



Dr Ian Holland
Inquiry Secretary
Senate Education, Employment and Workplace Relations Legislation Committee
Parliament House
Canberra ACT 2601

Dear Dr Holland

Skills Australia is pleased to have the opportunity to provide input into the inquiry into the National Vocational Education and Training Regulator Bills 2010 (2011).

As you may be aware, in its report *Foundations for the Future*, Skills Australia recommended the establishment of a more robust and effective national regulatory system. The recommendations were developed through Skills Australia's program of research and feedback received in a national consultation. This work identified the value of simplifying, providing clearer accountability and rationalising the multiplicity of authorities involved in regulation and quality matters at both state and national levels. It was also intended to position Australia for the future.

Specifically, the report recommended that:

- vii. Australian governments undertake legislative reform to establish an independent national regulatory body, absorbing the functions of State and Territory regulatory authorities, TVET Australia and reporting to Ministerial Council, noting Skills Australia's advice on:
 - a single national agency model with a presence in each State and Territory to enable responsive service across regions and informed delivery of States/Territories' regulatory needs
- viii. Australian governments agree the national VET regulatory body be responsible for regulatory policy, the registration and audit of VET providers operating in the domestic and international markets, accreditation of courses, final endorsement of training products based on the recommendations of Industry Skills Councils and dissemination of provider performance information on service quality and outcomes to assist users.

We very much welcome provisions in the Bill which appear to pick up a number of recommendations made by the Board, particularly:

- A Commission composed of independent experts, rather than a representative body
- Strong sanctioning and enforcement provisions, notably enforceable undertakings, infringements and injunctions together with provisions for imposing offences and civil penalties
- public exposure through NTIS or other means of the Commission's sanctioning and enforcement actions
- Sharing of information with other parties about RTO performance



- Transparency and publishing of information about the quality performance of the VET system.

There are however two main areas of concern that we seek to bring to your attention. These relate to the relationship between the National VET Regulator and the National Standards Council, and also the resourcing of the National VET Regulator.

As it is currently drafted, there is no expressed relationship between the National VET Regulator and the proposed National Standards Council. These are the two 'pillars' of the new VET regulatory apparatus. The National Standards Council will be the entity that develops the national VET standards for registration and accreditation of courses and will make recommendations to Ministerial Council for their approval.

Whilst a separation of roles can be understood in terms of avoiding conflict of interest, the current drafting seems to favour this principle over the potential for collaboration and liaison between the two bodies to ensure a sound, co-ordinated and effective mechanism for regulation.

There appears to be no formal requirements for communication between the two bodies, other than what might occur through the conduit of the Ministerial Council. While informal communications no doubt would occur, it seems that a requirement for collaboration and co-ordination between the 'enforcement' arm and the standards 'policy' arm, has been neglected.

We note that this arrangement appears to differ from the arrangements for the Tertiary Education Quality and Standards Agency (TEQSA). We understand that TEQSA will have a 'standards panel' within its operations, so that the link between standards/policy and enforcement is arguably to be more streamlined and co-ordinated within the higher education regulator.

The Board expressed a view in *Foundations for the Future* that it did not see fundamental contradiction in the National VET Regulator having a policy determinative/standards setting role (see pp54 -55 of report) and that there were instances of regulatory bodies undertaking both functions. While understanding that the drafting instructions for the NVR may have gone down an alternative path from the Board's recommendations, there now appears to be a risk in the Bill that regulatory streamlining and effectiveness might be undermined. This might be overcome if the drafting included a function for the NVR to 'work with the Standards Council to ensure the development of effective regulatory policy and implementation mechanisms', or similar intention. Some cross representation on the two bodies could also be considered.

A review of the bill by the parliamentary library points out a potential weakness or 'loophole' in the new regulatory apparatus because it does not detail the procedures for establishing the standards, nor the standards themselves. This resonates with the concern that the Skills Australia Board had in *Foundations for the Future* in terms of linking policy and enforcement. Furthermore, the NVR can only be as good as the standards that it has to enforce, which underlines the importance of effective standard setting. There is also potential for close working relationship between the NSC and the NVR contributing to the strengthening and improvement of the standards themselves.

On the issue of resourcing the National VET regulator, we consider that it is critical that the regulator is sufficiently funded to ensure that it can carry out its role in an effective manner.

We also note that the bill indicates that fees for the National Regulator need to be agreed by Ministerial Council. While it is understood that reporting and communication lines of the NVR with Ministerial Council are important, it is arguable that the effectiveness of regulatory operations could be compromised if the fee structure of the regulator's operations is to be established by Ministerial Council, rather than the Australian Government Minister. There is also potential conflict of interest in Ministers, as owners and funders of public TAFE institutions, setting and agreeing fees.

There is also a broader point about the available funding for the NVR. We note from the supporting material to the bill that the NVR is expected to operate on a cost-recovery basis. Skills Australia is of the view that revenue should be utilised by the NVR to ensure it can focus on continuous improvement.

Yours sincerely

Philip Bullock
Chair
Skills Australia
7 March 2011