

ED301*

Vocational Education and Training Act 1996

Vocational Education and Training (General) Amendment Regulations 2013

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Vocational Education and Training (General) Amendment Regulations 2013*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2014.

3. Regulations amended

These regulations amend the *Vocational Education and Training (General) Regulations 2009*.

4. Regulation 3 amended

- (1) In regulation 3 delete the definitions of:

AQF Implementation handbook
NTIS

- (2) In regulation 3 insert in alphabetical order:

AQF means the Australian Qualifications Framework as defined in the Commonwealth Act section 3;

ASQA means the Australian Skills Quality Authority (the National VET Regulator) established under the Commonwealth Act section 155;

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* (Commonwealth);

national register has the meaning given in the Commonwealth Act section 3;

- (3) In regulation 3 in the definition of ***AQTF*** delete “Framework;” and insert:

Framework as defined in the *Higher Education Support Act 2003* (Commonwealth) Schedule 1;

- (4) In regulation 3 in the definition of ***registering body***:

- (a) in paragraph (b) delete “law;” and insert:

law; or

- (b) after paragraph (b) insert:

- (c) ASQA;

5. Regulation 4 amended

In regulation 4(1) in the definition of *listed* delete “NTIS.” and insert:

national register.

6. Regulation 7 amended

- (1) In regulation 7(1) insert in alphabetical order:

compliance monitoring audit means a compliance monitoring audit conducted under Division 3;

non-referring State has the meaning given in the Commonwealth Act section 7;

Standards for VET Regulators has the meaning given in the Commonwealth Act section 189;

- (2) In regulation 7(1) in the definition of *prescribed registration document* delete “AQTF 2007 Standards for State and Territory Registering Bodies (published by the Commonwealth of Australia 2007);” and insert:

Standards for VET Regulators;

- (3) In regulation 7(2) after “AQTF” insert:

or the Standards for VET Regulators

7. Regulation 8 amended

Delete regulation 8(1) and insert:

- (1) In performing its functions under Part 7A of the Act, the Council must have regard to the Standards for VET Regulators.

Note: The heading to amended regulation 8 is to read:

Council to have regard to the Standards for VET Regulators

8. Regulation 9 amended

In regulation 9(3) delete “NTIS” and insert:

national register

9. Regulation 10 amended

Delete regulation 10(1) and (2) and insert:

- (1) A person may apply to be registered as a training provider under section 58B of the Act —
 - (a) if the person's principal place of business —
 - (i) is in WA and all or most of the vocational education and training that the person provides, or intends to provide, is or will be either in WA or another non-referring State (whether or not the person also provides, or intends to provide, vocational education and training elsewhere); or
 - (ii) is in another non-referring State and all or most of the vocational education and training that the person provides, or intends to provide, is or will be in WA (whether or not the person also provides, or intends to provide, vocational education and training elsewhere);
 - and
 - (b) the person is not a training organisation to which the Commonwealth Act applies.
- (2) A WA registered provider whose registration is cancelled by the Council may not apply for registration under section 58B of the Act for 2 years, or such shorter time as the Council considers appropriate, after the day that the cancellation takes effect.

10. Regulation 12 amended

- (1) In regulation 12(3) delete “regulation 10(1) applies to the provider” and insert:

the provider satisfies the criteria for making an application for registration under regulation 10(1)

- (2) Delete regulation 12(4) and insert:

- (4) The Council must not register a training provider who is registered under a corresponding law or the Commonwealth Act until the Council receives a notice from the relevant registering body that the registering body has cancelled the provider's registration.

11. Regulation 13 amended

In regulation 13(2)(b) and (d) after “compliance audit” insert:

or a compliance monitoring audit

12. Regulation 16 amended

Delete regulation 16(3)(a)(i) and insert:

- (i) that the person satisfies the criteria for making an application for registration under regulation 10(1); and

13. Regulation 17 amended

- (1) In regulation 17(3) after “provider’s registration” insert:

at any time

- (2) In regulation 17(4):

- (a) delete “regulation 10(1) applies to the provider” and insert:

the provider satisfies the criteria for making an application for registration under regulation 10(1)

- (b) in paragraph (b) after “compliance audit” insert:

or a compliance monitoring audit

14. Regulation 18 amended

- (1) Delete regulation 18(1) and insert:

- (1) Under section 58B of the Act, the Council may cancel a WA registered provider’s registration if it is satisfied that the provider is a person who does not satisfy, or no longer satisfies, the criteria for making an application for registration under regulation 10(1).

