



National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020

No. 77, 2020

***An Act to amend the *National Vocational Education
and Training Regulator Act 2011*, and for related
purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation
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***An Act to amend the *National Vocational Education
and Training Regulator Act 2011*, and for related
purposes***

[Assented to 3 September 2020]

The Parliament of Australia enacts:

No. 77, 2020 National Vocational Education and Training Regulator Amendment 1
(Governance and Other Matters) Act 2020

Note: This table relates only to the provisions of this Act as originally enacted.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.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

6 Section 3 (paragraph (b) of the definition of *member of the staff of the Regulator*)

Omit “183(1)”, substitute “171(1)”.

7 Section 3 (definition of *National VET Regulator*)

Omit “the body established by section 155”, substitute “the person appointed under subsection 162(1) to the position of the National Vocational Education and Training Regulator referred to in subsection 155(1)”.

8 Section 3

Insert:

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

9 After section 3

Insert:

3A Vacancy in the office of an Advisory Council member

For the purposes of a reference in:

- (a) this Act to a *vacancy* in the office of an Advisory Council member; or
- (b) the *Acts Interpretation Act 1901* to a *vacancy* in the membership of a body;

there are taken to be 9 offices of Advisory Council members in addition to the Chair.

10 Section 18

Omit “its decision”, substitute “deciding”.

11 Paragraphs 27(a) and (b)

Omit “its functions”, substitute “the Regulator’s functions”.

12 Subsection 28(2)

Omit “its website”, substitute “the Regulator’s website”.

13 Section 30

Omit “its decision” (wherever occurring), substitute “deciding”.

14 Section 34

Omit “its decision”, substitute “deciding”.

15 Section 40

Omit “it may”, substitute “the Regulator may”.

16 Subsection 41(3)

Omit “its position”, substitute “the Regulator’s position”.

17 Section 45

Omit “its decision”, substitute “deciding”.

18 Section 49

Omit “its decision” (wherever occurring), substitute “deciding”.

19 Paragraph 51(2)(a)

Omit “its own initiative”, substitute “the Regulator’s own initiative”.

20 Subsection 52(2)

Omit “its own initiative”, substitute “the Regulator’s own initiative”.

21 Subsection 57(2)

Omit “it considers”, substitute “the Regulator considers”.

22 Paragraph 57(2)(a)

Omit “its website”, substitute “the Regulator’s website”.

23 Paragraph 62(3)(b)

Omit “Chief Commissioner”, substitute “Regulator”.

24 Sections 89 and 90

Omit “Chief Commissioner” (wherever occurring), substitute “National VET Regulator”.

25 Part 7 (heading)

Repeal the heading, substitute:

Part 7—Administration

26 Division 1 of Part 7 (heading)

Repeal the heading, substitute:

**Division 1—National Vocational Education and Training
Regulator**

27 Before section 155

Insert:

**Subdivision A—Establishment, functions and powers of the
National VET Regulator**

28 Subsections 155(1) and (2)

Repeal the subsections, substitute:

- (1) There is to be a National Vocational Education and Training Regulator (*National VET Regulator*).
- (2) The National VET Regulator may also be known as the Chief Executive Officer of the Australian Skills Quality Authority.

Note: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the National VET Regulator is the accountable authority of the listed entity known as the Australian Skills Quality Authority: see section 173.

29 Sections 156 and 156A

Repeal the sections.

30 Paragraph 157(1)(m)

Omit “its counterparts”, substitute “the Regulator’s counterparts”.

31 Paragraph 157(1)(o)

Omit “its functions”, substitute “the Regulator’s functions”.

32 Subsection 157(5)

Omit “it receives”, substitute “the Regulator receives”.

33 After subsection 157(5)

Insert:

- (5A) Without limiting subsection (5), in performing the National VET Regulator’s functions, the Regulator must have regard to any advice provided by the Advisory Council (whether or not the advice was given in response to a request by the National VET Regulator or the Minister).

34 Subsection 157(6)

Omit “or (5)”, substitute “, (5) or (5A)”.

35 Subsection 157(7)

Omit “its functions”, substitute “the Regulator’s functions”.

