THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR AMENDMENT BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Skills Small and Family Business, Senator the Hon Michaelia Cash)
The purpose of the National Vocational Education and Training Regulator Amendment Bill 2019 (the Bill) is to amend the National Vocational Education and Training Regulator Act 2011 (NVETR Act) to improve its efficiency and effectiveness by strengthening the regulatory framework. The amendments will ensure that the National VET Regulator, the Australian Skills Quality Authority (ASQA), has the necessary powers to encourage and promote a quality vocational education and training (VET) system that benefits students and industry.

The National VET Regulator is responsible for registration and compliance monitoring of NVR registered training organisations (NVR RTOs) and accreditation of VET accredited courses. The National VET Regulator is established under the NVETR Act. All NVR RTOs must comply with the requirements of the NVETR Act and its associated legislative framework.

In 2017, the Australian Government commissioned an independent review of the NVETR Act by Professor Valerie Braithwaite, professor at the Australian National University’s School of Regulation and Global Governance. In 2018, the ‘All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011 report’ (Braithwaite Review) and the Australian Government response were released.

Overall, the Braithwaite Review found the NVETR Act gives ASQA sufficient powers to appropriately regulate the current VET environment. However, the Braithwaite Review made recommendations to enhance student outcomes by strengthening regulation of the VET sector to improve the quality of training in Australia and ensure students are both protected and informed.

In April 2019, the Australian Government released the ‘Strengthening Skills: Expert Review of Australia’s Vocational Education and Training System’ by the Hon Steven Joyce (Joyce Review). The Joyce Review concurred with Braithwaite Review recommendations in respect of legislative amendments to the NVETR Act to strengthen registration requirements and increase transparency. Consequently, the proposed amendments respond to both reviews to improve the efficiency and effectiveness of the National VET Regulator and regulation of the VET sector, without significantly increasing the regulatory burden on prospective or current NVR RTOs.

A number of amendments in the Bill strengthen registration requirements for NVR RTOs and ensure that only those NVR RTOs genuinely committed and adequately resourced to deliver quality VET are able to operate in the sector. This will increase clarity for NVR RTOs regarding registration requirements. Amendments also ensure more timely notification of changes to an NVR RTO’s operations in order to improve
the National VET Regulator’s oversight of the sector and its ability to take action where standards are not met. Further amendments make clear that the compliance standards a course must meet to be accredited by the National VET Regulator are ongoing standards that must continue to be met throughout the period of accreditation. The Bill provides the National VET Regulator with a new power to give general directions about the way in which course owners are to meet these compliance standards. These amendments ensure students and industry can have confidence in the quality of courses and training being delivered.

To ensure the NVETR Act supports modern regulation, a number of amendments improve the transparency of training information in the VET sector. Amendments requiring the National VET Regulator prepare an audit report which will be made publically available, will give stakeholders a greater understanding of the nature of the Regulator’s audit findings. Further amendments improve the data sharing capabilities between the National VET Regulator and certain authorised bodies prescribed in the legislation and improve information on the National Register. Together, these amendments strengthen the National VET Regulator’s ability to regulate more efficiently and effectively.

The Secretary of the department responsible for VET will also have the power to release information to the public about the training provided by a Registered Training Organisation (RTO). Where students have undertaken training with an RTO, the Secretary will also have the power to release information to the public about the outcomes and experiences for students and employers of that training. These amendments increase transparency for students and the VET sector, supporting them to make informed decisions about the quality of training. They will also provide employers with better information about training quality.

To improve the effectiveness of the National VET Regulator’s operations, amendments expand the Regulator’s powers to use enforceable undertakings for all purposes of the NVETR Act and enable the cancellation of VET qualifications and VET statements of attainment in circumstances where there is a risk to individuals and the community. Amendments also strengthen the National VET Regulator’s enforcement powers by including a civil penalty for failure, by an NVR RTO, to comply with a direction to cancel VET qualifications and VET statements of attainment.

Amendments also provide the National VET Regulator with the power to stay a decision during the period of reconsideration. This clarifies the status of registration and course accreditation for NVR RTOs and course owners while the National VET Regulator is reconsidering a decision it has made in relation to registration or accreditation. It also provides the National VET Regulator with more flexibility to support training and delivery arrangements for students during review processes.

Further technical amendments to the NVETR Act proposed during the Braithwaite Review improve its effectiveness and operation. These provide greater clarity around the timeframes for ASQA reporting, streamline acting appointment processes, change the scope of the Minister’s power to issue directions to the National VET Regulator, clarify third party arrangements and provide flexibility around the nomenclature and making of legislative instruments.
FINANCIAL IMPACT STATEMENT

The bill has no financial impact on the Commonwealth or NVR RTOs.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR AMENDMENT BILL 2019

The National Vocational Education and Training Regulator Amendment Bill 2019 (Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The purpose of the Bill is to amend the National Vocational Education and Training Regulator Act 2011 (NVETR Act) to improve its efficiency and effectiveness by strengthening the regulatory framework. The amendments will ensure the National VET Regulator, the Australian Skills Quality Authority (ASQA), has the necessary powers and processes to encourage and promote a quality vocational education and training (VET) system that benefits students and industry.

The National VET Regulator is responsible for registration and compliance monitoring of NVR registered training organisations (NVR RTOs) and accreditation of VET accredited courses. The National VET Regulator is established under the NVETR Act. All NVR RTOs must comply with the requirements of the NVETR Act and its associated legislative framework.

The amendments in the Bill are intended to improve the efficiency and effectiveness of the National VET Regulator’s regulation of the sector. The changes strengthen registration requirements, modernise information and data sharing and improve the administrative efficiency of the NVETR Act.

The amendments respond to some of the recommendations from the report prepared by Professor Valerie Braithwaite titled ‘All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011’ (Braithwaite Review) and ‘Strengthening Skills: Expert review of Australia’s VET system’ a report prepared by the Hon Steven Joyce (Joyce Review).

Amendments in the Bill strengthen registration requirements in relation to NVR RTOs. A new condition of registration requires NVR RTOs to demonstrate a commitment and the capability to deliver quality VET. This amendment is targeted at ensuring that NVR RTOs are genuinely committed to and capable of delivering quality VET. Further amendments require NVR RTOs to notify the National VET Regulator when there are likely to be substantial changes to the operation of the organisation or an event occurs that is likely to significantly affect the organisation’s ability to comply with the VET Quality Framework. The effect of this amendment will be to ensure that the National VET Regulator has better and more timely
information about an NVR RTO’s operations, thus mitigating risks to students and VET quality. Technical amendments provide clarity in relation to removing conditions of registration and the timing of decisions by the National VET Regulator that relate to registration.

Amendments are made to clarify that all reviewable decisions made by the delegate of the National VET Regulator are subject to reconsideration by the National VET Regulator. A decision by the National VET Regulator is reviewable by the Administrative Appeals Tribunal (AAT).

Further amendments make clear that the compliance standards a course must meet to be accredited are ongoing standards that must continue to be met throughout the period of accreditation. The National VET Regulator is given a new power to issue general directions on the way in which courses are to meet these compliance standards. Technical amendments provide clarity in relation to the imposition and removal of conditions of accreditation.

To improve the transparency of the National VET Regulator’s regulatory actions and provide the sector with confidence in the ability of the Regulator to make appropriate, consistent and proportionate regulatory decisions, amendments provide for the preparation and publication of audit reports by the Regulator.

Other measures in the Bill also improve the flows of information between stakeholders in the sector. These measures enable the National VET Regulator to share information electronically with persons and bodies responsible for administering laws relating to VET and expand the information that the Regulator is required to enter on the National Register. The National VET Regulator will be able to authorise the National Centre for Vocational Education Research (NCVER) to release certain information to the public. The Secretary of the department responsible for VET will also have the power to release information to the public about the training provided by an Registered Training Organisation (RTO). Where students have undertaken training with an RTO, the Secretary will also have the power to release information to the public about the outcomes and experiences for students and employers of that training. These amendments increase transparency for students and the VET sector, supporting them to make informed decisions about the quality of training. They will also provide employers with better information about training quality.

To improve the effectiveness of the National VET Regulator’s operations, amendments enable the Regulator to request documents in electronic form and expand its powers to use enforceable undertakings for all purposes of the NVETR Act. This amendment aligns with similar powers of other regulatory regimes. In addition, the National VET Regulator will have powers to allow for regulatory decisions to be stayed whilst it is reconsidering a decision. Conditions may be imposed by the National VET Regulator on the decision while it is stayed. This measure provides flexibility to support training delivery so students’ training is not interrupted during the review process.

Further, the amendments enable the National VET Regulator to cancel VET qualifications and VET statements of attainment without first directing the NVR RTO
to do so. This amendment allows the National VET Regulator to take urgent action to cancel VET qualifications and VET statements of attainment where there is a risk to individuals and the community. The amendments also bolster enforcement powers by including a civil penalty in the NVETR Act for failure, by an NVR RTO, to comply with a direction to cancel VET qualifications and VET statements of attainment.

To assist the Minister to support and direct the National VET Regulator without impinging on its statutory independence, the Bill makes changes to the Minister’s powers to issue directions to the National VET Regulator.

Amendments make clear that the Minister may determine fees the National VET Regulator may charge for goods and services it provides in performing functions under other laws of the Commonwealth.

To improve the efficiency and effectiveness of the NVETR Act, clarification is made to offence provisions relating to the delivery of a VET course where course delivery is conducted by a person, on behalf of an NVR RTO, in accordance with a written agreement.

Further technical amendments streamline the nomenclature of a number of legislative instruments defining them in section 3 of the NVETR Act by reference to the relevant section under which they are made, clarifying that the subordinate legislation can be given different names. Amendments also provide the ‘Australian Skills Quality Authority’ as an alternative name for the National VET Regulator. This aligns the NVETR Act with the terminology commonly used in the VET sector when referencing the National VET Regulator.

Amendments streamline processes for the appointment of acting Commissioners, the Deputy Chief Commissioner and the Chief Commissioner of the National VET Regulator.

Finally amendments remove the requirement on the National VET Regulator to produce an annual operational plan (as it duplicates the content of the corporate plan that the Regulator is also required to produce) and change the date that the Regulator’s corporate plan must be given to the Minister for approval.

**Human rights implications**

The Bill engages the following human rights:

- The right to education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- The right to privacy – Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR)
- The right to work – Article 6 of the ICESCR

*Right to education*
The Bill engages the right to education contained in Article 13 of the ICESCR. Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

The measures in the Bill engage the right to education because they seek to strengthen the integrity and quality of the VET sector and to safeguard the best interests of students who are engaged in vocational education and training. The provisions in the Bill are designed to ensure that the VET sector has strong quality assurance measures in order to deliver quality education and training outcomes for students, which ultimately promote the right to education.

