulator must include the following in the annual report relating to a financial year:
  - (a) an assessment of the extent to which the Regulator's operations during the year have contributed:
    - (i) to the objectives set out in the strategic plan applicable for the year; and
    - (ii) to the objectives set out in the annual operational plan for the year;
  - (b) particulars of variations (if any) of the strategic plan and the annual operational plan taking effect during the year;
  - (c) an evaluation of the Regulator's performance during the year against the key performance indicators agreed by the Minister;
  - (d) an evaluation of the Regulator's overall performance during the year against the other performance indicators set out in the annual operational plan for the year;

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- (e) a statement about the Regulator's compliance, during the year, with the Standards for VET Regulators;
  - (f) a report on whether the service standards have been met by the Regulator during the year, including reasons in any case where the service standards have not been met;
  - (g) details of the number of directions given to the Regulator by the Minister during the year;
  - (h) details of the number and types of matters relating to vocational education and training which the Commonwealth, State and Territory Education Ministers referred to the Regulator during the year;
  - (i) details of the number and types of matters relating to vocational education and training which the Ministerial Council referred to the Regulator during the year;
  - (j) a general description of the Regulator's response to the matters mentioned in paragraphs (h) and (i);
  - (k) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
  - (l) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.
- (4) The Minister must give a copy of the report to the relevant Minister for each of the parties to the Ministerial Council (other than the Commonwealth) at the same time as the report is presented to the Parliament.

**216 National Register**

- (1) The National VET Regulator must ensure that the following are included on the National Register:
  - (a) the following details for each NVR registered training organisation:
    - (i) the organisation's business name and business address;
    - (ii) the names of the organisation's executive officers and high managerial agents;
    - (iii) the organisation's scope of registration;
    - (iv) the period for which the organisation is registered;

- (v) any conditions imposed on the organisation's registration under subsection 29(1);
  - (vi) any VET qualifications or VET statements of attainment issued by the organisation that have been cancelled;
  - (b) if all or part of an NVR registered training organisation's scope of registration has been suspended—the following:
    - (i) the period and extent of the suspension;
    - (ii) the reason for the suspension;
    - (iii) the names of the organisation's executive officers and high managerial agents;
  - (c) if an NVR registered training organisation's registration has been cancelled—the following:
    - (i) the day from which cancellation takes effect;
    - (ii) the reason for the cancellation;
    - (iii) if applicable, the VET qualifications or VET statements of attainment that have been cancelled;
    - (iv) the names of the organisation's executive officers and high managerial agents;
  - (d) the following details for each VET accredited course:
    - (i) the person in respect of whom the course is accredited;
    - (ii) the person's name and address, or business name and business address, as applicable;
    - (iii) the period for which the course is accredited;
    - (iv) any conditions imposed on the accreditation of the course under subsection 48(1);
  - (e) if a VET accredited course is cancelled—the following:
    - (i) the person in respect of whom the course is accredited;
    - (ii) the person's name and address, or business name and business address, as applicable;
    - (iii) the day from which cancellation takes effect;
    - (iv) the reason for the cancellation.
- (2) The National VET Regulator may ensure that details are removed from the National Register.

**Example:** The National VET Regulator may ensure that details about an NVR registered training organisation whose registration has been withdrawn are removed from the National Register.

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- (3) The regulations may set out matters that the National VET Regulator must ensure are entered on the National Register.
- (4) Subsection (3) does not prevent the National VET Regulator from ensuring that other matters are entered on the National Register.
- (5) The National Register is to be made available for inspection on the internet.

## **Part 11—Strategic and annual operational plans**

### **Division 1—Strategic plans**

#### **217 Development of strategic plan**

- (1) The National VET Regulator must develop, and prepare in written form, a strategic plan, for a 3-year period, that:
  - (a) defines the principal objectives of the Regulator in performing its functions during that 3-year period; and
  - (b) gives a broad outline of the strategies to be pursued by the Regulator to achieve those objectives.
- (2) A strategic plan is to relate to:
  - (a) for the first strategic plan—the 3-year period beginning on 1 July 2011; and
  - (b) for later strategic plans—a period beginning on the 1 July immediately following the end of the 3-year period to which the previous plan related.
- (3) A strategic plan prepared under subsection (1) is not a legislative instrument.

#### **218 Approval of strategic plan**

- (1) The National VET Regulator must give a copy of a strategic plan to the Minister for approval on or before:
  - (a) for the first strategic plan—the end of 2 months after the day this section commences; and
  - (b) for later strategic plans—either:
    - (i) 31 January in the last year of the 3-year period to which the previous plan related; or
    - (ii) a later day, but not later than 31 March, in the last year of the 3-year period to which the previous plan related, as allowed by the Minister.

