



Australian Education Union

and

TAFE Directors Australia

**Submission to the Senate Education,
Employment and Workplace Relations Committee Inquiry
into the
National VET Regulator Bill 2010 ('the Bill') & National VET
Regulator (Transitional Provisions) Bill 2010 ('the Transitional
Bill') and the National VET Regulator (Consequential
Amendments) Bill 2011 ('the Consequential Bill') [collectively 'the
NVR Bills']**

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The Australian Education Union and TAFE Directors Australia ('the organisations') welcome the opportunity to make a submission to the Committee. Indeed the organisations have been vocal and persistent to date in their criticisms of the lack of stakeholder involvement in the processes of development of the Bills and the inadequacy of the legislative and regulatory frameworks which will govern the implementation of a national regulatory environment for the vocational education and training sector.

In making this submission, the organisations wish it noted that these written submissions are not exhaustive of their concerns with the Bills and would welcome further opportunity to meet with the Committee to expand orally upon the written submissions and to raise other matters of concern where appropriate.

The organisations wish it further noted that they view the 11 day time period allowed for the Committee to undertake and complete its inquiry as wholly inadequate for the purpose of ensuring appropriate consultation on what is after all such a significant change in the VET sector regulatory environment.

The Committee is urged to consider recommending further delay in passage of the Bills to enable full consultation to occur, including consideration of legislative amendment, to take account of stakeholder concerns.

The written submissions which follow are framed around three key organising principles:

1. The need for greater alignment, integration or consistency between the principles, frameworks and regulation establishing the Tertiary Education Quality and Standards Agency ('TEQSA') and those which the NVR Bills propose for the establishment of the National Vocational Education and Training Regulator ('NVR');
2. The issue of Standards and the components of the VET Quality Framework proposed by the Bill; and
3. The nature, structure and operation of the NVR

The principle of greater alignment of NVR with TEQSA

Lack of Objects

In an era of modern legislative drafting and the purposive approach to statutory interpretation adopted by Courts, the organisations view it as significant that the Bill does not contain Objects.

Objects provide a clear expression of legislative intention and provide authoritative guidance to the administrators and users of the statute. Without Objects, it is therefore unclear what the Bill is attempting to achieve. Objects, however, are included in the Exposure Draft of the TEQSA Bill which can be found at:

<http://www.deewr.gov.au/HigherEducation/Policy/teqsa/Documents/TEQSABill2011.pdf>.

The Objects of the proposed TEQSA Bill are listed below and, suitably adapted, provide a model for what the Bill's Objects could look like:

'The objects of this Act are:

- (a) *to provide for national consistency in the regulation of higher education; and*
- (b) *to regulate higher education using:*
 - (i) *a standards-based quality framework; and*
 - (ii) *principles relating to regulatory necessity, risk and proportionality; and*
- (c) *to protect and enhance:*
 - (i) *Australia's reputation for quality higher education and training services; and*
 - (ii) *Australia's international competitiveness in the higher education sector; and*
 - (iii) *excellence, diversity and innovation in higher education in Australia; and*
- (d) *to encourage and promote a higher education system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and*
- (e) *to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education; and*
- (f) *to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia.'*

An alternative would be for such objects to be included in section 157 as part of the functions of the NVR. However, section 157 addresses only the administrative tasks that the NVR undertakes.

As a result of this omission, there appears to be nothing about the Bill that is aspirational or strategic in purpose and there is no clear rationale for its replacing the current arrangements.

The organisations consider it to be imperative that the Bill articulates the Objects of the legislation and that these Objects include aspirational goals in similar vein to those outlined in the proposed TEQSA Bill.

Accreditation Status

In the state of Victoria, for example, TAFE institutes have the legislative capacity to obtain self-accrediting authority in VET and some institutes have already done so. The organisations view the NVR Bills as lacking clarity as to whether this authority will carry over to the new arrangements.

The proposed TEQSA Bill envisages a Higher Education Standards Framework with a range of standards which include criteria for awarding self-accrediting authority to providers (eg, sections 41 & 58 of the proposed TEQSA Bill) and page 16 of the Draft Provider Standards Consultation Guide. These could provide a useful model, if suitably adapted, for inclusion in the NVR Bills and associated documentation as appropriate.

The organisations urge that standards/criteria for awarding self-accrediting authority be developed and included in the VET Quality Framework.