In order to achieve this, two measures in the Bill may be perceived as limitations on the right to education, however they are considered necessary and proportionate to achieving legitimate policy aims, which ultimately improve the right to education by ensuring the integrity and quality of the VET system generally.

Specifically, the Bill contains a measure (new section 22A) which may operate to restrict a person’s or organisation’s ability to be, or remain, registered in order to provide quality VET. The measure requires that the person or organisation demonstrate a commitment, and the capability, to deliver quality vocational education and training as a condition of registration. To the extent this could be seen as limiting the right to education (for example because less education services may be available as a result), this limitation is necessary and proportionate to the legitimate policy objective of ensuring that only quality organisations are able to be registered to provide VET courses. This is intended to protect students from poor training and enhance quality educational outcomes for the benefit of the Australian community.

This Bill also contains a measure (new subsection 56(3A)), which enables the National VET Regulator to cancel a particular ‘VET qualification’ and ‘VET statement of attainment’ directly, that is, without directing the relevant NVR RTO to do so as is currently the case (under subsection 56(2) of the NVETR Act). To the extent that this places a limitation on the right to education, it is a necessary and proportionate measure to ensure the integrity of VET qualifications and VET statements of attainment from the perspective of students, potential employers and the public at large.

The Bill also contains additional measures, which engage and promote the right to education, including amendments that:

- require NVR RTOs to advise the National VET Regulator if there are likely to be substantial changes to its operations;
- require the National VET Regulator to update the National Register with more detailed information on NVR RTOs (for example, sanctions imposed, changes to campus/delivery site addresses, information about renewals of registration);
- require that the National VET Regulator keep the National Register up to date;
- require that the National VET Regulator prepare and publish audit reports;
• give the Secretary the power to release information to the public about VET training provided by RTO’s and the outcomes and experiences for students and employers who have hired students from that particular training course.

The requirement for NVR RTOs to notify the National VET Regulator of likely substantial changes to an NVR RTO’s operations, promotes the right to education because it enables the National VET Regulator to take early steps to mitigate any impact on current students arising from the changes in an organisation’s operations. This measure provides an important protection for individuals’ right to education.

The requirements for the National VET Regulator to update the National Register with more detailed information about NVR RTOs (for example, sanctions, changes to campus/delivery site addresses, information about renewals of registration) and keep the National Register up to date, are all measures which promote the right to education. These measures empower potential VET students by giving them access to current relevant information which they can use to inform their decisions about enrolling or participating in VET.

Requiring that the National VET Regulator prepare and publish audit reports ensures that there is more transparency and availability of information about the National VET Regulator’s regulatory activities in the VET sector. NVR RTOs can draw on this information to deliver regulatory compliant training. These measures promote the right to education as they strengthen the National VET Regulator’s oversight of the VET sector (and consequent regulatory activities) to ensure best practice is adopted in delivering VET in Australia.

The new power which enables the Secretary of the Department to release information to the public (such as on the MySkills website, accessible at www.myskills.gov.au) about VET training provided by RTOs, and the outcomes and experiences for students and employers who have hired students from a particular training course, also promotes the right to education. This measure means that students will be able to make a more informed choice when deciding which training course they should enrol in. It will also give employers a better sense of the quality of training a potential employee is likely to have had. The measure is also intended to promote accountability and incentives within the sector for RTOs to provide quality training to students, thereby enhancing the right to education.

Collectively, these measures engage the right to education as they improve the transparency and availability of information for existing and potential students participating in VET. Such information ultimately improves a student’s access to education and promotes the right to education as it enables students to make informed decisions about the courses in which they enrol.

Further amendments in the Bill which engage the right to education include:

• clarifying that the Standards for VET Accredited Courses (Standards) and the Australian Qualifications Framework (AQF) apply throughout the duration of a course’s accreditation;
• giving the National VET Regulator the power to make a general direction about the way NVR RTOs are to meet the Standards, the AQF (and other conditions of accreditation).

These amendments engage the right to education as they are designed to strengthen the quality of courses offered to students participating in VET. Clarifying that the Standards and AQF apply throughout the period of accreditation of a course and giving the National VET Regulator power to issue directions about how the Standards and AQF are to be complied with, encourage the delivery of quality education to students. This ultimately promotes the right to education.

The Bill is compatible with the right to education.

Right to privacy and reputation

The Bill engages the right to privacy and reputation contained in article 17 of the ICCPR. Article 17 recognises the right to not be subject to arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence, nor unlawful attacks on the individual’s honour and reputation.

The measures in this Bill that engage the right to privacy and reputation include:

• Enabling the National VET Regulator to share information for the strict purpose of administering laws relating to VET by giving electronic access to that information to government entities that administer VET (the Secretary of the Department, a Commonwealth authority, a State or Territory authority, another VET regulator, a person who holds any office or appointment under a law of the Commonwealth, a State or Territory, and NCVER;
• Expanding the list of persons to whom the National VET Regulator is able to share information with, including through electronic access, to include a tuition assurance scheme operator;
• Enabling the National VET Regulator to authorise NCVER to disclose information on its behalf if that information would reasonably inform a person’s choice to participate in VET, would encourage improvement in the quality of VET, or encourage compliance;
• Enabling the Secretary of the Department to release information (other than personal information unless the personal information is the name of the RTO) to the public about VET training provided by RTOs and the outcomes and experiences for students and employers of that training;
• Providing that the National VET Regulator may enter information on the National Register if the National VET Regulator has released that information to the public;
• Requiring that the National VET Regulator prepare and publish audit reports (which will not contain personal information unless it is the name of a NVR RTO applicant or NVR RTO).

These measures, as a whole, do not increase the range of personal information that may be shared under the NVETR Act. Generally these measures increase the methods through which access may be granted to information that may already be shared (under section 205 of the NVETR Act), as well as enabling the sharing of
de-identified statistical data to help inform students and others engaged in the VET sector.

The measure to include a tuition assistance scheme operator as one of the persons to whom the National VET Regulator may share information (including personal information) with, potentially places a limitation on the right to privacy. The types of personal information which may be disclosed in this instance could include details identifying students. Such information could however only be disclosed for the strict purposes of administering laws relating to VET. The disclosure of personal information to a tuition assurance scheme operator will assist students in the event that their NVR RTO defaults. To the extent this measure limits an individual’s right to privacy, it is just and necessary to achieve a legitimate policy aim, which in this instance is to ensure the operation of laws relating to VET and protecting students.

The new measures which require that the National VET Regulator publish audit reports and which enable the Secretary of the Department to release information to the public about VET training provided by RTOs, engage the right to privacy. While both provisions specifically provide that personal information is not to be released, there is an exception where the personal information is, in the case of audit reports, the name of the NVR RTO or an applicant to become an NVR RTO or in the case of the Secretary releasing information to the public, the name of an RTO. To the extent that this limits a person’s right to privacy, this is justifiable as such personal information is already in the public domain on websites and advertising circulars. To the extent that this places any limitation on the right to privacy, this measure is necessary and proportionate. A failure to include such personal information in an audit report, or in the release of information to the public in accordance with the Secretary’s new power would undermine the intention of the measures which is to inform the sector of best practice and improve transparency in the VET sector.

The Bill is compatible with the right to privacy.

Right to work

The Bill also engages the right to work contained in article 6(1) of the ICESCR. Article 6(1) recognises the right to work, which includes the right of everyone to the opportunity to gain one’s living by work which he or she freely chooses or accepts.

Broadly, the measures in the Bill are all designed to improve and enhance the National VET Regulator’s ability to regulate the VET sector, leading to improvements in students’ educational outcomes and ultimately in their preparedness to take up opportunities to work. The measures in the Bill therefore, generally, have a positive impact on the right to work and promote the right.

The Bill is compatible with the right to work.

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

AAT Administrative Appeals Tribunal

ASQA Australian Skills Quality Authority

Braithwaite Review Review report prepared by Professor Valerie Braithwaite titled ‘All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011’

Joyce Review ‘Strengthening Skills: Expert review of Australia’s VET system’ by the Hon Steven Joyce

ESOS Act Education Services and Overseas Students Act 2000

HESA Higher Education Support Act 2003

NCVER National Centre for Vocational Education Research

NVETR Act National Vocational Education and Training Regulator Act 2011

NVR RTO NVR registered training organisation

RTO registered training organisation

TEQSA Act Tertiary Education Quality and Standards Agency Act 2011

VET vocational education and training
NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be the National Vocational Education and Training Regulator Amendment Act 2019.

Clause 2 - Commencement

The table in subclause 2(1) sets out when the Act’s provisions will commence. The table provides that:

- sections 1 to 3 and any provisions not elsewhere covered by the table commence on the day the Act receives Royal Assent.
- Schedule 1 commences on 1 July 2020.
- Schedules 2 and 3 commence on the day after the Act receives Royal Assent.

Clause 3 - Schedules

Clause 3 provides that any legislation that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.
Schedule 1 – Main amendments

Summary

The amendments contained in Schedule 1 of the Bill are intended to improve the efficiency and effectiveness of the National VET Regulator's regulation of the sector. The changes strengthen registration requirements, modernise information and data sharing and improve the administrative efficiency of the NVETR Act.

The amendments respond to some of the recommendations from both the 2018 Braithwaite Review and the 2019 Joyce Review, to ensure the legislation is fit for purpose and supports the National VET Regulator and the sector in delivering quality VET services.

Amendments in Schedule 1 of the Bill strengthen registration requirements in relation to NVR RTOs. A new condition of registration requires NVR RTOs to demonstrate a commitment and the capability to deliver quality VET. This amendment is targeted at ensuring that NVR RTOs are genuinely committed to and capable of delivering quality VET. Further amendments require NVR RTOs to notify the National VET Regulator when there are likely to be substantial changes to the operation of the organisation or an event occurs that is likely to significantly affect the organisation's ability to comply with the VET Quality Framework. The effect of this amendment will be to ensure that the National VET Regulator has better and more timely information about an NVR RTO's operations, thus mitigating risks to students and VET quality. Technical amendments provide clarity in relation to removing conditions of registration and the timing of decisions by the National VET Regulator that relate to registration.

Amendments are made to clarify that all reviewable decisions made by the delegate of the National VET Regulator are subject to reconsideration by the National VET Regulator. A decision by the National VET Regulator is reviewable by the Administrative Appeals Tribunal (AAT).

