

TASMANIA

VOCATIONAL EDUCATION AND TRAINING (COMMONWEALTH POWERS) BILL 2011

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VOCATIONAL EDUCATION AND TRAINING (COMMONWEALTH POWERS) BILL 2011

*(Brought in by the Minister for Education and Skills, the
Honourable Nicholas James McKim)*

A BILL FOR

An Act to adopt the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth and the *National Vocational Education and Training (Transitional Provisions) Act 2011* of the Commonwealth and to refer certain matters relating to the regulation of vocational education and training to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth and to provide for related matters

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Vocational Education and Training (Commonwealth Powers) Act 2011*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Interpretation

In this Act –

“adoption” means the adoption under section 5(1);

“amendment reference” means the reference under section 6(1);

“continuing VET matter” has the meaning given in section 4;

“express amendment” of the national VET legislation means the direct amendment of the text of the national VET legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the national VET legislation;

“national VET instrument” means any instrument (whether or not of a legislative character) that is made or issued under the national VET legislation;

“national VET legislation” means –

- (a) the *National Vocational Education and Training*

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*Regulator Act 2011 of the
Commonwealth; and*

(b) *the National Vocational
Education and Training
Regulator (Transitional
Provisions) Act 2011 of the
Commonwealth.*

4. Continuing VET matters

- (1) Each of the following matters is a continuing VET matter to the extent that it is included in the legislative powers of the Parliament of the State:
- (a) the registration and regulation of vocational education and training organisations;
 - (b) the accreditation or other recognition of vocational education and training courses or programs;
 - (c) the issue and cancellation of vocational education and training qualifications or statements of attainment;
 - (d) the standards to be complied with by a vocational education and training regulator;
 - (e) the collection, publication, provision and sharing of information about vocational education and training;

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- (f) investigative powers, sanctions and enforcement in relation to any of the above.
- (2) However, a continuing VET matter does not include that matter of making a law that excludes or limits the operation of a State law to the extent that the State law makes provision with respect to –
 - (a) primary or secondary education (including the education of children subject to compulsory school education); or
 - (b) tertiary education that is recognised as higher education and not vocational education and training; or
 - (c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships; or
 - (d) the qualifications or other requirements to undertake or carry out any business, occupation or other work (other than that of a vocational education and training organisation); or
 - (e) the funding by the State of vocational education and training; or
 - (f) the establishment or management of any agency of the State that provides vocational education and training.

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(3) In this section –

“State law” means any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time.

5. Adoption of national VET legislation

- (1) The national VET legislation, as originally enacted, is adopted within the meaning of section 51(xxxvii) of the Constitution of the Commonwealth.
- (2) The adoption has effect for a period –
 - (a) beginning when subsection (1) commences; and
 - (b) ending at the end of the day fixed under section 8(1)(a) or (c) as the day on which the adoption is to terminate.

6. Reference of continuing VET matters

- (1) Each continuing VET matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to the matter by making express amendments of the national VET legislation.
- (2) The reference of a matter under subsection (1) has effect only if and to the extent that the matter

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is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth).

- (3) Despite any provision of this Act other than section 9(4), the amendment reference has effect for a period –
- (a) beginning when subsection (1) commences; and
 - (b) ending at the end of the day fixed under section 8(1)(a) as the day on which the reference is to terminate –

but not longer.

7. Amendment of Commonwealth law

It is the intention of the Parliament of the State that –

- (a) the national VET legislation may be expressly amended, or have its operation otherwise affected, at any time by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and

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- (b) the national VET legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of national VET instruments.

8. Termination of adoption and amendment reference

- (1) The Governor may, at any time, by proclamation published in the *Gazette*, fix a day as the day on which –
 - (a) the adoption and the amendment reference are to terminate; or
 - (b) the amendment reference is to terminate; or
 - (c) the adoption is to terminate (if the amendment reference has been previously terminated).
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 6 months beginning with the day on which the proclamation is published.
- (3) The Governor may, by proclamation published in the *Gazette*, revoke a proclamation published under subsection (1).
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).

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- (5) If a revoking proclamation has effect, the revoked proclamation is taken, for the purposes of each or either of sections 5 or 6, never to have been published, but the revocation does not prevent publication of a further proclamation under subsection (1).

9. Effect of termination of amendment reference before termination of adoption

- (1) In this section –

“existing legislation” means the national VET legislation as –

- (a) amended by laws made under the amendment reference that have come into operation before the termination; or
- (b) amended or affected by provisions referred to in section 7(a) or (b) that have come into operation before the termination –

and as in operation immediately before the termination.

- (2) A reference in this section to provisions referred to in section 7(b) includes a reference to national VET instruments made to carry out or give effect to the national VET legislation as amended by laws made under the amendment reference.

