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HOUSE OF REPRESENTATIVES

Main Committee

BILLS

**National Vocational Education and
Training Regulator Amendment Bill 2011**

Second Reading

SPEECH

Monday, 31 October 2011

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Ley, Sussan, MP

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Ms LEY (Farrer) (16:15): I rise today to speak on the National Vocational Education and Training Regulator Amendment Bill 2011. Remarkably, this bill seeks to amend legislation that was before this House only a few months ago. At the time it was acknowledged that changes would be required to the legislation. However, amendments could not be made at the time as a result of the referral arrangements of the states.

One of the lessons we have learnt from this bill is that, when text referrals are made from states referring their powers to the federal government, committees should have an opportunity to examine the text prior to any state government passing the legislation. We would not then find ourselves in the rather odd situation where, when the minister spoke to the original bill, he foreshadowed—of course correctly and appropriately—the amendments that would need to be made, but of course New South Wales had already referred its powers to the Commonwealth. Therefore, at the time of this parliament creating the national VET regulator, we were not able to do it in one simple session and in one piece of legislation. We have had to return again to make the amendments that we see today. It is clumsy and it is messy.

The Senate Education, Employment and Workplace Relations Legislation Committee recommended that in future, when we are dealing with these COAG processes, we approach it a little differently. The original legislation saw the establishment of the national VET regulator, which is the Australian Skills Quality Authority, ASQA. This came about after agreement between the states and territories to introduce a national system of VET regulation, instead of each state's training authority assuming responsibility in that state.

The coalition supports the concept of national regulation of the VET sector, primarily because of the need for consistency and quality across the board. There are approximately 4,900 registered training organisations, or RTOs, operating in Australia, with many of these organisations operating in more than one jurisdiction. We believe that a VET qualification should be afforded the same regard as a university qualification and, for this to occur, we need to be certain that we have a regulatory framework in place that will ensure quality.

Approximately 30,000 international students undertake VET qualifications in Australia each year. Education is our fourth largest export and we need to be certain that we promote a quality product. Certainly a national regulator will assist in this. However, we were critical of the establishing legislation, and for good reason. Regrettably, this is not truly a national system. It is not even close to being a national system. Western Australia and Victoria, two of our biggest training states, have not signed up to the national regulator. Ultimately, the system in place is therefore not national and WA and Victoria are maintaining their separate regulatory systems. This will result in parallel systems operating in both those states, with RTOs that operate across borders having to comply with both systems. Those states have agreed to enacting mirror legislation. However, ongoing concerns—particularly surrounding a guarantee that state owned facilities, such as TAFEs, would be audited by state regulatory bodies—are in fact further confusing and creating anxiety about the amount of duplicating auditing activity.

In addition, Tasmania, South Australia and Queensland are yet to actually pass legislation through their parliaments. As it currently stands, according to the RTO count on the training.gov.au website as at October 2011, of the 4,909 current RTOs, 2,032 are registered with ASQA, the new VET regulator; 1,514 are registered in Queensland; 314 in South Australia; 109 in Tasmania; 556 in Victoria; and 386 in Western Australia. When the Queensland, South Australian and Tasmanian governments refer their VET regulation powers to the Commonwealth, another 1,937 RTOs will be registered by ASQA, so ultimately—at least in the short term—multiple registration arrangements will persist.

I return briefly to the topic of international education. This government aspires to have a national system of VET regulation yet has so little faith in the capacity of this regulator to deliver a quality product that it excludes VET and even non-university higher education providers from its proposed visa and work permissions reforms as a result of the recent Knight review. I have to question what message this sends to potential international students

about the quality of the education they can expect here in this country, and I ask the ministers responsible to demonstrate the faith that they should have in our VET sector and the training that is delivered by it.

Notwithstanding the fact that there have been poor providers, providers who have had poor-quality products and instances where we have had to take corrective action against our institutions, generally we have a very strong, very positive and very good VET sector in this country if we want to attract international students—and that is exactly what we should be doing. It is a complete win-win for the Australian taxpayer. The facility is able to charge the international students and there is no call on either the state or the Commonwealth dollar for entitlements funding to do that, so it is a good thing to do. It is being done all over the world, and we have to be rather careful that we do not miss the boat and find that the international student market that we might target—South-East Asia, in particular—has been catered for by other countries as far away as those in Europe and North America.