Further amendments make clear that the compliance standards a course must meet to be accredited are ongoing standards that must continue to be met throughout the period of accreditation. The National VET Regulator is given a new power to issue general directions on the way in which courses are to meet these compliance standards. Technical amendments provide clarity in relation to the imposition and removal of conditions of accreditation.

To improve the transparency of the National VET Regulator’s regulatory actions and provide the sector with confidence in the ability of the Regulator to make appropriate, consistent and proportionate regulatory decisions, amendments provide for the preparation and publication of audit reports by the Regulator.
Other measures in the Bill also improve the flows of information between stakeholders in the sector. These measures enable the National VET Regulator to share information electronically with persons and bodies responsible for administering laws relating to VET and expand the information that the Regulator is required to enter on the National Register. The National VET Regulator will be able to authorise NCVER to release certain information to the public. The Secretary of the Department responsible for VET will also be able to release information to the public about training provided by an RTO and the outcomes and experiences, for students and employers, of training undertaken with an RTO. These measures will increase transparency of information to the sector and assist students to make informed decisions about their training choices.

To improve the effectiveness of the National VET Regulator’s operations, amendments enable the Regulator to request documents in electronic form and expand its powers to use enforceable undertakings for all purposes of the NVETR Act. This amendment aligns with similar powers of other regulatory regimes. In addition, the National VET Regulator will have powers to allow for regulatory decisions to be stayed (while it is reconsidering a decision). Conditions may be imposed by the National VET Regulator while a decision is stayed. This provides flexibility to support training delivery so students’ training is not interrupted during the review process.

Further, the amendments enable the National VET Regulator to cancel VET qualifications and VET statements of attainment without first directing the relevant NVR RTO to do so. This amendment allows the National VET Regulator to take urgent action to cancel VET qualifications and VET statements of attainment where there is a risk to individuals and the community. The amendments also bolster enforcement powers by including a civil penalty in the NVETR Act for failure, by an NVR RTO, to comply with a direction to cancel VET qualifications and VET statements of attainment.

To assist the Minister to support and direct the National VET Regulator without impinging on its statutory independence, the Bill makes changes to the Minister’s powers to issue directions to the National Regulator. The amendments will give the Minister the power to issue directions to the National VET Regulator in relation to the performance of its functions and the exercise of its powers. The National VET Regulator must comply with a direction given by the Minister.

Amendments make clear that the Minister may determine fees the National VET Regulator may charge for goods and services it provides in performing functions under other laws of the Commonwealth.

To improve the efficiency and effectiveness of the NVETR Act, clarification is made to offence provisions relating to the delivery of a VET course where course delivery is conducted by a person, on behalf of an NVR RTO, in accordance with a written agreement.

Further technical amendments streamline the nomenclature of a number of legislative instruments defining them in section 3 of the NVETR Act by reference to the relevant section under which they are made, clarifying that the subordinate
legislation can be given different names. Amendments also provide the ‘Australian Skills Quality Authority’ as an alternative name for the National VET Regulator. This aligns the NVETR Act with the terminology commonly used in the VET sector when referencing the National VET Regulator.

The amendments in Schedule 1 commence on 1 July 2020.

Detailed explanation

National Vocational Education and Training Regulator Act 2011

Item 1 – Section 3

This item amends section 3 of the NVETR Act to insert the following definitions:

- **audit report rules** has the meaning given by section 231B.
- **information technology requirements** includes software requirements.
- **National Centre for Vocational Education Research**, means the National Centre for Vocational Education Research Ltd (ACN 007 967 311) or any successor of that body.
- **tuition assurance scheme operator means** a person or body who operates a scheme approved by the National VET Regulator for the purposes of requirements that:
  
  (a) are set out in the Standards for NVR RTOs; and
  
  (b) relate to the protection of fees for courses that an NVR RTO is unable to provide.

Item 2 – Section 3 (paragraphs (b) and (c) of the definition of VET course)

Item 2 amends paragraphs (b) and (c) of the definition of VET course in section 3 of the NVETR Act to insert ‘units of competency or’ before the word ‘modules’. This amendment ensures that the definition of ‘VET course’ more accurately reflects current practice in the VET sector.

Item 3 – After section 17

Item 3 inserts new section 17A into Subdivision A of Division 1 of Part 2 of the NVETR Act. Subdivision A sets out the steps for registering as an NVR RTO and renewing registration. When considering an application for registration or renewal of registration, the National VET Regulator may conduct an audit of any matter relating to the application under subsection 17(3).
Under new section 17A, where an audit is conducted, the National VET Regulator will be required to prepare an audit report. The report will need to be in a form (if any) approved by the Minister and must also comply with the audit report rules (if any are made – see item 84, Schedule 1). The reports must not contain personal information unless personal information is needed to identify the applicant for registration or the relevant NVR RTO (for example where the organisation is a sole trader). The National VET Regulator must comply with the requirements (if any) prescribed by the audit report rules, relating to the publication of the report (see item 84, Schedule 1).

These amendments add an additional layer of transparency to the National VET Regulator's audit processes. They do not prevent the National VET Regulator from producing other reports that relate to the audit which may be used for operational purposes under the Act. These other reports do not need to be published nor do they need to comply with audit report rules or be in a form approved by the Minister.

**Item 4 – Subparagraph 20(1)(a)(i)**
**Item 5 – Paragraph 20(1)(b)**
**Item 6 – Subsection 20(1) (note)**

Section 20 of the NVETR Act deals with commencement and duration of registration for NVR RTOs.

Items 4 to 6 make amendments to section 20. Item 4 amends subparagraph 20(1)(a)(i) to provide that if the applicant is renewing its registration, the renewal commences in accordance with paragraph 31(3B)(b) (see item 20, Schedule 1).

Item 5 amends paragraph 20(1)(b) to provide that the applicant's registration expires at the end of the period determined by the National VET Regulator, subject to subsections 20(2) and 31(3) and paragraph 36(2)(c) of the NVETR Act.

Item 6 repeals the note at subsection 20(1) and replaces it with a note clarifying that subsection 31(3) provides for registration to continue in force if a decision has not been made by the National VET Regulator on a renewal application until after the registration would otherwise expire. The note also clarifies that paragraph 36(2)(c) allows the National VET Regulator to shorten the period of registration, as a sanction.

**Item 7 – After section 22**

This item inserts a new section 22A into Subdivision B of Division 1 of Part 2 of the NVETR Act. Subdivision B sets out various conditions of registration imposed upon an NVR RTO. Failure to comply with a condition of registration may amount to a contravention of a civil penalty provision under section 111.

New section 22A provides that an NVR RTO must demonstrate that it has a commitment and the capability to deliver quality vocational education and training.
This amendment addresses recommendation 4 of the Braithwaite Review which proposed an amendment to the NVETR legislative framework to:

'ensure that entrants to the registered training market be required to clearly demonstrate educational commitment and knowledge of how to provide best practice support to students. This statement of commitment should be required as a condition of registration, and include quality performance objectives, which, if breached, could lead to sanctions and ultimately de-registration.'

New section 22A will be used by the National VET Regulator in managing organisations that are seeking to obtain registration for purposes other than the delivery of quality training, such as on-selling registration, migration or taxation purposes.

**Item 8 – Paragraph 25(1)(a)**

**Item 9 – Paragraph 25(1)(c)**

Under subsection 25(1) of the NVETR Act, it is a condition of registration that an NVR RTO must notify the National VET Regulator in writing if:

- an event occurs that would significantly affect its ability to comply with the VET Quality Framework (paragraph 25(1)(a));
- there is a change to the name or contact details of an executive officer or high managerial agent (paragraph 25(1)(b));
- there are other substantial changes to the organisation’s operations (paragraph 25(1)(c)).

Examples of an event that would significantly affect an NVR RTO’s ability to comply with the VET Quality Framework or are substantial changes to the organisation’s operations could include significant changes to shareholder ownership, significant changes to delivery methodologies, actions taken by other agencies which also regulate the NVR RTO’s business operations and significant changes to financial status such as entering voluntary administration.

Item 8 amends paragraph 25(1)(a) so that a notification must be made if an event occurs, or is likely to occur, that would significantly affect its ability to comply with the VET Quality Framework.

Item 9 amends paragraph 25(1)(c) so that a notification must be made if there are, or are likely to be, other substantial changes to the organisation’s operations.

The amendments address Recommendation 5 of the Braithwaite Review which proposed strengthening the notification requirements under the NVETR Act, and where appropriate, aligning them with the TEQSA Act and ESOS Act and other relevant legislation.

As these material changes are significant risk indicators the National VET Regulator’s oversight would be more effective with earlier intelligence from the NVR RTO when a change is likely to happen. Under the TEQSA Act and the ESOS Act,
providers are required to notify their regulator if such changes ‘happen’ or are ‘likely to happen’.

**Item 10 – Section 26 (heading)**
**Item 11 – At the end of subsection 26(1)**
**Item 12 – Subsection 26(2)**
**Item 12 – Subsection 26(2)**
**Item 13 – Subsection 26(2)**
**Item 14 – At the end of section 26**

Under section 26 of the NVETR Act, it is a condition of registration that an NVR RTO must give the National VET Regulator such information that it requests by notice in writing.

Item 10 makes a minor amendment to the heading of section 26 (to insert ‘etc’).

Item 11 qualifies the current condition on NVR RTOs under section 26 of the NVETR Act so that the organisation will only need to provide the information where the organisation is capable of complying with the request to provide the information. This amendment makes it clear that if the NVR RTO does not have access to the requested information, they will not be required to provide it to the National VET Regulator.

Item 12 makes a minor amendment to subsection 26(2) to insert a reference to subsection (1).

Item 13 amends subsection 26(2) to provide that the notice given under subsection 26(1) may specify ‘the manner in which’ the information requested is to be provided. The ‘manner in which’ could include, for example, that the information is provided in an email or in a particular electronic file format.

In order to allay any concerns that the power to request information under section 26 might not extend to documents, a number of amendments are made to that section.

Item 14 inserts new subsections 26(3) and (4). New subsection 26(3) provides that an NVR RTO must produce to the National VET Regulator such documents that it requests by notice in writing, for the purposes of the NVETR Act, as long as the organisation is capable of complying with the request. The new requirement to produce documents contains the qualification where ‘the organisation is capable of complying with the request’, so that the NVR RTO will not be required to produce a document if they do not have the document or it is not in a producible form.

New subsection 26(4) provides that such a notice must specify the time for compliance and the manner in which the documents are to be produced.