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- (2) However, the National VET Regulator is not required to give a copy of a strategic plan to the Minister for approval in a calendar year if:
  - (a) the first year to which the plan would relate is a year to which a previous strategic plan is in force; and
  - (b) the Minister determines, at the request of the Regulator, that this subsection applies for the calendar year.
- (3) A strategic plan comes into force on:
  - (a) the day on which it is approved by the Minister; or
  - (b) the first day of the period to which it relates;whichever is later.

**219 Variation of strategic plans**

- (1) The National VET Regulator may, at any time, review a strategic plan, whether or not it has come into force, and consider whether a variation to the plan is necessary.

Note: See also section 221.
- (2) The National VET Regulator may, with the approval of the Minister, vary a strategic plan.
- (3) The Minister may, at any time, request the National VET Regulator to vary a strategic plan, whether or not it has come into force.
- (4) If the Minister requests a variation of a strategic plan, the National VET Regulator must, with the approval of the Minister, vary the plan accordingly.
- (5) If a variation of a strategic plan is approved by the Minister after the plan has come into force, the plan as so varied continues in force on and after the day the variation is so approved.
- (6) Despite subsection (2), the National VET Regulator may vary a strategic plan without the approval of the Minister if the variation is of a minor nature. The plan as so varied continues in force on and after the day the variation is made.

- (7) If the National VET Regulator makes a variation of a minor nature, the Regulator must inform the Minister of the variation as soon as practicable after making it.

## **Division 2—Annual operational plans**

### **220 Development of annual operational plan**

- (1) The National VET Regulator must give the Minister an annual operational plan relating to the 12 month period:
  - (a) beginning on the day this section commences and ending on 30 June 2012—before the end of 2 months after the day this section commences; and
  - (b) beginning on 1 July in a later calendar year—before 30 April in that calendar year.
- (2) An annual operational plan must:
  - (a) set out particulars of the action that the National VET Regulator intends to take during the period to which the plan relates in order to give effect to, or further, the goals set out in the strategic plan applicable to the period; and
  - (b) include such performance indicators as the Regulator considers appropriate against which the Regulator's performance can be assessed during the period to which the plan relates.
- (3) An annual operational plan comes into force at the beginning of the period to which the plan relates.
- (4) For the purposes of this section, the period beginning on the day this section commences and ending on 30 June 2012 is taken to be a 12 month period.
- (5) An annual operational plan is not a legislative instrument.

### **221 Variation of annual operational plan**

When submitting to the Minister proposals for variation of a strategic plan, the National VET Regulator must also sequentially vary a relevant annual operational plan as required.



## **Division 3—Compliance with plans**

### **222 Compliance with plans**

When performing functions and exercising powers, the National VET Regulator and the Chief Executive Officer must take into account the strategic plan and annual operational plan that is in force.

## **Part 12—Miscellaneous**

### **Division 1—Delegations**

#### **223 Delegation by the Minister**

The Minister may, by writing, delegate all or any of the Minister's powers under this Act (other than under section 91 or 160) to:

- (a) the Chief Commissioner; or
- (b) the Secretary.

#### **224 Delegation by the National VET Regulator—government authorities etc.**

- (1) The National VET Regulator may, by writing, delegate all or any of the Regulator's functions and powers to:
  - (a) a member of the staff of the Regulator; or
  - (b) a consultant engaged under section 184; or
  - (c) a Commonwealth authority; or
  - (d) a person who holds any office or appointment under a law of the Commonwealth.
- (2) The National VET Regulator may, by writing, delegate all or any of the Regulator's functions and powers to:
  - (a) a State or Territory authority; or
  - (b) a person who holds any office or appointment under a law of a State or Territory;if the State or Territory concerned agrees to the delegation.
- (3) A delegate under subsection (1) or (2) must comply with any written directions of the National VET Regulator.

#### *Sub-delegations*

- (4) A delegate under subsection (1) or (2) must not sub-delegate any or all of the functions or powers delegated without the National VET Regulator's written consent.

- (5) A sub-delegate must comply with any written directions of the delegate.
- (6) If the delegate is subject to a direction in relation to the performance of the function or the exercise of the power sub-delegated under subsection (4), the delegate must give a corresponding direction to the sub-delegate.
- (7) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a sub-delegation in the same way as they apply to a delegation.

**225 Delegation by the National VET Regulator—occupational licensing bodies and other industry bodies**

- (1) The National VET Regulator may, by writing, delegate all or any of the Regulator's functions and powers to an occupational licensing body or other industry body (other than one covered by section 224) that deals with, or has an interest in, matters relating to vocational education and training.
- (2) A delegate under subsection (1) must comply with any written directions of the National VET Regulator.