36 After section 157

Insert:

157A 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.

37 Section 159

Omit “its functions or the exercise of its powers”, substitute “the Regulator’s functions or the exercise of the Regulator’s powers”.

38 Subsection 160(1)

Repeal the subsection, substitute:

- (1) The Minister may, by legislative instrument, give directions to the National VET Regulator in relation to the performance of the Regulator’s functions and the exercise of Regulator’s powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations)

made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

39 At the end of section 160

Add:

- (4) Subsection (3) does not apply to the extent that the direction relates to the National VET Regulator's performance of functions, or exercise of powers, under the following Acts:
 - (a) the *Public Service Act 1999*;
 - (b) the *Public Governance, Performance and Accountability Act 2013*.

40 At the end of Division 1 of Part 7

Add:

Subdivision B—Appointment and terms and conditions of the National VET Regulator

162 Appointment

- (1) The National VET Regulator is to be appointed by the Governor-General by written instrument, on a full-time basis.

Note: The National VET Regulator may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (2) The National VET Regulator holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) A person may only be appointed as the National VET Regulator if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
- (4) 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 the National VET Regulator.

- (2) The Minister may grant the National VET Regulator leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

166 Other paid work

The National VET Regulator must not engage in paid work outside the duties of the National VET Regulator's office without the Minister's approval.

167 Other terms and conditions

The National VET Regulator 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.

168 Resignation

- (1) The National VET Regulator may resign the Regulator's appointment by giving the Governor-General a written resignation.
- (2) 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.

169 Termination of appointment

- (1) The Governor-General may terminate the appointment of the National VET Regulator:
- (a) for misbehaviour; or
 - (b) if National VET Regulator is unable to perform the duties of the Regulator's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the National VET Regulator if:
- (a) the Regulator:
 - (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 the Regulator's creditors; or
 - (iv) makes an assignment of the Regulator's remuneration for the benefit of the Regulator's creditors; or
 - (b) the Regulator is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Regulator engages, except with the Minister's approval, in paid work outside the duties of the Regulator's office (see section 166); or
 - (d) the Regulator fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (3) The Minister must terminate the appointment of the National VET Regulator if the Regulator becomes an executive officer of a registered training organisation.

Subdivision C—Staff and consultants

170 Staff required to assist the National VET Regulator

- (1) The staff required to assist the National VET Regulator in the performance of the Regulator's functions must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the National VET Regulator and the staff referred to in subsection (1) together constitute a Statutory Agency; and
 - (b) the National VET Regulator is the Head of that Statutory Agency.

171 Staff to be made available to the National VET Regulator

- (1) The National VET Regulator may 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 the
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Regulator's functions or the exercise of the Regulator's powers; and

- (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The National VET Regulator 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 Regulator to perform services in connection with the performance of the Regulator's functions or the exercise of Regulator's 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 Regulator.

172 Consultants

- (1) The National VET Regulator may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Regulator's functions.
- (2) Consultants are to be engaged on the terms and conditions that the National VET Regulator determines in writing.

Subdivision D—Application of the finance law

173 Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
 - (i) the National VET Regulator;
 - (ii) members of the staff of the Regulator;
 - (iii) consultants engaged under section 172; and
- (b) the listed entity is to be known as the Australian Skills Quality Authority; and

- (c) the National VET Regulator is the accountable authority of the listed entity; and
- (d) the persons referred to in paragraph (a) are officials of the listed entity; and
- (e) the purposes of the listed entity include the functions of the National VET Regulator referred to in section 157.

Note: The National VET Regulator may also be known as the Chief Executive Officer of the Australian Skills Quality Authority: see subsection 155(2).

41 Divisions 2 to 6 of Part 7

Repeal the Divisions, substitute:

Division 2—National Vocational Education and Training Regulator Advisory Council

Subdivision A—Establishment and function of the Advisory Council

174 Establishment

The National Vocational Education and Training Regulator Advisory Council (the *Advisory Council*) is established by this section.