This new requirement to produce documents does not abrogate the privilege against self-incrimination, where this is applicable, noting that the privilege does not attach to bodies corporate (see section 187 of the *Evidence Act 1995* (Cth)).
This new condition of registration in subsection 26(3) may be used by the National VET Regulator where it can identify a particular document (or class of documents) that the NVR RTO needs to produce (for example, a financial statement). The current condition to request information under subsection 26(1) will continue to be relevant for the National VET Regulator. Where the National VET Regulator knows the information that it requires but does not know the document where it would be located or alternatively the information is not currently in documentary form, the Regulator may rely on subsection 26(1) to access the information.

**Item 15 – After section 26**

This item inserts new sections 26A and 26B into the NVETR Act.

Under new section 26A, the National VET Regulator may inspect documents that are produced under subsection 26(3) and may make and retain copies of the documents, or make and retain extracts from such documents.

New section 26B enables the National VET Regulator to retain documents produced under subsection 26(3) for as long as is reasonably necessary. The National VET Regulator must however give the person otherwise entitled to possession of a document a certified copy of it as soon as practicable and courts and tribunals must accept such certified copies as evidence as though they were originals (subsections 26(2) and (3)). Until a certified copy is provided, the Regulator must, at such times and places as it thinks appropriate, allow a person otherwise entitled to possession (or a person they authorise), to inspect and make copies of, or take extracts from, the document (subsection 26(4)).

**Item 16 – At the end of section 28**

Item 16 inserts new subsection 28(3) clarifying that a general direction given by the National VET Regulator to organisations about compliance with the VET Quality Framework and other conditions of registration under Subdivision B of Part 2 the Act, are legislative instruments. General directions issued by the National VET Regulator in relation to the VET Quality Framework, need to be consistent with the VET Quality Framework.

New subsections 28(4) and 28(5) make it clear that despite anything in sections 44 and 54 of the *Legislation Act 2003* (which deal with exemptions from disallowance and sunsetting), the general directions are subject to disallowance and sunsetting under section 42 and Chapter 3 of the *Legislation Act 2003*.

The change to the NVETR Act by item 16 applies to general directions given by the National VET Regulator after the commencement of the amendment.

**Item 17 – Subsection 29(2)**

Subsection 29(1) of the NVETR Act allows the National VET Regulator to impose other conditions (in addition to the conditions contained in Division 1 of Part 2 of the NVETR Act) on an NVR RTO’s registration and subsection 29(2) provides that the Regulator may vary such conditions imposed under subsection 29(1).
This item amends subsection 29(2) to provide that the National VET Regulator may not only vary, but may also remove such conditions.

**Item 18 – Section 30**

**Item 19 – At the end of section 30**

Section 30 of the NVETR Act requires the National VET Regulator to notify an NVR RTO within 30 days of its decision to impose or vary a condition on the organisation’s registration. This notification must be in writing and contain the decision, the reasons for the decision and the period for which the condition is imposed. Item 18 makes a minor amendment to incorporate these requirements into a new subsection 30(1) (i.e. item 18 is a minor numbering amendment).

Item 19 adds new subsections 30(2) and 30(3). New subsection 30(2) provides that the period for which a condition is imposed may be either as specified in a subsection 30(1) notice, or may be for a period that is to be ascertained in accordance with the notice.

An example of where a period for which the condition is imposed is to be ascertained in accordance with a notice is when a condition on registration is that an NVR RTO is required to notify the National VET Regulator of commencement of delivery and the Regulator receives the notification. The condition on registration will no longer apply once the Regulator has received notification from the NVR RTO.

New subsection 30(3) provides that the National VET Regulator must, within 30 days of deciding to remove a condition, notify the organisation in writing of its decision and provide reasons for the decision. A note explains that details of conditions imposed on an organisation’s registration are included on the National Register (see section 216).

**Item 20 – Subsection 31(3)**

Section 31 of the NVETR Act provides that the National VET Regulator may renew an NVR RTO’s registration if the organisation makes an application for renewal in accordance with the timing set out in paragraphs 31(1)(a) and (b).

Currently subsection 31(3) provides that the organisation’s registration continues until the application is decided by the National VET Regulator.

Item 20 repeals subsection 31(3) and substitutes new subsections 31(3), 31(3A), 31(3B) and 31(3C).

New subsection 31(3) provides that if an NVR RTO’s registration would, apart from subsection 31(3), expire before the National VET Regulator makes a decision about the application for renewal, then the organisation’s registration is taken to continue in force until:

- in the case where the application is refused – the refusal takes effect, or
• in the case where the application is approved – the start of the day after the application is decided.

New subsection 31(3A) provides that if an NVR RTO’s application for renewal of registration is refused:

• the National VET Regulator must notify the organisation of the refusal, and
• the refusal will take effect either at the start of the day after notification of refusal is given to the organisation, or at the start of any later day that is specified in the notice.

This will provide the National VET Regulator with some flexibility with respect to when a refusal of renewal of registration will take effect. If a later date is specified in the notice of refusal, this will allow the NVR RTO to continue operating for a period while its enrolled students complete their training, or arrange to transfer to another training provider.

New paragraph 30(3B)(a) provides that, if the National VET Regulator decides to renew an NVR RTO’s registration, the Regulator must determine the period for which registration is renewed. New paragraph 30(3B)(b) also sets out two alternatives for when the NVR RTO’s renewed registration commences. Subparagraph 30(3B)(b)(i) provides that the renewed registration starts on the day after the day on which the organisation’s previous registration expires subject to subparagraph 30(3B)(b)(ii). Subparagraph 30(3B)(b)(ii) provides that if the organisation’s registration continued under subsection 30(3), the renewed registration commences on the day on which the previous registration would have expired except for the operation of subsection 30(3).

New subsection 30(3C) provides that a period of renewal of registration determined under paragraph 30(3B)(a) must not exceed 7 years.

**Item 21 – Before subsection 35(1)**
**Item 22 – Subsection 35(1)**

Section 35 of the NVETR Act gives the National VET Regulator the power to conduct compliance audits of an NVR RTO.

Item 21 inserts a heading for compliance audits before subsection 35(1). Item 22 inserts new subsections 35(1A) – (1D).

New subsection 35(1A) requires that the National VET Regulator must prepare a report of a compliance audit, if they conduct a compliance audit under subsection 35(1).

New subsection 35(1B) specifies that a report of a compliance audit must be in a form (if any), approved by the Minister. The report must also comply with the audit report rules (if any are made – see item 84, Schedule 1).
New subsection 35(1C) requires that a report of a compliance audit must not contain personal information unless it is the name of the NVR RTO to which the report relates (for example where the organisation is a sole trader).

New subsection 35(1D) requires that a report of a compliance audit must comply with the requirements (if any) prescribed by the audit report rules relating to the publication of an audit report (see item 84, Schedule 1).

The amendments only require that reports be prepared (and published in accordance with any prescribed audit report rules), for compliance audits conducted under subsection 35(1) of the NVETR Act. They do not require that reports be prepared (and published) for reviews and examinations conducted under subsection 35(2).

These amendments will increase transparency of the National VET Regulator’s auditing processes. They do not prevent the National VET Regulator from producing other reports that relate to a compliance audit that may be used for operational purposes under the Act. These other reports do not need to be published nor do they need to comply with audit report rules or be in a form approved by the Minister.

Item 22 also includes a new heading at the end of subsection 35(1D) ‘Reviewing or examining an NVR RTO’s operations’.

Item 23 – Subsection 38(1)

Currently, subsection 38(1) of the NVETR Act enables the National VET Regulator, by written notice, to suspend all or part of an NVR RTO’s scope of registration.

Subsection 38(1) is amended to add the words ‘for a period specified in, or ascertained in accordance with, the notice’. This amendment will make it clear that the National VET Regulator has flexibility in determining the period of the suspension.

Item 24 – At the end of section 39

Section 39 of the NVETR Act enables the National VET Regulator, by written notice, to cancel an NVR RTO’s registration in any circumstances it considers appropriate to do so.

New subsection 39(4) provides that, if an NVR RTO’s registration is cancelled under subsection 39(1), the cancellation takes effect either at the start of the day after notification of cancellation is given to the organisation, or at the start of any later day that is specified in the notice. If a later date is specified in the notice of cancellation, this would allow the NVR RTO to continue operating for a period while its enrolled students complete their training, or arrange to transfer to another training provider.

These amendments make it clear that the National VET Regulator has flexibility in determining when cancellation takes effect.
Section 46 of the NVETR Act deals with commencement and duration of accreditation of VET accredited courses.

Items 25 to 27 make amendments to section 46. Item 25 amends subparagraph 46(1)(a)(i) to provide that if the applicant is renewing a course’s accreditation, the renewal commences in accordance with paragraph 50(3B)(b) (see item 32, Schedule 1).

Item 26 amends paragraph 46(1)(b) to provide that the course’s accreditation expires at the end of the period determined by the National VET Regulator, subject to subsections 46(2) and 50(3).

Item 27 includes an explanatory note at the end of subsection 46(1).

Section 47 of the NVETR Act prior to these amendments, provides that a person must comply with any conditions imposed on the accreditation of a VET accredited course under subsection 48(1).

This item repeals and substitutes section 47 and also adds new sections 47A, 47B and 47C.

Under new section 47, a person in respect of whom a VET accredited course has been accredited must comply with the conditions specified in new sections 47A, 47B and 47C, as well as any conditions imposed on the accreditation of a VET accredited course under subsection 48(1). A note explains that failure to comply with a condition is a contravention of a civil penalty provision (see section 130).

New section 47A provides that a person in respect of whom a VET accredited course has been accredited must ensure the course meets the Standards for VET Accredited Courses (which are made under section 188 of the NVETR Act).

New section 47B provides that a person in respect of whom a VET accredited course has been accredited must ensure the course meets the Australian Qualifications Framework. The Australian Qualifications Framework is defined in section 3 of the NVETR Act to have the same meaning as in HESA.

New subsection 47C(1) provides that a person in respect of whom a VET accredited course has been accredited must comply with any written general directions given by the National VET Regulator on the way in which VET accredited courses are to meet the Standards for VET Accredited Courses and the Australian Qualifications Framework. New subsection 47C(2) requires the National VET Regulator to publish any general directions under paragraphs 47C(1)(a) and (b) on
its website. New subsection 47C(3) provides that subsection (1) is a legislative instrument.

Any general directions given by the National VET Regulator must be consistent with the Standards for VET Accredited Courses and the Australian Qualifications Framework.

