

EXPLANATORY STATEMENT

National Vocational Education and Training Regulator Act 2011

*National Vocational Education and Training Regulator
(Data Provision Requirements) Instrument 2020*

Authority

Subsection 187(1) of the *National Vocational Education and Training Regulator Act 2011* (**the Act**) provides that the Minister may make requirements for data provision, as agreed by the Ministerial Council. Subsection 187(2) of the Act provides that the agreed requirements are to be known as the *Data Provision Requirements* (**the Requirements**).

In accordance with sections 44 and 54 of the *Legislation Act 2003*, the Requirements are not subject to disallowance or sunseting.

Purpose and operation

The *National Vocational Education and Training Regulator (Data Provision Requirements) Instrument 2020* (**the Instrument**) remakes the Requirements to align with recent amendments to the Act and the *National Vocational Education and Training Regulator Regulations 2011* (**the Regulations**).

The Instrument repeals and remakes the *Data Provision Requirements 2012* (F2013C00497) (**the former Requirements**), which will continue to apply until commencement of this Instrument. As conditions for registration as an NVR registered training organisation (**NVR RTO**), the Requirements apply to NVR RTOs from initial registration and throughout their registration. The changes in this Instrument are mainly consequential in nature following the recent *National Vocational Education and Training Regulator Amendment Act 2020* (**the Amendment Act**). The Instrument promotes increased publicly available data to improve quality, transparency and consumer information.

The Requirements form part of the VET Quality Framework. As defined in section 3 of the Act, the VET Quality Framework is comprised of the Standards for NVR RTOs, the Quality Standards, the Australian Qualifications Framework, the Fit and Proper Person Requirements, the Financial Viability Risk Assessment Requirements, and the Data Provision Requirements.

The purpose of the Requirements is to ensure that data required by the National VET Regulator (**the Regulator**) to make a decision about registration, renewal of registration, and for compliance and audit purposes, is made available. The Requirements identify the data that an NVR RTO and a person seeking registration or renewal of registration are required to make available to the Regulator on request.

The National Register is a publicly accessible database that contains information on all registered training organisations (including NVR RTOs) and nationally recognised training products. It is maintained by the Australian Government Department of Education, Skills and Employment (**the department**) and is currently located at www.training.gov.au. The National Register provides information for a broad range of vocational education and training (**VET**) stakeholders and is a primary source from which information for VET consumers and potential consumers is drawn (including for www.myskills.gov.au). Section 216 of the Act and section 15A of the Regulations

require the Regulator to ensure various information is entered on the National Register. Subsection 216(6) of the Act requires the Regulator to keep the National Register up to date. One of the objectives of the Requirements is to support the Regulator in meeting its legislative obligation to enter information about NVR RTOs on the National Register and keep the National Register up to date.

The Requirements also ensure that Australian Vocational Education and Training Management Information Statistical Standard (**AVETMISS**) data is provided by NVR RTOs. AVETMISS data includes enrolment and completion data essential to regulation, as well as enabling research and policy analysis into vocational education by VET sector stakeholders. Paragraph 191A(1)(c) of the Act enables the Requirements to incorporate AVETMISS, as published on www.ncver.edu.au as existing from time to time.

The repeal of the former Requirements is not intended to affect the previous operation of that former instrument or provisions; or anything duly done or suffered under the former instrument or provisions; or any right, privilege, obligation or liability acquired, accrued or incurred under the former instrument or provisions.

Background

On 8 June 2017, the Australian Government announced a review of the Act and its subordinate legislation to determine if the Regulator had appropriate legislative capacity to efficiently and effectively regulate the VET sector.

On 22 June 2018, the “All eyes on quality: Review of the *National Vocational Education and Training Regulator Act 2011* report” by Professor Valerie Braithwaite (**the Braithwaite Review**) and the Australian Government response were released. The report made 23 recommendations to enhance student outcomes by strengthening regulation in the VET sector to improve the quality of training in Australia, and ensure students are both protected and informed. It identified a need to remedy gaps in information for VET consumers and found that the National Register could be more informative for the benefit of students, regulators, governments and others with a vested interest in VET.

The Amendment Act was enacted on 26 February 2020 and addressed some of the concerns raised during the Braithwaite Review, including strengthening registration requirements for NVR RTOs, improving data sharing and increasing the transparency of regulatory information and actions by the Regulator.

Differences of substance between this Instrument and the former Requirements, primarily relate to the Amendment Act and the implementation of findings from the Braithwaite Review. Additional minor differences improve the clarity and technical accuracy, reducing duplication and confusion to assist NVR RTOs to comply with their obligations.

Parliamentary Scrutiny

Instruments made under subsection 187(1) of the Act are not subject to disallowance or sunseting because:

- the enabling legislation for the instrument, the Act, facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States; and authorises the instrument to be made by the body or for the purposes of the body or scheme (see s44(1) and s54(1) of the *Legislation Act 2003*).

