

Department of Education, Employment and Workplace Relations
Submission to the Inquiry into the
National Vocational Education and Training Regulator Bill 2010 [2011], National
Vocational Education and Training Regulator (Transitional Provisions) Bill 2010 [2011]
and National Vocational Education and Training Regulator (Consequential Amendments)
Bill 2011.

1. Purpose of Bill

The establishment of a National VET Regulator is one of the most significant reforms to the sector in years. It has been achieved through strong cooperation between the Commonwealth, states and territories. Better regulation will improve the quality of Australia's training system and increase confidence in the skills of its graduates. This is a key factor in achieving long term prosperity in Australia.

Skills are the key to Australian recovery and economic development. Highly skilled workers are needed to deal with reconstruction in the parts of Australia recently damaged by natural disasters, as well as ensuring the growth of our industries and productivity. Effective regulation of the VET sector acts as a key quality assurance mechanism for the skills of Australia's workforce.

The VET sector also represents a significant export industry for Australia. Recent concerns about poor quality providers operating in the national training system have highlighted the need to improve the quality of regulation in VET to maintain confidence in this export sector. International students considering Australia as their education destination need to be assured that there is transparent regulation which they can understand and rely upon.

Australia's skills requirements, coupled with the need for a seamless national economy, are a national issue. Over the years the VET sector has recognised the need for national regulatory frameworks and developed them under the auspices of Ministerial Councils however they rely on agreement and action by all states and uniformity of timing. The reality is the aspiration has not been achieved. For example, the National Registration and Audit Agency (NARA) established by agreement with the states to improve seamless registration of cross-jurisdictional VET providers was not fully operational after more than three years. Also, some states had up to half of the providers operating in their state registered and regulated by the regulator of another state. This presented challenges in ensuring consistency of regulation and prioritising reviews.

VET needs a more effective, consistent and transparent regulatory system. This could not realistically be achieved through eight separate reform programs in eight separate systems, each with their own systems and processes. The National VET Regulator body will allow a new approach to regulation which builds on the strengths of the current systems while using lessons learnt in the past to improve and strengthen regulation.

More effective regulation will also improve the operation of the Australian Qualifications Framework (AQF) and Training Packages. Currently, there are concerns amongst stakeholders that there are insufficient checks to ensure the assessment of training is properly undertaken when awarding these qualifications. This has undermined confidence in the system, and led to inconsistencies in the qualifications being delivered. More effective regulation will improve

compliance with the AQF, and is essential for the success of the new strengthened AQF which will be implemented shortly.

To achieve these ends, the Council of Australian Governments (COAG) agreed at its meeting in December 2009 on a new approach to national regulation. This approach includes the establishment of a National VET Regulator responsible for registering training organisations and accrediting VET qualifications and courses, and a separate Standards Council to provide advice to the Ministerial Council for Tertiary Education and Employment (the Ministerial Council) on national standards for regulation.

COAG agreed that a national regulator be established even without all jurisdictions referring power, in order to ensure effective national regulation and on the basis that all providers wishing to operate in more than one jurisdiction or enrol international students will be registered through the national regulator. COAG agreed that the National VET Regulator would be established as a Commonwealth Statutory authority under Commonwealth legislation, through a text-based referral of powers from referring states. In February 2011, COAG agreed in-principle to the intergovernmental agreement which will govern the new framework.

2. Consultation and Development

The National VET Regulator Bill was developed through a collaborative process involving extensive consultation with state and territory governments and VET stakeholders.

VET Regulation is currently carried out by eight state and territory regulators, operating under eight separate pieces of state legislation. Attempts to harmonise state legislation have occurred in the past, and as a result most state legislation is based on nationally agreed model clauses. Despite these model clauses, there are substantial differences in state legislation as different jurisdictions have refined their Acts to suit their purposes.

The National VET Regulator Bill establishing the National VET Regulator seeks to identify best practice amongst state systems of regulation and learn from current issues affecting the sector.

The approach taken to ensure that best practice was identified and current issues addressed included the following steps:

- An analysis of model clauses and state legislation was conducted examining differences in the legislation used by different states.
- This analysis was discussed extensively with state and territory regulators and officials to learn from their experience regulating the sector and understand the differences between their Acts.
- Open consultation forums were held with Registered Training Organisations (RTOs) across the country to learn from their experiences with the state regulators and canvass their views on where there were opportunities for improvement.
- An industry roundtable was established to allow other key industry stakeholders the opportunity to provide comments and suggestions to the process. This included peak industry bodies such as the Australian Chamber of Commerce and Industry, the Australian Council of Trade Unions and the Australian Industry Group.

