

# **AUSTRALIAN MANUFACTURING WORKERS' UNION**



**SUBMISSION TO INQUIRY INTO THE NATIONAL VOCATIONAL EDUCATION AND  
TRAINING REGULATOR BILLS 2010 [2011]**

**EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS  
LEGISLATION COMMITTEE**

**FEBRUARY 2011**

SUBMISSIONS OF THE AUSTRALIAN MANUFACTURING WORKERS' UNION CONCERNING  
THE NATIONAL VOCATIONAL EDUCATION AND TRAINING REGULATOR BILLS 2010  
[2011]

## **Introduction**

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make submissions in response to the inquiry into the *National Vocational Education and Training Regulator Bill 2010 [2011]* (Main Bill), *National Education and Training Regulator Transitional Provisions) Bill 2010 [2011]* (Transitional Bill) and *National Vocational Education and Training Regulator (Consequential Amendments) Bill 2011* (Consequential Bill), collectively known as the National Vocational Education and Training Regulator Bills 2010 [2011] (the Bills).
2. The AMWU represents approximately 120,000 members working across major sectors of the Australian economy. AMWU members are primarily based in the manufacturing division in the subdivisions of metal manufacturing, printing and graphic arts, food and vehicle building, repair and service. The AMWU also has significant membership in the mining, building and construction, aircraft and airline operations, laboratory, technical, supervisory and public sector employment.
3. The AMWU is Australia's principal union for skilled trades and has had a long standing, committed and productive involvement in vocational education and training (VET) for many years. We provide representation at all levels of the system including involvement at both state and national levels, on a variety of state and territory regulatory bodies, and also, importantly, in the network of Industry Skills Councils.
4. Manufacturing workers across all occupations, including production, trade, technical and para-professional, more than many others, rely on the quality and portability of their skills for their livelihood. The structures for the delivery, recognition, quality assurance and credentialing of skills are therefore of critical importance to them.

## **General comments**

5. Regulation of the VET sector has traditionally been carried out by each of the respective State and Territory Training Authorities in the context of national agreements relating to the structures and quality of the system but which has resulted, in our submission, in a VET system compromised by the inconsistent application of the agreed standards designed to underpin the system.
6. We submit that the reputation of the system as it stands is weakened by the inconsistencies that exist in the commitment to, and application of, nationally agreed standards by the respective jurisdictions and

that industry requires certainty, confidence in the quality of the outcomes, and consistency against the standards that it sets for the application of vocational skills.

7. We submit the barrier to entry into the training 'market' is not high enough, and that there is not yet an entrenched culture of quality in the system. Non-compliance with registration standards must be treated more seriously given the critical importance vocational skills, workforce development and workforce participation have for the economy going forward.
8. If standards are set for registration, it is our view that non-compliance should result in suspension of registration with appropriate safeguards for the interests of on-going students.
9. The AMWU welcomes the Bills and the establishment of a National VET Regulator and calls on those jurisdictions that have not yet agreed to refer their powers to do so and create a truly national, high quality regulatory environment capable of driving the VET system to greater heights.
10. We understand that funding for the NVR will be in the order of \$100m over 4 years. Whilst the Bill provides significant powers to assist the NVR to carry out its functions, the AMWU is concerned its effectiveness will be entirely dependent on having sufficient resources to fulfill its brief.

## **The Bills**

11. The AMWU has a number of concerns about the content of the Bill which are outlined below.

## **Objects**

12. We are concerned that the Bill does not contain formal Objects that spell out the intent of the legislation and provide guidance on the intent with which administrators and users of the legislation should approach working with and interpreting it.
13. The Explanatory Memorandum to the Main Bill specifies “building confidence in the quality and consistency of assessment and training outcomes of VET qualifications which in turn supports confidence in the abilities of VET graduates” as one of its objectives.
14. The AMWU is of the view that “building confidence” in the VET system is different to ensuring vocational standards are met. Certainty and consistency in the skills and ability of graduates to apply/deploy skills in employment are absolutely vital if the economy and the society it serves are to reap an adequate return on their substantial investments.
15. The AMWU submits that the Bills need to put far more emphasis on the outcomes of VET, which is to provide Australia with vocational graduates who are able to apply their skills in a job to the standard defined by industry.

