

Queensland



# **TRAINING AND EMPLOYMENT ACT 2000**

**Act No. 23 of 2000**



Queensland



**TRAINING AND EMPLOYMENT ACT  
2000**

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Queensland



## **Training and Employment Act 2000**

### **Act No. 23 of 2000**

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**An Act to provide for training and employment, and for other purposes**

*[Assented to 27 June 2000]*

The Parliament of Queensland enacts—

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTION

#### Short title

1. This Act may be cited as the *Training and Employment Act 2000*.

#### Commencement

- 2.(1) Schedule 1, section 15 is taken to have commenced on 1 July 1999.
- (2) Schedule 1, section 77 commences, or is taken to have commenced, on 1 July 2000.
- (3) The remaining provisions of this Act commence on a day to be fixed by proclamation.

#### Objectives

3. The objectives of this Act are—
  - (a) to establish a system for the effective and efficient provision of high quality vocational education and training to meet the immediate and future needs of industry and the community; and
  - (b) to provide mechanisms for employees, employers, associations of employees or employers and the community to advise government on vocational education and training needs and priorities to meet those needs; and
  - (c) to support the continued development of high quality training by and within industry; and
  - (d) to facilitate the provision of vocational education and training that is relevant to employment and encourages the generation of

employment opportunities; and

- (e) to regulate the registration of training organisations within the State; and
- (f) to meet the State's obligations under national training arrangements about vocational education and training.

### **Act binds all persons**

**4.(1)** This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

**(2)** However, nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

### **Notes in text**

- 5.** A note in the text of this Act is part of the Act.

## **PART 2—DEFINITIONS AND BASIC CONCEPTS**

### **Definitions—the dictionary**

- 6.** The dictionary in schedule 3 defines particular words used in this Act.

### **What is an “apprenticeship”**

**7.** An “**apprenticeship**” is employment based training declared by the council to be an apprenticeship.

*Note—*

The declaration is made under section 183 (Declaring apprenticeships or traineeships).

**What is a “traineeship”**

**8.** A “**traineeship**” is employment based training declared by the council to be a traineeship.

*Note—*

The declaration is made under section 183 (Declaring apprenticeships or traineeships).

**Who is an “apprentice”**

**9.(1)** An employee who is being trained in an apprenticeship is an “**apprentice**” if—

- (a) an apprenticeship contract for the apprenticeship has been signed by the parties to the contract, whether or not the contract has been registered under this Act; or
- (b) the probationary period for the apprenticeship has not ended.

*Note—*

Section 52(3) states who are the parties to the contract.

**(2)** However, an employee can not be an apprentice if the employee’s employer has been declared a prohibited employer and the employment contravenes the declaration.

*Note—*

An employer may be declared to be a prohibited employer under section 83.

**Who is a “trainee”**

**10.(1)** An employee who is being trained in a traineeship is a “**trainee**” if—

- (a) a traineeship contract has been signed by the parties to the contract, whether or not the contract has been registered under this Act; or
- (b) the probationary period for the traineeship has not ended.

*Note—*

Section 52(3) states who are the parties to the contract.

(2) However, an employee can not be a trainee if the employee's employer has been declared a prohibited employer and the employment contravenes the declaration.

*Note—*

An employer may be declared to be a prohibited employer under section 83.

### **What is an “apprenticeship contract”**

**11.(1)** An “**apprenticeship contract**” is a contract in the approved form for the training and employment of a person in an apprenticeship.

(2) A training plan is not part of an apprenticeship contract.

### **What is a “traineeship contract”**

**12.(1)** A “**traineeship contract**” is a contract in the approved form for the training and employment of a person in a traineeship.

(2) A training plan is not part of a traineeship contract.

### **What is a “training plan”**

**13.(1)** A “**training plan**” for an apprentice or trainee is a document stating—

- (a) the training to be delivered to the apprentice or trainee by the apprentice's or trainee's employer; and
- (b) if the apprentice or trainee is also to be trained by a supervising registered training organisation—
  - (i) the training to be delivered to the apprentice or trainee by the organisation; and
  - (ii) the maximum period of the training to be delivered by the organisation during the apprenticeship or traineeship; and
- (c) the qualification or statement of attainment to be issued to the apprentice or trainee on completing the training; and

(2) A **“training plan”** for a student under a vocational placement is a document stating the training to be delivered to the student during the placement by a placement person.

### **What is a “registered training organisation”**

**14.** A **“registered training organisation”** is a training organisation that is registered to provide—

- (a) training services; or
- (b) recognition services.

### **What is a “supervising registered training organisation”**

**15.** A **“supervising registered training organisation”** is a registered training organisation that—

- (a) delivers training to an apprentice or trainee under a training plan for the apprentice or trainee that requires the training to be delivered by a registered training organisation; and
- (b) when satisfied the apprentice or trainee has completed the training required to be completed under the plan, issues the qualification or statement of attainment stated in the plan.

### **What is a “vocational placement scheme”**

**16.(1)** A **“vocational placement scheme”** is a scheme stating the particulars mentioned in subsection (2) (the **“relevant particulars”**) for a course that—

- (a) is to be offered by a registered training organisation; and
- (b) requires a student undertaking the course to complete a vocational placement.

(2) The relevant particulars are—

- (a) the qualification or statement of attainment to be issued to a student completing the course; and



- (b) the skills and knowledge to be attained by a student during the placement and their relevance to the qualification or statement of attainment; and
- (c) the duration of the placement.

### **What is a “vocational placement”**

**17.(1)** A “**vocational placement**”, for a student, is the placement under a vocational placement agreement of the student in a work environment with a placement person who agrees to deliver to the student the training stated in the training plan for the placement.

**(2)** The object of the placement is to give the student practical training and experience that is required under, and is an assessable part of, the student’s course.

## **CHAPTER 2—TRAINING ORGANISATIONS**

### **PART 1—REGISTRATION OF TRAINING ORGANISATIONS**

#### *Division 1—Applying for registration*

#### **Applying for registration**

**18.(1)** A training organisation offering vocational education and training may apply to the council, in the approved form, for registration.

**(2)** The council may register the organisation only if the council is satisfied the organisation—

- (a) meets an approved guideline for registration; and
- (b) is a suitable organisation for registration.

**Council to keep register**

**19.(1)** The council must keep a register of the training organisations registered under this part.

**(2)** The register may be kept in any way the council thinks appropriate.

**Suitability for registration**

**20.** In deciding whether a training organisation is a suitable organisation for registration, the council must have regard to the following—

- (a) if the organisation is an individual, the individual's character;
- (b) the organisation's business reputation;
- (c) the organisation's current financial position and financial background;
- (d) whether the organisation has, or has access to, the appropriate resources and services to deliver the training or recognition services for which the registration is sought;
- (e) whether the organisation has been convicted of an indictable offence or an offence against this Act or the former VETE Act;
- (f) whether the organisation has been refused registration under a corresponding law.

**How council may deal with application**

**21.(1)** The council may register, or refuse to register, a training organisation.

**(2)** If the council decides to grant the registration, the council must promptly—

- (a) give the organisation—
  - (i) a certificate of registration stating any condition to which the registration is subject; and
  - (ii) if the registration is subject to a condition, an information notice; and
- (b) include the organisation on the register.

(3) If the council decides not to grant the registration, the council must promptly give the organisation an information notice.

### **Type of registration**

22. The council may register a training organisation to provide—

- (a) the training services stated in its registration; or
- (b) the recognition services stated in its registration.

### **Registration conditions**

23.(1) Registration of a training organisation may be subject to reasonable conditions imposed by the council.

(2) A registered training organisation must not contravene a condition stated in its certificate of registration.

Maximum penalty for subsection (2)—80 penalty units.

### **Registering training organisations registered under corresponding law**

24.(1) The council must include a training organisation on the register of registered training organisations if the organisation—

- (a) is registered as a training organisation under a corresponding law; and
- (b) notifies the council in writing that it intends to provide, in Queensland, a service stated in the organisation's registration under the corresponding law.

(2) The registration may be subject to reasonable conditions imposed by the council.

(3) However, the council may refuse to include the organisation on the register if—

- (a) the organisation's registration under the corresponding law is currently suspended; or

- (b) the council decides, by fair procedure prescribed under a regulation, that there is a reasonable ground for refusing the registration.

