

**Vocational Education and Training
(Commonwealth Powers) and Other
Acts Amendment Bill 2011**

Report No. 7

**Industry, Education, Training and Industrial Relations
Committee**

December 2011

Industry, Education, Training and Industrial Relations Committee

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Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its Inquiry. In particular the Committee acknowledges the assistance provided by the Department of Education and Training.

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Abbreviations

ACPET	Australian Council for Private Education and Training
ASQA	Australian Skills Quality Authority
Building Act	<i>Building Act 1975</i> (Qld)
COAG	Council of Australian Governments
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DET	Department of Education and Training
ISQ	Independent Schools Queensland
National Legislation	<i>National Vocational Education and Training Regulator Act 2011</i> (Cwlth) and the <i>National Vocational Education and Training Regulator (Transitional Provisions) Act 2011</i> (Cwlth)
RTO	Registered Training Organisation
NVR Act	<i>National Vocational Education and Training Regulator Act 2011</i> (Cwlth)
NVR TP Act	<i>National Vocational Education and Training Regulator (Transitional Provisions) Act 2011</i> (Cwlth)
VET	Vocational education and training

Chair's Foreword

This report presents a summary of the Committee's Inquiry into the [Vocational Education and Training \(Commonwealth Powers\) and Other Acts Amendment Bill 2011](#).

A national regulator for vocational education and training, the Australian Skills Quality Authority or ASQA, has been established by the Commonwealth Government to provide a national approach to regulating the vocational and education industry, including approving training courses and licensing registered training organisations. It administers the vocational education and training industry for several jurisdictions at present, and under the Bill, Queensland's vocational education and training industry would join them.

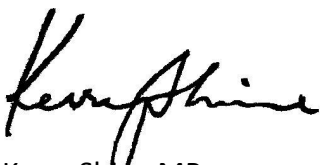
Queensland would still retain control of TAFE and apprentices and traineeships, and licensing of trades and occupations. It would also hold on to responsibility for the qualifications of staff in the liquor, gaming and swimming pool industries for another two years, while alternative options for those are developed.

The Bill aims to improve the quality and outcomes for students and Australian vocational education and training businesses. A national approach would deliver a more mobile workforce, with qualifications recognised throughout Australia. This would mean employers could be assured of the standard a prospective employee has obtained, whichever state the qualification was obtained in. The establishment of the Australian Skills Quality Authority as the national regulator aims to improve confidence in the vocational and education sector generally.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, such as whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament. A public inquiry such as this allows the Parliament to hear from those we might not otherwise have heard from, which should make for better policy and legislation.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions with the Committee on this Bill; and all others who have informed the Committee's deliberations: officials from the Department of Education and Training, the Department of Justice and the Attorney-General and the Department of Local Government and Planning, those who made public submissions to the Committee in respect of the Bill and the research conducted by the Committee's secretariat, the Technical Scrutiny of Legislation secretariat and the Queensland Parliamentary Library¹.

The Committee unanimously recommends that the Bill proceed subject to the amendment it has recommended and clarifications by the Minister of points raised in this report.



Kerry Shine MP
Chair

December 2011

¹ Queensland Parliamentary Library, *Research Brief. National Scheme Legislation*

Executive Summary

On 11 October 2011, the House referred the Bill to the Committee for consideration and report by 6 February 2012, it having been introduced on that day by the Hon Stirling Hinchliffe MP, Minister for Employment, Skills and Mining.

The Bill seeks to refer legislative power to the Commonwealth Government to facilitate national regulation of vocational education and training, to improve the quality of services and increase public confidence in the sector.

The national regulator, the Australian Skills Quality Authority (ASQA) was established under Commonwealth Government legislation; and commenced operations on 1 July 2011 regulating training providers in New South Wales (NSW), the Australian Capital Territory (ACT) and the Northern Territory (NT); and providers from Victoria and Western Australia which operate in one of the above jurisdictions or train overseas students.

This report is informed by written submissions to the Committee, advice provided by officers of the Department of Education and Training, and research conducted by the Committee's secretariat and the Technical Scrutiny of Legislation Secretariat, both within Parliamentary Services.

The submissions were supportive of the intent of the Bill, that is, to refer regulatory authority for VET to the Commonwealth Government. A concern was raised about the adverse impact that a fee regime would have on schools providing vocational education and training if the current delegation is not maintained by the national regulator beyond 12 months.

The Committee invites the Minister to comment on what Queensland could do between now and when the 12 month delegation expires to minimise the impact of registered training organisation fees on schools and to ensure that vocational and education training services delivered in schools are not adversely affected.

In respect of the Bill itself and the Commonwealth legislation that would apply to Queensland, the Committee makes a recommendation to ensure the Queensland Parliament can scrutinise amendments to the Commonwealth legislation; and invites the tabling of that legislation in the Queensland Parliament.

The Committee unanimously recommends that the Bill proceed subject to the amendment it has recommended and clarification by the Minister in respect of points raised in this report.

Summary of Recommendations

Recommendation 1

The Committee recommends that the Bill proceed subject to the amendment recommended and consideration by the Minister of the points raised in this report.

The Committee invites the Minister to table at the second reading of the Bill a copy of the:

- [National Vocational Education and Training Regulator Act 2011](#); and the
- [National Vocational Education and Training Regulator \(Transitional Provisions\) Act 2011](#).

Recommendation 2

The Committee recommends that a clause be inserted in the Bill to provide that the member of the Ministerial Council representing Queensland is to make arrangements for the tabling of any amendment to the National Law in this House of Parliament.

The Committee invites the Minister to comment on what Queensland could do between now and when the 12 month delegation expires to support schools to minimise the impact of registered training organisation fees and to ensure that vocational and education training services in the school sector are not adversely affected.

