



MASTER BUILDERS
A U S T R A L I A

22 February 2011

Dr Ian Holland
Inquiry Secretary
Education, Employment and the Workplace Relations Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Dr Holland

Thank you for your correspondence of 14 February 2011 inviting Master Builders Australia Ltd ('Master Builders') to comment on the National Vocational Education and Training Regulator Bill ('the Bill') currently before the Senate.

Master Builders strongly supports the creation of a National Vocational Education and Training (VET) Regulator, where it can deliver on the aim of delivering consistent and robust national regulation of training providers and courses. Master Builders' members are the largest employers of skilled tradespeople in the country, and so we have a vested interest in a strong Australian training system. A Commonwealth Authority with full-time Commissioners, its own network of resources and with open and transparent best-practice governance would appear to be an appropriate model for maintaining the standards that underpin the training system.

At the same time, Master Builders is concerned that elements of the Bill impose undefined and potentially burdensome requirements on training providers, which may result in some legitimate providers choosing to leave (or not to enter) the VET market. A lack of competition in training provision arising from such an outcome would be as undesirable as a failure of standards from insufficient regulation.

The Bill imposes a wide range of obligations, backed by heavy penalties, to provide information to, co-operate with, or comply with directions given by the National VET Regulator (ss. 21-30). There is no reasonableness test, natural justice requirement or administrative review in relation to these conditions, although a court may of course impose such tests should a matter be brought before it. There is also an obligation to comply with as yet unspecified Data Provision Requirements, Financial Viability Risk Assessment Requirements and Fit and Proper Person Requirements.

A natural justice requirement in respect of training providers is specified for the suspension or cancellation of a provider's registration (s. 37). However, the cancellation of a course or courses (s. 52) may in the case of a small training provider have the same practical effect as cancelling the provider's registration, but with no specific natural justice redress. Master Builders recommends that the same natural justice provisions applying to suspension or cancellation of a provider's registration should apply to cancellation of a course or courses, i.e. all providers offering that course should be able to show cause why the course should not be cancelled.

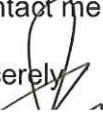
Master Builders has a further concern with the offences provisions in Part 5 of the National VET Regulator Bill. As a general principle, Master Builders does not believe that criminal penalties are called for in relation to breaches of the Bill (which are essentially matters of a 'fair trading' kind) and strongly recommends criminal penalty provisions should be removed. For example, it is not clear that issuing a qualification 'without ensuring adequate assessment' should be a criminal offence with a fine of up to \$26,400, when there is no settled understanding of what 'adequate assessment' may constitute for the purposes of this Bill. Similarly making a 'false or misleading statement' in relation to a qualification should be a matter for general Consumer Law and not something requiring a criminal penalty of up to \$13,200 under this Bill.

Master Builders makes the following further detailed points on the drafting of the Bill:

- The broad definition of 'Executive Officer' in the Bill (s. 3) potentially exposes a wide range of people, including passive investors and middle managers, to liability for the actions of an organisation under s. 133, going far beyond the obligations ordinarily imposed through the Corporations Law. Master Builders recommends that this definition be narrowed to refer only to those directors and senior executives responsible for the organisation's policies.
- There is no time limit specified to consider an application to become a registered training organisation (s. 17), to change the scope of registration (s. 32) or to accredit a course (s. 43). Target times will apparently be set out in 'service standards', however as these decisions are the critical function of the National VET Regulator, Master Builders recommends that firm timeframes be set in legislation, with resource allocations determined by the timeframe, rather than the other way around.
- The National VET Regulator may cancel a person's qualification by notice on its website, in major newspapers or similar means (s. 57). That person then becomes liable for civil penalties if they fail to return and/or continue to use that qualification. Master Builders recommends that, for the serious step of a person's qualification being cancelled, that person must in all cases be served notice individually. It is highly likely that a person may be unaware that they are using a cancelled qualification, raising questions not only of their liability under the Bill, but liability under occupational licensing and insurance arrangements that may inadvertently (e.g. in the case of a tradesperson) also expose consumers to losses.

Finally, it is important to note that the National VET Regulator is only one element of the governance of the national training system. The Bill is currently ambiguous on how the National VET Regulator will relate to other elements of that system. Currently the National Quality Council endorses Training Packages and oversees the application of the Australian Quality Training Framework with the administrative support of TVET Australia. Master Builders recommends that greater clarity be provided concerning the relationship between these existing arrangements and VET standards mechanisms intended to accompany the introduction of the National VET Regulator.

If you require any additional information, or would like to meet with us on these issues, please contact me on (02) 6202 8888 or email ceo@masterbuilders.com.au.

Yours sincerely 

Wilhelm Harnisch
CEO