(4) The council must promptly give the organisation an information notice if the council—

- (a) imposes a condition on the registration; or
- (b) refuses to include the organisation on the register.

(5) If the council includes the organisation in the register—

- (a) the organisation is taken to be registered under this part; and
- (b) the registration must, to the greatest possible extent and subject to a condition imposed under subsection (2), be the same as the registration under the corresponding law.

(6) However, the registration under subsection (5) does not authorise the organisation to do anything that can not be authorised by registration under this Act.

(7) If the organisation's registration under the corresponding law is amended, suspended, cancelled or expires ("**significant event**"), from the day the significant event happens the registration under this Act is—

- (a) if the significant event is an amendment—amended in the same way to the greatest possible extent, subject to any condition imposed by the council under subsection (2); or
- (b) if the significant event is a suspension—suspended in the same way to the greatest possible extent; or
- (c) if the significant event is a cancellation—cancelled; or
- (d) if the significant event is expiry—expired.

(8) If a significant event happens, the organisation must immediately notify the council of the event in writing unless the organisation has a reasonable excuse.

Maximum penalty for subsection (8)—80 penalty units.

**Training organisation registered under corresponding law not to provide service unless registered**

**25.(1)** This section applies if a training organisation is registered as a training organisation under a corresponding law.

(2) The organisation must not provide or offer to provide, in Queensland, a service stated in its registration under the corresponding law unless the organisation is included on the register of registered training organisations under section 24.

Maximum penalty—80 penalty units.

**Term of registration**

**26.(1)** A training organisation may be registered for an initial term of not longer than 5 years.

(2) The registration may be renewed for a term of not longer than 5 years.

(3) The total term of registration including the initial term and all renewed terms must not be longer than 10 years.

(4) However, subsection (3) does not prevent a training organisation whose registration is about to end, or ends, from applying for a new registration.

***Division 2—Provisions about amending, suspending and cancelling registration*****Amending or cancelling registration on application by registered training organisation**

**27.(1)** The council may, on the application of a registered training organisation amend or cancel the organisation's registration.

(2) If a registered training organisation's registration is cancelled, the organisation must return the certificate of registration to the council within 28 days after receiving notification of the cancellation, unless the organisation has a reasonable excuse.

Maximum penalty for subsection (2)—40 penalty units.

### **Grounds for amending, suspending or cancelling registration without application**

28. Each of the following is a ground for amending, suspending or cancelling the registration of a registered training organisation—

- (a) the registration was obtained because of incorrect or misleading information;
- (b) the organisation has contravened a condition of registration;
- (c) the organisation has been convicted of—
  - (i) an offence against this Act or a corresponding law; or
  - (ii) an indictable offence;
- (d) the organisation is no longer a suitable organisation for registration;
- (e) the organisation can not provide training or recognition services in accordance with its registration.

### **Procedure for amending, suspending or cancelling registration**

29.(1) This section applies if the council believes there is a ground to amend, suspend or cancel the registration of a registered training organisation.

(2) Before taking the proposed action, the council must give the organisation a signed notice under this section (“**show cause notice**”).

(3) The show cause notice must state the following—

- (a) the action (the “**proposed action**”) the council proposes taking under this section;
- (b) the grounds for the proposed action;

- (c) an outline of the facts and circumstances that are the basis of the grounds;
- (d) if the proposed action is to amend the registration (including a condition of registration)—the proposed amendment;
- (e) if the proposed action is to suspend the registration—the proposed maximum suspension period;
- (f) an invitation to the organisation to show, within a stated reasonable time (not less than 14 days after the notice is given to the organisation), why the proposed action should not be taken.

(4) If, after considering all representations made within the stated time, the council still believes there is a ground to take the proposed action and taking the proposed action is warranted, the council may—

- (a) if the proposed action was to amend the registration—amend the registration; or
- (b) if the proposed action was to suspend the registration—suspend the registration for not longer than the proposed maximum suspension period stated in the notice; or
- (c) if the proposed action was to cancel the registration—cancel the registration.

(5) If the council decides to take no further action about the proposed action, the council must inform the organisation of the decision by signed notice.

(6) If the council decides to amend, suspend or cancel the registration, the council must give the organisation an information notice.

(7) However, if the registration is amended, suspended or cancelled because of the organisation's conviction for an offence, the decision—

- (a) does not take effect until—
  - (i) the end of the time to appeal against the conviction; and
  - (ii) if an appeal is made against the conviction—the appeal is finally decided or otherwise ends; and
- (b) has no effect if the conviction is quashed.

(8) Subject to subsection (7), the decision takes effect on the day the notice is given to the organisation or, if a later day is stated in the notice, the later day.

### **Return of registration certificate**

**30.(1)** If the registration is amended, suspended or cancelled, the organisation must return the certificate of registration to the council within 14 days after the decision takes effect, unless the organisation has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) The council must return the certificate of registration to the registered training organisation—

- (a) if the registration was amended—promptly after amending it; or
- (b) if the registration was suspended—at the end of the suspension period.

### **Restrictions after action to amend, suspend or cancel registration started**

**31.** After a show cause notice is given to a registered training organisation under section 29(2) and until the council advises the organisation of its decision about the proposed action, the organisation must not—

- (a) if the proposed action is the suspension or cancellation of the registration—
  - (i) accept a person as a student at the organisation; or
  - (ii) allow an existing student to begin a new course at the organisation; or
  - (iii) publish an advertisement for its business as a registered training organisation; or



- (b) if the proposed action is the amendment of the registration—do any of the things mentioned in paragraph (a)(i) to (iii) if the things would not be permitted under the proposed amended registration.

Maximum penalty—50 penalty units.

### **Council to notify amendment, suspension or cancellation of registration**

**32.(1)** If the council amends the registration of a training organisation in a material way or cancels it under section 27, the council must promptly notify the particulars of the amendment or cancellation in the gazette.

(2) If the council amends, suspends or cancels the registration of a training organisation under section 29, (the “**disciplinary action**”) the council must promptly notify the particulars of the disciplinary action in the gazette after the later of the following—

- (a) the end of the time to appeal against the disciplinary action;
- (b) if an appeal is made against the disciplinary action—the appeal is withdrawn or discontinued before it is decided or the appeal is finally decided and the disciplinary action upheld.

### ***Division 3—False statements***

#### **False statements by training organisation**

**33.(1)** A training organisation that is not registered must not state, either orally or in writing, anything to a person that is likely to induce the person to believe the organisation is registered.

Maximum penalty—80 penalty units.

(2) A training organisation must not state, either orally or in writing, anything to a person that is likely to induce the person to believe the organisation is authorised to offer an accredited course unless—

- (a) the organisation is authorised by its registration to issue the qualification or statement of attainment for the course; and
- (b) the course is accredited.

Maximum penalty—80 penalty units.

(3) A training organisation must not state, either orally or in writing, anything to a person that is likely to induce the person to believe the organisation is authorised to issue a qualification or statement of attainment unless the organisation is authorised by its registration to issue the qualification or statement of attainment.

Maximum penalty—80 penalty units.

(4) A training organisation that is not registered must not publish an advertisement stating—

- (a) the organisation is registered; or
- (b) the organisation may issue a qualification or statement of attainment; or
- (c) a course the organisation conducts is accredited.

Maximum penalty—80 penalty units.

(5) If the council reasonably believes a training organisation is contravening subsection (1), (2), (3) or (4), the council may, by signed notice given to the organisation, state the conduct constituting the contravention and direct the organisation to immediately stop contravening the subsection.

(6) The organisation must not contravene the direction.

Maximum penalty—80 penalty units.

(7) An offence against subsection (6) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (6)—10 penalty units.

#### *Division 4—Other provisions*

### **Issuing qualifications and statements of attainment**

**34.(1)** A registered training organisation must issue a qualification or statement of attainment to a student who—

- (a) has—
  - (i) undertaken an accredited course or training under a national training system of qualifications with the organisation; and
  - (ii) attained the skills and knowledge required for the issue of a qualification or statement of attainment; or
- (b) has been recognised by the organisation as having the skills and knowledge required for the issue of a qualification or statement of attainment.