1 Introduction

1.1 The role of the Committee

The Industry, Education, Training and Industrial Relations Committee (the Committee) is a bipartisan portfolio committee of the 53rd Queensland Parliament established by motion of the House on 16 June 2011. It has responsibility for the portfolio areas of tourism, manufacturing, small business, state development and trade, the Coordinator-General, education, employment, skills and training, workplace health and safety, industrial relations and retail.

Section 93 (1) of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

- The policy to be given effect by the legislation;
- The application of fundamental legislative principles; and
- For subordinate legislation – its lawfulness.

1.2 The Committee's process

Referral

On 11 October 2011, the Legislative Assembly referred the Vocational Education and Training (Commonwealth Powers) and Other Acts Amendment Bill 2011 introduced by the Hon Stirling Hinchliffe MP, Minister for Employment Skills and Mining, to the Committee for consideration and report. The Committee's consideration of the Bill included a public submission process, and a public briefing by officials from the Department of Education and Training (DET). The Committee also considered advice on the Bill's consistency with fundamental legislative principles as listed in Section 4 of the [Legislative Standards Act 1992 \(Qld\)](#).

The Committee was required by the House to report on the Bill by 6 February 2012.

Public submissions

The Inquiry into the Bill was advertised in the Courier Mail and on the Parliament's website on Saturday, 29 October 2011. At the same time, the Committee wrote to specific stakeholders and all subscribers to its email list, inviting written submissions on the Bill by Thursday, 11 November 2011. A total of three submissions were received from the Australian Council for Private Education and Training (ACPET), Independent Schools Queensland (ISQ) and an individual.

The written submissions are available on the Committee's website: www.parliament.qld.gov.au/ietirc.

Public briefing

Officers from DET briefed the Committee on the Bill on 26 October 2011 in a session that was open to the general public. The transcript of the briefing is available on the Committee's website.

Departmental assistance

DET officials attended a meeting to brief the Committee, provide comment and answer the Committee's questions. DET also provided written briefing material on the Bill; a written response to some questions from the Committee and a written response to comments made in the written submissions received on the Bill.

The written material provided by the Department and transcripts of the meeting with officials are available on the Committee's website: www.parliament.qld.gov.au/ietirc.

The Committee thanks the officials from DET for their assistance.

1.3 Policy objectives of the Vocational Education and Training (Commonwealth Powers) and Other Acts Amendment Bill 2011

The objectives of the Bill are to²:

- refer legislative power to the Commonwealth Parliament to regulate registered training organisations, by adopting the *National Vocational Education and Training Regulator Act 2011 (Cwlth)* and *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011 (Cwlth)* and making an amendment reference;
- abolish Queensland's Training and Employment Recognition Council and transfer its remaining functions, mostly in relation to apprenticeships and traineeships, to Skills Queensland;
- repeal Chapter 2 of the [Vocational Education, Training and Employment Act 2000](#) that provides for regulation of registered training organisations;
- amend the [Building Act 1975](#) to remove potential inconsistency with the *National Vocational Education and Training Regulator Act 2011 (Cwlth)* and provide for the Pool Safety Council to approve a training course to be completed for the purpose of obtaining a licence as a pool safety inspector;
- insert displacement provisions in Part 5A [Liquor Act 1992](#) and Part 10A [Gaming Machine Act 1991](#) to allow Queensland to continue to apply the provisions of those Acts in relation to registered training organisations after the referral of power; and
- make consequential amendments to the *Vocational Education, Training and Employment Act 2000* and other legislation.

The Bill would implement the Council of Australian Governments (COAG) reforms agreed on 7 December 2009 for the regulation of vocational education and training (VET) by the establishment of a national regulator for the registration and regulation of registered training organisations (RTOs) and the accreditation of VET courses and a National Skills Standards Council to advise the Ministerial Council for Tertiary Education and Employment on the development of VET.

The *National Vocational Education and Training Regulator Act 2011 (Cwlth)* (the *NVR Act*) and the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011 (Cwlth)* (the *NVR TP Act*) were enacted in March 2011. This report from hereon refers to these Acts collectively as the 'National Legislation'. The National Legislation sets out the regulatory framework within which the national VET regulator will operate.

² Explanatory notes at 1

The Commonwealth was able to enact the National Legislation as a result of an initial referral of power from the New South Wales Parliament on 30 November 2010.

The national regulator, the Australian Skills Quality Authority (ASQA) was established by the National Legislation and commenced operations on 1 July 2011 regulating training providers in New South Wales, the Australian Capital Territory and the Northern Territory – these jurisdictions have all referred power to the Commonwealth. It also regulates providers from Victoria and Western Australia which operate in any of the referring jurisdictions, or train overseas VET students (as the Commonwealth Government already regulates in respect of all overseas students).

Victoria and Western Australia decided not to refer power but have agreed to enact mirror legislation to ensure the same standards of operation and accountability apply across Australia.³

If the Bill is not passed, providers in Queensland that operate in a referring jurisdiction or train overseas students will at least in part still be regulated by ASQA, as is the case for Victoria and Western Australia as described above. The Minister has advised the House that approximately one-third of Queensland's RTOs deliver training to overseas students or operate in other referring states and therefore would be subject to regulation by both the state and the Commonwealth if the State's regulatory power is not referred to the Commonwealth.⁴

In his Introductory Speech the Minister for Employment, Skills and Mining, the Hon Stirling Hinchliffe MP advised the House that the Commonwealth Minister made a determination under section 7 of the *NVR Act* giving Queensland until 30 June 2012 to refer power before it is deemed a non-referring jurisdiction. Minister Hinchliffe indicated that, subject to passage of this Bill, the Government anticipates that ASQA will assume responsibility for Queensland RTOs by mid-2012.⁵

³ Communique for the Council of Australian Governments' Meeting, 7 December 2009, p5, www.coag.gov.au/coag_meeting_outcomes/archive.cfm

⁴ Introductory speech, Hon SJ Hinchliffe MP, 11 October 2011, Hansard transcript at 3016.