One reason for these amendments is inadequate stakeholder consultation on the part of the government in the first instance. Fortunately, a Senate committee inquiry allowed stakeholders a forum to voice their concerns. The amendments in the bill seek to remedy the key issues highlighted in the inquiry and the minister has, I believe, gone through those amendments in detail and explained very well what they are. The key amendments see the introduction of an objects clause to provide for consistency, ensuring that VET is regulated against a standards-based quality framework and has an underpinning regulatory framework while protecting students by ensuring the quality of courses.

This was a major criticism by stakeholders of the original legislation, and, whilst a common inclusion in legislation was actually omitted from this legislation by the government, there has also been the clarification of when a training provider registered with the Australian Skills Quality Authority is immune from or subject to state or territory laws. This was also a major concern identified by the Victorian and Western Australian governments, as they realised that the act overrode the law in non-referring states which were actually meant to be excluded. The proposed section 9 now itemises the circumstances when an RTO is immune from state and territory laws, regardless of whether it is operating in a referring or a non-referring state. Conversely, proposed sections 9(2) and 9(3) itemise the circumstances when an RTO will be subject to state and territory laws.

In the original legislation, ASQA had authority to amend VET courses of their own initiative. The amendments in this bill seek to clarify in which instances amendments to courses may be made. Items 15 to 16 propose amendments to section 70 which provide more specific information about when an authorised officer can use force against a thing, mainly when the person in charge of the thing has been given the first opportunity to open, move or otherwise deal with this thing or when it is not possible to give that person the opportunity to do so. This section now clarifies that this does not authorise the use of force against a person.

Additional amendments seek to allow the minister to determine appropriate qualifications for authorised officers. Under this clause, the chief commissioner must be satisfied that someone holds the requisite power and qualifications in order to take up the position. Item 34 proposes to insert new section 191(a), which will enable the legislative instruments provided in the act to refer to documents that are not legislative instruments but which are integral to the VET sector, such as trainee packages and their guidelines.

While the coalition is supportive of these amendments, there is one other concern that I would like to address. The Australian Skills Quality Authority is set to operate on a cost recovery basis. A number of registered training organisations have contacted me, anxious that the new fee structure may impact on the financial viability of their businesses. Given that the intention of the national VET regulator was to reduce complexity and ensure a level playing field, I do find this somewhat ironic. We have to be so careful that when we introduce another layer of bureaucracy and administration, another framework and a new authority—particularly one that does not actually take the place of existing bodies in all states—we do not burden the people in the field in the sector with over-regulation. I do fear that this is happening.

The Minister for School Education, Early Childhood and Youth just mentioned that ASQA would face some challenges, and that is absolutely right because, in order for every single RTO—and that includes private and public—to be audited, to be given some sort of rating and to have the ability to demonstrate to students that it has passed a certain test, that is an enormous amount of work starting from scratch. I question whether the resources that are given to this body are sufficient, because if they are not then we will just get a messy approach. We will get websites; we will get phones that are not answered by real people; and we will get a sector that is frustrated

because it cannot get the answers that it needs. I have already had the members of the sector talking to me about the way that the VET regulator is making edicts or pronouncements or talking about the policies and the steps it will take via website only and is not actually engaging in a 'human face' way with the bodies that it seeks to audit. I understand that it is early days, and I understand that you cannot necessarily blame the organisation if it is under-resourced, but I would ask the government to be careful that we do not talk up the task and fail to provide the dollars to do the job, because that would not be a good thing.

I know that people have felt that there have been students that have been burned by small, relatively new RTOs and training providers, but there are some extremely good small RTOs; they usually do a specific task in a specific area that they have specific expertise in. If they face the same costs—which will be recovered by the VET regulator—as, for example, a large regional institute with several campuses then they are going to find that they cannot afford to operate on their own, and again that is not a good thing. So, if we approach this with 'one size fits all', again we will find that we are punishing smaller private providers, and that is not, I believe, the approach that the government wants to take.

So overall I think that, while the intent behind a national regulator can be truly beneficial for the VET sector, we have fallen well short of the intended goal. It is not a national system by a long shot. However, this amending bill provides for a framework for a better system of regulation. I do acknowledge the support of the stakeholders that were finally consulted. I thank the Main Committee.