- (2) In regulation 18(3) delete “corresponding law,” insert:

corresponding law or the Commonwealth Act,

15. Regulation 19 amended

- (1) Delete regulation 19(2) and insert:
 - (2) Under section 58B of the Act, the Council may suspend or cancel a WA registered provider's registration for a reason specified by subregulation (1) even if —
 - (a) the Council is no longer satisfied that the provider satisfies the criteria for making an application for registration under regulation 10(1); or
 - (b) the provider has applied to another registering body to be registered as a training provider under a corresponding law or the Commonwealth Act.
- (2) After regulation 19(4) insert:
 - (5A) The reasons for the suspension referred to in subregulation (4)(a) must identify specific issues to be addressed by the applicant.
- (3) In regulation 19(6) delete “the registering body of any other jurisdiction where the provider operates.” and insert:

any registering body that has, or may have, registered the provider under a corresponding law or under the Commonwealth Act.
- (4) After regulation 19(8) insert:
 - (9) A request by a WA registered provider for the cancellation of its registration must be accompanied by the fee set under regulation 23.

16. Regulation 22 replaced

Delete regulation 22 and insert:

22. Requests for reassessment of decision to suspend WA registered provider

- (1) This regulation applies if the Council has decided to suspend a WA registered provider's registration under regulation 19.

- (2) A WA registered provider to whom this regulation applies may request in writing that the Council reassess its decision in relation to the issues identified by the Council in the written order given under regulation 19(4).
- (3) A request by a WA registered provider must —
 - (a) describe the actions taken by the provider to address the issues identified in the order referred to in subregulation (2); and
 - (b) provide evidence to demonstrate that those issues have been addressed by the provider; and
 - (c) be accompanied by the reassessment fee set under regulation 23.

17. Part 3 Division 3 heading amended

In the heading to Part 3 Division 3 delete “**Audits of**” and insert:

Audits of, and investigations into,

18. Regulation 24 replaced

Delete regulation 24 and insert:

24. Terms used

In this Division —

compliance audit means an audit to establish whether a training provider meets the relevant registration requirements or is complying with the Act;

compliance monitoring audit means an audit in the form of a review or examination of all or any particular aspect of a WA registered provider’s operations —

- (a) following a compliance audit; or
- (b) as part of an investigation of a complaint;

investigation, in relation to a complaint, means an investigation into a WA registered provider conducted by the Council as a result of a complaint made about the provider’s compliance with the AQTF;

official travel costs means —

- (a) reasonably incurred airfares; and
- (b) such other travel expenses which may reasonably be incurred, including but not limited to accommodation, car rental and meals.

19. Regulation 25 amended

Delete regulation 25(2) and insert:

- (2A) The Council may conduct a compliance audit at any time on a training provider if the Council thinks fit having regard to the Act and the relevant registration requirements.
- (2) A compliance audit must comply with the Standards for VET Regulators.

Note: The heading to amended regulation 25 is to read:

Compliance audits**20. Regulations 26A to 26D inserted**

At the end of Part 3 Division 3 insert:

26A. Compliance monitoring audits

- (1) An inquiry conducted under section 58D of the Act may be in the form of a compliance monitoring audit on a WA registered provider.
- (2) The Council may conduct a compliance monitoring audit on a WA registered provider —
 - (a) if the Council thinks fit after assessing the results of a compliance audit; or
 - (b) as part of an investigation of a complaint.
- (3) If the Council conducts a compliance monitoring audit on a WA registered provider, a charge is payable for —
 - (a) the costs and expenses incurred by the Council in conducting the audit, calculated as the sum of —
 - (i) \$1 000; and
 - (ii) if the audit exceeds 4 hours in length — \$250 per subsequent hour; and
 - (iii) the official travel costs;and
 - (b) if any part of the audit is conducted outside Australia — any additional expenses reasonably incurred by the Council relating to that part of the audit.
- (4) A charge under subregulation (3) relating to a compliance monitoring audit on a WA registered provider is payable by that provider.

- (5) If a charge payable under subregulation (3) is not paid, the amount of the charge may be recovered in a court of competent jurisdiction as a debt due to the State.

26B. Investigations of complaints

- (1) An inquiry conducted under section 58D of the Act may be in the form of the investigation of a complaint made about compliance with the AQTF by a WA registered provider.
- (2) An investigation of a complaint must comply with the National Guidelines for Responding to Complaints about Vocational Education and Training Quality in the National Guidelines for a Registering Body, part of the AQTF.
- (3) A contravention of subregulation (2) does not affect the validity of the investigation of a complaint if the contravention —
 - (a) does not substantially affect the outcome of the investigation; or
 - (b) arises out of an inconsistency between the National Guidelines for Responding to Complaints about Vocational Education and Training Quality and written laws.
- (4) If the Council investigates a complaint made about a WA registered provider and finds the complaint substantiated, a charge is payable for —
 - (a) the costs and expenses incurred by the Council in conducting the investigation, calculated as the sum of —
 - (i) \$250 per hour; and
 - (ii) the official travel costs;
 - and
 - (b) if a compliance monitoring audit is conducted as part of the investigation — the charges prescribed under regulation 26A(3)(a); and
 - (c) if any part of the investigation, or compliance monitoring audit referred to in paragraph (b), is conducted outside Australia — any additional expenses reasonably incurred by the Council relating to that part of the investigation or audit.
- (5) A charge under subregulation (4) relating to an investigation of a complaint about a WA registered provider is payable by that provider.
- (6) If a charge payable under subregulation (4) is not paid, the amount of the charge may be recovered in a court of competent jurisdiction as a debt due to the State.