⁵ Introductory speech, Hon SJ Hinchliffe MP, 11 October 2011, Hansard transcript at 3017

2 Examination of the Bill

This section discusses issues raised during the Committee's examination of the Bill. In respect of the Bill itself, no significant issues were raised in submissions. While the submissions indicated support for the intent of the Bill (that is, to refer regulatory power for VET to the Commonwealth Government), they focus on areas of detail that are consequences of the Bill. That is, they focus on the *NVR Act*, which this Bill proposes be adopted as a Queensland law. Only one concern is identified in the submissions and that is with the fees payable by the schools sector to ASQA under the *NVR Act*, as discussed below.

The table at Appendix A provides a comprehensive summary of comments on the issues raised in submissions together with responses to these comments provided to the Committee from DET.

The Committee wishes to address the following four areas:

2.1 Regulation of RTOs under the *Liquor Act 1992* and the *Gaming Machine Act 1991*

The Bill includes a displacement provision to allow training regulated under the *Liquor Act* and the *Gaming Machine Act* to continue to be regulated under this legislation. The provision will expire two years after commencement. During this time the Office of Liquor and Gaming Regulation will consider alternative options for regulating these industries consistent with the national VET legislation.⁶

The Committee requested further information from the Department of Justice and the Attorney-General (DJAG), which administers the Responsible Service of Alcohol training, regarding the fee structures for RTOs after the displacement provision expiry. DJAG advised that while it is not currently in a position to comment on any future fee regime, it is working to identify options which may minimise any additional financial impact to RTOs as a result of the referral power. A copy of the advice from DJAG dated 21 November 2011 is at Appendix B.

2.2 Training of Pool Safety Inspectors

The Bill would amend the *Building Act 1975* in relation to the training of Pool Safety Inspectors. Currently under chapter 8 of the *Building Act* providers of training for Pool Safety Inspectors are regulated at state level by the Pool Safety Council. Under the Bill training courses would be accredited with ASQA and providers would be regulated by ASQA.

Information provided to the Committee by the Department of Local Government and Planning is that the licensing requirements for pool safety inspectors would remain unchanged, except that applicants for a licence will need to hold a 'qualification or statement of attainment' for an approved training course under the Commonwealth scheme, rather than a 'certificate of competency' issued by an 'eligible course provider'. Further, similar provisions to the present would apply in relation to cancellation or amendment of course accreditation by ASQA. Finally the Department advised that the *NVR Act* contains an extensive array of offence provisions (in Part 6) which cover the offences currently under the *Building Act* and generally provide for harsher penalties. A copy of the information is at Appendix C.

⁶ Explanatory notes at 4

2.3 Tabling of the National Legislation

The law to be adopted as the law of Queensland was not tabled with the Bill by the Minister. Although the law is available in the public arena, the Committee believes that as a matter of course a law proposed to apply in Queensland should be tabled in the Queensland Parliament to ensure that the people of Queensland are formally informed about and able to scrutinise the law to be adopted. This supports the Parliament's ability to undertake its fundamental role of exercising scrutiny over Government.

Committee comment

The Committee invites the Minister to table at the second reading of the Bill a copy of the:

- National *Vocational Education and Training Regulator Act 2011*; and the
- National *Vocational Education and Training Regulator (Transitional Provisions) Act 2011*.

2.4 Amendments to the National Legislation

The Committee notes the absence from the legislation of a requirement that amendments to the National Legislation be tabled in the Queensland Legislative Assembly.

The amendment reference would permit the Commonwealth Parliament to amend the legislation without seeking an additional referral from the States. To ensure state engagement over any future changes to the National Legislation, the intergovernmental agreement⁷ pertaining to VET regulation contains a Commonwealth commitment to consult the States and Territories prior to any amendment.

Committee comment

The Committee questions the practical ability of the Legislative Assembly to subject amendments to the National Law, which would also be a law of Queensland, to its scrutiny and to inform the people of Queensland under the Bill as it stands.

Recommendation 2

The Committee recommends that a clause be inserted in the Bill to provide that the member of the Ministerial Council representing Queensland is to make arrangements for the tabling of any amendment to the National Law in this House of Parliament.

2.5 Fees for RTOs Generally

Currently Queensland RTOs are charged state-subsidised fees for registration and course accreditation. ASQA will charge full recovery fees.

A Cost Recovery Impact Statement was issued by the National VET Regulator Taskforce in May 2011 to allow parties to assess the impact of fees on their operations and provide comment and recommendations on appropriate adjustments to the fee schedule. The Committee understands that the Commonwealth received over 140 submissions and in response to those submissions changed the amounts of some fees and the method of collection to reduce the impact on small providers.⁸

⁷ Still in draft at the time of writing.

⁸ DET, Director-General Speech, public briefing, 26 October 2011, at 11.

In its submission, ACPET supports the Bill on the basis that Queensland will benefit from national regulation by ASQA through the improved quality of services that will result from nationally consistent standards and a national regulator with significantly strengthened powers to take action against providers not committed to high quality education and training.

Advice from DET

A likely fee impact comparison was prepared for the Committee by DET and is appended to this paper at Appendix D.

DET advised the Committee the increase in fees will be gradual and an annual registration fee will not be payable until 1 January 2014.

Committee comment

Some members expressed concern about the quantum of the increase in fees for RTOs and the impact on RTO businesses.

The Committee understands that the National Legislation gives ASQA extensive powers of entry, search and seizure and creates significant civil and offence penalties. These increased powers of regulation to enforce nationally consistent standards are of considerable benefit to the industry but are not without cost. Those costs will be recovered by ASQA from RTOs.

The Committee is satisfied on balance that the benefits that will accrue to the sector from improved quality of VET services and increased public confidence will outweigh the increased costs of a national regulator.