175 Function

- (1) The function of the Advisory Council is to provide advice to the National VET Regulator on the Regulator's functions.
- (2) However, the Advisory Council's function does not include giving advice 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; or

- (e) the registration under the *Education Services for Overseas Students Act 2000* of a particular provider as a registered provider; or
- (f) a particular registered provider.

Note: Paragraphs (e) and (f)—*registered provider* is defined, see section 3.

- (3) The Advisory Council may perform its function:
 - (a) on the Advisory Council's own initiative; or
 - (b) at the request of the National VET Regulator or the Minister.

176 Minister may give directions to the Advisory Council

- (1) The Minister may, by legislative instrument, give written directions to the Advisory Council about the performance of the Advisory Council's function.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The Advisory Council must comply with a direction under subsection (1).

Subdivision B—Appointment and terms and conditions of the Advisory Council

177 Membership

The Advisory Council consists of the following members:

- (a) a Chair;
- (b) not more than 9 other members.

178 Appointment

- (1) Each Advisory Council member is to be appointed by the Minister by written instrument, on a part-time basis.

Note: An Advisory Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) Before appointing an Advisory Council member, the Minister must consult with the Ministerial Council.
- (3) An Advisory Council member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (4) A person is not eligible for appointment to the Advisory Council unless the Minister is satisfied that the person has substantial experience or knowledge in at least one of the following fields:
 - (a) delivering training;
 - (b) operating or managing registered training organisations;
 - (c) managing work-based placements for VET students or employing persons with VET qualifications;
 - (d) regulating industry sectors and developing and implementing best-practice regulation principles;
 - (e) advocating on behalf of VET students;
 - (f) communicating and engaging with industry and other stakeholders;
 - (g) any other appropriate field of expertise.

179 Acting appointments

Chair

- (1) The Minister may, by written instrument, appoint an Advisory Council member to act as the Chair:
 - (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Other Advisory Council members

- (2) The Minister may, by written instrument, appoint a person to act as an Advisory Council member (other than the Chair):
-

- (a) during a vacancy in the office of an Advisory Council member (other than the Chair), whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when an Advisory Council member (other than the Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) A person is not eligible for appointment under subsection (2) unless the person is eligible for appointment as an Advisory Council member.

Note 1: For eligibility to be appointed as an Advisory Council member, see subsection 178(4).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

180 Remuneration

- (1) An Advisory Council member 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 member is to be paid the remuneration that is determined by the Minister.
- (2) However, an Advisory Council member is not entitled to be paid remuneration if the member holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or
 - (b) a corporation (a public statutory corporation) that:
 - (i) is established for a public purpose by a law of a State; and
 - (ii) is not a tertiary education institution; or
 - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
 - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

Schedule 1 Governance arrangements

Part 1 Main amendments

Note: A similar rule applies to an Advisory Council member who has a similar relationship with the Commonwealth or a Territory: see subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) An Advisory Council member is to be paid the allowances that are prescribed by the regulations.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

181 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other Advisory Council member on the terms and conditions that the Chair determines.

182 Disclosure of interests to the Minister

Before the Minister appoints a person as an Advisory Council member, the person must disclose to the Minister all interests, pecuniary or otherwise, that the person is aware of having in a matter of a kind likely to be considered by the Advisory Council.

183 Disclosure of interests to the Advisory Council

- (1) An Advisory Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Council must disclose the nature of the interest to a meeting of the Advisory Council.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Advisory Council member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Advisory Council otherwise determines, the Advisory Council member:
 - (a) must not be present during any deliberation by the Advisory Council on the matter; and

- (b) must not take part in any decision of the Advisory Council with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Advisory Council member:
 - (a) must not be present during any deliberation of the Advisory Council 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 of the Advisory Council.

184 Other terms and conditions

An Advisory Council member 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.

184A Resignation

- (1) An Advisory Council member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

184B Termination of appointment

- (1) The Minister may terminate the appointment of an Advisory Council member:
 - (a) for misbehaviour; or
 - (b) if the Advisory Council member is unable to perform the duties of member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of an Advisory Council member if:
 - (a) the Advisory Council member:
 - (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 member's creditors; or
- (iv) makes an assignment of member's remuneration for the benefit of member's creditors; or
- (b) the Advisory Council member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Council; or
- (c) the Advisory Council member fails, without reasonable excuse, to comply with section 182 or 183 (which deal with disclosure of interests).

