After the explanation for Item 29 of Schedule 1, add the following:

‘The proposed new sections 176B(2) and 176C(2) of the Education Services for Overseas Students Act 2000 do not oblige the Minister, when making legislative instruments under those provisions, to apply, adopt or incorporate matters contained in another instrument or writing. The Minister would only do so where appropriate. If the Minister did so, there would not appear to be any prospect of that creating uncertainty to the law or leading to those affected having inadequate access to its terms. This is because it is envisaged that both the NVR and the Tertiary Education Quality Standards Agency would publicise on their websites the current versions of any document incorporated by reference in the legislative instruments in question.’

After the explanation for Item 39 of Schedule 1, add the following:

‘The proposed new subclause 17(4) of the Higher Education Support Act 2003 (HESA) does not oblige the Minister to apply, adopt or incorporate matters contained in another instrument or writing, and the Minister would only do so where appropriate. If the Minister did so, there would not appear to be any prospect of that creating uncertainty to the law or leading to those affected having inadequate access to its terms.

This is because it is envisaged that for the purpose of subclause 17(2) of Schedule 1A of HESA the requirements referred to in the VET Provider Guidelines made under clause 99 of Schedule 1A of HESA would be those in either:

(a) For training organisations which are registered with the NVR - the legislative instruments regarding standards for NVR Registered Training Organisations, and regarding Fit and Proper Person Requirements, made under clauses 185 and 186 respectively of the main NVR Bill. The content of those instruments
must be agreed by MCTEE. It is envisaged that these instruments would be well publicised by the NVR on its website. The requirements in the instrument under clause 185 will be very similar to those in the Australian Qualifications Training Framework (AQTF). One of the reasons to embody the AQTF requirements in the instrument under clause 185 is so that the requirements can be made clearer and more precise in form, leading to greater certainty about their application. (The requirements in the instrument under clause 186 are not currently included in the AQTF); and

(b) For RTOs which will continue to be regulated by non-referring States - the Australian Qualifications Training Framework (AQTF), at least for the time being. It is possible that in future the non-referring States will enact mirroring legislation requiring their RTOs to comply with the requirements in the instruments under clauses 185 and 186 (as is envisaged by the current draft Intergovernmental Agreement regarding the NVR). The current AQTF is well publicised, being referred to on the home page of the training.com.au website among other places, and available in full on that website. The AQTF could only be amended with the agreement of the MCTEE. It is unlikely that the AQTF will be amended in the interim period between when the requirements in the instruments under clauses 185 and 186 come into effect, and when non-referring States enact mirroring legislation, should they enact mirror legislation. If the AQTF was amended, the only likely change would be to make the requirements in the AQTF the same as those in the instruments under clauses 185 and 186.’

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator the Honourable Chris Evans)