New subsections 47C(4) and 47C(5) make it clear that despite anything in section 44 and 54 of the Legislation Act 2003, (which deal with exemptions from disallowance and sunsetting) the general directions are subject to disallowance and sunsetting under section 42 and Chapter 3 of the Legislation Act 2003.

Item 29 – Subsection 48(2)

Currently subsection 48(1) of the NVETR Act gives the National VET Regulator the power to impose conditions on the accreditation of a VET accredited course and subsection 48(2) allows the Regulator to vary such conditions imposed.

This item amends subsection 48(2) to provide that the National VET Regulator may not only vary, but may also remove such conditions.

Item 30 – Section 49

Item 31 – At the end of section 49

Section 49 of the NVETR Act requires the National VET Regulator to notify an NVR RTO within 30 days of its decision to impose or vary a condition on the accreditation of a VET accredited course. This notification must be in writing and contain the decision, the reasons for the decision and the period for which the condition is imposed.

Item 30 makes a minor amendment to incorporate the requirements into a new subsection 49(1) (i.e. item 30 is a minor numbering amendment).

Item 31 adds new subsections 49(2) and 49(3).

New subsection 49(2) provides that the period for which a condition is imposed may be either as specified in a subsection 49(1) notice, or may be for a period that is to be ascertained in accordance with the notice. This amendment provides the National VET Regulator with flexibility in relation to the period for which a condition of registration is imposed.

New subsection 49(3) provides that the National VET Regulator must, within 30 days of deciding to remove a condition on the accreditation of a VET accredited course, notify the organisation in writing of its decision and provide reasons for the decision. A note explains that details of conditions imposed on an organisation’s registration are included on the National Register (see section 216).

Item 32 – Subsection 50(3)
Section 50 of the NVETR Act provides that 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.

Subsection 50(3) prior to the amendments provides that the accreditation of a VET accredited course continues until the application is decided by the National VET Regulator.

This item repeals subsection 50(3) and substitutes new subsections 50(3), 50(3A), 50(3B) and 50(3C).

New subsection 50(3) provides that if the accreditation of a VET accredited course would, apart from subsection 50(3), expire before the National VET Regulator has made a decision about the application for renewal, the course’s accreditation is taken to continue until:

- in the case where the application is refused – the refusal takes effect; or
- in the case where the application is approved – the start of the day after the application is decided.

New subsection 50(3A) provides that if the application for renewal of accreditation is refused:

- the National VET Regulator must notify the person of the refusal; and
- the refusal will take effect either at the start of the day after notification of refusal is given to the person, or at the start of any later day that is specified in the notice.

This will provide the National VET Regulator with some flexibility with respect to when a refusal of renewal of accreditation will take effect. If a later date is specified in the notice of refusal, this would allow the NVR RTO delivering the course to continue providing the course for a period while its enrolled students complete their training, or arrange to transfer to another RTO.

New subsection 50(3B) provides that, if the National VET Regulator decides to renew accreditation of a VET accredited course, the Regulator must determine the period for which registration is renewed. New paragraph 50(3B)(b) sets out two alternatives for when the renewed accreditation commences. Subparagraph 50(3B)(b)(i) provides that the renewed accreditation starts on the day after the day on which the course’s accreditation expires subject to subparagraph 50(3B)(b)(ii). Subparagraph 50(3B)(b)(ii) provides that if the course’s previous accreditation was continued in force under subsection (3), the renewed accreditation commences on the day on which the course’s previous accreditation would have expired except for the operation of that subsection.

New subsection 50(3C) provides that a period of renewal of accreditation determined under subsection 50(3B) must not exceed 5 years.

**Items 33, 34 and 35 – Section 56**
Under subsection 56(1) of the NVETR Act, the National VET Regulator may cancel VET qualifications and VET statements of attainment if it is reasonably satisfied certain grounds justifying cancellation apply (e.g. where a qualification or statement of attainment was issued in error).

Currently, subsection 56(2) provides that the National VET Regulator may only take action under subsection 56(1) if it gives a written direction to an NVR RTO requiring that it cancel a VET qualification or VET statement of attainment and notify the individual concerned, and the organisation fails to comply with the direction in the time stipulated.

Item 33 amends subsection 56(2) by in effect replacing the words ‘may only’ with ‘may’ and deleting the word ‘however’. This amendment facilitates the amendments in item 34.

Item 34 inserts a new subsection 56(3A). New subsection 56(3A) provides that if the National VET Regulator reasonably believes that, if it were to issue a direction to an NVR RTO under subsection 56(2), the organisation would not comply – then the Regulator may take action under subsection 56(1) to cancel a VET qualification or VET statement of attainment.

An example would be where the organisation has ceased operating (but is still registered) or is not replying to communications and the National VET Regulator needs to take urgent action to cancel VET qualifications and VET statements of attainment due to a risk to individuals and the community. An example is where an aged-care worker purports to hold a VET qualification and/or VET statement of attainment for competencies in which they are not sufficiently skilled.

The effect of this amendment and that of item 33 is to enable the National VET Regulator to cancel a VET qualification or statement of attainment without first having to direct a NVR RTO to do so where subsection 56(3A) is applicable.

Item 35 inserts a new subsection 56(5) which prevents the National VET Regulator from taking action to cancel under subsection 56(1) unless subsections 56(2), 56(3A), or 56(4) apply (subsection 56(4) provides that the Regulator may take action under subsection 56(1) at any time in relation to a former RTO).

**Item 36 – At the end of Subdivision B of Division 2 of Part 4**

Subdivision B of Division 2 of Part 4 of the NVETR Act makes provision for civil penalties for the failure to return a VET qualification or VET statement of attainment (section 60) and for using a cancelled VET qualification or VET statement of attainment (section 61).

Item 36 inserts a new section 61A into Subdivision B. Under new section 61A, an NVR RTO is liable for a civil penalty if it has been given a direction under subsection 56(2) and fails to comply with the direction within the time stipulated in the direction. The maximum civil penalty is 100 penalty units (currently $21,000 as per subsection 4AA(1) of the Crimes Act 1914).
Subdivision B of Division 1 of Part 6 of the NVETR Act concerns certain conduct that is prohibited if a person is not an NVR RTO.

Under section 116 of the NVETR Act, a person commits an offence carrying a penalty of up to 300 penalty units (currently $63,000) for a breach of section 116, or in the case of section 117, up to 600 penalty units (currently $126,000) if the person is not an NVR RTO and the person:

- provides or offers to provide all or part of a VET course in a referring State or a Territory (subsection 116(1));
- is a registered provider (other than a secondary school) and provides or offers to provide all or part of a VET course in a non-referring State (subsection 116(2)).

Item 37 inserts a new subsection 116(1A), which provides that subsection 116(1) does not apply where a person provides all or part of a VET course on behalf of an NVR RTO in accordance with a written agreement. A note explains that a defendant in a court matter bears an evidential burden in relation to this subsection – see subsection 13.3(3) of the Criminal Code in the Schedule of the Criminal Code Act 1995.

Item 38 inserts new subsection 116(3). New subsection 116(3) provides that subsection 116(2) does not apply where a person provides all or part of a VET course on behalf of an NVR RTO in accordance with a written agreement. A note explains that a defendant in a court matter bears an evidential burden in relation to this subsection – see subsection 13.3(3) of the Criminal Code.

Under section 117 of the NVETR Act, a person contravenes a civil penalty provision carrying a penalty of up to 600 penalty units (currently $126,000) if the person is not an NVR RTO and the person:

- provides or offers to provide all or part of a VET course in a referring State or a Territory (subsection 117(1));
- is a registered provider (other than a secondary school) and provides or offers to provide all or part of a VET course in a non-referring State (subsection 117(2)).

Item 39 inserts a new subsection 117(1A), which provides that subsection 117(1) does not apply where a person provides all or part of a VET course on behalf of an NVR RTO in accordance with a written agreement. A note explains that a defendant in a court matter bears an evidential burden in relation to this subsection – see subsection 96 of the Regulatory Powers (Standard Provisions) Act 2014.

Item 40 inserts a new subsection 117(3). New subsection 117(3) provides that subsection 117(2) does not apply where a person provides all or part of a VET course on behalf of an NVR RTO in accordance with a written agreement. A note
explains that a defendant in a court matter bears an evidential burden in relation to this subsection – see section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*.

These amendments are designed to clarify that where a person offers a VET course in accordance with a written agreement between an NVR RTO and the person then that arrangement will not breach sections 116 and 117 of the NVETR Act. This is consistent with the Standards for NVR RTOs which allow an NVR RTO to enter into a written agreement with a person to offer a VET course on their behalf.

**Item 41 – After subsection 146(1)**

**Item 42 – Subsections 146(2) and (3)**

**Item 43 – Subsection 146(4)**

Section 146 of the NVETR Act enables the National VET Regulator to accept written undertakings from a person if it considers the person has committed an offence against the NVETR Act or has contravened a civil penalty provision.

Item 41 inserts a new subsection 146(1A) which provides that the National VET Regulator may accept a written undertaking from a person in relation to any matter relating to the NVETR Act.

Enabling the National VET Regulator to accept written undertakings for all purposes of the NVETR Act will be a very useful tool, as most of its regulatory action is administrative in nature and relates to the registration status of an NVR RTO, rather than involving criminal or civil penalty provisions.

This amendment aligns with the *Education and Training Reform Act 2006 (VIC)*, which allows the Victorian Registration and Qualifications Authority (VRQA) to accept a written undertaking given by an RTO in connection with a matter in relation to which the VRQA has a power or function under that Act.

Items 42 and 43 make minor consequential amendments to subsections 146(2), (3) and (4) to add in reference to new subsection 146(1A).

**Item 44 – After subsection 155(1)**

Section 155 of the NVETR Act provides for the establishment of the National VET Regulator and subsection 155(2) provides that it may also be known by a name specified in the regulations. Section 15 of the *National Vocational Education and Training Regulator Regulations 2011* provides that, for the purposes of subsection 155(2) of the NVETR Act, the National VET Regulator may also be known as the Australian Skills Quality Authority.

In the VET sector, the National VET Regulator is commonly known as the Australian Skills Quality Authority, or simply as ASQA.

This item inserts a new subsection 155(1A) which provides that the National VET Regulator may also be known as the Australian Skills Quality Authority.
Item 45 – Subparagraph 157(1)(q)(ii)
Item 46 – At the end of paragraph 157(1)(q)

Section 157 of the NVETR Act specifies the National VET Regulator’s functions. Paragraph 157(1)(q) provides that the functions include other functions conferred on the Regulator by the NVETR Act, or the ESOS Act or any other law of the Commonwealth.

