



Australian Government

Department of Industry

Regulation Impact Statement

Regulation of ‘scope of registration’ applications in vocational education and training

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1 Executive summary

The vocational education and training (VET) sector is an important part of the Australian economy. The Australian Government takes a lead role in promoting a VET system that is nationally consistent and coherent; responsive to individuals, industry and community needs; and recognised as providing quality outcomes.

The Australian Government is looking to ensure that business and industry needs are met through a modern approach to VET regulation that provides greater autonomy to high performing registered training organisations (RTOs) with a good track record of compliance with the national standards, while at the same time pursuing a rigorous regulatory approach in relation to those RTOs who deliver very poor quality training and assessment.

The Australian Skills and Quality Authority (the “Authority”) is responsible, as the national VET regulator, for ensuring that organisations who deliver nationally recognised training comply with conditions and standards for registration and provide nationally consistent training. The intention of national regulation is to provide students, employers and governments, confidence in the quality of VET outcomes delivered in Australia.

RTOs are required to apply to the Authority for a number of permissions including initial registration, re-registration and adding new courses to their offerings. To assess these applications, the Authority can undertake audits for a variety of purposes including registration audits and compliance audits which can be triggered by the identification of risky behaviour (for example through complaints). Between 1 July 2011 and 31 December 2013 the Authority had completed a total of 2858 audits. Of those audits undertaken, approximately twenty per cent of RTOs were fully compliant at point of audit. It is these highly compliant RTOs that this proposal is intending to reward.

One driver of regulatory burden for RTOs is the current requirement for all RTOs to apply to the Authority for approval to offer new courses. When new courses are approved this is considered a change to the scope of the RTO’s registration. This requirement places a similar level of administrative burden on all RTOs across the sector in relation to business decisions about what courses it will offer, irrespective of the risk to the sector or to students of any proposed change to a particular RTO’s scope.

As the regulator and its environment have matured, data has been able to be gathered that indicates that while not all applications for change of scope are

approved by the Authority, given the small numbers rejected (less than three per cent) it is arguable that the regulatory burden imposed on business by requiring an application to be made in every case is disproportionate to the risk posed. On the basis of the current risk profile of 'change of scope' applications, there is potential to reduce the impost to the VET sector associated with these types of applications and strengthen the Authority's risk-based approach to the regulation of RTOs. The proposed reforms are intended to acknowledge that the target element of the market has taken appropriate measures since the establishment of the Authority to improve their compliance.

It is proposed that the Authority will provide RTOs with the ability to make decisions about change of scope themselves under delegation from the Authority using an existing power under section 226 of the National Vocational Education and Training Regulator Act 2011 (NVETR Act) instead of having to apply to the Authority for approval and paying an application fee. This is a change in regulatory strategy, not an introduction of a new regulation.

Furthermore, utilising delegations will enable the Authority to focus more of its efforts on those RTOs with a history of providing low quality training outcomes, in line with the key priorities identified by Ministers.

Providing RTOs with a level of independence, to change their own scope of registration without an application, can be described as earned autonomy. RTOs that are recognised with this earned autonomy will have demonstrated to the Authority that they have a high level of compliance with the national standards of training providers and consistently deliver high quality training outcomes with minimal risk. Earned autonomy will reduce regulatory burden for these RTOs and ensure that they are treated in line with their strong record of compliance. It will also encourage RTOs to continue to invest resources to remain compliant in order to maintain their delegation.

After consultation with a range of stakeholders in various fora, it was apparent that there was support for addressing the current approach to applications for changes to scope of registration and that the introduction of a delegations scheme would be favoured by the VET sector and the Authority. There is precedent for a delegations scheme in the VET sector. Currently there are legacy delegations in place that provide for a small number of government RTOs to amend their scope without application. The legislation allows for delegations to be in place for this purpose.

A delegations scheme in relation to change of scope applications is estimated to bring about significant reductions in cost to RTOs. Alternatives to a delegations scheme were considered including maintaining the status quo and legislative amendment. Given the benefits of flexibility and agility that a delegations scheme affords the Authority along with the greatest reduction in cost to the VET sector, a delegations scheme is the preferred approach to reduce the current regulatory impost of the requirement for all RTOs to apply to the Authority for a change to scope of registration.

2 Background

2.1 Overview

The VET sector is comprised of more than 4,650 RTOs who deliver 1,500 qualifications, comprising more than 17,000 units of competencies from 65 training packages and a further 1,427 accredited courses to around 3 million students annually.

Australia's VET system provides people with the skills they need in the workplace, and the workforce with skilled employees who increase productivity in businesses and the economy as a whole.

While the VET system has significant strengths and international standing, and despite significant reforms over the past decade, concerns remain about:

- the responsiveness of the system to the needs of industry and employers
- the complexity of the system
- inconsistent quality and
- unnecessary regulatory burden and red tape.

It is also important to reduce unnecessary regulatory burden and red tape on highly compliant RTOs and ensure that the regulatory approach does not impose unnecessary costs whilst supporting quality outcomes for students. This will assist in increasing productivity in the Australian economy.

2.2 Australia's VET system

Prior to July 2011 state and territory authorities were responsible for regulation of VET within their jurisdiction. Under the state and territory system

all jurisdictions had agreed to a national standards framework, however the application of the standards varied between jurisdictions.

To recognise the importance of the VET sector on a national level and the need for a consistent national approach, most jurisdictions referred powers to the Commonwealth in 2011 to create a national VET regulator. As a result, the Authority was established in July 2011 under the NVETR Act. Existing registrations were transferred across to the Authority from the state and territory regulators as each jurisdiction referred powers.

The intention of the NVETR Act is to provide a regulatory framework that encourages and promotes a VET system that is appropriate to meet Australia's social and economic needs for a highly skilled population. The Authority's role is to ensure that courses in vocational education and training are delivered by organisations meeting nationally consistent industry standards so that learners and employers can have full confidence that their skills meet contemporary work needs.

The intention of the national system is to also provide some protection for students undertaking, or proposing to undertake Australian VET by ensuring the provision of quality VET. Similarly employers should be able to rely upon employees' VET qualifications as an indication of their competency, and consumers should also be able to rely upon the VET qualification of the person whose services they are purchasing. A range of risk mitigating actions is undertaken by the Authority to protect the reputation of these nationally recognised qualifications.