- The *Intergovernmental Agreement for Regulatory Reform in VET (IGA)* came into effect on 16 March 2011.
- Consultation on this Instrument is required under the IGA.
- Any potential disallowance of legislative instruments which reflect the outcome of an intergovernmental process may discourage state and territory support for the VET regulatory framework. A disallowance might be perceived as the Commonwealth Parliament unilaterally disallowing instruments that are part of a multilateral outcome.
- it is an instrument that is prescribed by regulation for the purposes of paragraph 44(2)(b) and 54(2)(b) of the *Legislation Act 2003* (see item 23A to the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*) and item 44A to the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation considered most of the amendments to be technical or clarifying in nature and the remainder to be likely to have a minor economic impact, and that a RIS was not required (OBPR ID 42469).

Commencement

This Instrument commences on 1 March 2021, allowing sufficient time to communicate the changes to the VET sector once the Instrument is made and before the commencement date.

Consultation

The Regulator, the National Centre for Vocational Education Research and the Skills Senior Officials' Network have been consulted on the development of this Instrument.

The state and territory ministers responsible for skills were consulted and agreed to this Instrument, as required under subsection 187(1) of the Act.

Consultation on this Instrument with the broader VET sector will occur after this Instrument is made and before the provisions commence. This is appropriate as most provisions do not require a change in the processes that NVR RTOs should be following.

Detailed explanation of the provisions of the Requirements

Part 1 – Preliminary

Section 1 – Name of legislative instrument

This section names the *National Vocational Education and Training Regulator (Data Provision Requirements) Instrument 2020*.

Section 2 – Commencement

This section provides that the provisions of the Instrument commence on 1 March 2021.

Section 3 – Authority

This section provides that the Instrument is made under section 187 of the *National Vocational Education and Training Regulator Act 2011*.

Section 4 – Definitions

This section defines terms used throughout the Instrument and clarifies the application of the Requirements.

Section 5 – Application

This section outlines that the Requirements apply to NVR RTOs and decisions of the Regulator from commencement of the Instrument. This means that, for example, a compliance decision made in relation to a breach of the Requirements would need to be made in relation to a breach of this Instrument from 1 March 2021.

As the Requirements are also part of the factors to be considered under section 17 of the Act when granting initial registration, this provision also clarifies that the Requirements apply to applicants for registration.

Part 2—Data Provision Requirements

Section 6 – Outline of operation of the Requirements

This section outlines the interrelated operation of the Requirements, within the VET Quality Framework and as part of the registration process for NVR RTOs under the Act.

Section 7 – AVETMISS

Paragraph 191A(1)(c) of the Act enables the Requirements to apply, adopt or incorporate any matter contained in another instrument or other writing. In accordance with paragraph 191A(1)(c) of the Act the following documents are incorporated in this Instrument:

- AVETMISS as published on www.ncver.edu.au and as existing from time to time
- the National VET Provider Collection Data Requirements Policy, which is at part B of the National VET Data Policy as endorsed by the Ministerial Council on 24 November 2017 and as updated from time to time, available on the website of the department which administers this Instrument.

Section 7, and the definition of ‘AVETMISS data’, outline the requirement for AVETMISS data to be provided by NVR RTOs in accordance with the National VET Provider Collection Data

Requirements Policy. NVR RTOs are required to comply with any changes to that policy, as updated from time to time, as well any changes to AVETMISS.

AVETMISS is the national data standard that ensures the consistency and accuracy of reporting VET information. AVETMISS data includes enrolment and completion data that enables the Regulator to analyse activity in the sector, and actions of NVR RTOs, in order to identify emerging risks and respond to issues, such as placing students of NVR RTOs that cease trading. This data is also used to improve the quality and transparency of VET as well as enabling the Commonwealth, states and territories and VET regulators to work together to develop policies for more than 4 million students participating in VET each year.

Section 8 – Information required upon request

Subsection 8(1) sets out the range of data that must be provided to the Regulator on request. The Regulator requires this data to carry out its regulation functions, for example, for the purposes of registration, renewal, risk assessment, or audit of NVR RTOs. Data collected by the Regulator is held by the Regulator.

In addition, the Regulator depends upon information provided by NVR RTOs under subsection 8(1) of the Requirements to fulfil its responsibility to ensure certain information is entered on the National Register as required under section 216 of the Act and section 15A of the Regulations. As a result, some of the data collected by the Regulator under subsection 8(1) will be published on the National Register. This includes personal information collected under paragraphs 8(1)(j) and 8(1)(k) (names of executive officers and high managerial agents; and contact details for public enquiries, registration enquiries, and the chief executive or other head manager). This personal information is required by section 15A of the Regulations and necessary to the primary purpose of the National Register. Contact details are for business purposes, therefore professional, rather than private, contact details are required.