(2) The qualification or statement of attainment must be issued within 21 days after the organisation—

- (a) is satisfied the student attains the skills and knowledge required for its issue; or
- (b) recognises the student as having the skills and knowledge required for its issue.

Maximum penalty—40 penalty units.

(3) A training organisation must not issue a document purporting to be a qualification or statement of attainment to a person who has undertaken an accredited course or vocational education and training under a national training system of qualifications with the organisation unless—

- (a) the organisation is authorised by its registration to issue the qualification or statement of attainment; and
- (b) the person has attained the skills and knowledge required for the issue of a qualification or statement of attainment.

Maximum penalty for subsection (3)—80 penalty units.

### **Assessment of skills or knowledge by registered training organisation**

**35.(1)** This section applies if a person—

- (a) claims to have skills or knowledge for which no qualification or statement of attainment has been issued; and
- (b) reasonably believes a qualification or statement of attainment could be issued to the person for the skills or knowledge.

(2) The person may apply to a registered training organisation to have the person's skills or knowledge assessed to decide whether the person may be issued a qualification or statement of attainment for the skills or knowledge.

(3) After assessing the person's skills or knowledge, the organisation must issue the person with the appropriate qualification or statement of attainment if the organisation—

- (a) is authorised by its registration to issue the qualification or statement of attainment; and
- (b) is satisfied the person has the skills or knowledge required for the issue of a qualification or statement of attainment.

### **Cancellation of qualification or statement of attainment**

**36.(1)** A registered training organisation may cancel a qualification or statement of attainment that it issued, by fair procedures prescribed under a regulation, if the qualification or statement of attainment was issued—

- (a) in error; or
- (b) because of a document or representation that—
  - (i) is false or misleading; or
  - (ii) was obtained or made in another improper way.

(2) If a qualification or statement of attainment is cancelled, the person to whom it was issued must return it to the registered training organisation within 21 days after the registered training organisation gives notice of the cancellation to the person, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—40 penalty units.

## **PART 2—COURSE ACCREDITATION**

### **Object of accrediting a course**

**37.** The object of accrediting a vocational education and training course is to allow a qualification or statement of attainment to be issued to a person

who undertakes the course and attains the requisite level of skills and knowledge if the skills and knowledge are not recognised under a national training system of qualifications.

### **Council may accredit courses**

**38.(1)** This section applies if the skills and knowledge that may be attained under a vocational education and training course are not recognised under a national training system of qualifications.

**(2)** An entity providing the course may apply in writing to the council for the grant of an accreditation for the course.

**(3)** The council may grant the accreditation only if satisfied the course meets the approved guidelines for accreditation.

**(4)** The council must keep a register of the courses granted accreditation under this part.

**(5)** The register may be kept in any way the council thinks appropriate.

### **Issue of qualification or statement of attainment**

**39.** A person who attains the requisite level of skills and knowledge under an accredited course at a training organisation that is registered to provide the course is entitled to be issued with the appropriate qualification or statement of attainment.

### **How council may deal with application**

**40.(1)** The council must consider an application for accreditation and either—

- (a) grant the accreditation; or
- (b) refuse to grant the accreditation.

**(2)** If the council decides to grant the accreditation, the council must promptly give the applicant—

- (a) a certificate of accreditation for the course; and
- (b) if the accreditation is subject to conditions, an information notice.

(3) If the council decides not to grant the accreditation, the council must promptly give the applicant an information notice.

### **Accreditation conditions**

**41.(1)** An accreditation may be subject to reasonable conditions imposed by the council.

(2) Without limiting subsection (1), a condition may be about restrictions on providing the course.

### **Term of accreditation**

**42.(1)** A course may be accredited for an initial term of not longer than 5 years.

(2) The accreditation may be renewed for a term of not longer than 5 years.

(3) The total term of accreditation including the initial term and all renewed terms must not be longer than 10 years.

(4) However, subsection (3) does not prevent the entity that obtained the accreditation (“**original accreditation**”) from applying for a new accreditation when the original accreditation is about to end or ends.

### **Cancelling accreditation on application**

**43.** The council may cancel an accreditation of a course at the written request of the entity that applied for the accreditation.

### **Procedure for granting and amending accreditation**

**44.** The grant or amendment of an accreditation may be applied for and granted or refused as prescribed under a regulation.

**Amendment or cancellation of accreditation without application**

**45.(1)** The council may amend or cancel an accreditation without application by the entity to whom it was granted, by fair procedures prescribed under a regulation.

**(2)** Amending an accreditation under subsection (1) includes imposing a condition on the accreditation or changing an existing condition.

**Recognition of courses accredited under corresponding laws**

**46.(1)** This section applies if a course has been granted an accreditation under a corresponding law (an “**interstate accreditation**”).

**(2)** The course is taken to be accredited under this Act, to the greatest possible extent, for the same accreditation and on the same conditions as the interstate accreditation.

**(3)** However, the interstate accreditation does not authorise anything that can not be authorised by an accreditation under this Act.

**(4)** A registered training organisation must not offer an interstate accredited course, unless the organisation has given the council signed notice of its intention to offer the course.

Maximum penalty—80 penalty units.

**(5)** If the interstate accreditation is cancelled or expires (a “**significant event**”) under the corresponding law, the accreditation under this Act is cancelled or expired from the day the significant event happens.

**(6)** If a significant event happens, a registered training organisation that is offering the interstate accredited course must immediately notify the council of the event in writing, unless the organisation has a reasonable excuse.

Maximum penalty for subsection (6)—80 penalty units.

**Reassessment of accredited course**

**47.** The council may, by fair procedures prescribed under a regulation, reassess an accredited course, other than a course accredited under a corresponding law, to ensure it continues to meet the needs of industry and the community.

## **CHAPTER 3—APPRENTICES AND TRAINEES**

### **PART 1—APPRENTICESHIP AND TRAINEESHIP CONTRACTS**

#### *Division 1—Preliminary*

#### **Start of apprenticeship or traineeship**

**48.** An apprenticeship or traineeship starts on the day agreed by the employer and the person who is to become the employer’s apprentice or trainee.

#### **Term of training contract**

**49.(1)** The council may decide the term (the “**nominal term**”) of training contracts for apprenticeships and traineeships.

**(2)** The nominal terms may be different for different apprenticeships or traineeships or different classes of apprenticeships or traineeships.

Note—

Section 77<sup>1</sup> provides for an extension of the nominal term for a particular apprentice or trainee.

#### **Probationary period**

**50.(1)** The council is to decide the probationary periods for apprenticeships and traineeships.

**(2)** Probationary periods may be different for different apprenticeships or traineeships or different classes of apprenticeships or traineeships.

**(3)** The nominal term of a training contract must include the probationary period for the apprenticeship or traineeship.

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<sup>1</sup> Section 77 (Delayed completion of registered training contract)



(4) An employer and the employer's apprentice or trainee may make written submissions to the council to shorten or lengthen the probationary period for the apprentice or trainee.

### **Ending apprenticeship or traineeship in probationary period**

**51.** An apprenticeship or traineeship may be ended during the probationary period by the giving of 1 week's notice—

- (a) by the employer to the employer's apprentice or trainee; or
- (b) by the employer's apprentice or trainee to the employer.

*Note—*

Under the *Industrial Relations Act 1999*, section 138A,<sup>2</sup> an employer or the employer's apprentice or a trainee may end the employment of the apprentice or trainee before the end of the probationary period.

### ***Division 2—Signing and registration of training contracts***

#### **Training contract to be signed**

**52.(1)** The employer of a person who is to be trained by the employer as an apprentice or trainee must ensure that a training contract is signed by the parties before the probationary period ends.

Maximum penalty—40 penalty units.

(2) A person must not coerce, or attempt to coerce, a person to become a party to a training contract.

Maximum penalty—40 penalty units.

(3) The parties to the contract are—

- (a) the employer; and
- (b) the person training as an apprentice or trainee under the contract; and

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<sup>2</sup> *Industrial Relations Act 1999*, section 138A (Termination of employment during probationary period)

- (c) if the person mentioned in paragraph (b) is a minor, the person's parent unless the minor is not in the parent's care and control.