One of the most effective tools, the Authority uses to regulate the risks in the market is ensuring that new entrants are of an appropriate standard. Only those businesses assessed as being compliant and therefore capable of providing quality training and/or assessment to the required standard are provided with a permission to enter the market.

The Authority regulates approximately 3900 RTOs across all jurisdictions. Victoria and Western Australia did not refer powers and retain regulatory responsibility for a total of 750 RTOs who operate solely in those jurisdictions and provide training only to domestic students.

The Authority operates a permission based system for registration. A business seeking to become an RTO applies to the Authority for permission to enter the market. In addition the business seeks permission for the qualification or courses they wish to offer. The Authority approves the

business to operate in the market for a set period. Currently registration can be granted for up to five years. The RTO is required to apply for re-registration prior to this registration expiring. If during a period of registration an RTO seeks to change the qualifications or courses it would like to offer, it must apply to the Authority for approval to offer these qualifications or courses. This is considered a change of scope to the RTO's registration. At each of these stages the Authority can undertake an audit known as a registration audit, which may be a desktop audit or an on-site audit.

Between 1 July 2011 and 31 December 2013 the Authority completed a total of 2858 audits. Of those undertaken, approximately twenty per cent of RTOs were fully compliant at point of audit. As part of the audit process, RTOs are provided with an opportunity to rectify issues identified in the audit. After rectification, approximately 75 per cent of all applicants were found to be fully compliant. This leaves approximately 25 per cent of the sector with at least one non-compliance, which requires further action by the Authority, which might also include a notice to cancel, suspend or amend registration. The Authority is looking at ways in which it can reward the top twenty per cent of the sector, focus more resources on educating the middle of sector to improve their initial compliance, and free up resources to better target non-compliance.

2.3 Modern responsive regulation of the VET sector

The Authority was established to provide national consistency in the regulation of VET. The regulator operates within a standards based quality framework and applies a risk based approach to regulatory interventions into the market place.

However, the Government is committed to moving the Authority away from its current focus on an application based system towards the increased use of the regulatory intelligence and other regulatory tools that it has at its disposal to effectively build a more modern risk-based approach to the regulation of RTOs. A revised regulatory approach will enable the Authority to refine and target its regulatory activity and focus more effort on poor performing RTOs. This will address recent discussions around the burden of regulation on the VET sector. It is important to respond to the issues which have been raised in order to ensure the national framework for regulation of VET remains effective, modern and responsive.

At the inaugural meeting of the COAG Industry and Skills Council on 3 April 2014, Commonwealth, State and Territory skills ministers made a new

commitment to ensuring industry has the skilled workforce and operating environment it needs to boost the nation's productivity and increase international competitiveness, this includes, amongst other things, enhancing the responsiveness of sector regulation. This reform of scope of registration applications dovetails with this commitment.

2.4 Current regulatory requirements for scope of registration applications

The delivery of nationally recognised VET courses is regulated by the Authority under the NVETR Act. Any organisation wishing to offer nationally recognised courses must be registered, with the record of what they can and cannot offer recorded on a national database known as "training.gov.au".

In response to market changes, RTOs make a business decision to offer additional courses and cease provision in others. Under section 32 of the NVETR Act, all RTOs must apply to the Authority for approval to add or remove training products from their scope of registration. Once approval is provided by the Authority, the organisation's record on training.gov.au is updated to reflect the change and the organisation can then advertise any new approved courses to prospective students.

The change of scope application process mitigates risk through the Authority assessing applications to ensure that RTOs have the ability to train and assess in the new courses they are applying to offer. Relevant considerations assessed during the process might include, whether the RTO is significantly diversifying its course offerings, has suitable qualified trainers, access to satisfactory facilities or an adequate assessment regime in place.

Section 226 of the NVETR Act allows for delegations to RTOs to amend their scope of registration as a delegate of the regulator. Currently there are delegations in place that provide for a small number of government RTOs to amend their scope without application. These existing delegations primarily continue arrangements that existed before the national regulatory system was created. A review of these delegations was conducted in 2012. The review concluded that granting delegations is a valid and appropriate tool. For delegates it facilitates business effectiveness and responsiveness to client needs and has clearly supported the integration of quality into business operations. The review identified improvements that can be made, which are addressed in the current proposal.

The power to delegate the change the scope of registration to an RTO was explicitly provided for in the enabling legislation as it was always intended that this power would be delegated to a broader cohort who have demonstrated their high level of compliance and a capacity to manage this delegation. However, when the Authority was first established it did not have sufficient information to assess the compliance levels of RTOs. The Authority now has sufficient information to understand the nature of the market failure concerning change of scope of registration and assess the risk of increasing the number of RTOs to whom the power is delegated.

3 Problem to be addressed

The current requirement for all RTOs to apply for a change to scope of registration places an administrative burden on the sector in relation to business decisions about what courses an RTO will offer, irrespective of the risk to the sector or to students of any proposed change to an RTO's scope. The highest volume of any applications received by the Authority is in relation to change of scope, however fewer than three per cent of these applications are refused by the Authority. This low refusal rate points to a need to reassess the burden placed on the sector for this activity.

Not all applications for change of scope are approved by the Authority, but given the small numbers rejected it is arguable that the regulatory burden imposed on business by requiring an application to be made is disproportionate to the risk posed. To remain competitive, training offered by RTOs need to be responsive to market and industry needs. Currently only twenty RTOs have the ability under delegation from the Authority to amend types of applications is six weeks, the approximately 3880 remaining organisations must go through an administrative process to have the courses they offer approved and can experience delays that impact on their ability to be responsive to market changes.

Furthermore there is a business cost associated with the effort spent by the applicants in preparing supporting documentation and evidence for the application.

At the time the Authority was established it was provided with information about risk and compliance from the state and territory regulators. The data and information provided, whilst useful, was developed according to varied methods and not in a uniform format in terms of accessibility and ease of use. Therefore the Authority was unable to utilise this information consistently

across the RTO population for assessing risk. The Authority now operates in a more mature operating environment and can verify information to assess the risk associated with applications and the appropriate level of regulatory intervention required for change of scope applications. For example, when the Authority first started assessing change of scope applications, over twenty per cent of applications were subject to an audit process. Taking into account the information that the Authority has gathered after three years of operations, this level of auditing has reduced to four and a half per cent of change of scope applications. Risk factors that can trigger an audit include a significant change of direction for an RTO, compliance history, complexity or courses with high occupational health and safety risks.

