



Vocational Education and Training (Commonwealth Powers) Act 2012

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Queensland

Vocational Education and Training (Commonwealth Powers) Act 2012

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Vocational Education and Training (Commonwealth Powers) Act 2012

An Act to adopt the *National Vocational Education and Training Regulator Act 2011* (Cwlth) and the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* (Cwlth), and to refer certain matters relating to the regulation of vocational education and training to the Parliament of the Commonwealth, for the purposes of section 51(xxxvii) of the Commonwealth Constitution

Part 1 Preliminary

1 Short title

This Act may be cited as the *Vocational Education and Training (Commonwealth Powers) Act 2012*.

2 Commencement

This Act commences on 29 June 2012.

Part 2 Adoption and reference of matters

3 Definitions for pt 2

In this part—

adoption means the adoption under section 5(1).

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amendment reference means a reference under section 5(2).

continuing VET matter has the meaning given in section 4.

national VET instrument means any instrument (whether or not of a legislative character) that is made or issued under the national VET legislation.

national VET legislation means—

- (a) the *National Vocational Education and Training Regulator Act 2011* (Cwlth); and
 - (b) the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* (Cwlth);
- as in force from time to time.

4 Continuing VET matters

- (1) Each of the following matters is a continuing VET matter to the extent that it is included in the legislative powers of the Parliament of the State—
 - (a) the registration and regulation of vocational education and training organisations;
 - (b) the accreditation or other recognition of vocational education and training courses or programs;
 - (c) the issue and cancellation of vocational education and training qualifications or statements of attainment;
 - (d) the standards to be complied with by a vocational education and training regulator;
 - (e) the collection, publication, provision and sharing of information about vocational education and training;
 - (f) investigative powers, sanctions and enforcement in relation to any of the above.
- (2) However, a continuing VET matter does not include the matter of making a law that excludes or limits the operation of a State law to the extent that the State law makes provision in relation to—

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- (a) primary or secondary education (including the education of children subject to compulsory school education); or
 - (b) tertiary education that is recognised as higher education and not vocational education and training; or
 - (c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships; or
 - (d) the qualifications or other requirements to undertake or carry out any business, occupation or other work (other than that of a vocational education and training organisation); or
 - (e) the funding by the State of vocational education and training; or
 - (f) the establishment or management of any agency of the State that provides vocational education and training.

(3) In this section—

State law means any Act of the State or any instrument made under an Act of the State, whenever enacted or made and as in force from time to time.

5 Adoption and references

- (1) The national VET legislation is adopted, within the meaning of section 51(xxxvii) of the Commonwealth Constitution, to the extent that the matters in the national VET legislation are within the legislative powers of the Parliament of the State.
- (2) Each continuing VET matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to the matter by making express amendments of the national VET legislation.
- (3) The operation of each of subsections (1) and (2) is not affected by the other subsection.
- (4) The reference of a matter under subsection (2) has effect only if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth

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(otherwise than by a reference for the purposes of section 51 (xxxvii) of the Commonwealth Constitution).

- (5) Despite any provision of this Act other than section 8(4), the adoption under subsection (1) or the reference under subsection (2) has effect for a period—
- (a) beginning when the subsection under which the adoption or reference is made commences; and
 - (b) ending at the end of the day fixed under section 7 as the day on which the adoption or reference is to terminate; but not longer.

6 Amendment of Commonwealth law

- (1) It is the intention of the Parliament of the State that—
- (a) the national VET legislation may be expressly amended, or have its operation otherwise affected, at any time by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters, or the adoption of the national VET legislation, for the purposes of section 51 (xxxvii) of the Commonwealth Constitution; and
 - (b) the national VET legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of national VET instruments.
- (2) If the national VET legislation is expressly amended, the Minister must table a copy of the amendment in the Legislative Assembly.
- (3) However, failure to comply with subsection (2) does not affect the operation of subsection (1) or section 5.

7 Termination of adoption or reference

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which—

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- (a) the adoption and the amendment reference are to terminate; or
 - (b) the amendment reference is to terminate; or
 - (c) the adoption is to terminate (if the amendment reference has been previously terminated).
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 6 months beginning with the day on which the proclamation is notified.
 - (3) The Governor may, by proclamation, revoke a proclamation under subsection (1).
 - (4) A revoking proclamation has effect only if notified before the day fixed under subsection (1).
 - (5) If a revoking proclamation has effect, the revoked proclamation is taken, for the purposes of section 5, never to have been notified but the revocation does not prevent notification of a further proclamation under subsection (1).
 - (6) A proclamation under subsection (1) or (3) is subordinate legislation.

8 Effect of termination of amendment reference before termination of adoption

- (1) A reference in this section to provisions referred to in section 6(b) includes a reference to national VET instruments made to carry out or give effect to the national VET legislation as amended by laws made under the amendment reference.
- (2) It is the intention of the Parliament of the State that, if the amendment reference terminates before the adoption terminates, the termination of the amendment reference does not affect—
 - (a) laws made under the amendment reference before the termination; or
 - (b) the continued operation in the State of the existing legislation or of the existing legislation as—

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- (i) amended after the termination by laws referred to in paragraph (a) that come into operation after the termination; or
 - (ii) amended or affected after the termination by provisions referred to in section 6(a) or (b).
- (3) Accordingly, the amendment reference continues to have effect for the purposes of subsection (2) unless the adoption reference is terminated.
- (4) Subsection (2) or (3) does not apply to or in relation to an amendment of the national VET legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.
- (5) In this section—

existing legislation means the national VET legislation as—

- (a) amended by laws made under the amendment reference that have come into operation before the termination; or
- (b) amended or affected by provisions referred to in section 6(a) or (b) that have come into operation before the termination;

and as in operation immediately before the termination.

termination means the termination of the amendment reference.