### **Employer to give training contract to council for registration**

**53.** The employer must send the signed training contract to the council for registration within 1 month after the end of the probation period for the apprenticeship or traineeship to which the contract relates.

Maximum penalty—40 penalty units.

### **Registering training contract**

**54.(1)** The council may register, or refuse to register, a training contract in the way prescribed under a regulation.

**(2)** The council must refuse to register a training contract if the employer is declared to be a prohibited employer and the employment of the apprentice or trainee contravenes the declaration.

*Note—*

An employer may be declared to be a prohibited employer under section 83.

**(3)** The council may register a training contract only if the contract conforms with the requirements stated in the approved guidelines.

**(4)** If the council registers the contract—

- (a) the contract is effective on and from the day it is registered; and
- (b) the council must promptly give the parties to the contract signed notice that the contract is registered.

**(5)** If the council refuses to register the contract, the council must promptly give each party an information notice.

**(6)** If the council refuses to register the contract, the contract and the apprenticeship or traineeship under it end on the day stated in the information notice as the day the decision has effect or an earlier day agreed to by the parties.

**False or misleading information in training contract**

**55.(1)** A person must not state anything in a training contract that the person knows is false or misleading.

Maximum penalty—50 penalty units.

**(2)** A person must not induce or coerce someone else to state anything in a training contract that the person knows is false or misleading.

Maximum penalty for subsection (2)—50 penalty units.

**Premiums prohibited**

**56.(1)** A person must not, either directly or indirectly, demand, accept or agree to accept from another person a premium for—

- (a) employing the person as an apprentice or trainee; or
- (b) inducing, or attempting to induce, another person to employ a person as an apprentice or trainee; or
- (c) amending a registered training contract; or
- (d) cancelling a registered training contract.

Maximum penalty—50 penalty units.

**(2)** If a person is convicted of an offence against subsection (1), the court by, or before, which the person is convicted may order the person—

- (a) to return the premium to the person who gave the premium; or
- (b) to reimburse the person who gave the premium an amount equal to the value of the premium.

**(3)** Subsection (2) does not limit the court's power to impose a penalty on the person convicted.

**(4)** An order under subsection (2)—

- (a) may be filed in a court with jurisdiction to recover in an action for debt an amount equal to the amount payable under the order; and
- (b) on being filed, is taken to be an order of that court and may be enforced accordingly.

**(5)** In this section—

“**premium**” does not include a payment to a person in the form of a grant or incentive from the State or the Commonwealth for employing or training, or promoting the employment or training of, an apprentice or trainee.

“**State or the Commonwealth**” includes an entity that pays a grant or incentive under a written agreement with the State or the Commonwealth.

*Division 3—Amending or assigning registered training contract*

**Amending or assigning registered training contract**

**57.(1)** Except as provided in sections 58 and 59, a registered training contract—

- (a) may not be amended or assigned, unless the parties to it agree in writing; and
- (b) may only be—
  - (i) amended as prescribed under a regulation; or
  - (ii) temporarily assigned to another employer (the “**new employer**”) in the way prescribed under a regulation if—
    - (A) the employer under the contract can not temporarily meet the training obligations under the training plan for the employer’s apprentice or trainee; and
    - (B) the parties to the contract and the new employer agree to the temporary assignment of the contract to the new employer.

**(2)** A party to a registered training contract must not coerce, or attempt to coerce, another party to the contract to agree to its amendment or assignment.

Maximum penalty for subsection (2)—50 penalty units.

### **Minor amendment of registered training contract**

**58.(1)** A party to a registered training contract may notify in writing the other parties to the contract and the council of a minor amendment of the contract.

(2) When the notice is given, the contract is taken to be amended in the way stated in the notice.

(3) In this section—

“**minor amendment**”, of a contract, means an amendment of the contract that does not alter its substance or effect.

*Examples of a minor amendment—*

- a party changes the party’s name or address
- a correction of a typographical error in a party’s name or address.

### **Statutory assignment or cancellation of registered training contract**

**59.(1)** If an event mentioned in section 82(1)(b) happens, the training contract is taken to have been assigned by the employer who is a party to the contract to the purchaser of the employer’s business when the council receives notice of the event under section 82(2) or (3).

(2) If an event mentioned in section 82(1)(c) happens—

- (a) if the business of the dissolved partnership is continued by 1 person who was a partner of the dissolved partnership—the training contract is taken to be assigned to the person when the winding up of the affairs of the dissolved partnership is complete; or
- (b) if the business of the dissolved partnership is continued by 2 or more persons who were partners of the dissolved partnership under a new partnership—the training contract is taken to be assigned to the persons when the new partnership begins; or
- (c) if neither paragraph (a) or (b) apply—the training contract is cancelled.

**Division 4—Cancelling training contract****Reinstatement in previous position**

**60.(1)** This section applies if an apprenticeship or traineeship (the “**training**”) starts and—

- (a) any of the following events happen—
  - (i) the council refuses to register the training contract for the training;
  - (ii) the training contract for the training is cancelled under section 61;
  - (iii) the apprenticeship or traineeship ends before the probationary period for the apprentice or trainee ends; and
- (b) immediately before the apprenticeship or traineeship started, the person training as an apprentice or trainee was employed in a position (the “**previous position**”) by the employer, other than as a casual employee.

**(2)** The employer, immediately after the event happens, must give the person a written notice stating that within 5 days after receiving the notice, the person may ask to be reinstated in the person’s previous position or in another position on at least the same pay and conditions as applied to the previous position immediately before the apprenticeship or traineeship started.

Maximum penalty—50 penalty units.

**(3)** If the person asks to be reinstated under subsection (2), the employer must re-employ the person in the person’s previous position, or another position, on at least the same pay and conditions as applied to the previous position immediately before the apprenticeship or traineeship started.

Maximum penalty—50 penalty units.

**(4)** If the employer contravenes subsection (3), the person is taken to have been unfairly dismissed under the *Industrial Relations Act 1999*, chapter 3, part 2,<sup>3</sup> and subject to that part, has the remedies under that part.

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<sup>3</sup> *Industrial Relations Act 1999*, chapter 3 (Dismissals), part 2 (Unfair dismissals)

(5) In this section—

“casual employee” includes a person—

- (a) engaged by the hour or day; or
- (b) engaged for a specific period or task; or
- (c) participating in a labour market program.

### **Agreeing to cancel training contract**

**61.(1)** The parties to a training contract may cancel it at any time if they agree in writing to its cancellation.

(2) A party to a training contract must not coerce, or attempt to coerce, another party to the contract to agree to cancel it.

Maximum penalty for subsection (2)—50 penalty units.

### **Reinstatement of training contract cancelled by coercion**

**62.(1)** A person who was a party to a decision to cancel a registered training contract by agreement under section 61 may apply to the industrial commission for an order reinstating the contract if the person’s agreement to the cancellation was obtained as a result of coercion.

(2) The application must be made, as required under the rules made under the *Industrial Relations Act 1999*, within 21 days after the cancellation of the contract.

(3) The commission may extend the time for making the application.

(4) In deciding the application, the commission may make any order that it could make under section 236.<sup>4</sup>

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<sup>4</sup> Section 236 (Order to resume training)

**Cancelling training contract for inability to perform contract on stated grounds**

**63.(1)** If a party to a training contract can not perform the party's obligations under the contract on any of the following grounds, the party may apply to the council in writing to cancel the contract—

- (a) if the party is an employer—
  - (i) the employer has ceased business; or
  - (ii) there has been a substantial change in the employer's circumstances and the change has affected the employer's capacity to perform the employer's obligations under the contract;
- (b) if the party is an apprentice or trainee (the “**relevant party**”)—
  - (i) the employer has moved the employer's business to a place to which it is impracticable or unreasonable for the relevant party to travel; or
  - (ii) there has been a substantial change in the relevant party's circumstances affecting the relevant party's capacity to perform the relevant party's obligations under the contract.

**(2)** The council must promptly decide the application by fair procedures prescribed under a regulation and give the parties an information notice for its decision.

**(3)** If the council decides to cancel the contract, the cancellation has no effect until at least 4 weeks from the day the notice is given, unless a shorter time is stated in the notice.

**(4)** The notice must not state a time less than 4 weeks, unless the council is satisfied it is reasonable in the circumstances to do so.

