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ACTU Submission to the Senate Inquiry into the National Vocational Education and Training Regulator Bills 2010 [2011]

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Introduction

The ACTU welcomes the opportunity to make a submission to this Senate Inquiry into the Bills before Parliament to establish a national VET regulator.

The ACTU has strongly supported the establishment of a national regulator as a crucial means of improving the overall quality of the national training system (the VET system), particularly through its auditing and regulation of RTOs.

The focus on quality in the VET system is ultimately about the quality of the skills and qualifications which are delivered through training. This includes the extent to which these skills meet the needs of industry and the vocational standards established by industry through national training packages, and whether they give graduates a genuine occupational outcome - a job, or an improved set of skills in an existing job - as well as a broader set of vocational skills they can use and deploy across an industry or occupation.

The quality of training providers is obviously a key element in ensuring the ongoing quality of training and skills delivered through the VET system. This will be a crucial role of the new national VET regulator. It is vital therefore this body has the necessary legislative powers, resources and will to vigorously regulate and audit to ensure quality from RTOs in the training and assessment they deliver and greater transparency regarding their performance, as well as enforcing rigorous standards for entry into the 'market' at the front end and dealing appropriately with poor provider behaviour or performance.

The submission that follows will make some comments of a general nature regarding the Bills before Parliament, before turning to specific issues with particular provisions of the Bills. The main focus of our submission will be on the 'principal' Bill, the National Vocational Education and Training Regulator Bill 2010, but we also raise an area of concern with the Transitional Bill.

In making this submission, the ACTU also wishes to support and endorse the submissions to the Inquiry made by its affiliated unions.

General comments

As noted above, the ACTU has been a strong supporter of the need for national regulation of the VET sector.

On that basis, we have broadly welcomed the introduction of this legislation and are pleased to see that the regulator has been given quite broad powers, including strong sanction and enforcement provisions to deal with poor RTOs, and also ensure greater transparency.

However, we are concerned with the lack of meaningful consultation around the details of these major reforms. The ACTU and other industry stakeholders were part of a 'limited consultation' process in late 2010 which provided the opportunity to view a draft Bill for a half day. Given the significance of this legislation, this did not prove sufficient time for proper consideration before the Bill was introduced. This Senate Inquiry, although also limited in time, offers the opportunity for a more thorough and informed view of the legislation to be developed, with input from industry stakeholders with an interest and experience in the VET system, before it is passed into law.

We note that despite the clear intention of the legislation to establish a national regulator, not all state jurisdictions have referred their powers. We encourage those jurisdictions to reconsider their decision and allow the creation of a truly national, high quality regulatory environment for the VET system into the future.

Finally, we wish to raise our concerns about resourcing for the national VET regulator. We understand that funding for the NVR will be in the order of \$100m over 4 years. This is broadly similar to the current funding level received by the Australian Building and Construction Commission. The Bill does provide broad powers for the NVR, but to be effective it must be adequately resourced to oversee the operation of almost 5000 RTOs across the country and be able to undertake audits of sufficient quality, frequency and intensity. There are legitimate doubts over whether this is the case under the current funding allocation.

Specific provisions

Registration

Stringent and well-enforced requirements around registration are a vital ingredient in lifting quality in the VET system.

Section 17 (2) of the Bill outlines the matters the NVR must consider in deciding whether to grant an application for registration i.e. whether it complies with the VET Quality Framework and other conditions of registration. This should be strengthened to state explicitly that the NVR may grant an application only where it is satisfied those conditions have been met, not just that it must consider those matters before deciding.

This would be consistent with the approach taken in sections 22-28 that clearly state the conditions of registration that providers must comply with.

The note in section 18 indicates the information on successful applicants for registration that will be included on the national register. It is not clear though if the registration decisions are to be made public. It appears to us that there would be a public benefit in doing so, particularly to highlight where applications have not been of an acceptable standard.

In the case of a provider seeking a renewal of registration, it would also seem appropriate for the NVR to take into account their past performance, including breaches or sanctions previously issued against them, not just whether they currently comply with the required standards and conditions. This is able to be done when determining sanctions (see s36(3)), but it is not clear whether it can be done at the point of registration.

In terms of the Standards for NVR RTOs that will form part of the VET Quality Framework under the legislation, there is no indication of what those standards will be. We have assumed that these Standards will incorporate the current Australian Quality Training Framework (AQTF) standards but there is no certainty or confirmation on that. We support the further submissions by the Australian Education Union in relation to the standards and conditions for registration, including the point that 'educational viability' should be

considered an essential pre-requisite to being an NVR RTO, alongside the other conditions set out in the Bill.