26C. Circumstances in which a charge may be waived in whole or in part

- (1) A charge that would otherwise be payable under this Division may be waived, in whole or in part if, in the opinion of Council —
 - (a) special or unusual circumstances exist which cause the charge to be unreasonable or inequitable; or
 - (b) the amount of the charge that remains unpaid is so small that its recovery would be uneconomical to pursue.
- (2) For the purposes of subregulation (1)(a), the following circumstances do not constitute grounds for granting a waiver —
 - (a) where the WA registered provider required to pay the charge did not consent to the compliance monitoring audit or investigation that resulted in the imposition of a charge;
 - (b) where the WA registered provider required to pay the charge does not agree with the outcome of the compliance monitoring audit or investigation that resulted in the imposition of a charge;
 - (c) where the WA registered provider required to pay the charge ceases to exist, or ceases to be a WA registered provider, or ceases to carry on business as a training provider.

26D. Rounding

When determining under regulations 26A(3)(a)(ii) and 26B(4)(a)(i) the amount of the charge payable for a compliance monitoring audit or investigation where the hourly rate is \$250 per hour, the following amounts will apply in the following circumstances —

- (a) if the time taken to complete the compliance monitoring audit or an investigation is less than 30 minutes, the total amount payable will be zero dollars;
- (b) if the time taken to complete the compliance monitoring audit or investigation is less than one hour but equal to or greater than 30 minutes, the total amount payable will be \$125.

21. Part 3 Division 4 heading amended

In the heading to Part 3 Division 4 after “**providers**” insert:

and of the Council

22. Regulation 28A inserted

At the end of Part 3 Division 4 insert:

28A. Person may obtain from Council certified copies of information

- (1) A person may make an application under this regulation if the person was a person to whom a course was provided, or a qualification conferred, by a WA registered provider that has —
 - (a) ceased to operate in WA; or
 - (b) ceased to be a registered training provider.
- (2) On application made to the Council, the Council must supply to a person about whom the Council holds information under this Division, a certified copy of any, or all, of that information as is requested by the person.
- (3) An application made to the Council must be in a form approved by the Council and be accompanied by —
 - (a) any information that the form requires the applicant to provide; and
 - (b) the application fee being \$60 for each certified copy requested.

23. Regulation 28 amended

In regulation 28(2)(b)(i) delete “\$1 425;” and insert:

\$2 700;

24. Regulation 30 amended

- (1) In regulation 30(1):
 - (a) delete paragraph (a) and insert:
 - (a) it has assessed the VET course in accordance with the Standards for VET Regulators; and

- (b) in paragraph (b) delete “the accreditation” and insert:

those
 - (c) in paragraph (c) delete “Implementation Handbook”.
- (2) Delete regulation 30(2)(b) and insert:
- (b) give that person a course accreditation document in accordance with the Standards for VET Regulators;

25. Regulation 33A inserted

After regulation 32 insert:

33A. Varying accreditation

- (1) The Council may at any time vary the accreditation of a WA accredited course.
- (2) The Council may take such action —
 - (a) on its own initiative, if the Council is satisfied that the action is reasonable and —
 - (i) updates information in the course; or
 - (ii) corrects false or misleading information in the course; or
 - (iii) has been requested by an occupational licensing body, or other industry body, that deals with, or has an interest in, matters relating to the course’s content;
 - or
 - (b) if —
 - (i) an application is made by the owner of the VET course; and
 - (ii) the Council is satisfied that it is appropriate to vary the accreditation.
- (3) An application to vary the accreditation of a WA accredited course must be in a form approved by the Council and be accompanied by —
 - (a) any information that the form requires the applicant to provide; and
 - (b) the application fee of \$500.
- (4) This regulation and regulation 30(1) (as applied by subregulation (6)) do not limit the grounds on which

the Council may decide not to grant an application to vary the accreditation of a WA accredited course.

- (5) The Council must not grant an application except in accordance with subregulation (2) and regulation 30(1) (as applied by subregulation (6)).
- (6) Regulations 29(2), (3) and (5) and 30(1) apply to and in respect of an application to vary the accreditation of a WA accredited course.
- (7) If the Council decides to vary the accreditation of a VET course, it must give to the owner of the course —
 - (a) a course accreditation document in accordance with the Standards for VET Regulators; and
 - (b) written notice of any condition to which the accreditation as varied is subject.

26. Regulation 37 amended

In regulation 37(2) delete “AQF Implementation Handbook.” and insert:

AQF.

27. Schedule 1 amended

In Schedule 1 under the heading “**Information to Help Complete the Training Contract**” delete “National Training Information Service website (www.ntis.gov.au).” and insert:

National Register website (training.gov.au).

G. MOORE, Clerk of the Executive Council.