16. We are strongly of the view that the principal purpose of the publicly funded VET system is the development of nationally recognised vocational skills for deployment in employment in the economy and alternative purposes to which others may want the VET system to be directed should not be allowed to compromise this principal purpose.
17. The Bill should define quality in the sense that the outcomes of the work of NVR registered training organisations should be measured in terms of skills productively deployed in employment, as it is the deployment of those skills that represents the return on investment that is the principal point of public funding of the VET system.
18. We believe the principal role of the regulator is to regulate the behavior of RTO's to ensure that the product they sell meets the standards and is fit for the purpose it is delivered. We submit that this purpose is the production of graduates whose vocational qualifications qualify them for the vocation their qualification purports to prepare them for and that they are fit for employment in the relevant vocation.
19. We submit that the Bill does not adequately deal with the risks associated with conflicts of interest arising in instances where a corporate entity that is an NVR registered training organisation also performs functions associated with Job Services contracts or the functions associated with an Australian Apprenticeship Centre contract or related functions that could lead to a real or perceived conflict of interest.
20. We submit that the Bill should provide for the establishment of national standards for registration that include the declaration, and management, of conflicts of interest where the registered training organisation is associated with or related to another body in the apprenticeship or employment space.

## **The Standards**

21. The AMWU has a number of concerns relating to the Standards for NVR registered training organisations:
22. There appears to be no mention in the Main Bill of the Australian Quality Training Framework (AQTF) which provides the current regulatory framework for Registered Training Organisations. Whilst this might be because the AQTF will be incorporated into the Standards for NVR registered training organisations, the AMWU submits that the relationship between the existing and new regulatory VET framework should be made explicit and that the legislation should expressly provide for a strong role for industry in decisions relating to the Standards underpinning the quality of the system.

23. We are concerned that, from the date of the Main Bill's operation, the NVR could potentially have to assess applications for registration, or transfer of registration by state regulatory authorities, without having knowledge of the Standards and its accompanying administrative machinery.
24. The AMWU submits that any Standards adopted in the new VET framework should contemplate a quality assurance framework which goes beyond the simple requirement for NVR registered training organisations to be a fit and proper person, financially viable and able to provide data and otherwise cooperate with the NVR.
25. The Bill, in our view, lacks specificity in not appearing to explicitly 'require' training organisations to register with the NVR if they are to engage in the delivery or provision of VET, notwithstanding the provision for a penalty at Clause 116 & 117 in relation to 'providing, or offering to provide, all or part of a VET course without registration'.
26. The AMWU supports the joint submissions of the Australian Education Union/TAFE Directors Australia that the Standards should stipulate that:
- NVR registered training organisations have, as a primary or significant purpose, the education and training of students;
  - NVR registered training organisations are required to also act in the best interests of their students and not purely in the best interests of shareholders, the company or the purchaser of the training per se;
  - NVR registered training organisations be subject to prudential regulatory control so that students are guaranteed continuation of their study/training programs irrespective of the financial exigencies of the business environment;
  - the conditions for registration of NVR registered training organisations are broadened to require demonstration of the adequacy of their physical and human resource infrastructure and the educational viability including educational governance structures; and
  - the NVR is obliged to assess the teaching and training standards, practices and procedures of an NVR registered training organisation and not just whether the outcomes can be properly checked off against the required accreditation standard.

### **Referred VET matters**

27. Sub-clause 6(1) of the Main Bill describes the referred VET matters. Sub-clause 6(2) describes exclusions to the referred VET matters and one of those exclusions includes certain matters relating to the rights and obligations of persons providing or undertaking apprenticeships or traineeships.

28. The AMWU notes with concern that this Sub-clause may prevent the NVR from setting standards for the skills and qualification requirements, and the establishment of national standards or Codes of Practice for the employment and training of apprentices under Training Contracts.

### **Immunity from State and Territory laws**

29. The AMWU strongly supports the inclusion of Clause 9 as it appropriately preserves the application of State and Territory consumer protection and occupational health and safety laws that would apply whether or not a person is a training organisation.