2.6 Fees for schools

State and non-state schools deliver a significant amount of VET in Queensland. Currently schools are not charged registration fees. Their registration is managed by the Queensland Studies Authority under a delegation from the Queensland Training and Employment Recognition Council. ASQA has agreed to provide a similar delegation for 12 months after referral while it reviews the situation.

In its written submission, ISQ stated that while it supports the intent of the Bill it is concerned about the impact that any increase in fees may have on VET services provided by schools if the delegation is not maintained. ISQ noted that the establishment of a national regulator has been driven by poor quality providers outside the school sector.

The submission from ISQ also expressed concern about increased regulatory costs for schools delivering VET education to overseas students. The Committee notes this concern, however it falls outside the scope of this Inquiry because a referral of power is not required for ASQA to regulate school RTOs delivering VET services to overseas students. The provision of education to overseas students is currently regulated by the Commonwealth.

In respect of overseas students, DET has confirmed that school RTOs that deliver VET services to overseas students will have to pay full cost recovery fees to ASQA regardless of whether this Bill is passed. The Commonwealth Government regulates the provision of education and training to overseas students under the *Education Services for Overseas Students Act 2000* (Cwlth). Under that Act schools which deliver training to overseas students must be registered on CRICOS – the Commonwealth Register of Institutions and Courses for Overseas Students. The Commonwealth Government has decided that ASQA will also be the designated authority for CRICOS registrations of RTOs. Therefore, if the Bill is

not passed, school VET providers would be answerable to two authorities – the State on VET regulation generally, and the Commonwealth in respect of their services to overseas students (as is the case in WA and Victoria).

Advice from DET

In the event that the school delegation is not continued at the expiry of the 12 months, DET has advised that it will ensure strategies are in place to minimise the impact of RTO fees on schools and ensure VET services are not adversely affected.

DET noted that ASQA uses a risk based approach to regulation so that proven high quality providers are subject to lower levels of regulatory intervention. School RTOs will have their risk assessed in the same way as any other RTO.

Further DET pointed out that because the referral of power would not take effect until 1 April 2012, schools would have at least until April 2013 before any fees would arise. In addition, ASQA has advised that the annual registration fee for all RTOS will not be collected until January 2014.

Committee comment

The Committee notes the advice from DET that in the event that the delegation is not continued, it is working to ensure strategies are in place to minimise the impact of registered training organisation fees on schools and ensure that their vocational and education training services are not adversely affected.⁹

The Committee invites the Minister to comment on what Queensland will do between now and when the 12 month delegation expires, to support schools, to minimise the impact of RTO fees and to ensure that VET services in the school sector are not adversely affected.

3 Fundamental Legislative Principles

The Committee considered the consistency of the Bill with fundamental legislative principles. These are addressed in section 2, *Examination of the Bill* and relate to whether the Bill has sufficient regard to the institution of Parliament. A copy of the report from the Technical Scrutiny of Legislation secretariat is at Appendix E. In respect of the remaining issues identified in the technical scrutiny report, the Committee is satisfied with the explanations provided in the explanatory notes, recognising that national scheme legislation does have some associated costs in terms of fundamental legislative principles.

⁹ DET Public briefing on the Vocational Education and Training (Commonwealth Powers) Bill 2011 on 26 October 2011, transcript at 3.

Appendices

Appendix A - Summary of comments made in submissions with DET comments

STAKEHOLDER	SUPPORT / NOT SUPPORT	COMMENTS	DEPARTMENT COMMENTS
Independent Schools Queensland (ISQ)	Conditional support	<p><u>Compliance and fees under ASQA</u></p> <ul style="list-style-type: none"> The ISQ submission supports the reasons for the establishment of a national VET regulator but notes that changes to the regulation of VET were driven by poor quality providers outside of the school sector. ISQ asks the Committee to seek ways to minimise compliance burdens and costs for individual schools to maintain their current offerings of programs. ISQ requests that the proposed legislation, either in referral of power to the Commonwealth, or in implementation of consequent changes not adversely impact on the interests of Queensland schools which have made a significant investment in VET in Schools (VETiS) programs in Years 10-12; <p><u>Overseas students</u></p> <ul style="list-style-type: none"> ISQ requests that the proposed legislation not limit 	<p><u>Compliance</u></p> <ul style="list-style-type: none"> The national regulator, the Australian Skills Quality Authority (ASQA) uses a risk based approach to regulation, where proven high quality providers are subject to lower levels of regulatory intervention. School RTOs will have their risk assessed in the same way as any other RTO. <p><u>Fees</u></p> <ul style="list-style-type: none"> Currently most Queensland school RTOs have their registration managed by the Queensland Studies Authority (QSA) and do not pay any fees for registration. ASQA has agreed that the QSA will continue to regulate Queensland school RTOs, under a delegation from ASQA, for a period of at least 12 months after the referral of power. This means that Queensland school RTOs will not be required to pay fees to ASQA during that period. If the referral of power takes effect on 1 April 2012, schools will have until at least April 2013 before they have to start paying ASQA fees. ASQA has also decided that the annual registration fee for RTOs will not be collected until January 2014 meaning that RTOs will not pay annual fees from the date of referral until January 2014. The Queensland Department of Education and Training (DET) is currently developing strategies to assist school RTOs to meet ASQA's fees in the event that the QSA's delegation is not continued by ASQA. <p><u>Overseas students</u></p> <ul style="list-style-type: none"> The Commonwealth Government regulates the provision of

