





# **National Vocational Education and Training Regulator (Consequential Amendments) Act 2011**

**No. 14, 2011**

**An Act to deal with consequential matters arising  
from the enactment of the *National Vocational  
Education and Training Regulator Act 2011*, and for  
related purposes**

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



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**An Act to deal with consequential matters arising  
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*[Assented to 12 April 2011]*

**The Parliament of Australia enacts:**

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## 1 Short title

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

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 April 2011
2. Schedule 1, items 1 to 6	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	
3. Schedule 1, item 7	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> . However, if Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> commences before that time, the provision(s) do not commence at all.	Did not commence (Schedule 1 of that Act commenced on 9 April 2011)
4. Schedule 1, item 8	Immediately after the commencement of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> . However, if section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> commences before that time, the provision(s) do not commence at all.	9 April 2011

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 1, items 9 to 16	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	
6. Schedule 1, item 17	Immediately after the commencement of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i> .	9 April 2011
7. Schedule 1, items 18 to 33	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	
8. Schedule 1, item 34	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> . However, if Schedule 1 to the <i>Higher Education Support Amendment (No. 1) Act 2011</i> commences before that time, the provision(s) do not commence at all.	
9. Schedule 1, item 35	Immediately after the commencement of Schedule 1 to the <i>Higher Education Support Amendment (No. 1) Act 2011</i> . However, if section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> commences before that time, the provision(s) do not commence at all.	
10. Schedule 1, items 36 to 55	Immediately after the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

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### **3 Schedule(s)**

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

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## Schedule 1—Consequential amendments

### *Education Services for Overseas Students Act 2000*

#### **1 Section 5 (definition of *approved provider*)**

Omit “the designated authority”, substitute “the relevant designated authority”.

#### **2 Section 5 (definition of *authorised employee*)**

Repeal the definition, substitute:

*authorised employee* means:

- (a) if, under subsection 170(2), the Secretary delegates a power to the National VET Regulator which the Regulator considers requires powers to be exercised under Part 7—a person who is an authorised officer (within the meaning of the *National Vocational Education and Training Regulator Act 2011*); or
- (b) a person who:
  - (i) is authorised in writing by the Secretary to exercise powers under Part 7; and
  - (ii) is an employee in the Department; and
  - (iii) holds the classification of APS 5 or higher, or an equivalent classification.

#### **3 Section 5 (definition of *designated authority*)**

Repeal the definition, substitute:

*designated authority* for a State, in relation to a provider, means:

- (a) to the extent that the provider is an NVR registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*)—the National VET Regulator; or
- (b) to the extent that the provider provides an English Language Intensive Course for Overseas Students, a Foundation program, or both—the entity determined by the Minister by legislative instrument; or

- (c) in any other case—the person responsible under the law of the State for approving providers to provide courses to overseas students for the State.

**4 Section 5**

Insert:

*ELICOS Standards* has the meaning given by section 176B.

**5 Section 5**

Insert:

*Foundation Program Standards* has the meaning given by section 176C.

**6 Section 5**

Insert:

*National VET Regulator* has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

**7 At the end of paragraph 9(2)(c)**

Add:

- (iv) if applicable, states that the provider meets the ELICOS Standards; and
- (v) if applicable, states that the provider meets the Foundation Program Standards; and

**8 After subparagraph 9(2)(c)(iii)**

Insert:

- (iiia) if applicable, states that the provider meets the ELICOS Standards; and
- (iiib) if applicable, states that the provider meets the Foundation Program Standards; and

**9 At the end of paragraph 9A(2)(d)**

Add:

- (iv) if applicable, states that the provider meets the ELICOS Standards; and

- (v) if applicable, states that the provider meets the Foundation Program Standards; and

**10 Subsection 10(5)**

After “is registered”, insert “for a course”.

**11 Paragraph 14(1)(b)**

Repeal the paragraph, substitute:

- (b) the source of the information is not the relevant designated authority.

**12 Subsection 14(2)**

Repeal the subsection, substitute:

- (2) The Secretary must give the information to the relevant designated authority.

**13 Subsection 14(3)**

Omit “the designated authority”, substitute “the relevant designated authority”.

**14 Paragraph 14A(1)(a)**

Repeal the paragraph, substitute:

- (a) a provider is approved by a designated authority for a State to provide courses to overseas students; and  
(aa) the designated authority has imposed a condition on the provider relating to its provision of those courses; and

**15 Paragraph 14A(2)(a)**

Repeal the paragraph, substitute:

- (a) a provider is approved by a designated authority for a State to provide courses to overseas students; and  
(aa) the designated authority has imposed a condition on the provider relating to its provision of those courses; and

**16 Subsection 14A(4)**

Omit “the designated authority”, substitute “the relevant designated authority”.

**17 Paragraph 14B(1)(b)**

Repeal the paragraph, substitute:

- (b) the relevant designated authority.

**18 Paragraph 27(1B)(b)**

Repeal the paragraph, substitute:

- (b) any advice of the relevant designated authority.

