

Department of Education, Employment and Workplace Relations
National Vocational Education and Training Regulator Bill 2010 [2011]
Additional responses to EEWR Committee questions on notice of 7 March 2011

1. Amendments made to Bills following exposure draft consultation

During the exposure draft consultation process the views of the attendees were taken into consideration. However, as evident at the hearing on 7 March 2011, not all stakeholders agree on what should and should not be changed in the Bill. For example, some stakeholders were in agreement with the range of penalties available to the Regulator, with others being vocally against the criminal sanctions.

According to the Office of Parliamentary Counsel approximately 2000 changes were made to the draft bill from the date of the exposure draft (version 15) on 29 October 2011 and the final draft Bill (version 33) tabled with Parliament on 26 November 2010. The changes varied from formatting and typographical errors to substantive changes to the wording of clauses. Numerous amendments were made to clarify points of confusion for the stakeholders.

Examples of the changes made following consultation include:

- The inclusion of notes in the Bill to clarify or cross reference the Bill – for e.g. the inclusion of a note at clause 8 to cross reference the meaning of a “registered provider”; the inclusion of a note at clause 84 to cross reference clause 234; the inclusion of a note at the ends of clauses 21, 38, 39, 42, 47 to cross reference the corresponding penalty provisions;
- Clarification of definitions of terminology including clarification of the definition of a *former registered training organisation*, *National Register*, *VET course*, and *VET statement of attainment*.
- Clarification of the terminology and application of the Bill, for example by replacing conflicting or old terminology with “NVR registered training organisation” throughout the Bill;
- The inclusion of subclauses 56(1)(d) to clarify circumstances where the NVR may cancel VET qualifications and statement of attainments;
- The amendment of clauses 57 and 59 and the inclusion of clause 58 to allow for natural justice to an affected person whose qualification or statement of attainment may be cancelled. i.e. that the NVR will give notice and consider the affected person’s response to a notice prior to making a decision about cancelling a qualification or statement of attainment; and
- Clarification at the end of clause 62 requiring the NVR to have reasonable belief that a person has the information it is seeking when requesting information from a person connected with a RTO.

2. Legal advice regarding the impact of amendments to the Bill

In relation to the committee’s question about whether the committee can receive the legal advice relating to the effects of amendments on the referral of powers, generally the

Government does not release constitutional advice as there is a risk disclosure may prejudice the Commonwealth's legal position.

Having discussed the matter with the Attorney General's department, DEEWR is pleased to make the following comments. In the case of a referral scheme, to the extent the Commonwealth Parliament does not have power to enact the national law on its own, the law will find constitutional support in State referrals made in accordance with subsection 51(xxxvii) of the Constitution. In this case, New South Wales – as 'lead State' – has enacted a 'text' referral to support the Commonwealth's enactment of the national law and also an 'amendment referral'.

The commencement of the Commonwealth law depends on at least one State having given the necessary two-fold referral. The first aspect – the 'text' referral – allows the Commonwealth Parliament to enact and commence the text of the Commonwealth Bill. The second – the 'amendment' referral – ensures that the new Commonwealth Act may be amended from time to time by the Commonwealth Parliament, so long as amendments are within specified limits.

A State text referral will not support a Commonwealth law that departs in substance from the terms of the text referred. This means that the Commonwealth and the State must agree on the terms of the text before it is referred to the Commonwealth by the State.

Commonwealth officers in this case previously agreed drafting instructions for the 'text' of the Commonwealth Bill with State officers. An exposure draft Bill was subsequently provided to State officers and other stakeholders and the final text of the Commonwealth Bill was agreed with State officers prior to the introduction of the State referral Bill in the State Parliament. As noted, the New South Wales Parliament has now enacted its 'text' referral in the form of the agreed Commonwealth Bill.