### **Addressing inconsistency**

30. Clause 11 contains a displacement mechanism to address inconsistency between the Commonwealth and State and Territory Laws. The displacement mechanism allows for States and Territories to declare a State or Territory provisions not to be displaced by the Bill.
31. The AMWU is concerned that the displacement mechanism does not provide an incentive for a truly national and consistent VET regulatory system as it provides an “opt out” solution should inconsistencies arise between the Commonwealth and State and Territory laws.
32. The AMWU submits that this Clause should be removed to ensure the National VET Regulator is given a nationally consistent environment in which to do its work.

### **Compliance with VET Quality Framework**

33. Sub-clause 17 should be strengthened to require that the NVR not only consider whether an NVR registered training organisation complies with the VET Quality Framework and other conditions of registration but grant an application only where it is satisfied those conditions have been met.
34. There is merit, in our view, in providing an explicit power to the NVR to take into account the previous history and behaviour of training organisations seeking registration or renewal of registration.
35. Sub-clause 22 requires that NVR registered training organisations comply with the Standards for NVR registered training organisations, the Australian Qualifications Framework and Data Provision Requirements. Clauses 23 to 30 require compliance with a range of other conditions of registration, however on our reading, notwithstanding the title of the Clause, there does not appear to be a specific requirement that makes it a condition of registration that NVR registered training organisations comply with the VET Quality Framework.

### **Notification of material changes**

36. Clause 25 requires NVR registered training organisations to notify the NVR of certain material changes. We submit that, in addition to notifying the NVR of material changes, NVR registered training organisations should be required to notify the market.

### **Part 3**

#### **Accreditation of Courses**

37. The AMWU is concerned that the Bill is silent on the question of the conditions under which courses might appropriately be accredited. Of particular interest to the AMWU is the need for conditions requiring that courses not be accredited:

- where they duplicate the qualifications contained in an endorsed Training Package; and,
- where they do not have broad industry support.

38. The AMWU is concerned that the Bill does not define a central role for Industry Skills Council's in the course accreditation process. We submit there needs to be a mandatory requirement for course developers to consult with the appropriate ISC. This serves two purposes:

- Provides an effective and timely response to rapidly changing needs of industry<sup>1</sup>
- Ensures that the intent of the Training Package is maintained.

39. Clause 50 allows for renewal of an accredited course with 90 days notice. We submit that 90 days may not provide adequate opportunities to those who may wish to object to accreditation of a course to examine the detail and determine whether to object.

### **Part 4**

#### **Issuance and cancellation of qualifications**

40. Clause 55(1) appears to require a person to be, or have been, a 'VET student' before the NVR can issue a qualification once it is satisfied that the standards have been met.

41. We submit that the NVR should be able to determine or endorse processes to recognise the competency of a person against the requirements for a qualification whether or not the person is or was a former VET student. Our concern is that a provision requiring a person to be a current or former VET student might compromise access to effective industry based recognition of prior learning processes and make such access more costly.

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<sup>1</sup> Commonwealth of Australia 2008 Users' Guide to the Standards for Accredited Courses pg 2

42. Clause 57 provides that the NVR must give notice to a person where the NVR intends to cancel a person's VET qualification or Statement of Attainment. This provision should also require notification to the person whose qualification has been cancelled of any rights they may have to redress against the organisation that issued the qualification or statement of attainment.
43. Clause 58 requires the physical return of a VET qualification if the NVR cancels the qualification. This is a penalty provision that attracts 100 penalty units, resulting in a fine of \$11,000 which we submit is harsh when compared with the penalties attached to conduct by NVR registered training organisations who improperly issue that qualification in the absence of proper assessment (120 penalty units), or who fail to return a Certificate of Registration that has been cancelled by the NEVER (120 penalty units), or who make false and misleading representation in advertisement (120 penalty units).
44. The AMWU believes the Bill would benefit from the inclusion of a requirement that NVR registered training organisations automatically issue any qualifications where an enrolled student has satisfied the requirements for the qualification without the need for a formal application. The AMWU understands it is the practice of some RTO's to require an application for the issuance of a qualification/credential. We submit that students enrolled in a VET program are entitled to the qualification on satisfying the requirements specified for the qualification without unnecessary bureaucracy.