For clarity, and to ensure the functions specifically refer to other legislation that has conferred functions on the National VET Regulator since the NVETR Act was originally enacted, item 46 amends paragraph 157(1)(q) to add in reference to the following:

- Higher Education Support Act 2003
- VET Student Loans Act 2016
- any other law of the Commonwealth.

These amendments do not change the substance of the law and do not alter the National VET Regulator’s functions.

Item 45 makes a minor consequential amendment to subparagraph 157(1)(q)(ii) to remove a doubling up of the reference to any other law of the Commonwealth.

Item 47 – Subsection 158(2)
Item 50 – Subsection 185(2)
Item 51 – Subsection 186(2)
Item 52 – Subsection 187(2)
Item 53 – Subsection 188(2)
Item 54 – Subsection 189(2)
Item 55 – Subsection 190(2)
Item 83 – Subsection 231A(2)

A number of provisions of the NVETR Act provide for the following legislative instruments to be made:

| Subsection 158(1) provides that the National VET Regulator must, by legislative instrument, make requirements relating to the financial viability of NVR RTOs | subsection 158(2) provides that these requirements are to be known as the Financial Viability Risk Assessment Requirements |
| subsection 185(1) provides that the Minister may, by legislative instrument, make standards for NVR RTOs (with the agreement of the Ministerial Council) | subsection 185(2) provides that these standards are to be known as the Standards for NVR Registered Training Organisations |
| subsection 186(1) provides that the Minister may, by legislative instrument, | subsection 186(2) provides that the requirements are to be known as the |
| Make requirements for assessing whether a person is a fit and proper person (with the agreement of the Ministerial Council) | **Fit and Proper Person Requirements** |
| subsection 187(1) provides that the Minister may, by legislative instrument, make requirements for data provision (with the agreement of the Ministerial Council) | subsection 187(2) provides that the requirements are to be known as the **Data Provision Requirements** |
| subsection 188(1) provides that the Minister may, by legislative instrument, make standards for VET accredited courses (with the agreement of the Ministerial Council) | subsection 188(2) provides that the standards are to be known as the **Standards for VET Accredited Courses** |
| subsection 189(1) provides that the Minister may, by legislative instrument, make standards for VET Regulators (with the agreement of the Ministerial Council) | subsection 189(2) provides that the standards are to be known as the **Standards for VET Regulators** |
| subsection 190(1) provides that the Minister may, by legislative instrument, make guidelines for the National VET Regulator to use when assessing risk (with the agreement of the Ministerial Council) | subsection 190(2) provides that the guidelines are to be known as the **Risk Assessment Framework** |
| Subsection 231A(1) provides that the Minister may, by legislative instrument, make standards relating to quality in the VET sector | Subsection 231A(2) provides that the standards are to be known as the **Quality Standards**. |

All of these legislative instruments are defined in section 3 of the NVETR Act by reference to the relevant section under which they are made (the defined terms being as per the highlighted instrument titles in the second column of the table above). For example, section 3 provides that the ‘**Financial Viability Risk Assessment Requirements**’ has the meaning given by section 158.

Items 47, 50, 51, 52, 53 and 83 all make the same minor amendments to the references to defined terms in subsections 158(2), 185(2), 186(2), 187(2), 188(2), 189(2), 190(2) and 231A(2).

For example, subsection 158(2) currently provides that the requirements provided for in subsection 158(1) are to be known as the **Financial Viability Risk Assessment Requirements**. Item 47 repeals and substitutes subsection 158(2) so that it instead provides that, for the purposes of the NVETR Act, **Financial Viability**
Risk Assessment Requirements means the requirements under subsection 158(1).

Item 48 – At the end of section 158

Section 158 of the NVETR Act relates to Financial Viability Risk Assessment Requirements. Item 48 makes it clear that despite anything in sections 44 and 54 of the Legislation Act 2003 (which deal with exemptions from disallowance and sunsetting), the Financial Viability Risk Assessment Requirements are legislative instruments that are subject to disallowance and sunsetting under section 42 and Chapter 3 of the Legislation Act 2003.

Item 49 – Subsection 160(1)

Currently section 160 of the NVETR Act provides that 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. Item 49 amends this power to issue a Ministerial direction so that the Minister may by legislative instrument give a direction to the National VET Regulator in relation to the performance of its functions and the exercise of its powers.

Item 56 – Section 199 (table item 5)
Item 57 – Section 199 (table item 19)
Item 58 – Section 199 (table item 26)

The table at section 199 of the NVETR Act specifies which decisions made under the NVETR Act are reviewable decisions.

By virtue of item 5 of the table, a decision under section 29 to vary a condition of an NVR RTO’s registration is a reviewable decision. Item 53 amends this slightly so that decision to vary or remove a condition of an NVR RTO’s registration is a reviewable decision. This is a consequential amendment to item 17 which amends section 29.

By virtue of item 19 of the table, a decision under section 48 to vary a condition of the accreditation of a VET accredited course is a reviewable decision. Item 57 amends this slightly so that a decision to vary or remove a condition of the accreditation of a VET accredited course is a reviewable decision. This is a consequential amendment to item 29 which amends section 48.

By virtue of item 26 of the table, a decision under section 216 to enter other matters on the National Register is a reviewable decision. Item 58 amends this slightly so that a decision under subsection 216(4) (as amended) to enter other matters on the National Register is a reviewable decision. This provides clarity as to which decisions made under section 216 are reviewable decisions.

Item 59 – At the end of section 200

Section 200 of the NVETR Act deals with applications for reconsideration of reviewable decisions.
This item amends section 200 by adding new subsections 200(6) and (7).

New subsection 200(6) provides that, when the National VET Regulator receives an application for the reconsideration of a reviewable decision, it may give a written notice to the applicant to determine a stay of the operation of the decision until the reconsideration has been finalised. New subsection 200(7) provides that a subsection 200(6) determination of stay is subject to any conditions as may be specified in the determination.

For example, this amendment allows the National VET Regulator to make a determination that would permit the NVR RTO’s registration to continue to operate (even though the Regulator’s initial decision was to cancel the registration), subject to appropriate conditions, pending the outcome of an application made under section 200.

Item 60 – Before subsection 203(1)
Item 61 – Before subsection 203(2)
Item 62 – Subsection 203(2)

Section 203 of the NVETR Act provides that applications may be made to the Administrative Appeals Tribunal (AAT) for review of those reviewable decisions listed in section 199.

Currently subsection 203(2) provides that applications may be made to the AAT for review of a reviewable decision if the decision was made by a person other than a member of the staff of the National VET Regulator.

Items 60 and 61 insert the following explanatory headings:

- before subsection 203(1): Review of delegate’s decision following reconsideration
- before subsection 203(2): Review of decision not made by delegate.

Item 62 amends subsection 203(2) to provide that an application may be made to the AAT where the decision was not made by a delegate of the National VET Regulator.

These amendments clarify that all reviewable decisions made by the delegate of the National VET Regulator are subject to reconsideration by the National VET Regulator. A decision by the National VET Regulator is reviewable by the AAT.

Item 63 – Paragraph 205(1)(f)
Item 64 – At the end of subsection 205(1)
Item 65 – After subsection 205(1)
Item 66 – Subsection 205(2)
Item 67 – After subsection 205A(1)
The National VET Regulator currently has the ability to share information for the purpose of administering laws relating to vocational education and training to the bodies and persons listed in subsection 205(1) of the NVETR Act. These bodies and persons are the Secretary of the Department, a Commonwealth authority, a State or Territory authority, a person who holds any office or appointment under a law of the Commonwealth, State or Territory, another VET Regulator or NCVER.

Item 63 is a technical amendment that deletes reference to ‘any successor of that body’. This is a consequential amendment to item 1 Schedule 1 which amends the definition of NCVER at section 3 of the NVETR Act.

Item 64 adds a ‘tuition assurance scheme operator’ to the list of bodies and persons to whom the National VET Regulator may disclose information. The definition of tuition assurance scheme operator has been included under item 1, Schedule 1.

Item 65 inserts subsection 205(1A) to facilitate the provision of electronic access to information to those bodies and persons specified in subsection 205(1). Item 66 amends subsection 205(2) in effect removing the obligation on the National VET Regulator to advise a person whose personal information has been disclosed to NCVER, the details of the disclosure. The National VET Regulator will also not be required to advise a person if their personal information is disclosed to a tuition assurance scheme operator.

NCVER was established to support the national training sector. Disclosure to NCVER is particularly useful in circumstances where an NVR RTO closes suddenly and submits student records to the National VET Regulator and not NCVER. With these amendments the National VET Regulator is able to provide relevant data to NCVER to update its records, so that a person’s authenticated VET transcript (made available under the Student Identifiers Act 2014 by drawing on training data held by NCVER) can be populated with accurate training information. This assists the students concerned and other NVR RTOs where the students wishes to continue their training by enabling a new provider to ascertain a person’s prior learning. This arrangement is consistent with Australian Privacy Principle 6, which provides that an entity may use personal information or disclose it to another entity without consent from the individual when that individual ‘reasonably expects’ that the information would be used for that secondary purpose and that secondary purpose is related or directly related (in the case of sensitive information) to the primary purpose.

Tuition assurance schemes are an important consumer protection mechanism under the Standards for NVR RTOs, designed to protect a student’s investment in their studies if an NVR RTO ceases to provide a course or closes its business. The amendments allow the National VET Regulator to share information with a tuition assurance scheme operator without having to notify every student about this communication. This benefits the students as the amendments will enable the tuition assurance scheme operator to efficiently assist affected students if their NVR RTO closes or is no longer able to provide a course. Also these amendments align with Australian Privacy Principle 6, which provides that an entity may use personal information or disclose it to another entity without consent from the individual when that individual ‘reasonably expects’ that the information would be used for that
secondary purpose and that secondary purpose is related or directly related (in the case of sensitive information) to the primary purpose.

Item 67 inserts a new subsection 205A(1A) that facilitates the provision of electronic access to information disclosed under subsection 205A(1). Subsection 205A(1) currently provides that the National VET Regulator may disclose VET information to a Commonwealth authority, or a State or Territory authority, if the Regulator is satisfied that the disclosure is necessary to enable or assist the authority to perform or exercise any of the authority's functions or powers. It also provides that the National VET Regulator may disclose VET information to a Royal Commission. VET information is defined in section 3 of the NVETR Act.

The amendments at items 60 to 63 support implementation of recommendation 11 from the Braithwaite Review that ‘…the Australian Government prioritises the improvement of policies and systems that allow for transfer of real-time data for timely use by other agencies with regulatory responsibilities for identifying and responding to emerging sectoral and provider-based issues.’

