



National Vocational Education and Training Regulator (Consequential Amendments) Bill 2011

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National Vocational Education and Training Regulator (Consequential Amendments) Bill 2011

Date introduced: 10 February 2011

House: Senate

Portfolio: Education, Employment and Workplace Relations

Commencement: Sections 1 to 3 and anything not otherwise specified, by Royal Assent; Schedule 1, items 1 to 6, 9 to 16, 18 to 33 and 36 to 55 immediately after the commencement of section 3 of the *National Vocational Education and Training Regulator Act 2011*; Schedule 1, item 7 immediately after the commencement of section 3 of the *National Vocational Education and Training Regulator Act 2011* unless Schedule 1 to the *Education Services for Overseas Students Legislation Amendment Act 2011* commences before that time in which case the provision does not commence at all; Schedule 1, item 8 immediately after the commencement of Schedule 1 to the *Education Services for Overseas Students Legislation Amendment Act 2011* unless section 3 of the *National Vocational Education and Training Regulator Act 2011* commences before that time in which case the provision does not commence at all; Schedule 1, item 34 immediately after the commencement of section 3 of the *National Vocational Education and Training Regulator Act 2011* unless Schedule 1 to the *Higher Education Support Amendment (No. 1) Act 2011* commences before that time in which case the provision does not commence at all; Schedule 1, items 36 to 55 immediately after the commencement of *Higher Education Support Amendment (No. 1) Act 2011* unless section 3 of the *National Vocational Education and Training Regulator Act 2011* commences before that time in which case the provision does not commence at all.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

The Bill makes amendments to three Acts, consequential to the establishment of the new National Vocational Education and Training Regulator (NVR) provided by the National Vocational Education and Training Regulator Bill 2010 and the National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010. The three acts being amended are the *Education Services for Overseas Students Act 2000*, the *Higher Education Support Act 2003* and the *Indigenous Education (Targeted Assistance) Act 2000*.

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Background

This Bill is the third in a package of Bills that relates to the establishment of the NVR. Tabled earlier on 26 November 2010, the other two Bills are the National Vocational Education and Training Regulator Bill 2010 and the National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010.

Committee consideration

The Bill has been referred to the Senate Education, Employment and Workplace Relations Committee together with the National Vocational Education and Training Regulator Bill 2010 and the National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010, for inquiry and report by 21 March 2011. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/eet_ctte/nvetr_bills_2011/index.htm.

Following the tabling of this Bill, the three Bills were referred to the Senate committee. Reasons provided for the referral are that:

There has been insufficient stakeholder consultation and there are some valid issues that need to be given some further consideration.

Possible submissions or evidence from:

AEU

TAFE Directors Australia

RTOs.¹

Main issues

The policy background and main issues relating to this package of Bills have been addressed in the Bills Digest for the earlier two Bills.² That Bills Digest noted that despite the Council of Australian Governments (COAG) agreement of December 2009, there were newly emerging concerns from Victoria and Western Australia about the proposed scope of the NVR's coverage.

In the Communiqué from its recent meeting of 13 February 2011 COAG has said:

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1. *Selection of Bills Committee: report no. 1 of 2011*, Appendix 4, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2011/rep0111.pdf
 2. C Kempner, *National Vocational Education and Training Regulator Bill 2010*, Bills Digest, no. 61–62, 2010–11, Parliamentary Library, Canberra, 2011, viewed 1 March 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs810%22>

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In recognition of the importance of skills and workforce development, COAG (with the exception of Victoria and Western Australia) agreed in principle to the Intergovernmental Agreement (IGA) for Regulatory Reform of Vocational Education and Training (VET) with sign-off by the end of February 2011.

This agreement will establish a national VET regulator to drive better quality standards and regulation across the Australian VET sector. Ensuring rigorous quality assurance of education and training is critical to increasing the skills and qualifications of individual workers and the productivity of the economy. Victoria and Western Australia committed to a national approach to regulation of the sector but maintained they should have regulatory control over certain providers including TAFEs.³

The Australian Education Union (AEU) expressed concerns that the issue of standards were not adequately addressed in the Bill. These concerns were noted in the first Bills Digest, and have more recently been detailed in joint statements and submissions by the AEU and TAFE Directors Australia. They refer to lack of alignment between the proposed NVR and the proposed Tertiary Education and Quality Standards Agency (TEQSA), in that the standards that the NVR will apply appear to fall short of those required for TEQSA regulated providers. The AEU and TAFE Directors Australia want the standards to oblige training providers to:

- have education as a primary or significant purpose,
- act in the best interests of their students rather than their shareholders,
- be subject to prudential regulatory control so that students are guaranteed continuation of their study irrespective of the financial position of a registered training organisation (RTO),
- require RTOs to demonstrate the adequacy of their physical and human resource infrastructure and their educational viability and
- oblige the NVR to assess the teaching and training standards, practices and procedures of a RTO.⁴

The Department of Education, Employment and Workplace Relations (DEEWR) has however confirmed in its submission that the Bill is not intended to extend to this level of detail:

... 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.