**Cancellation for serious misconduct**

**64.(1)** This section applies if—

- (a) an apprentice or trainee who is a party to a training contract engages in serious misconduct; and



- (b) because of the misconduct, the employer of the apprentice or trainee decides it is unreasonable to continue to train the apprentice or trainee.

**(2)** The employer may immediately suspend the training contract by—

- (a) telling the apprentice or trainee the contract is suspended; or
- (b) giving the apprentice or trainee signed notice stating the apprentice or trainee is suspended and the grounds for the suspension.

**(3)** If the employer suspends the contract under subsection (2)(a), the employer must, within 1 working day after the suspension, give the apprentice or trainee signed notice confirming the suspension and stating the grounds for it.

**(4)** If the employer suspends the contract, the employer must—

- (a) within 1 working day after the suspension, notify the council of the suspension; and
- (b) within 5 working days after the suspension—
  - (i) apply to the council in writing to cancel the contract; and
  - (ii) give the council a copy of the notice stating the grounds for the suspension that was given to apprentice or trainee under subsection (2)(b) or (3).

**(5)** The suspension is effective until the council decides the application.

**(6)** The council must promptly—

- (a) decide the application by fair procedures prescribed under a regulation; and
- (b) give the parties an information notice for its decision.

**(7)** The council may cancel the contract only if—

- (a) it is satisfied the employer gave the apprentice or trainee the signed notice required by subsection (2)(b) or (3); and
- (b) the council reasonably believes—
  - (i) the apprentice or trainee engaged in the serious misconduct; and

- (ii) it is unreasonable in the circumstances for the employer to continue the training.

(8) However, if the employer does not apply for cancellation of the contract under subsection (4)(a), or the council refuses to cancel the contract, the suspension is taken not to have happened and the employer must immediately—

- (a) resume training the apprentice or trainee; and
- (b) reimburse the apprentice or trainee for wages lost during the suspension period.

Maximum penalty—50 penalty units.

(9) In this section—

“**dangerous event**” see the *Workplace Health and Safety Act 1995*, schedule 3.<sup>5</sup>

“**serious bodily injury**” see the *Workplace Health and Safety Act 1995*, schedule 3.<sup>6</sup>

“**serious misconduct**” means any of the following—

- (a) theft;
- (b) assault;
- (c) fraud;
- (d) at work—
  - (i) being under the influence of liquor or a drug; or
  - (ii) causing an imminent risk of serious bodily injury or work caused illness or a dangerous event happening; or

<sup>5</sup> The *Workplace health and Safety Act 1995*, schedule 3 defines ‘dangerous event’ as follows—

“**dangerous event**” means an event at a workplace involving imminent risk of explosion, fire or serious bodily injury.

<sup>6</sup> The *Workplace health and Safety Act 1995*, schedule 3 defines ‘serious bodily injury’ as follows—

“**serious bodily injury**” means an injury—

- (a) that causes death; or
- (b) impairs a person to such an extent that as a consequence of the injury the person becomes an overnight or longer stay patient in a hospital.

- (iii) behaving in a way that is inconsistent with the continuation of a registered training contract.

“**work caused illness**” see *Workplace Health and Safety Act 1995*, schedule 3.<sup>7</sup>

### **Council’s power to reinstate training**

**65.(1)** This section applies if a person who was a party to a training contract that has purportedly been cancelled by another party to the contract, believes on reasonable grounds that the contract has not been cancelled in accordance with this Act.

**(2)** Within 21 days after the cancellation, the person may apply in writing to the council for an order that training under the contract be resumed.

**(3)** The person must state the grounds in the application.

**(4)** If the council decides, by fair procedures prescribed under a regulation, that a party to the contract has purported to cancel the contract other than in accordance with this Act, the council may order—

- (a) if the employer purported to cancel the contract—the employer under the contract to resume training the apprentice or trainee; or
- (b) if another party purported to cancel the contract—the apprentice or trainee under the contract to resume undertaking the training.

**(5)** If the council considers it would be impracticable to make the order, it may order the cancellation of the contract.

**(6)** The council must promptly give the parties an information notice on its decision for an order under subsection (4) or (5).

<sup>7</sup> The *Workplace health and Safety Act 1995*, schedule 3 defines ‘work caused illness’ as follows—

“**work caused illness**” means—

- (a) an illness that is contracted by an employer, self-employed person or worker (a “**person**”) in the course of doing work and to which the work was a contributing factor; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration in a person of an existing illness in the course of doing work to which the work was a contributing factor to the recurrence, aggravation, acceleration, exacerbation or deterioration.

(7) A person must not contravene the council's order.

Maximum penalty for subsection (7)—50 penalty units.

### **Cancelling registration of training contract**

**66.(1)** The council may, by fair procedures prescribed under a regulation, cancel the registration of a training contract if the council reasonably believes—

- (a) the contract was registered in error or because of a materially false or misleading representation or declaration; or
- (b) a party to the contract has been convicted of an offence against this Act; or
- (c) there has been a change in the circumstances of the employer or the apprentice or trainee that make it unlikely that the contract will be completed.

(2) The council must promptly give the parties an information notice for its decision.

(3) Subsection (1) does not limit the power of the council to cancel the registration of a training contract under section 64 or 71.

### **Training contract ends if registration cancelled**

**67.** If the registration of a training contract is cancelled before it is completed, the contract ends on the day the cancellation takes effect.

### **Effect of cancelling or ending training contract**

**68.** If a training contract ends or is cancelled before it is completed, the apprenticeship or traineeship of the person who was the apprentice or trainee ends on the day the contract ends or is cancelled.

*Note—*

Section 78 provides for the effect of cancelling or completing a training contract on the apprentice's or trainee's employment.

**Employer to notify supervising registered training organisation**

**69.(1)** This section applies if a training contract ends or is cancelled before it is completed.

**(2)** The person who was the employer under the contract must give the supervising registered training organisation for the apprentice or trainee signed notice of the ending of the apprenticeship or traineeship within 7 days after—

- (a) if the parties have agreed to cancel the contract—the cancellation; or
- (b) if the council has cancelled the contract or the registration of the contract and given the person signed notice of the cancellation—the person being given the notice.

Maximum penalty—40 penalty units.

***Division 5—Discipline*****Definition for div 5**

**70.** In this division—

“**misconduct**”, for a party to a registered training contract, means—

- (a) if the party is an employer or an apprentice or trainee—
  - (i) the party fails to carry out a reasonable and lawful instruction that is consistent with the party’s obligations under the contract given by—
    - (A) if the party is the employer—the council; or
    - (B) if the party is an apprentice or trainee—the council, the apprentice’s or trainee’s employer, the employer’s agent or employee or the supervising registered training organisation for the apprentice or trainee; or
  - (ii) the party does not—
    - (A) keep a training record prescribed under a regulation to be kept by the party; or

- (B) when requested by another party to the contract, produce the record for the party's inspection; or
- (iii) the party has been convicted of an offence against this Act; or
- (b) if the party is an apprentice or trainee—
  - (i) the party is absent from the party's employer's service without the employer's consent, unless the absence is authorised under this Act or the *Industrial Relations Act 1999*; or
  - (ii) the party is absent from training required under the party's training plan to be provided by the party's supervising registered training organisation without the organisation's consent; or
  - (iii) the party does not participate in training provided under the party's training plan; or
  - (iv) the party fails to make reasonable progress in training provided under the party's training plan; or
  - (v) the party causes serious damage, or risk of serious damage, to the party's employer's business or business reputation.

## Discipline

**71.(1)** This section applies if the council reasonably believes a party to a registered training contract—

- (a) has contravened this Act or the contract; or
  - (b) has engaged in misconduct.
- (2)** The council may make any of the following orders—
- (a) an order reprimanding the party;
  - (b) an order directing the party—
    - (i) to pay the chief executive an amount of not more than 4 penalty units; or
    - (ii) to comply with the contract;

- (c) if the party contravening the contract or engaging in the misconduct is the apprentice or trainee—an order suspending the contract for a period no longer than 30 days;
- (d) if an order has not been made under paragraph (b)(ii) or (c)—an order cancelling the contract.