As the Authority moves toward strengthening its risk based regulatory approach, the efficient allocation of its resources needs to be directed toward oversight of those activities that pose the highest risk to the integrity of the VET sector. With 97 per cent of change of scope applications approved, continuing to process change of scope applications in all cases represents an inefficient use of resources. Changes to the process of changing or updating an organisation's scope of registration would enable the Authority's resources to be targeted towards the smaller group of RTOs who offer poor quality training outcomes and subsequently pose a reputational risk to the VET system.

In addition to driving business decisions, the requirement for all change of scope proposals to be approved by the Authority imposes direct cost on business. Costs comprise the application fee which represents the cost to the regulator in processing the application, and the additional cost to business in preparing applications for change of scope. Currently the application fee to add a qualification to a provider's registration starts at \$920 for one qualification. Each additional qualification costs \$135, with units of competency costing \$260 for up to seven units, and \$135 for each unit in the same application. In addition if the application is not submitted electronically, a \$100 data entry fee is charged. In 2013-14 the Authority has collected \$2.8 million in revenue from approximately 3200 change of scope applications. Varying factors impact on the time required for the Authority to assess an application and notify the RTO of the outcome, however in most cases, applications are completed within 6 weeks.

However, delegations will not be able to be offered to all RTOs. For some RTOs the rigour of the application and approval process underpins the act of successfully preparing to add an item to their scope. For this group the

requirement to have an application is necessary to maintain a level of compliance. Other highly compliant RTOs have excellent internal systems the courses they offer without the need for an application. Whilst the average processing time for these to underpin their scope decisions and for this group the application process adds an unnecessary layer of effort for them.

4 Objectives of Government action

The immediate objective of the proposal is to implement targeted enforcement without increasing the risk the regulatory scheme is designed to address. Deregulating a component of the regulatory framework will allow highly compliant RTOs to work more efficiently in the market.

5 Options to achieve objectives

In any reform process, it is important to consider alternative courses of action when deciding how to tackle the problem at hand. This section of the Regulation Impact Statement assesses the relative merits of three options:

- Option 1 – the status quo. No Government action is taken
- Option 2 – a revised approach to delegations by the regulator
- Option 3 – legislative change

It is important to analyse the impact of each of these options according to their costs and benefits. These costs and benefits may be both qualitative and quantitative, and both are considered below.

5.1 General assumptions and parameters used for all three options

In quantifying the costs and savings associated with proposed options, the following general assumptions have been applied:

- The cost of legal advice is \$500 per hour.
- The average cost of an employee's time is \$34.20 per hour.¹
- The average cost of a manager's time is \$41.60 per hour.²

¹ According to the Australian Bureau of Statistics Publication 6306.0 Employee Earning and Hours Australia (May 2012), the average cost of a non-managerial employee is \$34.20 per hour. This publication was released 23 January 2013 and is available from the Australian Bureau of Statistics website.

- Changes will only apply prospectively.
- There are approximately 3900 RTOs regulated by the Authority.³
- It is expected that approximately 2685 businesses will potentially be eligible to participate in Options 2 and 3 but that an estimated 1294 RTOs will actually participate. The cost has therefore been assessed for this discrete number of RTOs.
- The average business currently applies to change its scope of registration twice a year.⁴
- Options 2 and 3 will be primarily rolled out over the first four years with the bulk of start-up costs incurred by the sector in this period. From year five the number of eligible participants will increase by an average of 26 RTOs each year.
- Costings have been prepared on the basis of a 10 year period from when the changes take effect.
- In comparing the cost to business for Options 2 and Option 3, the costs calculated for this group for Option 1 will be taken to be zero.
- For the purpose of comparison, those tasks that are the same across all three options have been excluded from the cost calculation, for example, record keeping.

5.2 Option 1: Status quo/take no action

5.2.1 What does this option involve?

Under this option, there would be no changes to the NVETR Act or the current regulatory approach taken by the Authority in relation to changing scope of registration.

When an RTO wishes to offer a new qualification or unit of competency they will be required to apply to the Authority for approval of their change of scope

² According to the Australian Bureau of Statistics Publication 6306.0 Employee Earning and Hours Australia (May 2012), the average cost of a manager's time is \$41.60 per hour. This publication was released 23 January 2013 and is available from the Australian Bureau of Statistics website.

³ Figure taken from the training.gov.au website 27 May 2014.

⁴ Based on data provided by the Australian Skills Quality Authority that they received 3224 applications from 1601 organisations in 2013-14.

application and pay the associated fee. Currently the application fee to add a qualification to a provider's registration starts at \$920 for one qualification. Each additional qualification costs \$135, with units of competency costing \$260 for up to seven units, and \$135 for each unit in the same application. In addition if the application is not submitted electronically, a \$100 data entry fee is charged.

Of those applications received, four and a half per cent are audited for compliance against the standards. Three per cent of applications submitted for change of scope are refused by the regulator.

If the status quo remains, current delegations that are in place that provide for TAFE colleges and state authorities to amend their scope without application will continue and this benefit will not be expanded to other RTOs in the VET sector.

5.2.2 What are the qualitative costs and benefits of this option?

Costs of this option include:

- The Authority will not respond optimally to the risks identified in relation to change of scope applications from RTOs. As a result, many RTOs will continue to be subject to unnecessary regulation that does not enhance the integrity of the VET system.
- Failure to adequately address known problems will continue unnecessary regulatory burden and potentially impact the quality of training provided by RTOs. Resources devoted to preparing change of scope applications cannot be deployed to more productive outcomes within the businesses.
- The Authority will continue to use its resources to assess these low risk applications instead of utilising its resources in higher risk areas.
- RTOs are required to use their resources to prepare an application and pay a fee to the Authority, regardless of their compliance history. The provider is also less able to be responsive to industry needs as they are required to wait for approval from the Authority, which is dependent on the number of applications the Authority has on hand at any given time.

For the community, RTOs are more limited in their responsiveness to industry demand as they are required to wait for approval from the Authority, therefore modernised training may not be provided in a timely way. In addition, there is

less incentive for RTOs to make available modernised courses; therefore training provided may not be well targeted.

Benefits of this option include:

- RTOs already understand, and are familiar with, the process currently in place.
- There is no change and RTOs do not need to train staff in new processes, nor are they required to have a staff member take on the extra role in exercising delegation and establishing processes to handle any potential conflict of interest in roles.
- For the Authority, staff will continue undertaking this work under the current arrangements; therefore there is no need allocate resources to a new role in relation to monitoring and reporting in relation to delegations or to train staff in new processes.