Definition of 'VET course'

The Bill (s3) and the proposed TEQSA Bill (s6) contain inconsistent definitions of a VET Course as outlined below:

Inconsistent Definitions of a VET Course			
NVR Definition		TEQSA definition	
(a)	the units of competency of a training package that is endorsed by the Ministerial Council; or	(a)	the units of competency of a training package that is endorsed by the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for vocational education and training; or
(b)	the modules of a VET accredited course; or	(b)	the modules of a course accredited under a State or Territory law relating to vocational education and training; or
(c)	the modules of a course accredited by a VET Regulator of a non-referring State.	(c)	a course of a similar kind to any of the above training packages or course

The organisations note the definition in the proposed TEQSA Bill is broader in point (c) than the NVR definition. Although the proposed TEQSA Consequential Amendments and Transitional Provisions (Schedule 2, Part 2, s45) [‘TEQSA C & T Bill’] indicates a proposed adoption for TEQSA purposes of the NVR definition, it is proposed nonetheless to keep the broader scope of point (c)

The broadness of the TEQSA definition is an issue since Higher Education Qualifications are defined as any course at AQF level 5 and above and this opens up the VET market at those levels to Higher Education Providers.

The organisations urge that the definitions of a VET Course (and any other definitions) in the two Bills be brought into alignment and that the NVR Bill adopt in its definition of a VET course the broader scope outlined in point (c) of the TEQSA legislation.

The issue of Standards and the components of the VET Quality Framework

The organisations view the proposed VET Quality Framework, defined in the Bill at s3, as wholly inadequate to assure the public interest in having a quality VET sector and hence as a deficient mechanism in the proposed regulatory regime to be administered or supervised by the NVR.

Missing from the VET Quality Framework is any reference to the concept:

- that VET providers have as a main or proper or primary or significant purpose the provision of VET;
- that VET providers operate in the interests of students and be required to provide ancilliary support services for students;
- that VET providers demonstrate appropriate quality standards for teaching and learning.

The issue is a significant one for the proposed regulatory function of the NVR. As presently proposed, the compliance regime for VET creates an offence (s107) for a NVR Registered

Training Organisation ('NVR RTO') to issue a VET qualification without ensuring adequate assessment. It is also an offence for a NVR RTO to offer all or part of a VET course outside the scope of that body's registration (s93). However, it is not an offence for an NVR RTO to issue VET qualifications without ensuring the student has completed the necessary course of study. The organisations note that for TEQSA purposes, the proposed TEQSA Bill, s107, would make it an offence for a regulated entity to award a qualification without also requiring the completion of a course of study.

Accepting that for modern administrative purposes, perceived difficulties associated with having standards setting and regulatory functions being combined in the one body, but noting the two functions are actually proposed to be combined in the new TEQSA, the organisations suggest one method to address this serious deficiency in the Bill would be:

Amending definition of VET Quality Framework in s3 to include an additional (f) Provider Purpose Requirements and then subsequently in Part 8, a new s188 'Provider Purpose Requirements'. The same developmental prescription as currently for the other standards or requirements would apply, ie, Ministerial determination after agreement of the Ministerial Council and, presumably following advice from the new National Standards Council.

The organisations urge the Committee to recommend that as a minimum, the elements within the VET Quality Framework and other references to standards be broadened to include:

- that NVR RTOs have as a primary or significant purpose, the education and training of students;
- that NVR RTOs are required to also act in the best interests of their students and not purely in the best interest of shareholders or the company or the purchaser of the training per se;
- that NVR RTOs 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 their NVR RTO might find itself in;
- that the conditions for registration of NVR RTOs are broadened to require demonstration of the adequacy of their physical and human resource infrastructure **AND** the educational viability including educational governance structures
- that the NVR is obliged to assess the teaching and training standards, practices and procedures of a NVR RTO and not just whether the outcomes can be properly checked off against the required accreditation standard.

This would enable the possibility of the development of Provider Categories of Registration and of Provider Category Standards consistent with the approach adopted in the proposed TEQSA Bill.

The nature, structure and operation of the NVR

Other matters which the organisations wish to bring to the Committee's attention, and which will be elaborated on in oral submissions, include:

- The NVR is not established as an independent statutory authority and has no separate legal identity to the Commonwealth. Although the Bill, s159, nominally grants

independence to the NVR, this is expressly constrained by the operation of Ministerial direction under s160.

The public users, industry, stakeholders are therefore not statutorily guaranteed of an independent regulator.

- Commissioners may only be appointed on a full-time basis and excluded from consideration for appointment are persons who have recent executive experience with an RTO;
- There are extensive powers of delegation both by the Minister and the NVR which appear exceptional (ss223-226)