



New South Wales

Vocational Education and Training (Commonwealth Powers) Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to refer to the Commonwealth Parliament certain matters relating to vocational education and training (principally the registration and regulation of vocational education and training organisations and the accreditation of vocational education and training courses),
- (b) to repeal the existing vocational education and training legislation operating in New South Wales, to make consequential amendments to other legislation and to enact savings, transitional and other provisions.

The proposed Act will form part of the new national vocational education and training regime being established under Commonwealth law. It is to be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution which enables State Parliaments to refer matters to the Commonwealth Parliament. At this stage some States (Victoria and Western Australia) have not agreed to refer power to the Commonwealth. The national VET legislation will, however, be applied on a more limited basis to those non-referring States pursuant to existing Commonwealth constitutional powers.

The proposed national VET legislation is the *National Vocational Education and Training Regulator Bill 2010* and the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010* of the Commonwealth. The reference operates by reference to the text of that initial national VET legislation, a copy of which will be tabled in State Parliament, and will refer to the Commonwealth the matters to which the tabled text relates that are included within the legislative powers of State Parliaments (the **initial reference**).

The proposed Act also provides for the referral of certain matters relating to vocational education and training to the Commonwealth Parliament in order to support future amendments to the national VET legislation (the **amendment reference**). The amendment reference is limited to the express amendment of the national VET legislation so that it cannot be the source of power for other Commonwealth legislation.

The proposed Act also sets out certain exclusions (or “carve outs”) to the amendment reference to ensure that State legislation is not excluded or limited in areas the Commonwealth and the referring States have agreed will not be affected by the referral (eg higher education, apprenticeships and the qualifications required for various occupations).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides, for the purposes of the initial reference, that the initial VET matters are the matters to which the tabled text relates to the extent that they are included within the legislative powers of the State.

Clause 5 provides, for the purposes of the amendment reference, that the continuing VET matters are each of the following:

- (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,
- (f) investigative powers, sanctions and enforcement in relation to any of the above.

However, State law on the following matters are not to be limited or affected by the reference (the “carve outs”):

- (a) primary or secondary education (including the education of children subject to compulsory school education),
- (b) tertiary education that is recognised as higher education and not vocational education and training,
- (c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships,
- (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),
- (e) the funding by the State of vocational education and training,
- (f) the establishment or management of any agency of the State that provides vocational education and training.

Clause 6 refers to the Commonwealth Parliament the initial VET matters to the extent of making laws by enacting Acts in the terms, or substantially in the terms, of the tabled text. The clause also refers to the Commonwealth Parliament each of the continuing VET matters to the extent of making express amendments to its national VET legislation.

Clause 7 makes it clear that the State Parliament envisages that the national VET legislation can be amended or affected by Commonwealth legislation enacted in reliance on other powers and that instruments under the national VET legislation may also affect that legislation otherwise than by express amendment.

Clause 8 deals with the termination of the period of the references. The clause enables the Governor, by proclamation, to fix a day on which the period of the references (or only the amendment reference) terminates.

Clause 9 makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 10 provides for the accuracy of a copy of the tabled text containing the proposed national VET legislation to be certified by the Clerk of the Legislative Assembly.

Schedule 1 Repeal

Schedule 1 repeals the existing New South Wales legislation on the referred matters, namely, the *Vocational Education and Training Act 2005*.

Schedule 2 Consequential amendment of other legislation

Schedule 2 amends various Acts as a consequence of the repeal of the existing State legislation and its replacement by the new national VET legislation.

Schedule 3 Savings, transitional and other provisions

Schedule 3 includes savings and transitional provisions consequent on the enactment of the proposed Act (including a power to make regulations of a savings and transitional nature). Provision is made with respect to the dissolution of the State Vocational Education and Training Accreditation Board, the construction of superseded legislative references, the provision of information and assistance to the new National VET Regulator and the continuation of pending proceedings.