It may be viewed that scrutiny of all applications by the Authority will lead to more rigorous regulation, however from the Authority's experience it has proven to be unnecessary to scrutinise RTOs that have a strong history of compliance and high quality of training outcomes.

5.2.3 What are the quantitative costs and benefits of this option?

The Department of Industry together with the Authority have undertaken a detailed process to assist it in understanding the financial impact on businesses of maintaining the status quo as Option 1. To do this, the Department has utilised the Business Cost Calculator available through the Office of Best Practice Regulation.⁵ Costs of this option have been calculated at \$3917 per business per year with a total average cost for businesses over ten years of \$5.07 million each year.

General assumptions and parameters

In addition to the general assumptions and parameters identified above⁶, the following assumptions have been applied when quantifying costs associated with status quo arrangements:

⁵ Further information on the Business Cost Calculator is available from the Office of Best Practice Regulation website.

⁶ See page 12 for general assumptions used for costing all three options

- Based on current trends approximately four and a half per cent of businesses are audited in relation to a change of scope application incurring a business cost of \$1270 per audit or an average cost of \$74,000.00 to the 1294 businesses each year.
- It is assumed that business decisions to change scope will occur twice a year based on the average number of applications per provider received by the Authority in 2013-14.
- An average application fee of \$978 per application.⁷

5.3 Option 2: Delegations by the regulator

5.3.1 What does this option involve?

Under this option the Authority would revise its approach to delegations made under section 226 of the NVETR Act. There would be no legislative changes to the NVETR Act or associated standards. Currently the Authority exercises the section 226 delegation powers to twenty RTOs (TAFE colleges or state authorities) enabling those organisations to change their own scope without application.

This option provides for the Authority to expand the delegation, already available in the legislation, to other RTOs that have demonstrated high levels of compliance.

Taking this information into account, this policy option proposes a shift in regulatory approach by the Authority. The Authority would use published criteria to offer, the opportunity to have delegations in place for change of scope applications to a wider group of training organisations in recognition of their strong compliance history and high quality training outcomes.

The proposal is that the delegations will be rolled out in tranches over a period of time to RTOs that have demonstrated high levels of compliance, including:

- The RTO must have been registered for at least five years (meaning they have gone through at least one re-registration process);
- The RTO must have been found to be fully compliant in an audit (no rectification process required); and

⁷ Based on figures provided from the Authority that it has collected \$3,153, 170 for 3244 applications in 2013-14.

- The RTO must have a demonstrated and documented quality assurance system in place to manage VET regulatory functions and obligations.

The RTO would be expected to enter into a delegation agreement, including agreement to be audited to assess the delegate's performance in the exercise of the powers delegated to them under section 226 of the NVETR Act. This audit has a different purpose to the compliance audits undertaken by the regulator on the entire sector.

The delegate would also be expected to notify the Authority when changes have been made so that the Authority can update details on the national register, training.gov.au. This notification process will be automated once the Authority has implemented upgrades to its operating system which will allow delegates to directly log in and update records held by the Authority. The notification provides the Authority with visibility into course changes made by the delegate and will be monitored by the Authority to mitigate any risks that may emerge.

It is estimated that the Authority would offer the opportunity to enter into a delegation agreement with approximately 660 RTOs participating in the first year.⁸ These numbers may increase in later tranches if RTOs are able to demonstrate that they meet the criteria.

This may include the training organisation participating in a specific purpose audit to demonstrate compliance with the national standards and meet the requirement of being found fully compliant in an audit.

Once a delegate, the RTO would have the ability to amend their scope of registration without applying to the regulator. It is expected that a highly compliant RTO would apply the same level of rigour in satisfying the internal decision maker that they are able to successfully deliver the new course as they would if submitting an application to the Authority.

Stakeholder consultation has confirmed the Authority's view that delegates will continue to invest in maintaining a high level of compliance to retain their delegation as RTOs will view a delegation as recognition of their quality provision.

The Authority monitors the market as part of its approved risk framework. If it identifies an increased risk for those RTOs with delegated powers in relation

⁸ Based on figures provided from the Authority about the number of participants eligible and likely to participate each year.

to the change of scope requirement, it will modify the criteria for the delegation of powers.

For individual RTOs, a delegation agreement is signed between the RTO and the Authority. The delegated power may therefore be modified or withdrawn if the authority deems it necessary. This may be because the authority becomes aware of a new or modified risk, or the RTO is found non-compliant in an audit. The decision to withdraw or amend a delegation is not administratively reviewable, but may be subject to judicial review depending on circumstances. However if an RTO is subject to any regulatory decision in relation to non-compliance with the VET provider standards, that decision is administratively reviewable.

Under the current delegation arrangement there is an asymmetric competitive environment, this would continue under this option. However the option is designed to deliberately recognise continued excellent behaviour. By definition new entrants cannot demonstrate this. The Authority's risk information shows that those newer to the market are more likely to be non-compliant. They are also more likely to exit the market. New entrants would be aware of the regulatory framework and should design a business model based on this differing competitive advantage.

The risks that that the current system is mitigating against include the risk of RTOs offering courses outside their ability. Under this option, those RTOs that receive the delegated power would no longer be subject to external assessment prior to commencing the delivery of additional courses. This theoretically increases the risk that students, employers and society at large could be affected by VET courses that are not being taught or assessed at the required standard. This could affect the reputation of nationally recognised training contrary to the objectives of national regulation. However this risk is mitigated as the Authority still has visibility over the changes to scope being registered by the RTOs with delegation power. The Authority retains the power to audit the RTO to address any concerns. Furthermore a delegation will only be offered to highly compliant RTOs. As such the risk of a delegate adding a course to their registration which they cannot provide is considered low

5.3.2 What are the qualitative costs and benefits of this option?

Costs of this option include:

- There would be costs to the RTO in ensuring robust business practices, systems and governance arrangements that meet the requirements of the delegation agreement are in place. However given that the RTOs offered to enter into a delegation agreement are highly compliant it is likely that they will have appropriate similar systems already in place.
- For RTOs with compliance issues, there is still a requirement for them to apply to the Authority for changes to their scope. While this is a cost to these businesses, this is a benefit to the community as it protects the quality of the training they receive.
- For the Authority, there will be resourcing efforts required to educate their staff in the new processes as well as educating the sector on the new policy and requirements. In addition, rigorous monitoring and reporting systems will need to be in place; however this can be facilitated through ICT capability.
- It is expected that the first tranche of participants will have robust governance processes in place with little additional costs. It is possible that some organisations in the later tranches will look to update and/or enhance their governance arrangements to meet the requirements of a delegation agreement.

