

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are as follows:

(a) to refer to the Commonwealth Parliament certain matters relating to vocational education and training (principally the registration and regulation of vocational education and training organisations and the accreditation of vocational education and training courses),

(b) to repeal the existing vocational education and training legislation operating in New South Wales, to make consequential amendments to other legislation and to enact savings, transitional and other provisions.

The proposed Act will form part of the new national vocational education and training regime being established under Commonwealth law. It is to be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution which enables State Parliaments to refer matters to the Commonwealth Parliament. At this stage some States (Victoria and Western Australia) have not agreed to refer power to the Commonwealth. The national VET legislation will, however, be applied on a more limited basis to those non-referring States pursuant to existing Commonwealth constitutional powers.

### Explanatory note page 2

Vocational Education and Training (Commonwealth Powers) Bill 2010

### Explanatory note

The proposed national VET legislation is the *National Vocational Education and Training Regulator Bill 2010* and the *National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010* of the Commonwealth. The reference operates by reference to the text of that initial national VET legislation, a copy of which will be tabled in State Parliament, and will refer to the Commonwealth the matters to which the tabled text relates that are included within the legislative powers of State Parliaments (the **initial reference**).

The proposed Act also provides for the referral of certain matters relating to vocational education and training to the Commonwealth Parliament in order to support future amendments to the national VET legislation (the **amendment reference**). The amendment reference is limited to the express amendment of the national VET legislation so that it cannot be the source of power for other Commonwealth legislation.

The proposed Act also sets out certain exclusions (or “carve outs”) to the amendment reference to ensure that State legislation is not excluded or limited in areas the Commonwealth and the referring States have agreed will not be affected by the referral (eg higher education, apprenticeships and the qualifications required for various occupations).

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** provides, for the purposes of the initial reference, that the initial VET matters are the matters to which the tabled text relates to the extent that they are included within the legislative powers of the State.

**Clause 5** provides, for the purposes of the amendment reference, that the continuing VET matters are each of the following:

(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.

Explanatory note page 3

Vocational Education and Training (Commonwealth Powers) Bill 2010

Explanatory note

However, State law on the following matters are not to be limited or affected by the reference (the “carve outs”):

- (a) primary or secondary education (including the education of children subject to compulsory school education),
- (b) tertiary education that is recognised as higher education and not vocational education and training,
- (c) the rights and obligations of persons providing or undertaking apprenticeships or traineeships,
- (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),
- (e) the funding by the State of vocational education and training,
- (f) the establishment or management of any agency of the State that provides vocational education and training.

**Clause 6** refers to the Commonwealth Parliament the initial VET matters to the extent of making laws by enacting Acts in the terms, or substantially in the terms, of the tabled text. The clause also refers to the Commonwealth Parliament each of the continuing VET matters to the extent of making express amendments to its national VET legislation.

**Clause 7** makes it clear that the State Parliament envisages that the national VET legislation can be amended or affected by Commonwealth legislation enacted in reliance on other powers and that instruments under the national VET legislation may also affect that legislation otherwise than by express amendment.

**Clause 8** deals with the termination of the period of the references. The clause enables the Governor, by proclamation, to fix a day on which the period of the references (or only the amendment reference) terminates.

**Clause 9** makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

**Clause 10** provides for the accuracy of a copy of the tabled text containing the proposed national VET legislation to be certified by the Clerk of the Legislative Assembly.

#### **Schedule 1 Repeal**

**Schedule 1** repeals the existing New South Wales legislation on the referred matters, namely, the *Vocational Education and Training Act 2005*.

Explanatory note page 4

Vocational Education and Training (Commonwealth Powers) Bill 2010

Explanatory note

#### **Schedule 2 Consequential amendment of other legislation**

**Schedule 2** amends various Acts as a consequence of the repeal of the existing State legislation and its replacement by the new national VET legislation.

**Schedule 3 Savings, transitional and other provisions**

**Schedule 3** includes savings and transitional provisions consequent on the enactment of the proposed Act (including a power to make regulations of a savings and transitional nature). Provision is made with respect to the dissolution of the State Vocational Education and Training Accreditation Board, the construction of superseded legislative references, the provision of information and assistance to the new National VET Regulator and the continuation of pending proceedings.