New South Wales

Vocational Education and Training (Commonwealth Powers) Bill 2010

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New South Wales

Vocational Education and Training (Commonwealth Powers) Bill 2010

No. , 2010

A Bill for

An Act 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 for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Vocational Education and Training (Commonwealth Powers) Act 2010</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Definitions	7
In this Act:	8
<i>amendment reference</i> means the reference under section 6 (2).	9
<i>continuing VET matter</i> has the meaning given in section 5.	10
<i>express amendment</i> 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.	11 12 13 14 15 16 17
<i>initial reference</i> means the reference under section 6 (1).	18
<i>initial VET matters</i> has the meaning given in section 4.	19
<i>national VET instrument</i> means any instrument (whether or not of a legislative character) that is made or issued under the national VET legislation.	20 21 22
<i>national VET legislation</i> means Commonwealth Acts enacted in the terms, or substantially in the terms, of the tabled text and as in force from time to time.	23 24 25
<i>tabled text</i> means the text of the following proposed Bills for Commonwealth Acts:	26 27
(a) <i>National Vocational Education and Training Regulator Bill 2010</i> ,	28 29
(b) <i>National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010</i> ,	30 31
as tabled in the Legislative Assembly of New South Wales on 24 November 2010 by or on behalf of the Minister introducing the Bill for the <i>Vocational Education and Training (Commonwealth Powers) Act 2010</i> of that State in the Legislative Assembly.	32 33 34 35

4	Initial VET matters	1
	The initial VET matters are the matters to which the provisions of the tabled text relate to the extent that those matters are included in the legislative powers of the Parliament of the State.	2 3 4
5	Continuing VET matters	5
(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:	6 7
(a)	the registration and regulation of vocational education and training organisations,	8 9
(b)	the accreditation or other recognition of vocational education and training courses or programs,	10 11
(c)	the issue and cancellation of vocational education and training qualifications or statements of attainment,	12 13
(d)	the standards to be complied with by a vocational education and training regulator,	14 15
(e)	the collection, publication, provision and sharing of information about vocational education and training,	16 17
(f)	investigative powers, sanctions and enforcement in relation to any of the above.	18 19
(2)	However, a continuing VET matter does not include the 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:	20 21 22
(a)	primary or secondary education (including the education of children subject to compulsory school education), or	23 24
(b)	tertiary education that is recognised as higher education and not vocational education and training, or	25 26
(c)	the rights and obligations of persons providing or undertaking apprenticeships or traineeships, or	27 28
(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	29 30 31
(e)	the funding by the State of vocational education and training, or	32
(f)	the establishment or management of any agency of the State that provides vocational education and training.	33 34
(3)	In this section:	35
	<i>State law</i> 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.	36 37

6	References	1
(1)	The initial VET matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by enacting Acts in the terms, or substantially in the terms, of the tabled text.	2 3 4 5
(2)	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.	6 7 8 9
(3)	The operation of each of subsections (1) and (2) is not affected by the other subsection.	10 11
(4)	The reference of a matter under subsection (1) or (2) has effect only if and to the extent that the matter 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).	12 13 14 15 16
(5)	Despite any provision of this Act other than section 9 (4), a reference under subsection (1) or (2) has effect for a period:	17 18
(a)	beginning when the subsection under which the reference is made commences, and	19 20
(b)	ending at the end of the day fixed under section 8 as the day on which the reference is to terminate, but not longer.	21 22 23
7	Amendment of Commonwealth law	24
	It is the intention of the Parliament of the State that:	25
(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	26 27 28 29 30 31 32
(b)	the national VET legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of national VET instruments.	33 34 35

