



Australian Government
**Department of Employment
and Workplace Relations**

National Vocational Education and Training Regulator (Data Streamlining) Amendment Bill 2023 [Provisions]

Submission from the Department of
Employment and Workplace Relations to the
Senate Standing Committees on Education
and Employment

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National Vocational Education and Training Regulator (Data Streamlining) Amendment Bill 2023 [Provisions]

Introduction

The Department of Employment and Workplace Relations (the department) welcomes the opportunity to make a submission to the Education and Employment Legislation Committees on the National Vocational Education and Training Regulator (Data Streamlining) Amendment Bill 2023 [Provisions].

The Australian Government is working with states and territories, the National Centre for Vocational Education Research (the NCVER), Vocational Education and Training (VET) regulators and training providers to improve the timeliness and quality of VET activity data through the VET Data Streamlining (VDS) program.

The data reported by RTOs is used by governments, VET regulators, researchers, training providers, employers and students to help inform decisions surrounding their respective interests in VET. However, there are currently data lags of up to 20-months between the collection and use of National VET activity data which is published annually. These data lags make it difficult for VET data users, including governments, to respond effectively to emerging skills shortages, or other policy and funding issues as they occur.

The VDS program will introduce modern technology that will enable progressive submission and validation of VET activity data, an updated VET information standard to replace the current statistical standard, which was first developed over 25 years ago, and updated legislative, regulatory and governance settings that will support the VDS program objective of *'better data, faster'*.

This Bill is the first step towards modernising the way VET activity data is collected and submitted by registered training organisations (RTOs) to the NCVER and clarifying the ways that VET activity data can be accessed and used by authorised users. The measures in the Bill do not increase the range of personal information that may be shared under the *National Vocational Education and Training Regulator Act 2011* (NEVTR Act). The VDS program will be implemented in accordance with the *Privacy Act 1988* and the Australian Privacy Principles to ensure that the personal information of VET students is appropriately protected.

The NEVTR Act authorises the Commonwealth Minister with responsibility for Skills and Training (the Minister) to make requirements for data provision, as agreed by the Ministerial Council¹. The Ministerial Council (this body is currently known as the Skills and Workforce Ministerial Council) comprises of Skills and Training Ministers from each state and territory along with the Minister.

¹ *National Vocational Education and Training Regulator Act 2011*, subsection 187(1)

The current data provision requirements instrument, the *National Vocational Education and Training Regulator (Data Provision Requirements) Instrument 2020* (DPRs Instrument), specifies what information RTOs must provide to the NCVER. The DPRs also specify the authorised reporting pathways and timeframes for data submission by RTOs. As part of the VDS program, these requirements will be updated to ensure that information collected from students and training providers, and the data system being built to facilitate the transfer of that data to NCVER, are flexible and responsive to the needs of governments and other users of VET activity data.

The amendments in the Bill have no financial or regulatory impact on RTOs. The proposed amendments to the NVETR Act are limited to:

- permitting as an alternative, another person or body specified by the Ministerial Council to agree to the DPRs Instrument;
- enabling the Secretary of the Department of Employment and Workplace Relations (the department) to release information (which excludes personal information, unless the personal information is the name of the RTO) to the public about VET training, subject to ministerial agreement;
- explicitly authorising the National VET Regulator to grant exemptions to RTOs on their data reporting obligations in accordance with a separate policy called the National Data Provisions Exemption Policy;
- specify that the Secretary may make a determination permitting the collection, use or disclosure of information for the purposes of designing, building, operating, maintaining or testing of a VET data system.

The NCVER, VET regulators, the Skills Senior Officials' Network, and the state and territory ministers' responsible for skills and training were consulted on this Bill. In addition, updates on the progress of key legislation and policy activities, including on the Bill was provided to the sector and peak bodies via the VDS program's External User Reference Group on 23 February 2023. The Bill was endorsed for introduction into Parliament at the Skills and Workforce Ministerial Council meeting on 24 February 2023.

Provisions in the Bill

Delegation of powers

At present, any changes to the DPRs Instrument, including any decision to collect new information from VET students or their training providers, must be agreed to by the Ministerial Council. This includes, for example, updates to the VET information standard, or to any reporting pathways, data formats, or submission timeframes that the DPRs Instrument may specify. This imposes an unnecessary administrative burden on the Ministerial Council and makes the data standard less responsive to change.

This amendment will permit as an alternative, another person or body specified by the Ministerial Council, to agree to changes to the DPRs Instrument and the obligations it imposes on RTOs. At present, the Ministerial Council must agree to all amendments that are more substantive than correcting typographical errors.

Following the passage of the Bill, the Ministerial Council will be able to specify who, if not themselves, can agree to amendments to the DPRs Instrument. This delegation can be made to an existing body or to individuals who perform certain roles or occupy certain positions. The amendments would allow Skills Ministers to delegate their powers to agree to all, or parts of the DPRs Instrument, to other individuals or bodies. Equally, Ministers may decide not to delegate their powers.

This amendment will enable Skills Ministers to delegate their role of agreeing to changes to the DPRs Instrument, including to the new VET information standard (including establishing rules and limitations about what can be agreed to).