Subdivision C—Procedures of the Advisory Council

184C Times and places of meetings

- (1) The Chair must ensure that such meetings as are necessary for the efficient performance of the Advisory Council's function are held.
- (2) Meetings are to be held at such times and places as the Chair decides.

184D Conduct of meetings

Presiding at meetings

- (1) The Chair must preside at all meetings at which the Chair is present.
- (2) If the Chair is not present at a meeting, a person appointed by the Chair must be present and preside.

Quorum

- (3) At a meeting of the Advisory Council, a quorum is constituted by half of the Advisory Council members for the time being holding office.
- (4) However, if:
 - (a) an Advisory Council member is required by section 183 not to be present during the deliberations, or to take part in any

decision, of the Advisory Council with respect to a particular matter; and

- (b) when the Advisory Council member leaves the meeting concerned there is no longer a quorum present;

the remaining Advisory Council at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

Rules of procedure

- (5) The Advisory Council may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Advisory Council members may participate in meetings.

184E Voting at meetings

- (1) A question arising at a meeting of the Advisory Council is to be determined by a majority of the votes of the Advisory Council members present and voting.
- (2) The person presiding at a meeting of the Advisory Council has a deliberative vote and, if the votes are equal, a casting vote.

184F Minutes

The Advisory Council must keep minutes of its meetings.

184G Decisions without meetings

- (1) The Advisory Council is taken to have made a decision at a meeting if:
- (a) without meeting, a majority of the Advisory Council members entitled to vote on the proposed decision indicate agreement with the decision; and
- (b) that agreement is indicated in accordance with the method determined by the Chair under subsection (2); and
- (c) all the Advisory Council members were informed of the proposed decision, or reasonable efforts were made to inform all the Advisory Council members of the proposed decision.

- (2) Subsection (1) applies only if the Chair:
 - (a) has determined that it applies; and
 - (b) has determined the method by which Advisory Council members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), an Advisory Council member is not entitled to vote on a proposed decision if the Advisory Council member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Advisory Council.
- (4) The Advisory Council must keep a record of decisions made in accordance with this section.

42 Paragraphs 201(2)(a) and (b)

Omit “a Commissioner”, substitute “the National VET Regulator”.

43 Subsection 201(4)

Omit “its decision”, substitute “the Regulator’s decision”.

44 Subsection 201(5)

Omit “its decision” (first occurring), substitute “the decision”.

45 Subsection 201(5)

Omit “its reasons for its decision”, substitute “the Regulator’s reasons for the decision”.

46 Subsection 202(1)

Omit “its decision”, substitute “the Regulator’s decision”.

47 Subsection 202(2)

Omit “it has not”, substitute “the Regulator has not”.

48 Subsection 202(2)

Omit “its decision”, substitute “the Regulator’s decision”.

49 Subparagraphs 204(b)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) the National VET Regulator;

50 Subparagraph 204(b)(iv)

Omit “184”, substitute “172”.

51 Subsection 214(2)

Omit “its own initiative”, substitute “the Regulator’s own initiative”.

52 Subsection 215(1)

Omit “Chief Executive Officer”, substitute “National VET Regulator”.

53 Paragraph 215(1)(a)

Omit “National VET”.

54 Sections 218, 219 and 219A

Omit “Chief Executive Officer” (wherever occurring), substitute “National VET Regulator”.

55 Section 222

Omit “and the Chief Executive Officer”.

56 Section 223

Repeal the section, substitute:

223 Delegation by the Minister

The Minister may, by writing, delegate all or any of the Minister’s functions and powers under this Act (other than under section 91 or 160, subsection 162(3) or section 163, 169, 176, 178 or 184B) to:

- (a) the National VET Regulator; or
- (b) the Secretary.

57 Paragraph 224(1)(b)

Omit “184”, substitute “172”.

58 Subsection 232(1)

Omit “it provides”, substitute “the Regulator provides”.