**(3)** The council—

- (a) may make an order under subsection (2) only by fair procedures prescribed under a regulation; and
- (b) must give the parties an information notice of its decision on the order.

**(4)** If the contract is suspended, the apprentice or trainee who is a party to the contract is taken to be stood down from employment without pay for the suspension period.

**(5)** If the contract is cancelled, section 78 applies and, subject to that section, the employment of the apprentice or trainee is taken to be terminated.

**(6)** If an order under subsection (2)(b)(i) directs a party to pay an amount to the chief executive, the order may direct that—

- (a) the party pay the amount directly or by instalments over a stated period; or
- (b) if the party is an apprentice or trainee—despite the *Industrial Relations Act 1999*, section 391,<sup>8</sup> the apprentice's or trainee's employer deduct the amount directly or by instalments over a stated period from the apprentice's or trainee's wages and pay it.

**(7)** A person must not contravene an order made under subsection (2)(b), (c) or (d).

Maximum penalty for subsection (7)—50 penalty units.

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<sup>8</sup> *Industrial Relations Act 1999*, section 391 (Wages etc. to be paid without deduction)

***Division 6—Completion of apprenticeship or traineeship*****Employer and apprentice or trainee to notify completion of training**

**72.(1)** This section applies if an employer of an apprentice or trainee and the apprentice or trainee agree the apprentice or trainee has completed the training required to be delivered by the employer under the training plan for the apprentice or trainee.

(2) Within 5 working days after agreeing, the employer and the apprentice or trainee must sign a written statement that the apprentice or trainee has completed the training.

Maximum penalty—50 penalty units.

(3) Within 10 working days after agreeing, the employer or the apprentice or trainee must give the supervising registered training organisation for the apprentice or trainee a signed notice that the apprentice or trainee has completed the training.

Maximum penalty—50 penalty units.

(4) The employer or the apprentice or trainee must not give the supervising registered training organisation a false or misleading notice.

Maximum penalty for subsection (4)—50 penalty units.

**Issuing qualification or statement of attainment on completion of training**

**73.(1)** This section applies if a supervising registered training organisation for an apprentice or trainee—

- (a) receives a notice under section 72(3) from an employer or apprentice or trainee; and
- (b) the organisation is reasonably satisfied the apprentice or trainee—
  - (i) has completed all the training required for the apprenticeship or traineeship; and
  - (ii) is entitled to be issued a qualification or statement of attainment for the apprenticeship or traineeship.



(2) The organisation must, as soon as is reasonably practicable, ensure that it, the employer and the apprentice or trainee sign an agreement (the “**completion agreement**”) acknowledging the completion of the training.

Maximum penalty—50 penalty units.

(3) The organisation must issue the qualification or statement of attainment stated in the plan to the apprentice or trainee within 21 days after the completion agreement is signed.

Maximum penalty—40 penalty units.

(4) The organisation must, within 14 days after issuing the qualification or statement of attainment, give the council and the apprentice’s or trainee’s employer signed notice of issuing the qualification or statement of attainment.

Maximum penalty—50 penalty units.

(5) Promptly after receiving the notice mentioned in subsection (4), the council must issue a completion certificate to the apprentice or trainee.

(6) The organisation must not—

(a) issue a false or misleading qualification or statement of attainment; or

(b) give a false or misleading notice.

Maximum penalty for subsection (6)—80 penalty units.

### **Signing of completion agreement ends registered training contract**

**74.(1)** When a supervising registered training organisation, an employer and the employer’s apprentice or trainee sign a completion agreement, the registered training contract for the apprenticeship or traineeship stated in the agreement ends.

(2) This section applies despite the nominal term of the contract.

### **Signing of completion agreement ends training plan**

**75.** When a supervising registered training organisation, an employer and the employer’s apprentice or trainee sign a completion agreement, the training plan for the apprentice or trainee ends.

**Cancelling completion certificate**

**76.(1)** This section applies if, within 6 months after the issue of a completion certificate, the council reasonably believes the certificate was issued—

- (a) in error; or
- (b) because of a materially false or misleading representation or declaration.

**(2)** The council may, by fair procedures prescribed under a regulation, cancel the certificate.

**(3)** When the council decides to cancel, or not cancel the certificate, it must immediately give the holder of the certificate an information notice of its decision.

**(4)** If the council cancels the certificate, the cancellation is effective from the day the information notice is given.

**(5)** Also, if the council cancels the certificate, the council—

- (a) must notify the cancellation in the gazette; and
- (b) may, by signed notice to the person to whom the certificate was issued, require the person to return it to the council within the time stated in the notice.

**(6)** The person must comply with the requirement under subsection (5)(b), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

**(7)** The cancellation of the certificate does not reinstate the training contract that ended when the completion agreement was signed.

**Delayed completion of registered training contract**

**77.(1)** This section applies if the nominal term of a registered training contract is to end before the apprentice or trainee who is a party to the contract completes the apprenticeship or traineeship.

(2) The parties to the contract may apply in writing to the council to extend the nominal term.

*Example—*

Because an apprentice is ill, the apprentice can not participate in training for several months. The parties to the contract may apply to the council for an extension of the nominal term of the contract.

(3) The council may extend the nominal term by a reasonable time if the council reasonably believes the apprentice or trainee can complete the apprenticeship or traineeship in the extended nominal term.

(4) If the council extends the nominal term, the contract is taken to be similarly extended.

### **Cancellation or completion of registered training contract terminates employment**

**78.(1)** This section applies if a registered training contract is cancelled or completed.

(2) The employment of the apprentice or trainee who was a party to the contract (the “**employee**”) with the employer is taken to be lawfully terminated under the *Industrial Relations Act 1999* unless—

- (a) section 60<sup>9</sup> applies and under that section the apprentice or trainee asks to be reinstated in a previous position; or
- (b) the employer and the employee agree the employee is to be employed in another position.

(3) To remove doubt, it is declared that if the employment is terminated, the employee has, under the *Industrial Relations Act 1999*, the rights given to an employee whose employment has been lawfully terminated under that Act.<sup>10</sup>

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<sup>9</sup> Section 60 (Reinstatement in previous position)

<sup>10</sup> See, for example the *Industrial Relations Act 1999*, chapter 11 (Records and wages), part 2 (Wages and occupational superannuation), division 3 (Paying and recovering wages).

*Division 7—Employers obligations for apprentice or trainee***Employer to provide facilities**

**79.** The employer of an apprentice or trainee must provide, or arrange to provide, to the apprentice or trainee the facilities, range of work, supervision and training required under the training plan for the apprentice or trainee.

Maximum penalty—60 penalty units.

**Employer to comply with training plan**

**80.** The employer of an apprentice or trainee must deliver to the apprentice or trainee the training the employer is required to deliver under the training plan for the apprentice or trainee.

Maximum penalty—60 penalty units.

**Employer not to prevent participation in training**

**81.** The employer of an apprentice or trainee must not directly, or indirectly—

- (a) obstruct the apprentice or trainee from participating in the training required under the training plan for the apprentice or trainee to be delivered by the supervising registered training organisation for the apprentice or trainee (the “**required training**”); or
- (b) prejudice the apprentice’s or trainee’s employment, or place the apprentice or trainee at a disadvantage, because the apprentice or trainee participates or attempts to participate in the required training; or
- (c) discourage the apprentice or trainee from participating in the required training; or
- (d) induce or coerce the apprentice or trainee to not participate in the required training.

Maximum penalty—60 penalty units.

**Employer to report notifiable events**

**82.(1)** This section applies if any of the following events (a “**notifiable event**”) happens in relation to a registered training contract—

- (a) the parties to the contract agree to—
  - (i) amend the contract; or
  - (ii) temporarily assign the contract; or
  - (iii) cancel the contract;
- (b) the employer sells or disposes of the employer’s business to someone else (a “**purchaser**”) and the purchaser agrees to continue to train the apprentice or trainee under the registered training contract;
- (c) the employer is a partnership and the partnership is dissolved;
- (d) the employer decides—
  - (i) the apprentice or trainee is failing to make reasonable progress in the training for the apprenticeship or traineeship; or
  - (ii) the training can not be completed within the nominal term of the contract.

**(2)** The employer must give the council signed notice of the event within 14 days after the event happens.

Maximum penalty—50 penalty units.

