

Legislative Council—No 151

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South Australia

Vocational Education and Training (Commonwealth Powers) Bill 2011

A BILL FOR

An Act to adopt the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth and the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* of the Commonwealth, 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 *Constitution of the Commonwealth*.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Vocational Education and Training (Commonwealth Powers) Act 2011*.

2—Commencement

- 5 (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Definitions

In this Act, unless the contrary intention appears—

10 ***adoption*** means the adoption under section 4(1);

amendment reference means the reference under section 7(1);

15 ***express amendment*** of the National VET legislation means the direct amendment of the text of the National VET legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have the substantive effect otherwise than as part of the text of the National VET legislation;

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

20 ***National VET legislation*** means—

- (a) the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth; and

- (b) the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* of the Commonwealth,

as in force from time to time;

referred VET matters—see section 6;

5 *relevant version of the National VET legislation* means—

- (a) the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth; and
- (b) the *National Vocational Education and Training Regulator (Transitional Provisions) Act 2011* of the Commonwealth,

10 as in force immediately before the commencement of section 4.

4—Adoption of National VET legislation

- (1) The relevant version of the National VET legislation is adopted within the meaning of section 51(xxxvii) of the *Constitution of the Commonwealth*.

- (2) The adoption has effect for a period—

- 15 (a) beginning when this section commences; and
- (b) ending at the end of the day fixed under section 5 as the day on which the adoption is to terminate,

but no longer.

5—Termination of adoption

- 20 (1) The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the adoption is to terminate.

- (2) The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 4) never to have been published.

- 25 (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).

- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

6—Referred VET matters

- 30 (1) Each of the following matters is a *referred VET matter*:

- (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;
- 35 (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.

- 5 (2) However, a referred 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 with respect to—
- (a) primary or secondary education (including the education of children subject to compulsory school education); or
 - 10 (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
15 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.

- 20 (3) In this section—

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

7—Reference of matters

- 25 (1) Each referred VET matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to such a matter by making express amendments of the National VET legislation.
- (2) The reference of a matter under subsection (1) has effect only—
- (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under
30 section 51(xxxvii) of the *Constitution of the Commonwealth*); and
 - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (3) Despite any other provision, the reference has effect for a period—
- (a) beginning when this section commences; and
 - 35 (b) ending at the end of the day fixed under section 8 as the day on which the reference is to terminate,

but no longer.

8—Termination of reference

- 40 (1) The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the amendment reference terminates.

- (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 published.
- (3) The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 7) never to have been published.
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (5) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

9—Amendment of Commonwealth law

For the avoidance of doubt, 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 any legislative powers that the Parliament of the Commonwealth has on account of a reference of any matters, or the adoption of the relevant version of the National VET legislation, under section 51(xxxvii) of the *Constitution of the Commonwealth*; and
- (b) 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 relevant version of the National VET legislation, under section 51(xxxvii) of the *Constitution of the Commonwealth*; and
- (c) the National VET legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of National VET instruments.

10—Effect of termination of amendment reference before termination of adoption of Commonwealth Acts

- (1) If the amendment reference is terminated but the adoption of the relevant version of the National VET legislation is not terminated, the termination of the amendment reference does not affect—
- (a) laws that were made under the amendment reference (but not repealed) before that termination (whether or not they have come into operation before that termination); or
- (b) the continued operation in this State of the National VET legislation as in operation immediately before that termination or as subsequently amended or affected by—
- (i) laws referred to in paragraph (a) that come into operation after that termination; or
- (ii) provisions referred to in section 9(b) or (c).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the adoption is terminated.

(3) Subsection (1) 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.

(4) For the purposes of subsection (1)—

5 (a) the laws referred to in subsection (1)(a) include National VET instruments; and

(b) the reference in subsection (1)(b) to the National VET legislation as in operation immediately before the termination of the amendment reference includes that legislation as affected by National VET instruments that have
10 come into operation before that time.

Schedule 1—Ancillary arrangements

1—Interpretation

In this Schedule, unless the contrary intention appears—

15 **Commission** means the Training and Skills Commission established under the *Training and Skills Development Act 2008*;

National VET Regulator or **Regulator** means the body established under the National VET legislation.

2—Commission may provide information and assistance to National VET Regulator

20 Despite any other Act or law, the Commission is authorised to provide to the National VET Regulator or an agency of the Commonwealth (whether at the request of the Regulator or the agency or otherwise)—

25 (a) such documents and other information in the possession or control of the Commission that may reasonably be required by the Regulator or agency in connection with the performance or exercise of its functions or powers under the National VET legislation; and

(b) such other assistance as is reasonably required by the Regulator or agency to perform or exercise a function or power under the National VET legislation.

3—Regulations

30 (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on—

(a) the enactment of this Act; or

35 (b) the transition from the application of provisions of the *Training and Skills Development Act 2008*, or any other law of the State otherwise relating to vocational education and training, to the application of provisions under the National VET legislation.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of the relevant Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

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