Item 68 – Section 209 (at the end of the heading)
Item 69 – Subsection 209(2)

Item 68 is a technical amendment to the heading of section 209 to clarify that the information released to the public under that section is by the National VET Regulator.

Item 69 makes it clear that if the National VET Regulator is releasing information to the public under section 209, that they may provide for the release by authorising NCVER to release the information.

Item 70 – After section 209

Item 70 inserts new section 209A into the NVETR Act. New subsection 209A(1) provides that the Secretary may release information to the public about vocational education and training provided by an RTO, and the outcomes and experiences, for students and employers, of vocational education and training undertaken with an RTO. The Secretary may provide for the release of the information by authorising NCVER to release the information (new subsection 209A(2)).

The new section does not authorise the release of personal information, unless the personal information is the name of the RTO (new subsection 209A(3). The information that the Secretary would release under this new section will be aggregated data and therefore will not be able to be used in such a way that could re-identify an individual.

Item 71 – Subsection 211(2)
Item 72 – After subsection 211(2)
Item 73 – Subsections 211(3) and (4)

Subdivision C of Division 2 of Part 9 of the NVETR Act (including sections 211 to 214) relates to the provision of VET student records.
Section 211 of the NVETR Act concerns the transfer of VET student records to the National VET Regulator when an NVR RTO or former NVR RTO's registration has been cancelled, or the organisation ceases to operate or a person is or was an executive officer or high managerial agent of the organisation.

In its public submission to the Braithwaite Review, the National VET Regulator described thousands of boxes of hard copy student records being delivered to it following large NVR RTO closures. This volume of records makes it administratively difficult for the National VET Regulator to support students (such as by providing records of any training they may have already completed to another training provider), as well as it being expensive for the Regulator to store or digitise the records in question.

Item 71 makes a minor technical amendment to clarify as to who must provide a copy of VET student records, namely the person identified in subsection 211(1).

Item 72 inserts new subsections 211(2A) to (2E) into the NVETR Act. These new subsections will allow the National VET Regulator, by legislative instrument, to specify information technology requirements. If such an instrument is in force, a person who possesses or controls VET student records relating to a training organisation or former RTO, must provide copies of the records to the National VET Regulator in accordance with the information technology requirements specified in the instrument. The National VET Regulator may waive compliance with these requirements in a particular case. Despite anything in sections 44 and 54 of the Legislation Act 2003 (which deal with exemptions from disallowance and sunsetting), the legislative instrument is subject to disallowance and sunsetting under section 42 and Chapter 3 of the Legislation Act 2003.

Item 73 makes minor consequential amendments to subsections 211(3) and (4) due to the insertion of subsection 211(2A).

Item 74 – At the end of section 212

Under subsection 212(2) of the NVETR Act, the National VET Regulator can give a person (other than a person referred to in subsection 211(1)) it considers may hold VET student records relating to a training organisation or a former RTO, a written notice requiring the person to provide a copy of the records to the Regulator within a time specified in the notice.

Item 74 adds new subsections 212(3) to (6). These new subsections will allow the National VET Regulator, by legislative instrument, to specify information technology requirements. If such an instrument is in force, a person who holds VET student records relating to a training organisation or former RTO, must provide copies of the records to the National VET Regulator in accordance with the information technology requirements specified in the instrument. Despite anything in sections 44 and 54 of the Legislation Act 2003 (which deal with exemptions from disallowance and sunsetting), the legislative instrument is subject to disallowance and sunsetting under section 42 and Chapter 3 of the Legislation Act 2003.
These amendments will facilitate the transfer of information to the National VET Regulator especially avoiding the management of paper documents.

**Item 75 – Subparagraph 216(1)(a)(i)**  
**Item 76 – Subparagraphs 216(1)(a)(v)**  
**Item 77 – After paragraph 216(1)(a)**  
**Item 78 – After paragraph 216(1)(d)**  
**Item 79 – Subsection 216(2) (example)**  
**Item 80 – After subsection 216(3)**  
**Item 81 – Subsection 216(4)**  
**Item 82 – At the end of section 216**

Section 216 of the NVETR Act concerns the National Register. The National Register is defined in section 3 to mean the register maintained by the Department, or another person prescribed by the regulations, and is referred to in section 216.

Items 75, 76, 77 and 78 all amend subsection 216(1), which stipulates matters that the National VET Regulator must include on the National Register for each NVR RTO or a VET accredited course.

Item 75 repeals subparagraph 216(1)(a)(i) and replaces it with subparagraphs 216(1)(a)(i) – (ic) which require the National VET Regulator to include the following on the National Register:

- the organisation’s name and business name;
- the physical address and postal address of the organisation’s head office;
- the physical address of the organisation’s principal place of business;
- the physical address of the sites or campuses from which the organisation delivers VET courses on a permanent basis.

In relation to providing information on the National Register about the physical address of the sites or campuses, this would for example capture where an NVR RTO owns or leases sites which are used for the principal purpose of delivering VET courses.

Subparagraph 216(1)(a)(v) requires the National VET Regulator include on the National Register any conditions imposed on the organisation’s registration. This would include the extent of the condition. Item 76 amends subparagraph 216(1)(a)(v) to provide that for each NVR RTO if a condition was imposed on the organisation’s registration under subsection 29(1) for a particular period, the National VET Regulator must ensure that the period is included on the National Register.

Item 77 adds new paragraphs 216(1)(aa) and 216(1)(ab). Paragraph 216(1)(aa) provides that the National VET Regulator must ensure that if an NVR RTO has made an application to renew the organisation’s registration, a statement to that effect is included on the National Register. Paragraph 216(1)(ab) provides that if the National VET Regulator has refused to renew an NVR RTO’s registration, the National VET Regulator must ensure that the following is included on the National Register:
• a statement to that effect;
• the date of effect of the refusal to renew the organisation’s registration.

Paragraph 216(1)(d) lists the details that must be included on the National Register for each VET accredited course. Item 78 adds two additional matters to those details. The first is new paragraph 216(1)(da) that if the person in respect of whom a VET accredited course is accredited has made an application to renew that accreditation, a statement to that effect. The second is new paragraph 216(1)(db) that if the National VET Regulator has refused to renew the accreditation of a VET accredited course, a statement to that effect and the date of effect of the refusal to renew the course’s accreditation.

Item 79 removes the example as it is no longer accurate. An example of where the National VET Regulator may remove details from the National Register would be in the case of an error.

Item 80 inserts a new subsection 216(3A) which provides that if information has been publicly released under section 209 (release of information to the public), the National VET Regulator may enter that information on the National Register.

Item 81 makes a minor consequential renumbering amendment to subsection 216(4) so that it reads “Subsections (3) and (3A) do not prevent the National VET Regulator from ensuring that other matters are entered on the National Register.”

Item 82 inserts subsection 216(6) requiring the National VET Regulator to ensure that the National Register is kept up to date.

The proposed amendments are designed to ensure that the National Register contains current information that is relevant and useful for its users. It obliges the National VET Regulator to update the National Register with the most recent information that it has in its possession.

Item 84 – After Division 3A of Part 12

Item 81 inserts a new Division 3B after Division 3A. Division 3B inserts section 231B which provides that Minister may make rules prescribing the matters required or permitted by the Act to be prescribed by the audit report rules. This will allow the Minister to prescribe requirements relating to the content and publication of an audit report (items 3, 18 and 19).

Item 85 – After subsection 232(1)

Section 232 enables the Minister to determine the amounts of fees the National VET Regulator may charge for goods and services it provides in performing its functions.

A fee for accepting a registration application under the ESOS Act is authorised through reading section 232 (Fees) in conjunction with subparagraph 157(1)(q)(ii) (Functions of the National VET Regulator).
Notwithstanding this, this item amends section 232 to insert a new subsection 232(1) to make it clear that the National VET Regulator has legislative authority to charge fees for the performance of all of its functions, including those functions under other legislation such as the ESOS Act.
Schedule 2—Amendments commencing day after Royal Assent

Summary

The amendments in Schedule 2 of the Bill are also intended to improve the efficiency and effectiveness of the National VET Regulator's regulation of the sector.

Amendments in Schedule 2 streamline processes for the appointment of acting Commissioners, the Deputy Chief Commissioner and the Chief Commissioner of the National VET Regulator. To increase transparency of information to the sector and assist students to make informed decisions about their training courses, amendments expand information entered on the National Register. Amendments also remove the requirement on the National VET Regulator to produce an annual operational plan (as it duplicates the content of the corporate plan that the Regulator is also required to produce) and change the date that the Regulator’s corporate plan must be given to the Minister for approval.

The items in Schedule 2 of the Bill commence on the day after the Bill receives Royal Assent.

Detailed explanation

National Vocational Education and Training Regulator Act 2011

Item 1 – Section 171
Item 2 – Subsection 172(1)
Item 3 – Paragraph 172(1)(a)

The Chief Commissioner of the National VET Regulator is also the Chief Executive Officer. As a result, there is a risk of complications if in unexpected circumstances the Chief Commissioner is unable to perform his or her role.

Subsection 162(5) of the NVETR Act provides that the Governor-General may appoint another Commissioner as the Deputy Chief Commissioner. Section 171 of the NVETR Act provides that if appointed, the Deputy Chief Commissioner is to act as the Chief Commissioner in the circumstances set out in that section. Those circumstances are where there is a vacancy in the office of the Chief Commissioner, during any or all periods when the Chief Commissioner is absent from duty or from Australia or is for any reason, unable to perform the duties of the office.
Problems can occur if the Chief Commissioner is unable to perform his or her functions or there is a vacancy in office and a Deputy Chief Commissioner has not been appointed. This is most likely to occur where the term of a Deputy Chief Commissioner has concluded. While the vacancy could be addressed through urgent appointment papers, a more streamlined approach is set out at items 1-3 of Schedule 2 for appointing an acting Deputy Chief Commissioner.

Item 1 makes a minor amendment to section 171 to make it clear that either a Deputy Chief Commissioner or acting Deputy Chief Commissioner is to act as the Chief Commissioner in the circumstances set out in the section.

Item 2 amends subsection 172(1) to remove reference to the Governor-General and a Deputy Chief Commissioner having been appointed and in its place provide that the Minister may, by written instrument, appoint a Commissioner to act as Deputy Chief Commissioner.

Item 3 amends paragraph 172(1)(a) to clarify an acting appointment can take place when there is a vacancy in the office of the Deputy Chief Commissioner, whether or not an appointment has previously been made to that office.