**(3)** If the notifiable event is an event mentioned in subsection (1)(b), the purchaser must give the council signed notice of the purchaser’s agreement to continue training the apprentice or trainee under the registered training contract within 14 days after the event happens.

Maximum penalty for subsection (3)—50 penalty units.

**Division 8—Prohibited employers****Prohibited employers**

**83.(1)** The council may, by fair procedures prescribed under a regulation, declare an employer to be a prohibited employer if the council reasonably believes the employer is not a suitable person to employ an apprentice or trainee.

**(2)** A declaration may be for a stated or indefinite period.

**(3)** A declaration must state the employer must not, while the declaration is in force, employ—

- (a)** any apprentice or trainee; or
- (b)** an apprentice or trainee in 1 or more stated apprenticeships or traineeships.

**(4)** In deciding whether or not a person is suitable to employ an apprentice or trainee, the council must have regard to the following—

- (a)** the employer's ability to provide, or arrange to provide, to an apprentice or trainee the facilities, range of work, supervision and training required under a training plan for the apprentice or trainee;
- (b)** the employer's record in delivering training to apprentices or trainees;
- (c)** whether the employer has contravened any Act or Commonwealth Act relating to employment including this Act, the former VETE Act, the *Industrial Relations Act 1999* and the *Workplace Health and Safety Act 1995*;
- (d)** whether the employer has been convicted of an indictable offence.

**(5)** When the council decides to declare or not declare an employer to be a prohibited employer, it must immediately give the employer an information notice of its decision.

**(6)** The council must promptly notify the declaration of an employer as a prohibited employer by gazette notice after the sooner of—

- (a)** if the employer does not appeal against the decision to make the declaration—the end of the time for appealing against the decision; and

- (b) if the employer appeals against the decision to make the declaration and the appeal is discontinued or unsuccessful—the end of the appeal.

### **Revocation of declaration as prohibited employer**

**84.(1)** A prohibited employer may, by signed notice given to the council, request it to revoke the declaration.

**(2)** The council may, by fair procedures prescribed under a regulation, completely or partly revoke the declaration.

**(3)** The council may completely revoke the declaration only if it is satisfied the employer is no longer an unsuitable person to employ any apprentice or trainee.

**(4)** The council may partly revoke the declaration only if it is satisfied—

- (a) if the declaration stated the employer must not employ any apprentice or trainee—the employer is no longer an unsuitable person to employ an apprentice or trainee in a particular apprenticeship or traineeship; or
- (b) if the declaration stated the employer must not employ an apprentice or trainee in more than 1 stated apprenticeships or traineeships—the employer is no longer an unsuitable employer to employ an apprentice or trainee in 1 or more apprenticeships or traineeships stated in the original declaration.

**(5)** When the council decides to completely or partly revoke the declaration or to leave the declaration stand, it must immediately give the employer an information notice of its decision.

**(6)** If the council completely or partly revokes the declaration it must promptly notify the complete or partial revocation by gazette notice.

**(7)** If the council partly revokes the declaration, the gazette notice must state the employer must not, while the declaration is in force, employ an apprentice or trainee in 1 or more stated apprenticeships or traineeships.

**Prohibited employer not to contravene declaration**

**85.(1)** A prohibited employer must not employ, or offer to employ, a person as an apprentice or trainee in contravention of a declaration.

Maximum penalty—80 penalty units.

**(2)** In this section—

**“declaration”** means—

- (a) a declaration made under section 83; or
- (b) if the declaration has been partially revoked under section 84, the declaration as partially revoked.

***Division 9—Other provisions*****Temporary stand down under registered training contract**

**86.(1)** This section applies if the employer of an apprentice or trainee temporarily can not provide the apprentice or trainee with the training stated in the training plan for the apprentice or trainee.

**(2)** The employer may apply in writing to the council for its approval to temporarily stand down the apprentice or trainee from the apprenticeship or traineeship.

**(3)** If the council approves the application, it must give the employer a signed notice stating—

- (a) the maximum period, not more than 30 days, over which the stand down may happen; and
- (b) the maximum time during the period the employer may stand down the apprentice or trainee; and

*Examples of paragraph (b)—*

- the council may approve that the employer stand down the apprentice or trainee for the whole period
  - the council may approve that the employer stand down the apprentice or trainee for a stated number of working days in a week for the period
- (c)** the day the period starts.



(4) The employer may stand down the apprentice or trainee from the apprenticeship or traineeship without pay only in accordance with the notice from the council.

(5) If the apprentice or trainee is stood down, the apprentice or trainee is also stood down from employment with the employer unless the employer and the apprentice or trainee otherwise agree.

(6) An employer must not stand down an apprentice or trainee from the apprenticeship or traineeship other than under this section.

Maximum penalty for subsection (6)—50 penalty units.

### **Employer restriction on training**

**87.(1)** An employer must not knowingly enter into a training contract with a person to train the person as an apprentice or trainee in an apprenticeship or traineeship if the person is already being trained as an apprentice or trainee under a registered training contract in the same apprenticeship or traineeship by another employer (the “**original employer**”).

Maximum penalty—40 penalty units.

(2) However, the employer does not contravene subsection (1) if the original employer consents in writing to the apprentice or trainee entering into the training contract with the employer.

### **Apprentice or trainee restriction on training**

**88.(1)** An apprentice or trainee under a registered training contract must not enter into a training contract with an employer (the “**second employer**”) for training for the same apprenticeship or traineeship for which the apprentice or trainee is being trained under the registered training contract.

Maximum penalty—40 penalty units.

(2) However, the apprentice or trainee does not contravene subsection (1) if the apprentice’s or trainee’s employer consents in writing to the apprentice or trainee entering into the training contract with the second employer.

**Restricted callings**

**89.(1)** The council may, by gazette notice, declare a calling to be a restricted calling.

**(2)** An employer must not employ a young person in a restricted calling unless the young person—

- (a) has completed a qualification or statement of attainment relevant to the calling; or
- (b) is employed by the employer as an apprentice or trainee in the calling under a registered training contract.

Maximum penalty—50 penalty units.

**(3)** A person does not contravene this section if the person provides a young person with a vocational placement under a vocational placement agreement under chapter 4, part 2.

**(4)** In this section—

“**young person**” means a person under 21 years.

## **PART 2—SUPERVISING REGISTERED TRAINING ORGANISATIONS**

**Requirement for supervising registered training organisation**

**90.(1)** There must be a supervising registered training organisation for each apprentice or trainee.

**(2)** If a person is an apprentice or trainee under more than 1 training contract, there must be a supervising registered training organisation for each apprenticeship or traineeship.

**Becoming a supervising registered training organisation**

**91.(1)** The parties to a training contract must agree on the registered training organisation that is to become the supervising registered training organisation for the apprentice or trainee.

(2) There can not be more than 1 supervising registered training organisation for each apprentice's apprenticeship or trainee's traineeship at any one time.

(3) A registered training organisation can not become a supervising registered training organisation for an apprentice or trainee without the organisation's agreement.

### **Availability of facilities**

92. A registered training organisation may be a supervising registered training organisation for an apprentice or trainee only if the organisation is able to provide, or arrange to provide, to the apprentice or trainee the facilities, services, supervision and training required under the training plan for the apprentice or trainee.

Maximum penalty—80 penalty units.

### **Supervising registered training organisation to ensure delivery of training**

93. A supervising registered training organisation for an apprentice or trainee must ensure the training required to be delivered under the apprentice's or trainee's training plan is delivered to the apprentice or trainee.

Maximum penalty—60 penalty units.

### **Replacing supervising registered training organisation**

94. (1) If the parties to a training contract agree, they may replace the supervising registered training organisation for the apprenticeship or traineeship with another registered training organisation.

(2) If the supervising registered training organisation is to be replaced, the employer must give the organisation a signed notice stating the day, no sooner than 14 days after the day it is given, when the replacement becomes effective.

Maximum penalty—40 penalty units.

(3) Action to replace a supervising registered training organisation is of no effect if subsection (2) is contravened.

### **Replaced training organisation to give statement of attainment**

**95.(1)** This section applies if a supervising registered training organisation is to be replaced and is given a notice under section 94.