8	Termination of references	1
(1)	The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which:	2
		3
	(a) the initial reference and the amendment reference are to terminate, or	4
		5
	(b) the amendment reference is to terminate, or	6
	(c) the initial reference is to terminate (if the amendment reference has been previously terminated).	7
		8
(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.	9
		10
		11
(3)	The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (1).	12
		13
(4)	A revoking proclamation has effect only if published before the day fixed under subsection (1).	14
		15
(5)	If a revoking proclamation has effect the revoked proclamation is taken, for the purposes of section 6, never to have been published but the revocation does not prevent publication of a further proclamation under subsection (1).	16
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		18
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9	Effect of termination of amendment reference before termination of initial reference	20
		21
(1)	In this section:	22
	<i>existing legislation</i> means the national VET legislation as:	23
	(a) amended by laws made under the amendment reference that have come into operation before the termination, or	24
		25
	(b) amended or affected by provisions referred to in section 7 (a) or (b) that have come into operation before the termination,	26
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		28
	and as in operation immediately before the termination.	29
	<i>termination</i> means the termination of the amendment reference.	30
(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.	31
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<p>(3) It is the intention of the Parliament of the State that, if the amendment reference terminates before the initial reference terminates, the termination of the amendment reference does not affect:</p> <p style="padding-left: 2em;">(a) laws made under the amendment reference before the termination, or</p> <p style="padding-left: 2em;">(b) the continued operation in the State of the existing legislation or of the existing legislation as:</p> <p style="padding-left: 4em;">(i) amended after the termination by laws referred to in paragraph (a) that come into operation after the termination, or</p> <p style="padding-left: 4em;">(ii) amended or affected after the termination by provisions referred to in section 7 (a) or (b).</p> <p>(4) Accordingly, the amendment reference continues to have effect for the purposes of subsection (3) unless the initial reference is terminated.</p> <p>(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.</p> <p>10 Evidence of tabled text</p> <p>(1) A certificate of the Clerk of the Legislative Assembly of New South Wales certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence:</p> <p style="padding-left: 2em;">(a) of the matter certified, and</p> <p style="padding-left: 2em;">(b) that the text of the proposed Commonwealth Bills was tabled in the Legislative Assembly of New South Wales as referred to in the definition of <i>tabled text</i> in section 3.</p> <p>(2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p>
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Vocational Education and Training (Commonwealth Powers) Bill 2010

Repeal

Schedule 1

Schedule 1 Repeal

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The *Vocational Education and Training Act 2005* No 100 is repealed.

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Schedule 2	Consequential amendment of other legislation	1
		2
2.1	Apprenticeship and Traineeship Act 2001 No 80	3
	Dictionary	4
	Omit the definition of <i>registered training organisation</i> . Insert instead:	5
	<i>registered training organisation</i> means a NVR registered training organisation within the meaning of the <i>National Vocational Education and Training Regulator Act 2011</i> of the Commonwealth.	6
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		9
2.2	Board of Vocational Education and Training Act 1994 No 33	10
	Section 6 Objects of the Board	11
	Omit section 6 (i).	12
2.3	Education Act 1990 No 8	13
	Section 21B Compulsory school-age	14
	Omit “a vocational course within the meaning of the <i>Vocational Education and Training Act 2005</i> ” from section 21B (6) (b).	15
		16
	Insert instead “a VET accredited course within the meaning of the <i>National Vocational Education and Training Regulator Act 2011</i> of the Commonwealth”.	17
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2.4	Fines Act 1996 No 99	20
	Schedule 1 Statutory provisions under which penalty notices issued	21
	Omit the following:	22
	<i>Vocational Education and Training Act 2005</i> , section 45	23
2.5	Higher Education Act 2001 No 102	24
	Section 3 Definitions	25
	Omit “an accredited course within the meaning of the <i>Vocational Education and Training Act 2005</i> ” from the definition of <i>post-graduate qualification</i> in section 3 (1).	26
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		28
	Insert instead “a VET accredited course within the meaning of the <i>National Vocational Education and Training Regulator Act 2011</i> of the Commonwealth”.	29
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2.6 Public Finance and Audit Act 1983 No 152	1
Schedule 2 Statutory bodies	2
Omit “Vocational Education and Training Accreditation Board”.	3
2.7 Public Sector Employment and Management Act 2002 No 43	4
Schedule 1, Part 3 Special Employment Divisions	5
Omit the matter relating to the Vocational Education and Training Accreditation Board Division.	6 7
2.8 Technical and Further Education Commission Act 1990 No 118	8 9
Section 7 Miscellaneous functions	10
Omit section 7 (2) (a). Insert instead:	11
(a) in the case of the provision of accredited courses of study and the conferring of educational awards or statements of attainment in connection with those courses—the provisions of the <i>National Vocational Education and Training Regulator Act 2011</i> of the Commonwealth, and	12 13 14 15 16