- Individual and collective consultations were held with the peak providers bodies; TAFE Directors Australia, ACPET and the Enterprise Registered Training Organisation Association.
- Drafting instructions for the legislation were prepared based on the above discussions.
- These instructions were negotiated extensively with states and territories, and the draft Bill prepared by the Office of Parliamentary Council based on the agreed drafting instructions.
- An exposure draft process was conducted allowing key stakeholders the chance to review and provide comment on the Bill. Stakeholders provided a number of suggestions and were generally supportive of the Bill.
- The draft Bill was amended to incorporate suggestions from the exposure draft process.
- The final Bill was introduced in the Senate on 26 November 2010.

During the period of consultation DEEWR sought comments and views from interested stakeholders through a website and mailbox. Suggestions and comments received in this way were also incorporated into the development of the Bill.

A list of consultation meetings undertaken can be found at **Attachment A**.

3. Standards

In the current VET system, nationally agreed standards called the Australian Quality Training Framework (AQTF) are enforced by eight separate state/territory regulators. These standards were developed by the National Quality Council (comprised of VET stakeholders including TAFE Director's Australia (TDA), Australian Council for Private Education and Training (ACPET), Australian Council of Trade Unions (ACTU), Australian industry Group (AiG), Australian Chamber of Commerce and Industry (ACCI), National Farmers' Federation (NFF) and Business Council of Australia (BCA)) and approved by the Ministerial Council.

The AQTF standards were recently examined and strengthened in 2010 in response to a request from COAG. Stakeholders in the VET sector were given opportunity to contribute to this strengthening process. The sector now needs time to adjust to these changes to the standards, and governments need time to fully assess their impact before undertaking further reform.

One of the key principles underpinning the COAG agreement to establish the National VET Regulator is that the setting of standards will be fully separate from regulation by the national VET Regulator which is to be responsible for the *application* of standards. The intergovernmental agreement agreed in principle by COAG in February 2011 states that the Ministerial Council will approve the standards for registration of providers on advice from the National Standards Council, which will replace the NQC.

Accordingly, the introduction of a National VET Regulator is not intended to significantly alter the national standards as recently strengthened. The intention is to improve consistency and enforceability of the standards by having them regulated by a single body with robust powers.

The current AQTF will be transferred into the standards for RTOs, Fit and Proper person requirements and risk assessment framework used by the National VET Regulator. This will not involve any substantial changes in the content of the standards/frameworks.

The enforceability and transparency of the standards will be promoted by the fact that the main Bill states that these standards will be legislative instruments, which are tabled in Parliament. This is an improvement on their current status, as presently they are just a guideline issued by the Ministerial Council and referenced in state legislation. Legislative instruments allow greater flexibility to amend the standards to respond to sector needs than would be the case if the standards were embedded in primary legislation.

The legislative instruments will be subject to a significant consultation process prior to their implementation, including exposure draft discussions with key stakeholders such as TDA, ACPET, Enterprise RTO Association (ERTO), ACTU, Australian Education Union (AEU), BCA, AiG, ACCI and its members, NFF, Skills Australia and others.

There will be further opportunities in the future for stakeholders to contribute to the ongoing development and refinement of the standards. In addition to the establishment of a National VET Regulator, the Australian Government is consulting extensively with state and territory governments and other key stakeholders to form the National Standards Council. The National Standards Council will continue to develop and refine the national standards, and will be required to consult extensively on these changes. Any substantial changes to the legislative instruments will also be subject to standard regulatory impact analysis (RIA) requirements, which involve significant consultation with all affected parties.

To summarise, the Bill is not considered to necessitate debate of specific issues related to the content of the standards for RTOs, for the following reasons:

- The Bill does not change the content of the standards; it attempts to improve their enforceability.
- The standards have recently been reviewed and strengthened. Stakeholders in the sector are still adjusting to the ongoing implementation of these changes and their full impact has yet to be determined.
- The standards are a joint responsibility of Commonwealth and state governments. State governments need to be consulted regarding any potential changes to the standards. Any changes will need to be agreed by the Ministerial Council.

Whilst stakeholders may have legitimate suggestions to improve the standards, the standards are not included in the legislation and there will be opportunity for these suggestions to be considered by the National Standards Council.

4. Stronger Powers

The National VET Regulator Bill provides the National VET Regulator with a more robust set of powers than is currently available to state and territory regulators. Stronger powers were considered necessary due to the particular challenges of the VET sector. Consistent feedback from stakeholders and state regulators suggested that the current powers available to state regulators were inadequate to appropriately safeguard quality in the sector. This was highlighted by well-publicised problems with colleges catering to international students.