Information is handled in accordance with the Australian Privacy Principles under the *Privacy Act 1988*. Individuals are notified of the collection of their personal information and what is published on the National Register before and at the time of collection, as part of the process to apply for registration as an NVR RTO. As a result, individuals whose details are published on the National Register would reasonably expect the department to maintain their contact details, and the other National Register data items, entered by ASQA for that purpose.

Paragraph 8(1)(c) requires an NVR RTO to provide to ASQA information required to assess compliance with the Financial Viability Risk Assessment Requirements (as referred to in the Act). This information is essential to the Regulator in assessing applications for registration and renewal. The former Requirements included long lists of data items that were replicated in other legislative instruments made under the Act. Replacing these lists with references to the legislative instruments that contain those obligations removes duplication and simplifies the Requirements, reducing regulatory burden and reducing the potential for confusion by NVR RTOs. It also removes the unintended consequence of one legislative instrument being updated without mirroring references in other legislative instruments.

Paragraph 8(1)(h) relates to the requirements that came into effect 1 July 2020 with the Amendment Act.

- Paragraphs 8(1)(h)(i), (ii) and (iii) which require address details, specify the type of address required, whether physical or postal.

- Paragraph 8(1)(h)(iii) refers to sites or campuses from which the NVR RTO delivers VET courses on a permanent basis and is intended to capture where an NVR RTO owns or leases sites which are used for the principal purpose of delivering VET courses.
- Paragraph 8(1)(h)(iv) requires an NVR RTO to provide their website address (if any).

Paragraph 8(1)(k) relates to the requirements introduced by the Amendment Act and requires an NVR RTO to provide contact details for use by the Regulator to communicate with the NVR RTO on matters relating to their registration; and for public enquiries. Public enquiries' contact details are essential to enable consumers to contact the NVR RTO and therefore appear on the National Register as well as downstream information products for consumers.

Paragraph 8(1)(n) requires an NVR RTO to provide to ASQA information required to assess compliance with the Fit and Proper Person Requirements (as referred to in the Act). This information is essential to the Regulator in assessing applications for registration and renewal. As with paragraph 8(1)(c) long lists of data items in the former Requirements have been replaced with references to the legislative instruments that contain those obligations to simplify the Requirements and reduce duplication and potential confusion.

Paragraph 8(1)(v) introduces a requirement to provide additional details in cases where paragraph 8(1)(u) applies (where training or assessment is delivered through a contract with another organisation). This information has, to date, been requested by the Regulator and collected from the NVR RTO through a form whenever an NVR RTO meets the requirements at paragraph 8(1)(u). Explicitly listing these details in this Instrument supports current practice by the Regulator and clarifies the data an NVR RTO is required to provide when it meets those circumstances.

Paragraph 8(1)(za) supports subsections 211(2A) and (2B) of the Act, which relate to the submission of VET student records by NVR RTOs that cease to operate or had their registration cancelled. This promotes positive student outcomes, by assisting with the transfer of information to the Regulator in the event of an NVR RTO closing.

Subsection 8(2) requires an NVR RTO to provide the Regulator with updated details when certain circumstances change. The requirement to advise the Regulator of change of circumstances at subsection 8(2) is consequential to subsection 216(6) of the Act for the Regulator to keep the National Register up to date, which came into effect 1 July 2020.

Subsection 8(3) requires an NVR RTO to provide details of changes resulting in non-compliance with Financial Viability Risk Assessment Requirements and Fit and Proper Person Requirements.

NVR RTOs are required to notify material changes under section 25 of the Act and the *Standards for NVR Registered Training Organisations (the Standards)* available on the Federal Register of Legislation. By specifically listing matters that need to be updated at subsections 8(2) and 8(3), it is intended that NVR RTOs will have greater clarity regarding the changes in circumstances that must be notified to the Regulator. Subsections 8(2) and 8(3) do not place additional regulatory burden on NVR RTOs, as the Regulator already requires NVR RTOs to provide this information and has the reporting mechanism for them to do so.

The requirements in section 8 ensure the Regulator has essential information on which to base regulatory decisions and promote increased publicly available data collected by the Regulator, which is required on the National Register. Making up-to-date data publicly available will improve quality, transparency and consumer information in the VET sector with little, if any, increase to regulatory

burden. At the same time provisions in section 8, which clarify existing data requirements and reduce duplication, decrease regulatory burden for NVR RTOs.

Section 9 – Data against quality indicators

Section 9 sets out the requirement for NVR RTOs to provide data, in an annual report, necessary to give effect to quality indicators agreed upon by the Ministerial Council.

Schedule 1 – Repeals

Item 1 provides for the repeal of the whole of the *Data Provision Requirements 2012* which is replaced by this Instrument.