Part 2—Consequential amendments

Education Services for Overseas Students Act 2000

61 Subsection 6A(1) (table item 2, column headed “a person is an *authorised officer* of the agency if:”, paragraph (a))

Repeal the paragraph, substitute:

(a) the National VET Regulator; or

62 Subsection 6A(1) (table item 2, column headed “a person is an *authorised officer* of the agency if:”, paragraph (b))

Omit “that Act”, substitute “the NVETR Act”.

63 Subsection 171A(2)

Repeal the subsection, substitute:

- (2) If the Secretary delegates a function or power under subsection 170(3) to the National VET Regulator, the National VET Regulator may, in writing, subdelegate the function or power to a member of the staff of the Regulator (within the meaning of the NVETR Act) who:
- (a) is an SES employee, or acting SES employee; or
 - (b) holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Higher Education Support Act 2003

64 Paragraphs 39EC(a), 39FB(1)(f) and 39FD(1)(e) of Schedule 1A

Omit “each *NVETR Commissioner”, substitute “the *National VET Regulator”.

65 Subclauses 39GA(2) and 39GC(2) of Schedule 1A

Omit “A *NVETR Commissioner”, substitute “The *National VET Regulator”.

66 Subclause 1(1) of Schedule 1 (definition of NVETR Commissioner)

Repeal the definition.

***National Vocational Education and Training Regulator
(Charges) Act 2012***

67 Paragraph 6B(2)(a)

Omit “its functions”, substitute “the Regulator’s functions”.

VET Student Loans Act 2016

68 Section 6 (definition of NVETR Commissioner)

Repeal the definition.

69 Paragraphs 82(3)(e) and 83(2)(e)

Omit “each NVETR Commissioner”, substitute “the National VET Regulator”.

70 Subparagraph 85(2)(b)(i)

Omit “each NVETR Commissioner”, substitute “the National VET Regulator”.

71 Subsections 88(2) and 89(2)

Omit “An NVETR Commissioner”, substitute “The National VET Regulator”.

**Part 3—Amendments contingent on the National
Vocational Education and Training
Regulator Amendment Act 2020**

*National Vocational Education and Training Regulator Act
2011*

72 Subsection 47C(2)

Omit “its website”, substitute “the Regulator’s website”.

73 Subsection 155(1A)

Repeal the subsection.

Schedule 2—Information sharing

National Vocational Education and Training Regulator Act 2011

1 Section 3

Insert:

information safeguard rules has the meaning given by section 214A.

2 At the end of Subdivision B of Division 2 of Part 9

Add:

210A Disclosure of information by the National Centre for Vocational Education Research etc.

- (1) The National Centre for Vocational Education Research may disclose information collected in accordance with the Data Provision Requirements, or any equivalent requirements in a non-referring State, to any of the following bodies for the purposes of that body:
 - (a) the Department;
 - (b) another Commonwealth authority;
 - (c) a State or Territory authority (other than a registered training organisation) that deals with, or has responsibility for, matters relating to vocational education and training;
 - (d) a VET Regulator.
- (2) The National Centre for Vocational Education Research may, for the purposes of the Centre, disclose information collected in accordance with the Data Provision Requirements, or any equivalent requirements in a non-referring State, to a person engaged by the Centre to conduct research on behalf of the Centre.
- (3) The National Centre for Vocational Education Research may disclose information to a person under subsection (2) only if:

- (a) the person satisfies the requirements (if any) prescribed by the information safeguard rules for the purposes of this paragraph; and
- (b) the National Centre for Vocational Education Research satisfies the requirements (if any) prescribed by the information safeguard rules for the purposes of this paragraph.

210B Disclosure of information by the Department etc.

Scope

- (1) This section applies to information disclosed under paragraph 210A(1)(a).

Disclosure of information

- (2) The Secretary may disclose the information to either of the following for the purposes of the Department:
 - (a) a Commonwealth authority;
 - (b) a person engaged by the Secretary to carry out an activity on behalf of the Department.
- (3) The Secretary may disclose information to an authority or person under subsection (2) only if the authority or person satisfies the requirements (if any) prescribed by the information safeguard rules for the purposes of this subsection.