The intention of this amendment is to enable the new VET information standard to be updated more readily in response to the future emerging VET information needs of governments and the sector. The amendment also provides a strong and appropriate level of ministerial oversight which reflects the intergovernmental scheme under which VET activity data is collected. Importantly, this change ensures that the Ministerial Council remains the ultimate decision maker that can determine what decisions can be agreed to by another person or body in relation to the DPRs Instrument.

Release of information by the Secretary of the Department

This amendment will allow the Department Secretary (the Secretary) with responsibility for Skills and Training (at present the Department of Employment and Workplace Relations) to release information collected in accordance with the DPRs Instrument to the public, where the type of information to be released is agreed by the Ministerial Council.

At present, the NVETR Act permits the NCVER to provide data to the Commonwealth², however only the Australian Skills Quality Authority (ASQA), as the National VET Regulator has the authority to release information to the public if it is satisfied that the release of the information would reasonably inform a person's choice to enrol as a VET student with an RTO, or would encourage improvement in the quality of VET services provided, or would encourage compliance with the VET Quality Framework.³ The current legislative framework does not permit the department on behalf of the Secretary to release information collected in accordance with the DPRs Instrument. This information could otherwise be shared publicly to support regular and ongoing assessment and review of the VET sector and to inform a student's decision to undertake VET study.

² *National Vocational Education and Training Regulator Act 2011*, subsection 210A(1)

³ *National Vocational Education and Training Regulator Act 2011*, subsection 209(1)

The purpose of this amendment is to enable the Secretary, where the appropriate agreement by the Ministerial Council has been provided, to release information to the public that might inform a prospective student's decision to undertake study, or the course they wish to undertake. Some examples of the types of information that could potentially be released under the new provision could include the number of students enrolled at an RTO or in an RTO course, course codes and names, and the number of students who have completed courses provided by RTOs. It is noted that student numbers at higher education providers and schools, some of which are RTOs (including TAFEs), are already published.

Similar to the current requirements for the department to consult in relation to the release of other types of RTO unit record data (i.e. not information collected under the DPRs Instrument) under the National VET Data Policy 2020, the department, on behalf of the Secretary, would undertake comprehensive consultation with the VET sector before settling on the information to be released.

Granting of exemptions

This amendment will authorise ASQA as the National VET Regulator to grant exemptions to RTOs from their data reporting obligations under the DPRs Instrument.

At present, ASQA grants data provision exemptions to RTOs in accordance with the National VET Provider Collection Data Requirements Policy, which forms Part B of the National VET Data Policy 2020⁴, rather than being explicitly authorised under the NVETR Act. The National VET Provider Collection Data Requirements Policy is incorporated by reference under part 7 of the DPRs Instrument and is endorsed by the Ministerial Council.

For RTOs, the exemption categories will remain unchanged. ASQA will continue to only be permitted to grant exemptions where the collection or submission of data would conflict with defence or national security legislation, or could jeopardise the security of defence, border protection, customs, national security or police personnel, or in prescribed circumstances where an RTO is providing emergency or safety related services.

The amendment will remove any ambiguity about the legislative basis for ASQA to exempt an RTO from providing required data under the DPRs Instrument. The amendment will not change the way ASQA operates in relation to decisions to grant exemptions to RTOs from their data provision obligations.

VET Data System Information Determination

The VDS program has recognised the need to involve ICT contractors in the VDS program in relation to the handling identified personal information. Specifically, the existing provisions of the NVETR Act do not authorise the disclosure of VET information to ICT contractors; or authorise ICT contractors to collect and use this information for the purposes of providing

⁴ National VET Data Policy, December 2020, Sections 5.1 – 5.4

contracted services relating to the design, build, operation, maintenance or testing or monitoring of VET data systems.

To ensure that the new VET data systems are built effectively, a limited amount of student activity data and the associated personal information (for example, name, age and contact details) is required so that systems can be tested with real data to confirm that everything is working as intended. The National VET data system contract will include appropriate measures relating to the handling of personal information, including standard comprehensive terms incorporating contractors' and the Commonwealth's statutory obligations in relation to privacy, information and security. This will ensure that personal information is handled in accordance with the *Privacy Act 1988* and the Australian Privacy Principles. In addition, information will only be held in secure environments, and encrypted when transferred between VET data systems to ensure personal information is kept as securely as possible.

The amendments in the Bill enable the Secretary to make a Determination permitting the collection, use or disclosure of information for the purposes of designing, building, operating, maintaining or testing a VET data system. The amendment defines a VET data system as a computer system used to collect, store and manage information collected in accordance with the DPRs Instrument

This change will support the authorised flow of information within the VET sector and amongst relevant VET entities using VET data system contractors, whilst also ensuring that the information is subject to clearly defined constraints on collection, use and disclosure so as to ensure that VET information remains properly regulated, and is only made available in prescribed circumstances. The prescribed circumstances include that the information has been collected in accordance with the DPRs Instrument or any equivalent requirement in a non-referring State; and the collection, use or disclosure be for the purpose of designing, building, operating, maintaining or testing the relevant VET data system.