The Bill strengthens the powers of the regulator in a number of ways, including:

- *Standards for RTOs are now a legislative instrument* rather than a guideline referenced in legislation.
- *Stronger powers related to enforcement*, such as warrants and monitoring powers. These powers are based on those available to regulators under the *Education Services for Overseas Students Act 2000*.
- *Introduction of civil penalties*. State legislation contains a number of offences related to VET provision and RTOs. The NVR Bill contains similar offences but also civil penalties, giving the regulator the option to resolve issues in the sector without criminal proceedings.
- *Broader range of sanctions for non-compliance*. Additional sanctions for non-compliance with the standards are included in the legislation, beyond what is currently available to most states and territories. These additional sanctions expand the options available to the regulator in dealing appropriately and proportionately with non-compliant RTOs.
- *Broader executive definitions* – The Bill uses a broader definition of executive officer than the equivalent definitions used in most state legislation. This aligns with the new *fit and proper person requirements* recently added to the AQTF. States and territories supported expanding the definition due to specific challenges in the sector. These challenges relate to foreign ownership and issues involving non-compliant RTOs ceasing to operate and personnel involved with them establishing new RTOs under different names.

These additional powers are balanced with substantial natural justice requirements and review procedures. The regulator can take action against providers immediately only in exceptional circumstances, such as serious health and safety risks or potential for significant fraud to be carried out. These exceptional circumstances provisions were considered necessary by state regulators and most stakeholders. Providers will also have access to administrative review of a range of decisions under the NVR legislation through the Administrative Appeals Tribunal, which is currently only an option in some states, before moving to the courts if they feel they have been unjustly dealt with.

5. Single Tertiary Regulator

The Australian Government supports the introduction of a single national regulator for the Higher Education and VET sectors, as recommended in the *Bradley Review of Higher Education* conducted in 2008.

This policy has not yet been agreed to by state and territory governments, and their support is required, particularly as the implementation of the National VET Regulator relies on a referral of powers.

The introduction of a National VET Regulator has involved close co-ordination with the introduction of a national Higher Education Regulator, the Tertiary Education Quality and Standards Agency (TEQSA). This will allow an easier transition should a single regulator be agreed to by states and territories.

Similar approaches which will assist with transition in the future include:

- A commissioner governance arrangement;
- Separation of standard setting and enforcement of standards;
- Risk based regulatory model;
- Standards set out in legislative instruments;
- An escalating “tool kit” of sanctions and regulatory response;
- Delegation powers – such that the higher education national regulator and the national VET regulator may delegate to one another thereby ensuring that in effect a dual sector provider will only deal with one regulator;
- Sharing of information – such that the higher education national regulator and the national VET regulator may share information with one another ensuring a dual sector provider deals with one regulator

However, it should be noted that the two sectors have significant differences in their character. The number, size and purpose of providers is different in each sector and each sector faces different regulatory challenges. As such, there are necessary and appropriate differences between the two Bills. It is expected that a single regulator for both sectors will be established under legislation that recognises the differences between the two sectors.

National VET Regulator DEEWR consultations

Date (2010)	Meeting
5 Feb	State and Territory Working Group
23 Feb	State and Territory Working Group (teleconference)
9 March	State and Territory Working Group
10 March	Roundtable with Peak Industry Bodies (ACTU, ACTU, AiG) (NFF & BCA invited but could not attend)
11 March	Bilateral state meeting (Brisbane)
11 March	Brisbane open consultation
12 March	Bilateral state meeting (Melbourne)
12 March	Melbourne open consultation
15 March	Sydney open consultation
15 March	Meeting with ISCs
16 March	Bilateral state meeting (Adelaide)
16 March	Adelaide open consultation
17 March	Bilateral state meeting (Sydney)
18 March	Hobart open consultation
19 March	Industry consultation – ACPET
22 March	Industry consultation – ERTOA / TDA (separate meetings)
25 March	Bilateral state meeting (Darwin)
25 March	Darwin open consultation
30 March	Bilateral state meeting (Canberra)
30 March	Canberra open consultation
31 March	Bilateral state meeting (Perth)
31 March	Perth open consultation
4 April	Bilateral state meeting (Hobart)
9 April	State and Territory Working Group
15 April	Industry Consultation – GTA National Conference
19 April	Industry Consultation – ACPET
23 April	Industry reference group (AIG, ACCI, ACTU) (NFF & BCA invited, but could not attend)
23 April	State and Territory Working Group (teleconference)
5 May	Industry Consultations roundtable (ACPET, ERTOA, TDA)
6 May	State and Territory Working Group
12 May	Bilateral state meeting (VIC)
13 May	Bilateral state meeting (WA)
14 May	State and Territory Working Group
28 May	Bilateral state meeting (VIC)
9 June	MCTEE
23 July	State and Territory Working Group
29 October	Exposure Draft process (Melbourne)
5 November	State and Territory Working Group
9 December	State and Territory Working Group
2011	
3 March	State and Territory Working Group