**19 Subsection 43(1)**

Repeal the subsection, substitute:

- (1) This section applies if:
  - (a) the Secretary has information suggesting that a registered provider for a State may have breached all or any of the following:
    - (i) the national code;
    - (ii) the ELICOS Standards;
    - (iii) the Foundation Program Standards; and
  - (b) the source of the information is not a designated authority in relation to the provider.

**20 Subsection 43(2)**

Omit “the designated authority”, substitute “each relevant designated authority”.

**21 Subsection 43(2)**

Omit “the authority”, substitute “one or more authorities”.

**22 Paragraph 43(3)(a)**

Omit “the designated authority”, substitute “each relevant designated authority”.

**23 Paragraph 43(3)(b)**

Omit “the designated authority”, substitute “a relevant designated authority”.

**24 Subsection 89(1)**

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Omit “the designated authority”, substitute “the relevant designated authority”.

## **25 Subsection 89A(1)**

Repeal the subsection, substitute:

- (1) If:
- (a) either:
    - (i) a provider is approved by a designated authority for a State to provide courses for a State; or
    - (ii) a provider is approved by a designated authority for a State to provide courses for a State and another designated authority to provide other courses for the State; and
  - (b) the National VET Regulator is not a designated authority mentioned in paragraph (a); and
  - (c) a designated authority mentioned in paragraph (a) tells the Secretary that the authority (having regard to the matters referred to in subsection 9B(2)) is no longer satisfied that the provider is fit and proper to be registered;
- the registration of the provider (other than a provider covered by subsection 9B(1)) is suspended for all courses for the State by force of this subsection.

Note: Section 95 sets out the effect of suspension.

- (1A) If:
- (a) the registration of a provider is suspended under subsection (1); and
  - (b) the provider is also approved by the National VET Regulator to provide courses for a State;
- the registration of the provider is also suspended for those courses for all States by force of this subsection.

Note: Section 95 sets out the effect of suspension.

- (1B) If:
- (a) either:
    - (i) a provider is approved by the National VET Regulator to provide courses; or
    - (ii) a provider is approved by the National VET Regulator and another designated authority to provide courses; and

- (b) the Regulator tells the Secretary that the Regulator (having regard to the matters referred to in subsection 9B(2)) is no longer satisfied that the provider is fit and proper to be registered;

the registration of the provider (other than a provider covered by subsection 9B(1)) is suspended for all courses for all States by force of this subsection.

Note: Section 95 sets out the effect of suspension.

## **26 Subsection 89A(2)**

Omit “the designated authority”, substitute “the relevant designated authority”.

## **27 Subsection 92B(1)**

Omit “the designated authority” (first occurring), substitute “the relevant designated authority”.

## **28 Section 170**

Repeal the section, substitute:

### **170 Delegation**

#### *Minister’s delegation*

- (1) The Minister may, by signed writing, delegate any or all of the Minister’s powers under this Act to:
- (a) the Secretary; or
  - (b) the National VET Regulator; or
  - (c) an SES employee or acting SES employee in the Department.

#### *Secretary’s delegation*

- (2) The Secretary may, by signed writing, delegate any or all of the Secretary’s powers under this Act to:
- (a) the National VET Regulator; or
  - (b) an SES employee or acting SES employee in the Department.

*Subdelegation*

- (3) If the Minister or the Secretary delegates a power under this section to the National VET Regulator, the Regulator may, by writing, subdelegate the power to a member of the staff of the Regulator (within the meaning of the *National Vocational Education and Training Regulator Act 2011*) who:
  - (a) is an SES employee or acting SES employee; or
  - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

**29 After section 176A**

Insert:

**176B ELICOS Standards**

- (1) The Minister may, by legislative instrument, make the *ELICOS Standards*.
- (2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the ELICOS Standards may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:
  - (a) at a particular time; or
  - (b) from time to time.

**176C Foundation Program Standards**

- (1) The Minister may, by legislative instrument, make the *Foundation Program Standards*.
- (2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the Foundation Program Standards may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:
  - (a) at a particular time; or
  - (b) from time to time.

### 30 Saving of existing authorisations

- (1) A person who is an *authorised employee* within the meaning of the definition of that expression in section 5 of the *Education Services for Overseas Students Act 2000* immediately before commencement, continues to be, on and after commencement, an authorised employee as if the person were authorised in writing by the Secretary in accordance with that definition as substituted by this Schedule.
- (2) In this item:  
*commencement* means the day this item commences.

### 31 Things done by, or in relation to, a designated authority

- (1) If, before commencement, a thing was done by, or in relation to, a designated authority under the *Education Services for Overseas Students Act 2000*, then the thing is taken, after commencement, to have been done by, or in relation to, the relevant designated authority (according to the definition of that expression as inserted by this Schedule).
- (2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, a designated authority.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) A determination under subitem (2) is not a legislative instrument.
- (5) In this item:  
*commencement* means the day this item commences.

### 32 Saving of existing delegations

- (1) A delegation in force under section 170 of the *Education Services for Overseas Students Act 2000* immediately before commencement continues to have effect, on and after commencement, as if it were a delegation under that section as substituted by this Schedule.
- (2) In this item:  
*commencement* means the day this item commences.

