

National Vocational Education and Training Regulator Bill 2010

Some drafting suggestions

Draft sections 107, 108, 109 and 110

Draft section 107 would provide –

An NVR registered training organisation commits an offence if:

- (a) the organisation issues, or purports to issue, a VET qualification to a VET student; and
- (b) the organisation did not satisfy itself that the VET student had successfully satisfied the requirements of the qualification.

The heading for draft section 107 is rather narrower than its wording –

107 Offence — issuing VET qualification without ensuring adequate assessment.

Section 13 of the *Acts Interpretation Act 1901* (Com) provides –

- (1) The headings of the Parts Divisions and Subdivisions into which any Act is divided shall be deemed to be part of the Act.
- (2) Every schedule to an Act shall be deemed to form part thereof.
- (3) No marginal note, footnote or endnote to an Act, and no heading to a section of an Act, shall be taken to be part of the Act.

This means that draft section 107 would be interpreted in its natural meaning requiring organisations to satisfy themselves that its students ‘had successfully satisfied the requirements of the qualification’ and not just the assessment requirements implied by its heading. Nonetheless, I suggest it would be better if the heading to draft section 107 were changed to reflect the substance of the draft section more accurately. I suggest something like –

107 Offence — issuing VET qualification without ensuring requirements met.

Similar considerations apply to draft sections 108, 109 and 110 for which I suggest these headings -

108 Civil penalty — issuing VET qualification without ensuring requirements met

109 Offence — issuing VET statement of attainment without ensuring requirements met

110 Civil penalty — issuing VET statement of attainment without ensuring requirements met.

‘Course’

Draft section 3 would provide this definition –

VET course means:

- (a) the units of competency of a training package that is endorsed by the Ministerial Council; or
- (b) the modules of a VET accredited course; or
- (c) the modules of a course accredited by a VET Regulator of a non-referring State.

That is, draft section 3 would adopt the US meaning of ‘course’ which in the UK and Australia would be called ‘subject’. However, the Bill uses ‘course’ in its UK and Australian meaning of ‘program’. For example –

- 33 Change of scope of registration
- (1) The National VET Regulator may grant an application for a change in the applicant’s scope of registration.
 - (2) In deciding whether to grant an application, the National VET Regulator must consider:
 - (a) the applicant’s ability to provide the VET course, or part of the VET course, in accordance with the VET Quality Framework; . . .

And draft subsection 55(2) –

The National VET Regulator may issue a VET statement of attainment to a person in relation to units of competency or modules of a VET course if the Regulator is satisfied, on reasonable grounds, that the person has successfully completed the requirements of the units of competency or modules of the VET course.

So substituting draft section’s first definition of ‘VET course’ for the term ‘VET course’ in draft subsection 55(2) would provide –

The National VET Regulator may issue a VET statement of attainment to a person in relation to units of competency or modules of the units of competency of a training package that is endorsed by the Ministerial Council if the Regulator is satisfied, on reasonable grounds, that the person has successfully completed the requirements of the units of competency or modules of the units of competency of a training package that is endorsed by the Ministerial Council.

This is clearly absurd. The Bill should decide whether ‘course’ means the UK ‘subject’ or ‘program’ and use that meaning consistently thruout.

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