## **Part 6**

### **Enforcement**

#### **Offenses**

45. Clause 107 currently reads:

“107 Offence – Issuing VET qualification without ensuring adequate assessment

An NVR registered training organisation commits an offence if:

- the organisation issues, or purports to issue, a VET qualification to a VET student; and
- the organisation does not satisfy itself that the VET student has successfully satisfied the requirements of the qualification”.

46. The AMWU submits that the heading to Clause 107 should be amended to reflect the breadth of the obligation on providers to ensure that the ‘requirements of the qualification are met’ not merely that adequate assessment has taken place. This might include adherence to packaging rules from endorsed Training Packages.
47. Similar considerations apply to Clauses 108 to 110.



48. The AMWU submits that the Clause headings for Clauses 107 to 108 be amended to read as follows:
- 107 Offence – issuing VET qualification without ensuring qualification requirements met;
  - 108 Offence – issuing VET qualification without ensuring qualification requirements met;
  - 109 Offence – issuing VET statement of attainment without ensuring requirements met; and
  - 110 Civil penalty – issuing VET statement without ensuring requirements met.
49. We support the submissions of the ACTU in relation to the references in the Bill to ‘industry bodies’. We support their call for explicit recognition of Industry Skills Councils in the Bill as key bodies the NVR should consult.
50. Clause 216 of the Bill provides that the NVR may disclose, by means of a National Register accessible through the internet, certain information about NVR registered training organisations. The information that may be included on the Register generally relates to decisions about the training organisation’s registration ie whether it is conditional, whether it’s scope of registration has been suspended or cancelled, and matters related to accredited courses.
51. We submit the NVR should ensure that such an accessible public register should also contain information about the audit performance and compliance history of NVR registered training organisations is available. The AMWU submits that the market is not yet mature enough to constitute the type of informed and demanding consumers that are able to differentiate between good and bad providers of VET in the absence of this type of information.

## **Part 8**

52. Clauses 185 and 188 make provision for the Minister to make standards for NVR registered training organisations and VET accredited courses respectively.
53. The AMWU is concerned that the absence of detailed information about the process adopted by the Minister in determining such standards and the role for industry in advising the Minister on the nature, content and implications for such standards that may compromise the effectiveness of the standards or result in unintended consequences. We believe the Bill should be amended to spell out a defined role for industry in advising the Minister on the nature, content and implications of standards when the Minister determines the Standards.

## **Other Matters**

### **Apprentices**

54. On 31 January 2011, the Expert Panel of the Apprenticeships for the 21<sup>st</sup> Century Panel (the Panel) made a number of recommendations<sup>2</sup> that we submit should be considered when the final form of the Bills are determined. In particular, the Bills should not compromise those recommendations of the Panel that concern:

- the establishment of national standards or processes that underpin the form and nature of, or the quality of, the relationship between apprentices and employers;
- initiatives designed to improve the completion rates or the quality of the skills that result from the apprenticeship;
- the establishment of an effective “Custodian” for the apprenticeship system in the terms recommended by the Panel;
- the clarification and consolidations of the number of intermediaries engaged in the administration of the apprenticeship system;
- the establishment of a formal system of accreditation of employers engaged in the employment and training of apprentices;
- the establishment of processes that can underpin the continuing employment and training of apprentices in periods of economic downturn;
- the establishment of specific mechanisms designed to regulate the quality and consistency of VET in schools in all its forms within the VET system;
- the establishment of, through Industry Skills Councils, and endorsed by the National Quality Council (or its successor), of a framework for effective, high quality, nationally consistent pre-vocational and pre-apprenticeship programs; and
- engendering support for the removal of impediments to accessing cost effective, timely, high quality recognition of prior learning.

End

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<sup>2</sup> See Appendix R of *A Shared Responsibility Apprenticeships for the 21<sup>st</sup> Century Final Report of the Expert Panel* (2011) Australian Apprenticeships  
<<http://www.australianapprenticeships.gov.au/experts/documents/Apprenticeshipsforthe21stCenturyExpertPanel.pdf>>  
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