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- (3) It is the intention of the Parliament of the State that, if the amendment reference terminates before the adoption terminates, the termination of the amendment reference does not affect –
- (a) laws made under the amendment reference before the termination; or
 - (b) the continued operation in the State of the existing legislation or of the existing legislation as –
 - (i) amended after the termination by laws referred to in paragraph (a) that come into operation after the termination; or
 - (ii) amended or affected after the termination by provisions referred to in section 7(a) or (b).
- (4) Accordingly, the amendment reference continues to have effect for the purposes of subsection (3) unless the adoption is terminated.
- (5) Subsection (3) or (4) does not apply to or in relation to an amendment of the national VET legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.

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Part 2 – Provisions Specific to Tasmania

PART 2 – PROVISIONS SPECIFIC TO TASMANIA

10. Provision of information and assistance to National VET Regulator

- (1) The Qualifications Authority, or a person authorised in writing by the Qualifications Authority, may, on the Qualifications Authority's or authorised person's own initiative or at the request of the National VET Regulator or an agency of the Commonwealth –
 - (a) provide the National VET Regulator or agency of the Commonwealth with such documents and other information in the possession or control of the Qualifications Authority that is reasonably required by the Regulator or agency in connection with the performance or exercise of its functions or powers under the National VET legislation; and
 - (b) provide the National VET Regulator or agency of the Commonwealth with such other assistance as is reasonably required by the Regulator or agency to perform or exercise a function or power under the National VET legislation.
- (2) In subsection (1) –

“National VET Regulator” has the same meaning as in the *National Vocational*

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*Education and Training Regulator Act
2011 of the Commonwealth;*

“Qualifications Authority” means the
Tasmanian Qualifications Authority
established by section 7 of the
*Tasmanian Qualifications Authority Act
2003.*

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Part 3 – Miscellaneous

PART 3 – MISCELLANEOUS

11. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Education and Skills; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Education.

12. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 12

Gas (Safety) Regulations 2002

1. Regulation 8(1)(a) is amended by omitting “or as approved by Skills Tasmania established under the *Vocational Education and Training Act 1994*; or” and substituting “; or”.

Occupational Licensing Act 2005

1. Section 3(2) is amended by omitting “within the meaning of the *Vocational Education and Training Act 1994*” and substituting “in accordance with the Australian Qualifications Framework within the meaning of the *Vocational Education and Training Act 1994*”.

Occupational Licensing (Electrical Work) Regulations 2008

1. Regulation 3(1) is amended by omitting “*Vocational Education and Training Act 1994*” from the definition of “registered training organisation” and substituting “*National Vocational Education and Training Regulator Act 2011* of the Commonwealth”.

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Poisons Regulations 2008

1. Regulation 62A is amended by omitting “*Vocational Education and Training Act 1994*” from the definition of “registered training organisation” and substituting “*National Vocational Education and Training Regulator Act 2011* of the Commonwealth”.

Property Agents and Land Transactions Regulations 2006

1. Regulation 42(1)(a) is amended by omitting “*Vocational Education and Training Act 1994*” and substituting “*National Vocational Education and Training Regulator Act 2011* of the Commonwealth”.

Tasmanian Qualifications Authority Act 2003

1. Section 3(1) is amended as follows:
 - (a) by omitting the definition of “accredited training course” and substituting the following definition:

“accredited training course” has the same meaning as “VET course” in the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

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- (b) by omitting the definition of “ANTA Ministerial Council”;
- (c) by omitting the definition of “Australian Quality Training Framework”;
- (d) by omitting the definition of “local registered training organisation”;
- (e) by omitting paragraph (a) from the definition of “national standard”;
- (f) by omitting the definition of “registered training organisation” and substituting the following definition:

“registered training organisation”
has the same meaning as in the
*National Vocational Regulator
Act 2011* of the Commonwealth;

- 2. Section 6 is repealed.
- 3. Section 10 is amended by omitting paragraph (h) and substituting the following paragraph:
 - (h) functions imposed on the Authority by any other Act;
- 4. Section 11 is amended by inserting after paragraph (d) the following paragraph:

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- (da) collecting vocational education attainment data from registered training organisations operating in Tasmania;
- 5. Section 12 is amended by omitting “, the *Vocational Education and Training Act 1994*”.
- 6. Section 20(1) is amended by omitting “, the *Vocational Education and Training Act 1994*”.
- 7. Section 55ZS(1) is amended by inserting “or is registered as a provider under the *Education Services for Overseas Students Act 2000* of the Commonwealth” after “provider”.
- 8. Section 56 is amended as follows:
 - (a) by omitting from subsection (1)(a)(i) “or under section 32U of the *Vocational Education and Training Act 1994*”;
 - (b) by omitting subparagraph (ii) from subsection (1)(a) and substituting the following subparagraph:
 - (ii) the accreditation of an accredited course or accredited education program should be cancelled under section 29, 40, 55ZL or 55ZY; or

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- (c) by omitting subparagraph (vii) from subsection (1)(b);
- (d) by omitting from subsection (1)(c)(ii) “, registered education (overseas students) provider or registered training organisation” and substituting “or registered education (overseas students) provider”;
- (e) by omitting from subsection (1)(d)(i) “, registered education (overseas students) provider or a registered training organisation” and substituting “or registered education (overseas students) provider”;
- (f) by omitting from subsection (1)(f) “, registered training organisation”;
- (g) by omitting from subsection (1)(ga) “, accredited education program or accredited training course” and substituting “or accredited education program”;
- (h) by omitting paragraph (h) from subsection (1) and substituting the following paragraph:
 - (h) to determine whether this Act is being or has been contravened; or
- (i) by omitting from subsection (3) “, registered training organisation”;

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- (j) by omitting from subsection (5) “, registered training organisation”.