### ***Higher Education Support Act 2003***

#### **33 Clause 1 of Schedule 1A**

Omit “accredited”.

#### **34 Paragraph 6(c) of Schedule 1A**

Repeal the paragraph, substitute:

- (c) the body is a \*registered training organisation as listed on the \*National Register; and

#### **35 Paragraph 6(1)(c) of Schedule 1A**

Repeal the paragraph, substitute:

- (c) the body is a \*registered training organisation as listed on the \*National Register; and

#### **36 Subclause 9(1) of Schedule 1A**

Repeal the subclause, substitute:

- (1) A body corporate that is a \*registered training organisation may apply, in writing, to the Minister for approval as a \*VET provider.

#### **37 After clause 9 of Schedule 1A**

Insert:

#### **9A Minister may seek information from relevant VET Regulator**

For the purposes of approving a body corporate as a \*VET provider, the Minister may seek information from the relevant \*VET Regulator that:

- (a) relates to the body corporate’s application for approval as a VET provider; or
- (b) relates to the body corporate’s compliance, or ability to comply, with the \*VET quality and accountability requirements.

#### **38 Subclause 17(2) of Schedule 1A**

Omit “in the \*Australian Quality Training Framework”, substitute “, or referred to, in the \*VET Provider Guidelines”.

**39 At the end of clause 17 of Schedule 1A**

Add:

- (3) For the purpose of subclause (2), the \*VET Provider Guidelines may provide for different requirements for different classes of \*VET providers.
- (4) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the \*VET Provider Guidelines may refer to a requirement by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

**40 Clause 25 of Schedule 1A**

Before “A”, insert “(1)”.

**41 At the end of clause 25 of Schedule 1A**

Add:

- (2) The notice must be given to the Minister as soon as practicable after the \*VET provider becomes aware of an event mentioned in subclause (1).

**42 After clause 25 of Schedule 1A**

Insert:

**25A Copy of notice given to National VET Regulator about material changes**

- (1) If a \*VET provider gives the \*National VET Regulator a notice under section 25 of the *National Vocational Education and Training Regulator Act 2011*, the provider must give a copy of the notice to the Minister.
- (2) A copy of the notice must be given to the Minister at the same time it must be given to the \*National VET Regulator.

**43 After subclause 26(2) of Schedule 1A**

Insert:

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(2A) To avoid doubt, if the Minister makes a determination under subclause (2) in relation to the \*National VET Regulator, the determination is not a direction for the purpose of subsection 160(2) of the *National Vocational Education and Training Regulator Act 2011*.

#### **44 After clause 29 of Schedule 1A**

Insert:

#### **29A Minister to notify relevant VET Regulator of cessation of approval**

If a body ceases to be approved as a \*VET provider, the Minister must ensure that the relevant \*VET Regulator is notified, in writing, of the cessation.

#### **45 Clause 32 of Schedule 1A**

Repeal the clause, substitute:

#### **32 Revocation of approval as a provider if body ceases to be a registered training organisation**

The Minister may revoke a body's approval as a \*VET provider if:

- (a) the body ceases to be listed as a \*registered training organisation on the \*National Register; and
- (b) the Minister complies with the requirements of clause 34.

#### **46 Paragraph 33(2)(d) of Schedule 1A**

Omit “\*accredited VET courses”, substitute “\*VET courses of study”.

#### **47 Before clause 34 of Schedule 1A**

Insert:

#### **34A Minister may seek information from relevant VET Regulator**

For the purpose of deciding whether it is appropriate to:

- (a) revoke a body's approval as a \*VET provider; or
- (b) determine that a body's approval as a \*VET provider is to be suspended;

the Minister may seek information from the relevant \*VET Regulator.

**48 Subclause 1(1) of Schedule 1 (definition of *accredited VET course*)**

Repeal the definition.

**49 Subclause 1(1) of Schedule 1**

Insert:

*National Register* has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

**50 Subclause 1(1) of Schedule 1**

Insert:

*National VET Regulator* has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

**51 Subclause 1(1) of Schedule 1 (definition of *NTIS*)**

Repeal the definition.

**52 Subclause 1(1) of Schedule 1**

Insert:

*registered training organisation* has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

**53 Subclause 1(1) of Schedule 1**

Insert:

*VET Regulator* has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

**54 Application**

- (1) Clause 9A of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) applies in relation to an application for approval made before, on or after this item commences.

- (2) Subclause 17(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Act) applies in relation to an application for approval made before, on or after this item commences.

***Indigenous Education (Targeted Assistance) Act 2000***

**55 Section 4 (definition of vocational education and training institution)**

Repeal the definition, substitute:

***vocational education and training institution*** means an institution in a State or Territory that:

- (a) is a registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*); and
- (b) provides VET courses (within the meaning of that Act); and
- (c) is not conducted for profit.

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[*Minister's second reading speech made in—  
Senate on 10 February 2011  
House of Representatives on 24 March 2011*]