STAKEHOLDER	SUPPORT / NOT SUPPORT	COMMENTS	DEPARTMENT COMMENTS
		<p>the ability of students with visas to have access to the same choice of curriculum offerings in Queensland schools as is available to other students, unless prevented by a legislative instrument;</p> <p><u>Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)</u></p> <ul style="list-style-type: none"> ISQ requests that the proposed legislation not disadvantage Queensland schools in terms of overall increases in regulatory costs and compliance burdens, when the stated aims of regulatory changes initiated by the Commonwealth Government in areas of VET regulation and education services for overseas students reforms have been to streamline processes and reduce costs for education sectors. 	<p>education and training to overseas students under the <i>Education Services for Overseas Students Act 2000</i> (Cwlth). Under that Act, schools which deliver training to overseas students must be registered on CRICOS. A school's CRICOS registration will indicate which courses it is registered to deliver to overseas students. Some schools have CRICOS registration to deliver primary or secondary education only. Other schools also have CRICOS registration to deliver VET to overseas students.</p> <ul style="list-style-type: none"> Currently DET is the 'designated authority' for the purpose of making recommendations to the Commonwealth in relation to an organisation's fitness to be registered on the CRICOS. DET does not charge full cost recovery fees for this function The Commonwealth Government can make changes to the regulation of training to overseas students at any time. The passage of this Bill is not necessary for the Commonwealth Government to change the designated authority for CRICOS providers. <p><u>Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)</u></p> <ul style="list-style-type: none"> The Commonwealth Government has decided that ASQA will, in addition to regulating RTOs, be the designated authority for CRICOS registrations of RTOs. This change will only affect school RTOs that have a CRICOS registration that allows them to deliver VET to overseas students. If the school only delivers primary or secondary education to overseas students, its CRICOS registration will continue to be managed by DET. If the Queensland Parliament passes this Bill ASQA will assume responsibility for regulating all RTOs in Queensland on the date of

STAKEHOLDER	SUPPORT / NOT SUPPORT	COMMENTS	DEPARTMENT COMMENTS
			<p>referral. ASQA will also become the designated authority for CRICOS registration for RTOs. It is proposed that the referral will take effect on 1 April 2012, subject to the passage of this Bill.</p> <ul style="list-style-type: none"> If the Queensland Parliament did not pass this Bill it would not stop ASQA becoming the designated authority for RTOs on CRICOS. The change to the designated authority for CRICOS is being made independently of this Bill. If this Bill was not passed, on 1 July 2012 Queensland would become a non referring jurisdiction under the <i>National Vocational Education and Training Regulator Act 2011</i> (Cwlth). On 1 July 2012 ASQA would become the regulator for Queensland RTOs that operate in a referring jurisdiction or deliver training to overseas students. ASQA would also become the designated authority for CRICOS registration for RTOs. Once ASQA becomes the designated authority for RTOs on CRICOS, school RTOs which deliver VET training to overseas students will have to pay full cost recovery fees to ASQA as the designated authority.
Australian Council for Private Education and Training (ACPET)	Support	<ul style="list-style-type: none"> ACPET supports the establishment of a single national regulator 	<ul style="list-style-type: none"> The Department notes that ACPET, a peak body representing training providers, supports the establishment of a national regulator and welcomes the benefits of national regulation such as improved consistency and enforcement of standards.
Denis Bowden	Not support	<ul style="list-style-type: none"> The submission raises concerns about the efficacy of alternative medicine. 	<ul style="list-style-type: none"> This submission relates to the provision of courses in alternative medicine. These courses are generally provided in the higher education sector and would not be regulated by ASQA.

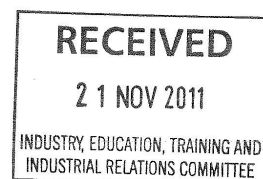
Appendix B - Letter from Department of Justice and Attorney-General, Director-General, Phillip Reid, to Mr Kerry Shine MP, 21 November 2011

Our reference: 1782398, OGR-04213



Office of the
Director-General
Department of
Justice and Attorney-General

Mr Kerry Shine MP
Chair - Industry, Education, Training
and Industrial Relations Committee
Parliament House
George Street
BRISBANE QLD 4000



Dear Mr Shine

I am writing to the Industry, Education, Training and Industrial Relations Committee (Committee) in response to a request for further information regarding provisions relating to Responsible Service of Alcohol training administered by the Department of Justice and Attorney-General.

At the 26 October 2011 briefing on the Vocational Education and Training (Commonwealth Powers) and Other Acts Amendment Bill 2011, issues related to Responsible Service of Alcohol training and relevant Registered Training Organisations, were raised by two Committee members (Mr Steve Dickson MP, Member for Buderim and Mrs Jann Stuckey MP, Member for Currumbin). Mr Dickson queried the registration processes for online Responsible Service of Alcohol training following comments he heard in relation to a fictitious name being used in the online registration process. Mrs Stuckey requested information regarding fee structures related to Registered Training Organisations after the displacement provision expiry.

The Department of Justice and Attorney-General (DJAG) approves Registered Training Organisations to deliver accredited Responsible Service of Alcohol and Responsible Service of Gambling courses both in person and online. The delivery of training online is a cost-effective alternative and provides a number of benefits to employees in the industry. The benefits include increased access to training across Queensland (particularly in areas where face-to-face training may not be available); and increased flexibility, where students can access training 24 hours per day, at a pace and location appropriate to each individual and organisation. All jurisdictions, apart from New South Wales, currently allow online Responsible Service of Alcohol training.

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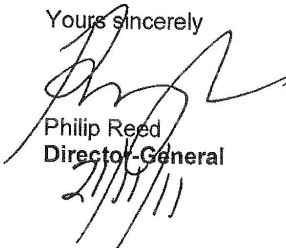
The Department of Justice and Attorney General is currently investigating the incident referred to by Mr Dickson. As the investigation is on-going, specific comment on this case cannot be made. The Committee should, however, be made aware that in accordance with the *Liquor Act 1992* (the Act), approved trainers must demonstrate an ongoing ability to meet guidelines designed to ensure consistency and integrity in delivering the RSA course in Queensland. In delivering the course online, Registered Training Organisations must also comply with additional guidelines to ensure delivery best practice and consistency with the face-to-face course. This includes a requirement to provide evidence of secure access technologies, including documented procedures for student identification. Approved trainers whose conduct does not meet the requirements of the guidelines may have their approval cancelled.