9. Section 57(1) is amended as follows:

- (a) by omitting from paragraph (a)(i) “, or of an accredited training course provided by a local registered training organisation”;
- (b) by omitting from paragraph (a)(ii) “, or a qualification in respect of an accredited training course provided by a local registered training organisation”;
- (c) by omitting from paragraph (b)(i) “, accredited training courses”;
- (d) by omitting from paragraph (b)(iii) “or Part 5 or 5A of the *Vocational Education and Training Act 1994*”;
- (e) by omitting from paragraph (b)(iiia) “, accredited training course”;
- (f) by omitting from paragraph (b)(iiib) “, registered education (overseas students) provider or registered training organisation” and substituting “or registered education (overseas students) provider”;
- (g) by omitting from paragraph (b)(iv) “or those provisions of the *Vocational Education and Training Act 1994* that

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relate to accredited training courses or
registered training organisations”.

10. Section 60 is amended as follows:

- (a) by omitting paragraph (c);
- (b) by omitting from paragraph (d)(iic) “program; or” and substituting “program;”;
- (c) by omitting subparagraph (iii) from paragraph (d);
- (d) by omitting paragraph (f);
- (e) by omitting paragraph (h);
- (f) by omitting from paragraph (i) “, the *Vocational Education and Training Act 1994*”.

11. Section 61(2) is amended by omitting paragraph (a).

12. Section 64(2) is amended as follows:

- (a) by omitting from paragraph (a)(i) “accredited training course;”;
- (b) by omitting from paragraph (b)(i) “accredited training course;”;

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- (c) by omitting from paragraph (c)(i) “accredited training course,”;
- (d) by omitting from paragraph (d) “or a qualification for an accredited training course”;
- (e) by omitting from paragraph (e) “the *Vocational Education and Training Act 1994* or”.

13. After section 64B, the following section is inserted in Part 9:

64C. Registered training organisations to provide information to Qualifications Authority

A registered training organisation conducting operations in this State must provide returns of its client records of attainment of units of competency and qualifications, as are determined by the Qualifications Authority, to the Qualifications Authority at such times and in such manner as the Qualifications Authority determines.

Penalty: Fine not exceeding 10 penalty units.

14. Section 72 is amended as follows:

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- (a) by omitting from subsection (1)(b) “under the *Vocational Education and Training Act 1994* or”;
 - (b) by omitting paragraph (c) from subsection (6).

Vocational Education and Training Act 1994

1. Section 3 is amended as follows:

- (a) by omitting the definitions of “accreditation certificate” and “accredited training course”;
- (b) by omitting the definitions of “Australian Qualifications Framework” and “Australian Quality Training Framework”;
- (c) by omitting the definitions of “compliance audit” and “corresponding law”;
- (d) by omitting the definitions of “higher education”, “interstate course accrediting body”, “interstate registered training organisation”, “legislative compliance standard” and “local registered training organisation”;
- (e) by omitting the definition of “national course accreditation standards”;

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- (f) by omitting the definitions of “national training register”, “national training standards” and “nationally endorsed training package”;
- (g) by omitting the definitions of “Qualifications Authority” and “registered”;
- (h) by omitting the definition of “registered training organisation” and substituting the following definition:

“registered training organisation”
means a registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

- (i) by omitting the definitions of “registering body”, “registration certificate” and “scope of registration”;
- (j) by omitting the definition of “standards for State and Territory registering and course accrediting bodies”;
- (k) by omitting the definition of “statement of attainment”;
- (l) by omitting the definition of “unit of competency”.

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2. Parts 4, 5 and 5A are repealed.
3. Section 69 is amended by omitting subsection (1B).
4. Section 80 is amended by omitting subsection (3).
5. Section 83 is amended as follows:
 - (a) by omitting from subsection (4) “the Qualifications Authority,”;
 - (b) by omitting subsection (5).

Workplace Health and Safety Regulations 1998

1. Regulation 9(1)(a) is amended by omitting “or as approved by Skills Tasmania established under the *Vocational Education and Training Act 1994*; or” and substituting “; or”.

***Youth Participation in Education and Training
(Guaranteeing Futures) Act 2005***

1. Section 7(d) is amended by omitting “*Vocational Education and Training Act 1994*” and substituting “*Tasmanian Qualifications Authority Act 2003*”.

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