These costs are discussed further below where a quantitative analysis of the proposed changes is conducted. However given the limitations of data and information available, some costs are difficult to quantify.

Benefits of this option include:

- The power to delegate the ability to amend a scope of registration is already present in the NVETR Act.
- A review of the existing delegations has been undertaken. The review concluded that granting delegations is a valid and appropriate tool. For the Authority, it demonstrates efficiency and effectiveness within a risk based regulatory approach. For delegates it facilitates business effectiveness and responsiveness to client needs and has clearly supported the integration of quality into business operations.
- Previous experience has shown that RTOs value the delegated power. Extending it would therefore be a strong motivator for continued compliance from the RTO; because if they do not maintain full compliance their delegation agreement may be reviewed.

- Delegates will no longer be required to allocate resources to preparing applications for the Authority or paying an application fee. This means greater certainty of business operations, efficiency and that duplicate and unnecessary business costs are removed for highly compliant RTOs.
- Overall the sector will have an improved ability to respond to industry needs and market changes.
- This option provides a more modern regulatory approach rather than a process related applications based approach. If the RTO is highly compliant, a delegation is granted which acknowledges that they are high performing. In addition to having this earned autonomy, this provides a marketing tool to attract students.
- If granted a delegation, this option provides RTOs with a degree of business planning certainty.
- RTOs will build internal capability, good business processes and accountability for decision making.
- For the Authority, this option maximises its utilisation of the provisions that already exist in the NVETR Act and the arrangements have been tested and reviewed. It also better utilises the information that the Authority has available to the best advantage of the RTO.
- If risks emerge in the market, the Authority is able to be flexible and responsive and change the characteristics for granting delegation and remove delegations where necessary.
- There is not a clear business case that the Authority could undertake the regulatory functions in relation to change of scope of registration better than its delegates without a disproportionate assignment of resources. Taking into account the changing market conditions the Authority needs to be flexible and responsive in relation to managing the risk associated with change of scope applications.
- With RTOs having the ability to be more responsive to industry, more relevant and modern training will be provided in a more timely way and there is an incentive for training providers to modernise the courses they offer in response to industry needs. Training will be better targeted and there will be better training outcomes. As a result students will be provided with more current skills for employment.

After almost three years of operation the regulator is now operating in a more mature regulatory environment and has more reliable information available as to the compliance record and risk factors applicable to both delegations and types of applications, as well as individual RTOs.

A move to a level of self-regulation based on a modern regulatory approach acts to build the maturity of the sector. The set of new delegations by the Authority recognises and rewards quality training organisations, and will enable these identified low risk organisations the opportunity to make changes to their change of scope in response to industry needs without the need for an application or the involvement of the Authority, other than to notify the Authority of the change, once made.

5.3.3 What are the quantitative costs and benefits of this option?

The Department of Industry together with the Authority have undertaken a detailed process to assist it in understanding the financial impact on businesses of adopting Option 2. To do this, the Department has utilised the Business Cost Calculator available through the Office of Best Practice Regulation.⁹ Costs of this option have been calculated at \$1,352 per business per year with a total average cost for businesses over ten years of \$1.75 million each year. This does not take into account costs that are the same across all options.

Taking the calculated costs of Option 1 as zero, Option 2 represents savings of \$2,565 per business per year when compared to Option 1, or \$3.32 million total average for the 1294 businesses over ten years. The below discussion relates to some of the working assumptions adopted in the process of quantifying compliance costs (and compliance savings) flowing from the proposed changes.

General assumptions and parameters

In addition to the general assumptions and parameters identified above¹⁰, the following assumptions been applied when quantifying costs associated with Option 2:

- Delegation agreements will be for a period of five years.

⁹ Further information on the Business Cost Calculator is available from the Office of Best Practice Regulation website.

¹⁰ See page 12 for general assumptions used for costing all three options.

- Delegations will be rolled out in bulk over the first four years, with the majority of eligible providers participating by year four. For those businesses not yet participating the cost of remaining in status quo has been included in the total costs for Option 2 each year, For example in Year One, 660 businesses were calculated under Option 2 with the remaining 634 calculated using status quo costs.
- Costings have been prepared on the basis of a 10 year period from when the changes take effect.

Considerations and assumptions underpinning certain changes which will result in a net compliance cost increase

The following assumptions have also been applied when quantifying net compliance cost increases associated with Option 2:

- It is assumed that providers will seek legal advice when considering whether to enter into a delegation agreement.
- It is assumed that refresher legal advice will be sought the year a provider is due to renew the delegation agreement.
- A discrete number of providers (approximately 37 per cent of participants) may be required to participate in a specific purpose compliance audit before being able to enter into a delegation agreement. This has been estimated at a one-off start-up cost to this small group of providers of \$1270 or an average annual total of \$608,000 for all affected businesses over the first four years.
- It is expected that there will be staff training requirements to cover off the new roles and responsibilities that arise out of the delegation agreement. The Authority is proposing to offer three one hour webinars for this purpose.
- The RTO will also be required to utilise resources for the exercising of the delegation, which is effectively undertaking the work the Authority currently does to satisfy itself that the requirements are met. This has been estimated at costing the sector an average of \$193 each year which equates to six hours of managerial input into decision making each year.
- A small percentage of providers (approximately two per cent each year) will be required to participate in a specific compliance audit. This audit is specifically in relation to the RTO's ability to comply with the delegation

agreement, and may include the assessment of compliance with the Standard for VET Regulators, as the RTO is acting as a delegate for the VET regulator. This audit is for a different purpose to those audits ordinarily undertaken against the VET provider standards as part of the regulator's compliance activity. It is estimated that the delegation audit will cost affected businesses \$6000 per audit, with the estimated total cost to business over a ten year period being \$1.3 million.

- Given that delegates are standing in the shoes of the regulator when making decisions, it is appropriate that the regulator undertake periodic audits of participants to ensure that the level of compliance is maintained and it is appropriate for business to pay those costs for the delegation audits.
- Based on the business cost calculator there will be a net savings for the 1294 businesses of \$634, 720 over a ten year period due to reduced change of scope compliance audit costs compared to status quo (Option 1).