DJAG has not been advised of any intention by the Australian Skills Quality Authority (nor Service Skills Australia which administers the national unit of competency for Responsible Service of Alcohol training *SITHFAB009A Provide responsible service of alcohol*) to abolish or restrict online training under the new Federal framework.

In response to information requested by Mrs Stuckey MP, Member for Currumbin, regarding fee structures following the new framework, DJAG is currently considering all policy and regulatory options to ensure the effective delivery of mandatory Responsible Service of Alcohol and Responsible Service of Gambling courses in Queensland under the new Commonwealth Vocational Education Training framework. At this early stage, DJAG is not in a position to comment on any future fee regime under the new framework, however it is working to identify options which (within DJAG's power) may minimise any additional financial impact to relevant Registered Training Organisations as a result of the referral of power to the Commonwealth.

I trust this information is of assistance. If you require any further information, please contact Ms Sarah Ramsay, Senior Policy Advisor, on 3404 8317 who will be pleased to assist.

Yours sincerely


Philip Reed
Director-General

**Appendix C - Information from the Department of Local Government and Planning:
A comparison between the current scheme for the training of Pool Safety Inspectors
and the proposed new scheme**

The current scheme

The current scheme for the training of swimming pool safety inspectors is contained in Part 8 of Chapter 8 of the *Building Act 1975* (BA).

Under the current scheme, training courses may only be delivered by the following organisations (known as ‘eligible course providers’):

- registered training organisations (RTOs), or
- any other entity prescribed under a regulation.

As yet no other entities have been so prescribed.

Eligible course providers may apply to the Pool Safety Council (PSC) to approve a training course to be conducted by the course provider.

The chief executive of the Department of Local Government and Planning (DLGP) may issue guidelines (training course guidelines) to help eligible course providers apply to the PSC for approval of a training course. The chief executive has in fact published training course guidelines and they are available on the department’s website.

The PSC may only approve a training course submitted for approval by an eligible course provider if the eligible course provider is a ‘suitable entity’ to conduct the course and the course complies with the training course guidelines.

An approval for a training course remains in force for 2 years unless it is earlier cancelled under the Act (e.g. cancellation by the PSC for non-compliance with the training course guidelines).

The PSC has power to audit an eligible course provider and its activities to establish whether its approved training course continues to comply with the training course guidelines, and with any conditions imposed by the PSC on the course approval.

The PSC has power to cancel an approved training course or impose a condition on it if the PSC reasonably considers the eligible course provider is no longer a suitable entity to conduct the course, or the course no longer complies with the training course guidelines. The PSC may only exercise these powers after observing a ‘show cause notice’ procedure.

Under the current scheme, a person who successfully completes a pool safety inspector training course is said to be entitled to receive a ‘certificate of competency’ issued by the eligible course provider. A person must hold such a certificate as a condition of being granted a licence as a pool safety inspector by the PSC.

The current scheme contains the following offence provisions (each attracting a maximum penalty of 80 penalty units) in relation to pool safety inspector training courses:

- falsely claiming to be an eligible course provider,
- falsely claiming to be conducting an approved training course, and
- falsely issuing or claiming to issue a 'certificate of competency'.

The proposed new scheme

Under the proposed new scheme, only training organisations registered with the Australian Skills Quality Authority (ASQA) established under the *National Vocational Education and Training Regulator Act 2011* (Cth) will be eligible to deliver pool safety inspector training courses. This is different from the current scheme which allows entities registered as training organisations under State legislation (the *Vocational Education, Training and Employment Act 2000*), and also any other entities prescribed under a State regulation, to deliver the courses.

Also, under the proposed new scheme, pool safety inspector training courses will be accredited with ASQA under the Commonwealth scheme, rather than being approved by the PSC against training course guidelines published by the chief executive of DLGP.

Under the proposed new scheme ASQA will have responsibility for *auditing* the activities of RTOs. This is different from the current scheme under which the PSC has the audit function.

The proposed new scheme will not alter the *licensing* requirements for pool safety inspectors, except that applicants for a licence will need to hold a 'qualification or statement of attainment' for an approved training course under the Commonwealth scheme, rather than a 'certificate of competency' issued by an 'eligible course provider'.

Similarly to the PSC's power at present to cancel an approved pool safety inspector training course or impose a condition on it, the National VET Regulator (ASQA) may cancel or amend the accreditation of a VET accredited course.

The Commonwealth legislation (i.e. the *National Vocational Education and Training Regulator Act 2011*) contains an extensive array of offence provisions (in Part 6) which cover the offences currently under the BA and generally provide for harsher penalties. For example, the offence of falsely claiming to be an NVR registered training organisation (section 114) carries a maximum penalty of 300 penalty units (\$33,000) in comparison to the analogous BA provision (section 246DZ) which carries a maximum penalty of 80 penalty units (\$8,800).