We also note there is no obligation in the Bill on organisations delivering or providing vocational education to actually register. This should be an explicit requirement.

Power to issue and cancel VET qualifications, and statements of attainment

The ACTU is concerned about the civil penalties that apply where an individual student or worker fails to return or purports to hold a VET qualification that has been cancelled.

One concern is the extent of the penalties that apply. A student who enrolls in good faith to undertake a qualification which is subsequently cancelled through no fault of their own could find themselves with a fine of up to \$11 000 if they fail to return that qualification. There is also a question of how proportionate this penalty is compared with those that apply to misleading or deceptive behaviour by providers.

It is also likely that a person would often be unaware that their qualification has been cancelled. There is no guarantee that a person who is not able to be served with a notice, will then see it on a website or in a newspaper. Section 60 (3) helps to acknowledge this by providing that a person only contravenes the requirement to return a qualification if they are aware of the notice being provided. However, by contrast, section 61 imposes a civil penalty if the person purports to hold a cancelled VET qualification, without making any provision for that person not knowing the qualification has been cancelled. The approach in s 131 (b) dealing with the use of a bogus qualification is to test whether the person knows, or a reasonable person in the circumstances could be expected to know, that it was 'bogus'. It would seem sensible to use this test for s 61 as well.

To be clear, there is no place for the use of cancelled or bogus qualifications. However, the concern with each of these provisions is that there seems to be undue burden placed on the individual student or worker, including potentially heavy penalties, where they have enrolled in a course in good faith, finished the course, and unknown to them, and for reasons beyond their control, the qualification has been cancelled or is bogus in some way. A person whose qualification has been cancelled should also be notified of any rights of redress they have against the organisation that issued the qualification.

Industry bodies

At s157 (k) and a number of other sections, the Bill refers to industry bodies. We note that the explanatory memorandum confirms that this includes the Industry Skills Councils, as it is important that they are recognised explicitly as key bodies the NVR will need to be talking to. This would be strengthened if their role was recognised in the Bill itself, if not in the individual sections then at least as part of the definitions.

Minutes of NVR meetings

Section S174 (6) states that minutes of NVR meetings must be kept. Is there a requirement for them to also be made public, in the way, for example, that RBA minutes are now made public? There may be benefits in doing so, particularly for a new body to communicate to the VET sector what it is doing.

Release of Information

We question if s209 should be a 'must', rather than a 'may', as any information that meets the purposes of 209 (1) (a) (b) and (c) would appear to be fundamental to the purpose and objectives of the NVR. This raises a broader point about the absence in the Bill of any 'Objects of the Act'. These are commonly used in other pieces of legislation (see for example the *Fair Work Act 2009*). This would help to clearly state the overriding purpose of the legislation, why a national regulator is being established, and what it is intended to achieve.

Annual report

Section 215 sets out the required contents of the NVR annual report. As would be expected, it includes a series of requirements to evaluate its performance against its strategic plan and operational plan etc. What seems to be missing is a requirement to assess and report on the overall state and quality of the VET system every 12 months. It may be the annual report would incorporate this type of assessment in the course of reporting against the matters in s 215(3), but this should be an explicit requirement.

Transitional Bill

A major issue with the Transitional Bill is that it provides no effective obligation on existing providers to re-register and demonstrate they meet the new standards (yet to be defined) under this legislation. The State regulatory authorities are able to transfer their registration to the NVR, and if that occurs there is no need to re-apply. Only if this transfer does not occur, is there a requirement to register within 90 days of commencement. We can see why this approach has been adopted in terms of administrative ease and providing a smooth transition to the new system, but in public policy terms it is hard to fathom as it means all the existing quality control issues are transferred to the new system with no immediate form of redress.

Conclusion

More than ever, the VET system plays a crucial economic and social role in our society, delivering the skills required to improve both workforce participation and productivity.

This occurs on a number of fronts. The VET system provides entry-level skills training for those entering the workforce for the first time or who wish to move into a new field of work, it provides foundation skills training for those who need the employability skills, and language, literacy and numeracy skills that will better prepare them for the world of work, and it provides more advanced skills training for those who wish to build on their existing qualifications and move into more highly skilled, highly paid jobs.

Each year, hundreds of thousands of workers, and the businesses that employ them, rely on the quality of training and skills that are delivered through the VET system.

There is a legitimate expectation then that those who responsible for providing vocational education and training, and in many cases receive considerable public funding to do so, are properly equipped to perform this vital role when they first enter the market, and that there are robust measures in place to ensure this continues to be the case. The Bills before Parliament go much of the way toward ensuring this will happen, but as with any piece of major legislation there is always scope for improvement and the suggestions made here and in other submissions can assist in doing this.