These amendments provide for a simple process for appointing a person to act in the position of Deputy Chief Commissioner. If there is a vacancy in the office of the Chief Commissioner, the Chief Commissioner is absent from duty from Australia or is unable to perform the duties of the office and a Deputy Chief Commissioner has not been appointed, the Minister may, by written instrument, appoint a Commissioner to act as Deputy Chief Commissioner. This acting Deputy Chief Commissioner will then act as the Chief Commissioner (in accordance with section 171 of the NVETR Act).

**Item 4 – Subsection 172(2)**

Subsection 172(2) provides that the Governor-General may, by written instrument, appoint a person to act as a Commissioner when there is a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to that office) and during any or all periods when the Commissioner is absent from Australia, or is for any reason unable to perform the duties of Commissioner.

Item 4 amends subsection 172(2) to remove reference to the ‘Governor-General’ and to provide that the ‘Minister’, may by written instrument, appoint a person to act as a Commissioner.

This amendment allows for a relatively quick acting appointment to the position of Commissioner.

**Item 5 – Paragraphs 215(1)(a) and (b)**

Subsection 215 of the NVETR Act sets out the matters that the Chief Executive Officer must include in the annual report given to the Minister under section 46 of the Public Governance, Performance and Accountability Act 2013. Under
paragraph 215(1)(a), this includes an assessment of the extent to which the
National VET Regulator's operations during the period have contributed to the
objectives set out in the annual operational plan for the period.

This item amends paragraph 215(1)(a) to omit reference to 'annual operational
plan' and substitute 'corporate plan'. This is a consequential change that is related
to the amendment at item 14, Schedule 2. The requirements for an 'annual
operational plan' under sections 220 and 221 of the NVETR Act are also addressed
in the requirements for a corporate plan under the Public Governance, Performance
and Accountability Act 2013. Since the National VET Regulator is required to
prepare a corporate plan, the requirement to also produce an annual operational
plan is removed from the NVETR Act by this Bill (see item 14, Schedule 2).

Item 6 – At the end of paragraph 216(1)(b)
Item 7 - After paragraph 216(1)(c)

Item 6 and 7 contain amendments relating to the National Register. Item 6 inserts
subparagraph 216(1)(b)(iv) which provides that the National VET Regulator must
include on the National Register any requirements in relation to the suspension that
the Regulator has placed on an NVR RTO during the period of suspension under
subsection 38(2) of the NVETR Act.

Item 7 inserts paragraph 216(1)(ca) which provides that the National VET Regulator
must include on the National Register details of sanctions under subsection 36(2)
that the Regulator places on an NVR RTO, unless the sanction is a suspension or
cancellation.

Item 8 - After subsection 216(1)

Item 8 inserts subsection 216(1A) which is a requirement that if an organisation
ceases to be an NVR RTO, the National VET Regulator must ensure that any
details that it was required to include on the National Register in relation to the
organisation before the cessation, is or continues to be included on the National
Register after the cessation.

This amendment supports stakeholders, to access and confirm information about
former NVR RTOs and the courses that they offered. In practice, the presentation of
the National Register may require a user to select to a particular part of the National
Register to see this historical information.
As stated above, since the National VET Regulator is required to prepare a corporate plan, and the corporate plan contains all of the information that is in an annual operation plan, the requirement in Division 2 of Part 11 of the NVETR Act to produce an annual operational plan is removed by this Bill.

Item 14 repeals Division 2 of Part 11 of the NVETR Act.

Items 9 and 10 makes consequential amendments to remove reference to annual operational plans in the headings for Part 11 and Division 1 of Part 11.

Item 13 makes a consequential amendment to subsection 219(1) to repeal the note which refers to section 221 which is being repealed.

Item 15 makes a consequential amendment to repeal the heading to Division 3 of Part 11 (Compliance with plans).

Item 16 makes a consequential amendment to section 222 to remove the words “and annual operational plan”.

Section 218 of the NVETR Act concerns the approval of corporate plans. To allow for corporate plans to take account of any announcements considered in the Budget (usually announced in early May each year), items 11 and 12 make amendments to the timeframes for corporate plans in subsection 218(1) so that the Chief Executive Officer of the National VET Regulator must give a copy of the corporate plan to the Minister for approval on or before:

- 31 May (instead of 31 January) before the first reporting period to which the plan relates; or
- if allowed by the Minister – a date no later than 30 June (instead of 31 March) before the first reporting period to which the plan relates.

**Item 17 – Section 223**

Item 17 makes it clear that the Minister’s power to appoint acting Commissioners under section 172 may not be delegated.
Schedule 3—Transitional and application provisions

Summary

The items in Schedule 3 include amendments to the National Vocational Education and Training Regulator (Transitional Provisions) Act 2011. These amendments set out the transitional and application arrangements for the amendments in Schedule 1 and Schedule 2 of the Bill.

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

Item 1 of the Schedule amends the National Vocational Education and Training Regulator (Transitional Provisions) Act 2011 to include Schedule 4 – Transitional provisions relating to the National Vocational Education and Training Regulator Amendment Act 2019. The content of this new Schedule 4 is set out below.

Item 1 - Definitions

Items 1 inserts definitions to support other amendments, concerning the commencement of the Act and Schedules of the Act. The words defined include ‘main commencement time’ and ‘early commencement time’.

Item 2 - Interpretation

This provision provides that an expression used in this Schedule that is also used in the Principal Act has the same meaning in this Schedule as it has in the Principal Act.

Item 3 - Application—audits of applications for registration

This item provides that the amendments to section 17A of the Principal Act (as inserted by Schedule 1 to the Amending Act) will apply to an audit where the audit starts to be conducted at or after the main commencement time.

Item 4 - Application—notifying the National VET Regulator of material changes

This item provides that the amendments to section 25 of the Principal Act made by Schedule 1 to the Amending Act will apply to a matter that an NVR RTO becomes aware of at or after the main commencement time.

Item 5 - Application—provision of information
This item provides that the amendments to subsections 26(1) and (2) of the Principal Act made by Schedule 1 to the Amending Act will apply to a notice given under subsection 26(1) of the Principal Act at or after the main commencement time.

Item 6 - Application—renewal of registration

This item provides that the amendments of subsection 20(1) and section 31 of the Principal Act made by Schedule 1 to the Amending Act will apply in relation to an application for renewal if the application is made at or after the main commencement time.

Item 7 - Application—compliance audits

This item provides that subsections 35(1A), (1B), (1C) and (1D) of the Principal Act (as inserted by Schedule 1 to the Amending Act) will apply to a compliance audit that starts to be conducted at or after the main commencement time.

Item 8 - Application—suspension of registration

This item provides that the amendment of section 38 of the Principal Act made by Schedule 1 to the Amending Act applies to a notice given under subsection 38(1) of the Principal Act at or after the main commencement time.

Item 9 - Application—cancellation of registration

This item provides that subsection 39(4) of the Principal Act (as added by Schedule 1 to the Amending Act) applies to a notice given under subsection 39(1) of the Principal Act at or after the main commencement time.

Item 10 - Application—renewal of accreditation

This item provides that the amendment of subsection 46(1) and section 50 of the Principal Act made by Schedule 1 to the Amending Act applies in relation to an application for renewal if the application is made at or after the main commencement time.

Item 11 - Application—provision of VET course on behalf of NVR registered training organisation

This item provides that the amendments of sections 116 and 117 of the Principal Act made by Schedule 1 to the Amending Act apply to the provision of a VET course before, at or after the main commencement time.

Item 12 - Application—applications for reconsideration of decisions

This item provides that subsections 200(6) and (7) of the Principal Act (as added by Schedule 1 to the Amending Act) will apply to:
• an application made under subsection 200(2) of the Principal Act before the main commencement time, if a decision on the application has not been made under section 201 of the Principal Act before the main commencement time; and
• an application made under subsection 200(2) of the Principal Act at or after the main commencement time.

Item 13 - Application—review by the Administrative Appeals Tribunal

This item provides that the amendment of subsection 203(2) of the Principal Act made by Schedule 1 to the Amending Act applies to an application made under that subsection at or after the main commencement time.

Item 14 - Application—VET student records required to be provided to the National VET Regulator

This item provides that the amendments of section 211 of the Principal Act made by Schedule 1 to the Amending Act apply in relation to a requirement to provide a copy of VET student records if the requirement is attributable to:

• the cancellation of an organisation’s registration that takes effect at or after the main commencement time; or
• the effective cessation of the operations of an organisation that occurs at or after the main commencement time.

Item 15 - Application—VET student records requested to be provided to the National VET Regulator

This item provides the amendment of section 212 of the Principal Act made by Schedule 1 to the Amending Act applies to a request made at or after the main commencement time.

Item 16 - Application—inclusion of information on the National Register

This item provides that the following amendments commence at the early commencement time:

• The amendment of paragraph 216(1)(b) of the Principal Act made by Schedule 2 to the Amending Act applies to requirements made under subsection 38(2) of the Principal Act before, at or after the early commencement time.
• Paragraph 216(1)(ca) of the Principal Act (as inserted by Schedule 2 to the Amending Act) applies to a sanction imposed before, at or after the early commencement time.
• Subsection 216(1A) of the Principal Act (as inserted by Schedule 2 to the Amending Act) applies to a cessation that occurs before, at or after the early commencement time.

This item also provides that the following amendments commence at the main commencement time:
The amendments of paragraph 216(1)(a) of the Principal Act made by Schedule 1 to the Amending Act apply to an NVR RTO that is registered before, at or after the main commencement time.

Paragraph 216(1)(aa) of the Principal Act (as inserted by Schedule 1 to the Amending Act) applies to an application made before, at or after the main commencement time.

Paragraph 216(1)(ab) of the Principal Act (as inserted by Schedule 1 to the Amending Act) applies to a refusal that occurs before, at or after the main commencement time.

Paragraph 216(1)(da) of the Principal Act (as inserted by Schedule 1 to the Amending Act) applies to an application made before, at or after the main commencement time.

Paragraph 216(1)(db) of the Principal Act (as inserted by Schedule 1 to the Amending Act) applies to a refusal that occurs before, at or after the main commencement time.

Item 17 – Application—entry of public information on the National Register

This item provides that subsection 216(3A) of the Principal Act (as inserted by Schedule 1 to the Amending Act) applies to information released to the public before, at or after the main commencement time.

Item 18 – Application—approval of corporate plan

This item provides that the amendments to section 218 of the Principal Act made by Schedule 1 to the Amending Act apply to a corporate plan for a period that begins after the early commencement time.