Appendix D - DET likely fee comparison

Comparison of fees charged by TERC and ASQA as at 1 July 2011

		Queensland	ASQA	Difference
Small RTO (43 % of Queensland Market) <ul style="list-style-type: none"> - Initial scope of three qualifications from one training package, adds further five qualifications during five year period. - No overseas students. <p>Example: organisation offering specialised training in a niche market eg maritime licensing. Typically these organisations have a small number of employees and one delivery location. Usually not in receipt of government funding.</p>		\$5,432.62	\$8,690.00	\$3,257.38 (approx \$650.00 per year increase – 60%)
Medium RTO (43 % of Queensland Market) <ul style="list-style-type: none"> - Initial scope of eight qualifications from four training packages, adds six qualifications from three new training packages. - Two delivery sites. <p>Example: an organisation delivering training across a limited range of qualifications eg hospitality, business and child care. Could be in receipt of government funding.</p>	Delivering to domestic students only	\$8,820.65	\$9,140.00	\$319.35 (approx \$65.00 per year increase – 4%)
	Delivering to both domestic and overseas students (estimated to be 10% of this cohort)	\$9,228.65	\$18,405.00	\$9,176.35 (approx \$1,835.00 per year increase – 99%)
Large RTO (14 % of Queensland Market) <ul style="list-style-type: none"> - Initial scope of 100 qualifications from 15 training packages. - Adds 10 new qualifications each year, 20 replacement training package qualifications each year. - Has five new courses accredited. - Delivers training to overseas students for 15 qualifications with two qualifications added each year. - Multiple delivery sites in more than one state. <p>Example: a Queensland TAFE Institute or large private provider. Typically in receipt substantial government funding.</p>		\$67,985.50	\$96,845.00	\$28,859.50 (approx \$5,770.00 per year increase – 42%)

Appendix E - Technical Scrutiny secretariat report on consistency with fundamental legislative principles

BACKGROUND

In introducing the Bill into the Queensland Parliament the Minister stated that:

In December 2009, the Council of Australian Governments – COAG – agreed to national reforms to the regulation of vocational education and training [VET]. Reforms agreed to include the establishment of a national VET regulator responsible for the registration and regulation of registered training organisations and accreditation of VET courses and a national skills standard council to provide advice to the Ministerial Council for Tertiary Education and Employment about the development of national standards for VET. To date all states except for Victoria and Western Australia have agreed to this reform. The passage of this Bill enshrines Queensland's commitment to the new national regulator – the Australian Skills Quality Authority – AQSA.¹⁰

On 13 February 2011, COAG reaffirmed its commitment to a national VET regulator, agreeing in principle to the 'Intergovernmental Agreement for Regulatory Reform of Vocational Education and Training' (the IGA).¹¹ While agreed in principle, the terms of the IGA are yet to be finalised and the document publicly released. There is therefore no final agreement available to be tabled in the Queensland Parliament.

The Commonwealth Minister has made a determination under the National Law which gives Queensland until 30 June 2012 to refer State VET powers to the Commonwealth before Queensland is deemed to be a non-referring jurisdiction for the national VET scheme (Explanatory Notes, 2).

LEGISLATIVE PURPOSE

The Bill aims to refer State legislative VET powers to the Commonwealth under s.51(xxxvii) of the Commonwealth Constitution (the Constitution) to regulate registered training organisations under the National Law (Explanatory Notes, 1).

The Bill provides for certain exclusions (carve outs) from the referral of VET powers, viz. primary and secondary education, higher education, establishment of public training providers such as TAFE institutes and qualifications to undertake or carry on a business, occupation or other work (Explanatory Notes, 4-5).

Providers of training and training courses in Queensland relating to the liquor and gaming industry will remain (by reason of displacement provisions included in the Bill) under the State's jurisdiction for two years pending development of alternative options to be consistent with the National Law. This is aimed at avoiding a problem of inconsistency with

10 First Reading speech, Record of Proceedings (Hansard), 11 October 2011, p.3015

11 Communiqué for the Council of Australia Governments' Meeting, 13 February 2011, p. 4, http://www.coag.gov.au/coag_meeting_outcomes/2011-02-13/index.cfm?CFID=3805391&CFTOKEN=37051611

the National Law following on referral of State VET powers, and consequent invalidity of State legislation (Explanatory Notes, 3).¹²

The Bill also amends the *Building Act 1975* to alter the way inspector pool safety courses are approved. The Pool Safety Council is to approve a nationally recognised course accredited by AQSA. This is also to prevent inconsistency with the National Law (Explanatory Notes, 3).¹³

The Bill amends a number of other Acts, including the *Vocational Education, Training and Employment Act 2002* (VETE Act). Amendments to that Act will abolish the Training and Employment Recognition Council (TERC) and (will by transitional regulation) facilitate transfer of its remaining functions (mostly in relation to apprenticeships and traineeships) to Skills Queensland. (Explanatory Notes, 7).

SUFFICIENT REGARD TO THE INSTITUTION OF PARLIAMENT

The National Law (which comprises the *National Vocational and Educational Training Regulator Act 2011* and *National Vocational and Educational Training Regulator (Transitional Provisions) Act 2011*) was not tabled by the Minister when introducing this Bill into Parliament. Under comparable circumstances the Industry, Education, Training and Industrial Relations Committee recommended in respect of the Education and Care Services National Law (Queensland) Bill 2011¹⁴ that the Minister table a copy of the National Law. Such a recommendation may also be appropriate in this instance.

Clause 6 of the Bill enables the National Law to be amended by the Commonwealth Parliament, (based on legislative powers it has apart from the State reference of the VET matters), and for the continuation in Queensland of the National Law as amended. However, the Bill does not require that amendments to the National Law be tabled in the Queensland Parliament. The omission of such a requirement may demonstrate insufficient regard to the institution of Parliament. This issue was recently considered by the Industry, Education, Training and Industrial Relations Committee in its report to Parliament on the *Education and Care Services National Law (Queensland) Bill 2011*.¹⁵

FLP issue	Amendment of an Act only by another Act – Section 4(4)(c) <i>Legislative Standards Act 1992</i> Does the bill allow or authorise the amendment of an Act only by another Act?
Comment	Clause 7 provides for the Governor to, at any time by proclamation, fix a day on which the legislative reference(s) are to end. This is a Henry VIII clause as it effectively allows subordinate legislation to amend the Act. It is also uncertain as to whether the referral of State powers to the Commonwealth is revocable. Section 51 (xxxvii) (referral power) of the Constitution enables the Commonwealth to legislate with respect to:

¹² A State law that is inconsistent with the provisions of a constitutionally valid Federal law will, by application of s.109 of the Commonwealth Constitution, be invalid to the extent of the inconsistency between those laws.