3. Council of Australian Governments (COAG), *COAG communiqué: 13 February 2011*, COAG, 2011, viewed 2 March 2011, http://www.coag.gov.au/coag_meeting_outcomes/2011-02-13/index.cfm?CFID=607588&CFTOKEN=66751165

4. Australian Education Union (AEU) and TAFE Directors Australia, *Urgent consultations needed on national VET regulation*, media release, 28 February 2011; see also J Ross, 'TAFE union, bosses fear VET regulator will be 'TEQSA lite'', *Campus Review Online*, 28 February 2011, viewed 2 March 2011, <http://www.campusreview.com.au/pages/section/article.php?s=VET&idArticle=20064>

- 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.⁵

In their submission to the Senate inquiry, the AEU and TAFE Directors Australia have also suggested that the Bill include aspirational statements of intent such as the 'Objects' in the proposed TEQSA legislation. They also seek clarity on the self-accreditation provisions for TAFEs, and raise questions about the independence of the NVR.⁶

Another matter raised in the earlier Bills Digest was the NVR's power to delegate functions to other authorities.⁷ In its submission to the Senate inquiry the Minerals Council has cautioned:

We note the provision for delegation of functions by the NVR to state and territory authorities, occupational licensing bodies or other industry bodies. We strongly caution against delegation of functions, particularly until the new regime is established, as this may lead to a weakening of the regulatory regime, particularly if delegated to existing bodies with entrenched failed processes.⁸

Key provisions

Schedule 1 provides for the consequential amendments to the *Education Services for Overseas Students Act 2000*, the *Higher Education Support Act 2003* and the *Indigenous Education (Targeted Assistance) Act 2000*. The following provides a brief overview of the thrust of these technical amendments as they relate to each Act.

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5. Department of Education, Employment and Workplace Relations (DEEWR), *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*, DEEWR, Canberra, 2011, p. 4, http://www.aph.gov.au/Senate/committee/eet_ctte/nvetr_bills_2011/submissions.htm
 6. Australian Education Union (AEU) and TAFE Directors Australia, *Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the National VET Regulator Bill 2010 ('the Bill') & National VET Regulator (Transitional Provisions) Bill 2010 ('the Transitional Bill') and the National VET Regulator (Consequential Amendments) Bill 2011 ('the Consequential Bill') [collectively 'the NVR Bills']*, AEU and TAFE Directors Australia, 2011, viewed 2 March 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/nvetr_bills_2011/submissions.htm
 7. C Kempner, *National Vocational Education and Training Regulator Bill 2010*, Bills Digest, no. 61–62, 2010–11, Parliamentary Library, Canberra, 2011, viewed 1 March 2011, p. 13, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs810%22>
 8. Minerals Council of Australia, *Senate Inquiry into National Vocational Education and Training Regulator Bills*, Minerals Council of Australia, 2011, viewed 2 March 2011, http://www.aph.gov.au/Senate/committee/eet_ctte/nvetr_bills_2011/submissions.htm

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Education Services for Overseas Students Act 2000

Many of the provisions are technical amendments to accommodate the new NVR within the Education Services for Overseas Students (ESOS) regulatory framework, and to recognise that there are now a number of authorities. These include **item 3** which provides a new definition of *designated authority* and a number of clauses such as **items 1, 13, and 16** that substitute 'the designated authority' with 'the relevant designated authority'.

Item 25 repeals subsection 89A(1) that deals with the suspension of the registration of a provider to provide courses, and substitutes new **subsections 89A(1), (1A) and 1(B)** to deal with situations that may result from the actions of the different designated authorities involved in suspending registrations.

Item 28 repeals section 170 that deals with delegations and substitutes a new section that takes into account the role of the NVR.

Item 29 introduces two new **sections 176B and 176C** which enable the Minister, by legislative instrument, to make ELICOS Standards and Foundation Program Standards respectively.

Higher Education Support Act 2003

The provisions are technical amendments to Schedule 1A of the Act which deals with the VET FEE-HELP Assistance Scheme, and to Schedule 1 which is the Dictionary of definitions. Definitions have been added to Schedule 1 to include entities established under the *National Vocational Education and Training Regulator Act 2011*. These are the National Register (**item 49**), the National VET Regulator (**item 50**), registered training organisation (**item 52**) and VET Regulator (**item 53**). Other amendments incorporate a role for the new NVR, such as **item 42**, which inserts a new **section 25A** that requires that the NVR be given a copy of the notice to the Minister advising of material changes to that provider's circumstances.

Indigenous Education (Targeted Assistance) Act 2000

Item 55 substitutes a new definition for 'vocational education and training institution' that takes into account a registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011*.

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