**226 Delegation by the National VET Regulator—NVR registered training organisations**

- (1) The National VET Regulator may, by writing, delegate to an NVR registered training organisation the Regulator's function of:
  - (a) amending the organisation's scope of registration; or
  - (b) accrediting a course; or
  - (c) both:
    - (i) amending the organisation's scope of registration; and
    - (ii) accrediting a course.
- (2) If the National VET Regulator delegates a function under subsection (1) to an NVR registered training organisation, the organisation must notify the Regulator, in writing, if it performs the function.

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- (3) An NVR registered training organisation must notify the National VET Regulator within 30 days of the function being performed.

## **Division 2—Provisions affecting partnerships**

### **227 Partnerships—rights and obligations**

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section and sections 135, 228 and 229.
- (2) Any right that would otherwise be exercisable by the partnership is exercisable by each partner instead.
- (3) Any obligation that would otherwise be imposed on the partnership:
  - (a) is imposed on each partner instead; but
  - (b) may be discharged by any of the partners.
- (4) Subject to section 135, the partners are jointly and severally liable to pay an amount that is payable, or becomes payable, in relation to this Act.

### **228 Continuity of partnerships**

For the purposes of the application of this Act to a partnership, a change in the composition of the partnership does not affect the continuity of the partnership.

### **229 Partnership ceases to exist**

- (1) If a partnership ceases to exist, the persons who were partners immediately before the cessation must continue to satisfy any applicable obligations imposed by this Act.
- (2) Section 227 applies as if:
  - (a) references to a partnership were to a partnership that ceases to exist; and
  - (b) references to partners of the partnership were to the persons who were partners immediately before the cessation.
- (3) For the purpose of this section, a partnership ceases to exist if the dissolution of the partnership does not result in the creation of

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**Division 2** Provisions affecting partnerships

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another partnership.

## **Division 3—Provisions affecting unincorporated associations**

### **230 Unincorporated associations—rights and obligations**

- (1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section and sections 136 and 231.
- (2) A right that would otherwise be exercisable by the unincorporated association is exercisable by each member of the association's committee of management instead.
- (3) An obligation that would otherwise be imposed on the unincorporated association:
  - (a) is imposed on each member of the association's committee of management instead; but
  - (b) may be discharged by any of those members.
- (4) Subject to section 136, the members are jointly and severally liable to pay an amount that is payable, or becomes payable, in relation to this Act.

### **231 Unincorporated association ceases to exist**

- (1) If an unincorporated association ceases to exist, the persons who were members of the association's committee of management immediately before the cessation must continue to satisfy any applicable obligations imposed by this Act.
- (2) Section 230 applies as if:
  - (a) references to an unincorporated association were to an unincorporated association that ceases to exist; and
  - (b) references to members of the association's committee of management were to the persons who were members immediately before the cessation.

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**Division 3** Provisions affecting unincorporated associations

**Section 231**

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- (3) To avoid doubt, for the purpose of this section, an unincorporated association ceases to exist if the dissolution of the association does not result in the creation of another association.



## **Division 4—Miscellaneous**

### **232 Fees**

- (1) The Minister may, by legislative instrument, determine the amounts of fees the National VET Regulator may charge for goods or services it provides in performing its functions (other than the service mentioned in subsection 35(2)).

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to a legislative instrument that determines fees (see sections 44 and 54 of that Act).

- (2) Before making a determination, the Minister must get the Ministerial Council's agreement to the amount of a fee that:
- (a) relates to goods or services in respect of registration as an NVR registered training organisation; or
  - (b) relates to goods or services provided to NVR registered training organisations; or
  - (c) relates to goods or services in respect of:
    - (i) the accreditation of a course as a VET accredited course; or
    - (ii) VET accredited courses.
- (3) Before making a determination, the Minister must consult the National VET Regulator about the amount of a fee that relates to goods or services not mentioned in subsection (2).
- (4) The Minister may, in the determination made under subsection (1), determine the way in which a fee is to be worked out.
- (5) The Minister may, in the determination made under subsection (1), determine other matters relating to the payment of fees, including:
- (a) the circumstances in which fees may be paid in instalments; and
  - (b) the circumstances in which fees may be set off against another amount payable; and
  - (c) the circumstances in which fees may be waived.

**Section 233**

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- (6) The fees determined under subsection (1) must not be such as to amount to taxation.

**233 Protection from civil actions**

- (1) This section applies to:
- (a) the National VET Regulator; and
  - (b) a Commissioner; and
  - (c) a member of the staff of the Regulator; and
  - (d) a consultant engaged by the Regulator.
- (2) A person mentioned in subsection (1) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:
- (a) in the performance or purported performance of any of the National VET Regulator's functions; or
  - (b) in the exercise or purported exercise of any of the Regulator's powers.

**234 Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

**235 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may prescribe scales of expenses to be allowed to persons required to give information, documents or things under Division 1 of Part 5.

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*[Minister's second reading speech made in—  
Senate on 26 November 2010  
House of Representatives on 24 March 2011]*

(287/10)

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