¹³ See Note 3

¹⁴ Industry, Education, Training and Industrial Relations Committee: Report No. 4 – *Education and Care Services National Law (Queensland) Bill 2011*

¹⁵ Industry, Education, Training and Industrial Relations Committee, Report No. 4 - *Education and Care Services National Law (Queensland) Bill 2011, October 2011*

Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.

It is unclear whether the referral power would allow the revocation of a State Act that referred power to the Commonwealth, where such referral is not expressed to be limited in time. The concept of parliamentary sovereignty would suggest that, just as a parliament can enact a law, it can as equally repeal it. However, the general issue as to revocability of a referring State law has not been resolved at law. The High Court of Australia left open the question in *R v Public Vehicles Licensing Appeal Tribunal (Tas)* (1964)¹⁶ although the Court found that a State Act that refers power can impose certain conditions. The High Court observed:

It is plain enough that the Parliament of the State must express its will and it must express its will by enactment. It nonetheless refers the matter. Indeed the matter may involve some limitation of time or be defined in terms which involve a limitation time ...There is no reason to suppose that the words "matters referred" cannot cover matters referred for a time which is specified or which may depend on a future event even if that involved the will of the State Governor-in-Council and consists in the fixing of a date by proclamation.¹⁷

Justice Robert French (as he then was) commented of the referral of power by the States to the Commonwealth that¹⁸:

There is an important open question as to whether a reference unlimited in time is irrevocable.¹⁹ However, there is little controversy that a referral may be for a fixed period.²⁰ The uncertainty as to whether a reference unlimited in time is irrevocable will no doubt have the consequence that for the foreseeable future most, if not all, references will contain a sunset clause.

An interesting question arises about what happens to a Commonwealth law passed pursuant to the referral power if referral by the State is terminated, whether according to a self executing sunset clause or by revocation. Absent any other provisions, it could be expected that such a law would continue in force for there is nothing in the grant of the power which makes the laws under it self-terminating upon revocation of the referral. In this respect the position of referring States and adopting States is arguably different. The latter case would depend upon whether the reference [in s.51(xxxvii)] to States whose parliaments 'afterwards adopt the law' provides for extension of the law to those States only during the currency of

16 (1964) 113 CLR 207. Competing arguments for and against the retention by a State to revoke a general reference are set out in Case Notes by P Buchanan in the *Federal Law Review*, 1965, Vol 1, 324 at 326-327.

17 *Op cit* p.33 In *Public Vehicles Licensing* the particular State Act similarly contained as with clause 7 of the Bill provision providing the Governor with power to at any time by proclamation fix a date to terminate the reference

18 RS French, *The Referral of State Powers*, (2003) 3 *Western Australian Law Review* 19 at 31

19 Citing *Graham v Paterson* (1950) 81 CLR 1 at 25; *Airlines of NSW v NSW* (1964) 113 CLR 1 at 53; *R v Public Vehicles Licensing Appeal Tribunal (Tas)* (1964) 113 at 207, 226; and *Sande v Registrar*, Supreme Court (Qld) 1996 64 FCR 123 at 131

20 Citing *Airlines of NSW v NSW* at 38

21 RS French, *The Referral of State Powers*, (2003) 3 *Western Australian Law Review* 19 at 31

22 *Op cit* para.4.104

23 *Op cit* para 4.109

	<p>the adoption or once and for all after adoption.²¹</p> <p>The Commonwealth can only make a valid law in reliance of s.51(xxxvii) of the Constitution within the ambit of the matters referred. Careful legislative drafting of the referral, with all necessary qualifications (including as to termination of the references) is required to protect the interests of the referring State so as to ward off possible encroachment by the Commonwealth on State sovereignty.</p> <p>Presumably the power to terminate the referral of State power for VETE matters as referred would only be exercised in extraordinary circumstances, such as the Commonwealth amending the National Law in a way that was not agreed to by the referring jurisdictions. Consequently, it would be prudent for Queensland to be able, should it ever be considered necessary, to terminate the constitutional reference(s) and prevent the Federal amendments taking effect. Clause 7, which allows the Governor to at any time by proclamation, fix a day on which the legislative references are to end, appears to appropriately accommodate the desired flexibility.</p> <p>Clause 39 of the Bill inserts a new Chapter 10, Part 7 for the VETE Act, including new s.406 which will allow transitional regulations to be made for transferring remaining statutory functions from TERC (which is to be abolished) to Skills Queensland.</p> <p>The Explanatory Notes advise that this Henry VIII clause is strictly limited in its scope and note that the power to amend the VETE Act by regulation is sunsetted (new s.406(3) provides that s.406 and any regulation made under s.406 expires within one year of commencement of the Act). (Explanatory Notes, p.7).</p> <p>This Henry VIII clause appears necessary to facilitate the transition to the new national legislative scheme. The former Scrutiny of Legislation Committee had commented that a Henry VIII clause in a Bill to overcome anomalies to a change in legislative regime, or to facilitate the transition from one regime to another, may fall into an acceptable category for such a provision.²² That Committee further observed that transitional sections in Acts containing Henry VIII clauses are commonplace in Queensland.²³</p> <p>It is however arguable that the transitional regulations to provide for the transfer of residual statutory functions from TERC to Skills Queensland would have been more appropriately included in primary legislation.</p>
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PROPOSED NEW OFFENCE PROVISIONS

Clause	Proposed offence	Proposed maximum penalty
27 (6)	Failure of an organisation to give a true and non-misleading notice.	80 penalty units (\$8,000)

Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by s.23 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

**Prepared by the
Technical Scrutiny of Legislation Secretariat**