Considerations and assumptions underpinning changes which will result in a net compliance cost saving

- Whilst the provider will still need to satisfy itself that the relevant requirements have been met prior to making the decision to change scope of registration, it is estimated that there will be a net average savings to business of \$4.2 million each year through a reduced interaction with the regulator about change of scope applications.
- This includes a savings of fees associated with making a change of scope application, currently an average of \$978 per application, representing an average saving of \$2.5 million for all affected businesses each year.

5.3.4 Conclusions regarding compliance costs

In comparing the cost to business for Options 2 and Option 3, the costs calculated for this group for Option 1 will be taken to be zero. The costs calculated for Option 2 therefore translate as a net saving of \$3.32 million each year, or an average of \$2565 per provider per annum. For the average provider offering less than four qualifications, this is a significant saving. Furthermore the benefit of a significant reduction in red tape is valuable in freeing up resources of the training providers to focus on delivery of training.

The following table sets out the result of the costing analysis undertaken by the Department of Industry in relation to the proposal. It shows that, based on the costs that can be quantified, there will be a net annual compliance saving to the VET sector of \$3.32 million.

Table 1: Option Two - delegation

| Regulatory Burden and Cost Offset (RBCO) Estimate Table | | | | |
|---|----------|-------------------------|-------------|------------|
| Average Annual Compliance Costs (from Business as usual) | | | | |
| Costs (\$m) | Business | Community Organisations | Individuals | Total Cost |
| Total by Sector | -\$3.32 | n/a | n/a | -\$3.32 |
| Cost offset (\$m) | | | | |
| Agency | \$n/a | n/a | n/a | \$n/a |
| Within portfolio | n/a | n/a | n/a | n/a |
| Outside portfolio | n/a | n/a | n/a | n/a |
| Total by Sector | \$n/a | n/a | n/a | \$n/a |
| Proposal is cost neutral? <input checked="" type="checkbox"/> Yes | | | | |
| Proposal is deregulatory? <input checked="" type="checkbox"/> yes | | | | |
| Balance of cost offsets -\$3.32m per annum | | | | |

5.4 Option 3: Legislative change

5.4.1 What does this option involve?

This option would involve making a number of legislative changes to the NVETR Act to allow for applications by RTOs for assessment against prescribed criteria. Successful applicants would then have the ability to change their scope of registration without applying to the regulator.

Section 32 of the NVETR Act as currently enacted, requires RTOs to apply to the regulator for change of scope applications. This proposal would involve making amendments to the NVETR Act to allow RTOs to apply for assessment against the prescribed criteria. Successful applicants would have the ability to change their scope of registration without having to apply under section 32 of the NVETR Act. Some applicants may have to undergo a specific purpose compliance audit to demonstrate that they meet the criteria. It is proposed a legislative instrument is used as the mechanism that specifies

the criteria which must be met by a successful applicant. The making of a legislative instrument by the Minister, on the advice of the Authority allows for the instrument to be updated as and when needed, in response to the Authority's assessment of risk at the time the instrument is made.

The criteria for offering autonomy would be similar to the criteria under Option 2, namely:

- The training organisation must have been registered for at least five years (meaning they have gone through at least one re-registration process);
- The training organisation must have been found to be fully compliant in an audit (no rectification process required); and
- The training organisation must have a demonstrated and documented quality assurance system in place to manage VET regulatory functions and obligations.

The legislation would also require amending to enable the regulator to undertake spot checks as and when appropriate in relation to the exercise of the change of scope function the training organisation is exercising. Amendments would also be required to address the situation where an approved RTO no longer meets the requirements. It is expected that the legislation would be amended to provide that decisions made under this option would be subject to administrative review.

Under the current delegation arrangement there is an asymmetric competitive environment, this would continue under this option. However the option is designed to deliberately recognise continued excellent behaviour. By definition new entrants cannot demonstrate this. The Authority's risk information shows that those newer to the market are more likely to be non-compliant. They are also more likely to exit the market. New entrants would be aware of the regulatory framework and should design a business model based on this differing competitive advantage.

The risks that that the current system is mitigating against includes the risk of RTOs offering courses outside their ability. Under this option, those RTOs that are approved would no longer be subject to external assessment prior to commencing the delivery of additional courses. This theoretically increases the risk that students, employers and society at large could be affected by VET courses that are not being taught or assessed at the required standard. This could affect the reputation of nationally recognised training contrary to the objectives of national regulation. However this risk is mitigated as the

Authority still has visibility over the changes to scope being registered by the approved RTOs. The Authority retains the power to audit the RTO if the change registers highly on their risk framework. Furthermore only highly compliant RTOs will be approved by the Authority. As such the risk of an approved RTO adding a course to their registration which they cannot provide is considered low.

5.4.2 What are the qualitative costs and benefits of this option?

Costs of this option include:

- A number of amendments would need to be made to the NVETR Act. This could be perceived as excessive, given the Act already has a provision which would achieve the objective of the government action.
- Under this option there is no certainty that the application would be successful, this is a matter for final approval of the Authority. Therefore RTOs currently with the ability to amend their scope under the current delegations system would need to reapply.
- There would be costs to the RTO in ensuring robust business practices, systems and governance arrangements are in place that meet the legislative requirements. However given that the RTOs are approved because they are highly compliant it is likely that they will have appropriate similar systems already in place.
- For RTOs with poor compliance history, there is still a requirement for them to apply to the Authority for changes to their scope. While this is a cost to these businesses, this is a benefit to the community as it protects the quality of the training they receive.
- For the Authority, there will be resourcing efforts required to educate their staff in the new processes as well as educating the sector on the new legislative requirements. These will include the application and probable appeal functions that would be associated with a legislative change. This will place additional costs more broadly on those RTOs that appeal, and the Authority to implement and maintain. In addition, rigorous monitoring and reporting systems will need to be developed; however this can be facilitated through ICT capability.
- This option provides less flexibility to the Authority to respond to emerging risks either at the RTO level or more broadly.

- There would be delay in implementing this option to allow for drafting resources to be allocated, the amendments drafted and for the proposed legislative changes to progress through Parliament. Further delays would be experienced if the Bill is referred to Committee for consideration. These delays would provide uncertainty for the Authority, Government and RTOs and require RTOs to continue to apply for change of scope under the current regime, which results in a lack of responsiveness to industry needs for highly compliant RTOs.