210C This Subdivision does not limit disclosure of information

This Subdivision does not limit the disclosure of information.

Note: The disclosure of information may also be authorised in other circumstances. For example, see the *Privacy Act 1988*.

3 At the end of Division 2 of Part 9

Add:

Subdivision D—Information safeguard rules

214A Information safeguard rules

The Minister may, by legislative instrument, make rules (*information safeguard rules*) prescribing matters required or permitted by this Act to be prescribed by the information safeguard rules, as agreed by the Ministerial Council.

4 At the end of Division 1 of Part 12

Add:

226A Delegation by the Secretary

The Secretary may, by writing, delegate all or any of the Secretary's functions or powers under this Act (other than a function or power delegated to the Secretary under section 223) to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

Schedule 3—Transitional and application provisions

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

1 In the appropriate position

Insert:

Schedule 5—Transitional provisions relating to the National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020

1 Definitions

In this Schedule:

Amending Act means the *National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020*.

Chief Commissioner has the same meaning as in the Principal Act immediately before the later commencement time.

Chief Executive Officer has the same meaning as in the Principal Act immediately before the later commencement time.

Commissioner has the same meaning as in the Principal Act immediately before the later commencement time.

early commencement time means the start of the day on which Schedule 2 to the Amending Act commences.

later commencement time means the time at which Part 1 of Schedule 1 to the Amending Act commences.

National VET Regulator has the same meaning as in the Principal Act.

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

VET information has the same meaning as in the Principal Act.

2 Things done by, or in relation to, a Commissioner or the Chief Executive Officer

- (1) If a thing was done by, or in relation to, a Commissioner (including the Chief Commissioner) or the Chief Executive Officer under a law of the Commonwealth before the later commencement time, then the thing is taken, at and after that time, to have been done by, or in relation to, the National VET Regulator.
- (2) The Minister may, by legislative instrument, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, a Commissioner (including the Chief Commissioner) or the Chief Executive Officer.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) Nothing in this item produces the result that the appointment of a person as a Commissioner (including the Chief Commissioner) before the later commencement time has effect, at or after that time, as if it were an appointment of the person as the National VET Regulator.

3 Effect of things done by the National VET Regulator before the commencement of the Amending Act

A thing done by, or in relation to, the National VET Regulator under a law of the Commonwealth before the later commencement time is not affected by the amendments made by Schedule 1 to the Amending Act.

4 Consultants

A consultant engaged under section 184 of the Principal Act immediately before the later commencement time is, at and after that time, taken to be engaged under section 172 of that Act.

5 Unauthorised disclosure of VET information

Despite the amendment of section 204 of the Principal Act by Schedule 1 to the Amending Act, that section, as in force immediately before the later commencement time, continues to apply at and after that time in relation to a person who was any of the following at any time before the later commencement time:

- (a) a Commissioner;
- (b) the Chief Executive Officer;

(c) a consultant engaged under section 184 of the Principal Act.

6 Protections from civil actions

Despite the amendment of section 233 of the Principal Act by Schedule 1 to the Amending Act, that section, as in force immediately before the later commencement time, continues to apply at and after that time in relation to a person who was a Commissioner at any time before the later commencement time.

7 Party to pending proceedings

- (1) If, immediately before the later commencement time:
- (a) the National VET Regulator was a party to proceedings under the name “Australian Skills Quality Authority”; and
 - (b) the proceedings were pending in any court or tribunal;
- then, at and after the later commencement time, the National VET Regulator is taken to continue as a party to the proceedings under the name “National Vocational Education and Training Regulator”.
- (2) However, if the Minister determines a different name under which the National VET Regulator is to continue as a party to the proceedings, then the Regulator is taken to continue as a party to the proceedings under that name.
- (3) The Minister must notify the court or tribunal in writing of a determination under subitem (2).

8 Disclosure of information

Section 210A (as inserted by Schedule 2 to the Amending Act) applies to a disclosure of information by the National Centre for Vocational Education Research at or after the early commencement time, even if the information was collected by the Centre before that time.

*[Minister’s second reading speech made in—
House of Representatives on 13 February 2020
Senate on 17 June 2020]*

(11/20)