Schedule 3	Savings, transitional and other provisions	1
		2
Part 1	General	3
1	Definitions	4
	In this Schedule:	5
	<i>national VET legislation</i> means:	6
	(a) the <i>National Vocational Education and Training Regulator Act 2011</i> of the Commonwealth, and	7
		8
	(b) the <i>National Vocational Education and Training Regulator (Transitional Provisions) Act 2011</i> of the Commonwealth.	9
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	<i>National VET Regulator</i> means the National Vocational Education and Training Regulator established under the <i>National Vocational Education and Training Regulator Act 2011</i> of the Commonwealth.	11
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	<i>NSW Vocational Education and Training Accreditation Board</i> means the Vocational Education and Training Accreditation Board established under the <i>Vocational Education and Training Act 2005</i> of New South Wales immediately before the repeal of that Act by this Act.	14
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2	Regulations	18
(1)	The Governor may make regulations containing provisions of a savings or transitional nature consequent on:	19
		20
	(a) the enactment of this Act, or	21
	(b) the transition from the application of the provisions of the <i>Vocational Education and Training Act 2005</i> of New South Wales to the application of the provisions of the National VET legislation.	22
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(2)	If such a regulation so provides, it has effect despite any other provision of this Schedule.	26
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(3)	A provision of a regulation made under this clause may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	28
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(4)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	31
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	(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	34
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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 1
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Part 2 Provisions consequent on enactment of this Act 4 5

3 Dissolution of NSW VET Accreditation Board 6

- (1) The NSW Vocational Education and Training Accreditation Board is dissolved. 7
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- (2) A person who held office as a member of the Board immediately before its dissolution ceases to hold office as a member of the Board and is not entitled to any remuneration or compensation for loss of that office. 9
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- (3) Any assets, rights or liabilities of the Board immediately before its dissolution become (subject to the National VET legislation) the assets or liabilities of the Crown. 12
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4 Construction of references to former NSW VET legislation and Board 15

- (1) In any document: 16
- (a) a reference to the *Vocational Education and Training Act 2005* of New South Wales extends to the national VET legislation, and 17
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- (b) a reference to a provision of that Act extends to the corresponding provision (if any) of the national VET legislation, and 19
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- (c) a reference to the NSW Vocational Education and Training Accreditation Board extends to the National VET Regulator, 21
22
- except to the extent that the context or subject-matter otherwise indicates or requires. 23
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- (2) In this clause, *document* means any Act (other than this Act) or statutory instrument, or any other instrument, or any contract or agreement. 25
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5 Provision of information and assistance to National VET Regulator 28

- (1) The Director-General of the Department of Education and Training, or a person authorised in writing by the Director-General, may, on the Director-General's or authorised person's own initiative or at the request of the National VET Regulator or an agency of the Commonwealth: 29
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- (a) provide the National VET Regulator or agency of the Commonwealth with such documents and other information in the possession or control of the Director-General that is 34
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reasonably required by the Regulator or agency in connection with the performance or exercise of its functions under the National VET legislation, and	1 2 3
(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.	4 5 6 7
(2) A reference in this clause to any documents and other information in the possession or control of the Director-General includes a reference to any document or other information in the possession or control of the NSW Vocational Education and Training Accreditation Board immediately before its dissolution.	8 9 10 11 12
(3) This clause has effect despite any other Act or law.	13
6 Pending proceedings before ADT or State court	14
(1) Any proceedings relating to any matter arising under the provisions of the <i>Vocational Education and Training Act 2005</i> of New South Wales that were commenced in the Administrative Decisions Tribunal or any court before the repeal of that Act, but were not finally determined on that repeal, may continue to be dealt with or otherwise determined (including for the purposes of any appeal or rehearing in relation to those proceedings) as if those provisions had not been repealed by this Act.	15 16 17 18 19 20 21 22
(2) This clause is subject to any provision of the National VET legislation that requires the National VET Regulator to be substituted as a party to any such proceedings in place of the NSW Vocational Education and Training Accreditation Board.	23 24 25 26