Benefits of this option include:

- Overall the sector will have an improved ability to respond to industry needs and market changes.
- Similar to Option 2, this option provides a modern regulatory approach rather than a process related applications based approach. If the provider meets the requirements they are granted autonomy to undertake change of scope to their registration, which acknowledges that they are high performing. In addition to having this earned autonomy, this provides a marketing tool to attract students.
- RTOs will build internal capability, good business processes and accountability for decision making.
- Again, similar to Option 2, this option also utilises the compliance and risk information that the Authority has available to the advantage of the RTO.
- If risks emerge in the market, the Authority will have limited flexibility to respond to those risks.
- There is not a clear business case that the Authority could undertake the regulatory functions in relation to change of scope of registration better than RTOs with this authority without a disproportionate assignment of resources. Taking into account the changing market conditions the Authority needs to be flexible and responsive in relation to managing the risk associated with change of scope applications.
- With RTOs having the ability to be more responsive to industry, more relevant and modern training will be provided in a more timely way and there is an incentive for training providers to modernise the courses they offer in response to industry needs. Training will be better targeted and there will be better training outcomes. As a result students will be provided with more current skills for employment.

- This option is more transparent as the criteria are specified in a legislative instrument.

5.4.3 What are the quantitative costs and benefits of this option?

The Department together with the Authority have undertaken a detailed process to assist it in understanding the financial impact on businesses of adopting Option 3. To do this, the Department has utilised the Business Cost Calculator available through the Office of Best Practice Regulation.¹¹ Costs of this option have been calculated at \$2,748 per business per year with a total average cost for businesses over ten years of \$3.55 million each year. This does not take into account costs that are the same across all options.

Taking the calculated costs of Option 1 as zero, Option 3 represents a net savings of \$1, 169 per business per year, or \$1.51 million total average for the 1294 businesses over ten years.

The below discussion relates to some of the working assumptions adopted in the process of quantifying compliance costs (and compliance savings) flowing from the proposed changes.

General assumptions and parameters

In quantifying the costs and savings associated with changes to the NVETR Act, the following general assumptions have been applied:

- Changes to the NVETR Act will only apply prospectively.
- Participants will be required to apply every five years.
- The bulk of eligible participants will be included in the first four years. For those businesses not yet participating the cost of remaining in status quo has been included in the total costs for Option 3 each year, For example in Year One, 660 businesses were calculated under Option 3 with the remaining 634 calculated using status quo costs.

Considerations and assumptions underpinning certain changes which will result in a net compliance cost increase

The following assumptions have also been applied when quantifying net compliance cost increases associated with Option 3:

¹¹ Further information on the Business Cost Calculator is available from the Office of Best Practice Regulation website.

- The RTO would be required to apply to the Authority and pay a fee. In applying, resources would be required to prepare an application to the Authority for consideration.
- It is assumed that providers will seek legal or professional advice when considering whether to apply.
- It is assumed that refresher advice will be sought the year a provider is due to reapply.
- A discrete number of providers (approximately 37 per cent of participants) may be required to participate in a specific purpose compliance audit before being eligible to apply. This has been estimated at a one-off start-up cost to this small group of providers of \$1270 or a total of \$608,000 for all affected businesses.¹²
- It is expected that there will be staff training requirements to cover off the new roles and responsibilities for participants. Training costs are relatively minimal as the Authority plans to develop webinars to assist with RTO staff training. The Authority is proposing to offer three one hour webinars for this purpose.
- The RTO will also be required to utilise resources for the exercising of the decision making function, which is effectively undertaking the work the Authority currently does to satisfy itself that the requirements are met. This has been estimated at costing the sector an average of \$193 each year which equates to six hours of managerial input into decision making each year.
- A small percentage of providers (approximately two per cent each year) will be required to participate in an audit of their ability to comply with the legislative requirements. It is estimated that this will cost affected businesses \$6000 per audit or average of \$133,000.00 to business each year over a ten year period.
- There will be a five yearly application process for which the providers will be required to prepare for. This is estimated to cost all business an average of \$315,000.00 each year over the ten year period.

¹² This cost has been estimated as the same as for Option 2 – delegation by the regulator.

- In addition to staffing costs for business, it is estimated that there will be additional application fees of \$6000 per application, or an average of \$1.5 million each year to whole of business.
- As RTOs must apply to be assessed, it is expected that some RTOs will not be able to accurately self-assess themselves against the threshold criteria for receiving the power. As such the Authority will need to assess more applications and respond to those that are not suitable. These extra costs would be recovered through application fees.
- Given that the approved RTOs are standing in the shoes of the regulator when making decisions, it is appropriate that the regulator undertake periodic audits of participants to ensure that the level of compliance is maintained and it is appropriate for business to pay those costs for these governance audits.
- Based on the business cost calculator there will be a net savings for the 1294 businesses of \$634, 720 over a ten year period due to reduced change of scope compliance audit costs compared to status quo (Option 1).

Considerations and assumptions underpinning changes which will result in a net compliance cost saving

- Whilst the provider will still need to satisfy itself that the relevant requirements have been met prior to making the decision to change scope of registration, it is estimated that there will be a net average savings to business of \$1.51 million each year through a reduced interaction with the regulator about change of scope applications.
- This includes a savings of fees associated with making a change of scope application, currently an average of \$978 per application, representing a saving of \$2.5 million for all affected businesses each year.

5.4.4 Conclusions regarding compliance costs

In comparing the cost to business for Options 2 and Option 3, the costs calculated for this group for Option 1 will be taken to be zero. The cost calculated for Option 3 therefore translates as a net saving of \$1.51 million each year, or an average of \$1169 per provider per annum. The following table sets out the result of the costing analysis undertaken by the Department of Industry in relation to the proposal. It shows that, based on the costs that

can be quantified, there will be a net annual compliance saving to the VET sector of \$1.51 million.

Table 2: Option Three – Legislative change

| Regulatory Burden and Cost Offset (RBCO) Estimate Table | | | | |
|---|----------|-------------------------|-------------|------------|
| Average Annual Compliance Costs (from Business as usual) | | | | |
| Costs (\$m) | Business | Community Organisations | Individuals | Total Cost |
| Total by Sector | -\$1.51 | n/a | n/a | -\$1.51 |
| Cost offset (\$m) | | | | |
| Agency | \$n/a | n/a | n/a | \$n/a |
| Within portfolio | n/a | n/a | n/a | n/a |
| Outside portfolio | n/a | n/a | n/a | n/a |
| Total by Sector | \$n/a | n/a | n/a | \$n/a |
| Proposal is cost neutral? <input checked="" type="checkbox"/> Yes | | | | |
| Proposal is deregulatory? <input checked="" type="checkbox"/> no | | | | |
| Balance of cost offsets -\$1.51m per annum | | | | |

6 Consultation

Extensive consultation has been undertaken with the Authority to ensure that the proposed options are viable and can be appropriately enabled. The Authority was also consulted in relation to the data and information required for the Business Cost Calculator.

A review of existing delegations that the Authority already has in place was undertaken in 2012. All current delegates expressed strong support for continuing to have delegations and believe that delegations enhance their business efficiency and market competitiveness. The review also consulted with the two other VET regulators, the Western Australian Training Accreditation Council and the Victorian Registration and Qualifications

Authority. These regulators indicated that they see delegations as a valid tool when there are appropriate safeguards in place.

Extensive consultation has been conducted with those RTOs that currently have delegation. This commenced in August 2013 with notification letters outlining draft principles for the development of a model for RTO delegations, based on the existing delegation arrangements, but improved through the findings of the delegation review. Consultation meetings led by Dr Dianne Orr, ASQA Commissioner for Compliance, was held from September to December 2013 with senior management staff of state VET authorities and TAFE institutes. In December 2013 it was agreed that all current delegations, in place when the Authority commenced in July 2011, would be extended to all current delegates to allow further time for consultation and development of the new arrangements. In February 2014 current delegates were provided with the details of the Authority's delegation model and asked to consider the draft Delegations Agreement. All existing delegates were happy with the agreement and have signed these agreements in March.

Detailed consultation has been undertaken as part of the Government's VET Reform agenda. The issue of change of scope has been identified as needing change through these consultations. Consultations were conducted throughout Australia and included representatives from industry, RTOs, Industry Skills Councils and Australian Apprenticeships Centres. A Ministerial Roundtable, seven workshops and a number of online workshops were held. In all, there were over 3,750 engagements with stakeholders in the consultation process.

In addition, an independent process review of the Authority has recently been undertaken. This review included a survey of RTOs to identify any areas where providers were experiencing issues or concerns in relation to the Authority. The survey was sent to a randomly selected sample of 800 RTOs that had interactions with the Authority. While the survey did not specifically ask about whether the RTO would benefit from delegations, the survey did ask about the change of scope process undertaken with the Authority. Of those surveyed 302 had change of scope applications processed by the Authority. Providers raised concern about the change of scope fees, identifying that they were a barrier to the RTO adding units of scope to their registration. One quarter of these RTOs were required to supply additional information to the Authority about their change of scope application and there were many comments in relation to the processing timeframes being too high for change of scope applications.

Relevant peak bodies have also been consulted as part of the VET Reforms, the Authority's process review, as well as directly to discuss their views on specific VET reforms that involve the work of the Authority. Most of the issues RTOs raised through the process review survey and through the VET Reform consultations were also identified as key issues by the peak bodies. The peak bodies are in support of RTOs that are highly compliant being given some level of delegation, and believe change of scope is a reasonable first step.

The VET peak bodies include:

- Australian Chamber of Commerce and Industry (ACCI) - the peak council of business organisations
- Australian Council of Private Education Training (ACPET) - the national industry association and peak body for private education and training providers
- Community Colleges Australia (CCA) – the peak body that represents community owned, not-for-profit education and training providers
- English Australia – the peak body and professional association for the English Language Intensive Course for Overseas Students (ELICOS) sector
- TAFE Directors Australia (TDA) – the association of Directors (Chief Executive Officers) of Institutes of Technology and Technical and Further Education
- Enterprise Registered Training Organisation Association (ERTO) – the national association representing business enterprises operating RTOs.

On 17 February 2014, the Authority conducted a Delegations Workshop as part of their ongoing 'Provider Roundtable' consultation program. The Authority's Commissioners met with TDA, ACPET and CCA to discuss the development of the Authority's proposed model for delegations. A Department of Industry representative also attended this meeting to hear the views of the peak bodies regarding the current delegations process and the Authority's proposed process. The peak bodies were strongly supportive of expanding the delegations model beyond the current delegates to high performing RTOs with a strong compliance record and contributed ideas to inform the development of the proposed preferred model. ERTOA were invited to the workshop, however were unable to attend. All peak bodies were also involved

in delegation discussions at two prior meetings as part of the Authority's regular Provider Roundtable meetings.

7 Conclusion and recommended option

The Department's preferred option is for the regulator to implement Option 2. Option 1 would fail to meet the Government's overriding objectives. It would not:

- Recognise and reward compliance
- Reduce unnecessary red tape and cost for the sector
- Enable business to be responsive to the needs of industry and employers

Option 3 would partially address some of the Government's objectives through allowing approved businesses to be more responsive to industry and employer needs. However whilst it potentially would reduce costs to business, Option 3 is not deregulatory in nature, requiring amendments to legislation and the development of a legislative instrument to be implemented. This may be seen as excessive given the objective can be achieved under option 2 without legislative amendment. The timely implementation of Option 3 is also dependant on legislative processes. Furthermore Option 3 introduces an application process which will result in the regulator's resources being redirected to this new function, rather than towards non-compliance as intended by Government.

Option 2 meets all of the Government's objectives.

Industry's support for Option 2 is consistent with the desire to reduce red tape and complexity for the sector whilst rewarding highly compliant businesses. Option 2 is deregulatory and turns on a business arrangement (by way of a delegation agreement) between the regulator and provider that recognises and rewards highly compliant behaviour. Furthermore Option 2 would free up regulatory resources to better target non-compliance of poor performing providers, as requested by Industry. Option 2 also represents more savings for business compared to Option 3 and the status quo (Option 1).

It is recommended that Option 2 is progressed as described in Part 5.2.

8 Implementation and review

The implementation of Option 2, as described in Part 5.2, will be achieved through a communication strategy initiated by the Authority, aimed at informing the sector on the criteria it will be using when considering whether to enter into new delegation agreements. Eligible providers will be approached by the regulator as to whether they are interested in entering into a delegation agreement.

It is intended that there will be a period of ongoing review where the Authority will continue to consult with delegates about the effectiveness of the delegation agreement and the impact on business through participating as a delegate.