(2) On or before the day stated in the notice when the replacement becomes effective (the “**replacement day**”), the organisation must give the apprentice or trainee a statement of attainment stating the training completed under the training plan for the apprentice or trainee up to the replacement day.

Maximum penalty—40 penalty units.

## **PART 3—TRAINING PLANS FOR APPRENTICES OR TRAINEES**

### *Division 1—Signing training plan for apprentice or trainee*

#### **Training plan for apprentice or trainee**

**96.(1)** There must be a training plan for each apprentice or trainee.

(2) If a person is an apprentice or trainee under more than 1 training contract, there must be a training plan for each apprenticeship or traineeship.

#### **Parties to training plan for apprentice or trainee**

**97.(1)** The parties to a training plan for an apprentice or trainee are—

- (a) the employer; and
- (b) the apprentice or trainee; and
- (c) the supervising registered training organisation for the apprentice or trainee.

(2) The supervising registered training organisation must be a party to the plan even though it may not be delivering any training to the apprentice or trainee under the plan.

### **Training plan for apprentice or trainee to be negotiated by parties**

**98.(1)** The training to be delivered under the training plan can not be unilaterally decided by the employer or supervising registered training organisation.

(2) It must be negotiated, and agreed to, by all the parties.

### **Coercion**

**99.** A person must not coerce, or attempt to coerce—

- (a) a person to become a party to a training plan; or
- (b) a party to a training plan to change the plan.

Maximum penalty—50 penalty units.

### **Signing training plan for apprentice or trainee**

**100.(1)** When the parties have agreed to the training plan, they must sign it.

(2) The supervising registered training organisation for an apprentice or trainee must take all reasonable steps to ensure that the apprentice's or trainee's plan is signed—

- (a) if the training plan is the initial training plan for the apprentice or trainee—before the probationary period for the apprentice or trainee ends; or
- (b) if a training plan for an apprentice or trainee ends because the supervising registered training organisation has been replaced—within 14 days after the replacement day.

Maximum penalty for subsection (2)—50 penalty units.

**Copies of signed training plan for apprentice or trainee**

**101.** The supervising registered training organisation for an apprentice or trainee must ensure a copy of the signed training plan is given to the apprentice or trainee, and the employer, within 7 days after the parties sign it.

Maximum penalty—50 penalty units.

**False or misleading information in training plan**

**102.(1)** A person must not state anything in a training plan for an apprentice or trainee the person knows is false or misleading.

Maximum penalty—50 penalty units.

**(2)** A person must not induce or coerce someone else to state anything in a training plan the person knows is false or misleading.

Maximum penalty for subsection (2)—50 penalty units.

***Division 2—Ending or changing training plan for apprentice or trainee*****Automatic cancellation on replacement of supervising registered training organisation**

**103.** If a supervising registered training organisation for an apprentice or trainee is replaced, the training plan for the apprentice or trainee ends on the replacement day.

**Automatic cancellation if apprenticeship or traineeship ends**

**104.** If a supervising registered training organisation receives notice under section 69<sup>11</sup> about the end of an apprenticeship or traineeship, the training plan for the apprentice or trainee ends on the same day the apprenticeship or traineeship ends.

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<sup>11</sup> Section 69 (Employer to notify supervising registered training organisation)

**Statement of attainment**

**105.(1)** This section applies if a training plan for an apprentice or trainee ends under section 104.

(2) The training organisation must, within 14 days after receiving the notice mentioned in section 69, give the person who was the apprentice or trainee a statement of attainment stating the training the person completed under the training plan before it ended.

Maximum penalty—40 penalty units.

**Changing a training plan for an apprentice or trainee**

**106.** The parties to a training plan for an apprentice or trainee may change the plan only in the way prescribed under a regulation.

**CHAPTER 4—VOCATIONAL PLACEMENT****PART 1—PRELIMINARY***Division 1—Definitions for chapter 4***Definitions for ch 4**

**107.** In this chapter—

“**course**” means a course that—

- (a) is conducted by a registered training organisation; and
- (b) leads to the issue of a qualification or statement of attainment.

“**parties**”, to a vocational placement agreement, are—

- (a) the student undertaking vocational placement; and

- (b) the registered training organisation offering the course that requires the student to complete a vocational placement under the agreement; and
- (c) the placement person for the vocational placement under the agreement.

**“vocational placement”**, other than for part 1, division 2, means a vocational placement conforming with the particulars stated in a notice for a recognised vocational placement scheme under section 109(3).

### *Division 2—Vocational placement schemes*

#### **Applying for recognition of vocational placement scheme**

**108.** A registered training organisation may apply in writing to the council to recognise a vocational placement scheme.

#### **How council deals with application**

**109.(1)** The council may recognise, or refuse to recognise, a vocational placement scheme.

**(2)** The council must promptly give the registered training organisation signed notice of its decision.

**(3)** If the council recognises the scheme, the notice must state the relevant particulars for the recognised scheme.

#### **Offering course if vocational placement scheme not recognised**

**110.** A registered training organisation must not offer a course that requires a student undertaking the course to complete a vocational placement unless the organisation has applied for and obtained the council’s recognition of a vocational placement scheme for the course.

Maximum penalty—80 penalty units.



**Division 3—Arranging vocational placement and application of laws****Registered training organisation to arrange vocational placement**

**111.(1)** If a student must complete a vocational placement, the registered training organisation offering the course must arrange the placement with an placement person, unless the council otherwise consents in writing.

Maximum penalty—80 penalty units.

**(2)** The registered training organisation must not arrange the placement with a placement person who is a prohibited employer, unless the council consents in writing.

Maximum penalty for subsection (2)—80 penalty units.

**Vocational placement not to be arranged contrary to recognition**

**112.** If a registered training organisation obtains recognition for a vocational placement scheme, the organisation must not arrange a vocational placement other than under the recognised scheme.

Maximum penalty—80 penalty units.

**Placement person not student's employer**

**113.** A placement person under a vocational placement agreement is not to be taken to be the employer of a student undertaking a vocational placement under the agreement, and the student is not to be taken to be the person's employee, only because the student is undertaking the placement.

**Certain laws not to apply to students obtaining vocational placement**

**114.(1)** An Act or law, to the extent it prohibits or regulates the employment of a person, does not apply to a vocational placement agreement or the placement of a student under the agreement.

**(2)** However, subsection (1) does not apply to—

- (a) the *Anti-Discrimination Act 1991*; or

- (b) another Act or law, to the extent it prohibits or regulates the work a person may do, if the person—
  - (i) is less than, or not more than, a stated age; or
  - (ii) is of a particular sex; or
  - (iii) does not have a licence, qualification or registration required under the Act or law to do the work.

### **Application of Workplace Health and Safety Act 1995**

**115.** Despite section 113, the *Workplace Health and Safety Act 1995* applies to a vocational placement and for that Act—

- (a) the student is taken to be a worker of the placement person; and
- (b) the placement person is taken to be the student’s employer.

## **PART 2—VOCATIONAL PLACEMENT AGREEMENTS**

### **Signing vocational placement agreement**

**116.(1)** Before a student starts a vocational placement, the registered training organisation offering the student’s course must ensure that an agreement (“**vocational placement agreement**”) in the approved form is signed by each of the following—

- (a) the organisation;
- (b) the student;
- (c) the person who is to provide the placement;
- (d) if the student is a minor, the student’s parent unless the minor is not in the parent’s care and control.

Maximum penalty—80 penalty units.

**(2)** However, the registered training organisation does not contravene subsection (1) if—

- (a) immediately before the placement starts, there is a signed agreement, in the approved form, in force between the organisation and the placement person under which the person agrees to provide a stated number of placements in a stated period; and
- (b) before starting the placement, the organisation and the student sign an agreement about the placement in the approved form.

(3) The signed agreements mentioned in subsection (2)(a) and (b) for each placement are together taken to be a vocational placement agreement for the placement.

(4) A vocational placement agreement is effective from the day the student starts the placement.

### **Registration of vocational placement agreement for short placement**

**117.(1)** This section applies if—

- (a) a registered training organisation obtains recognition for a vocational placement scheme; and
- (b) a placement under the scheme is to be a short placement.

(2) The organisation must, within 7 days after obtaining the recognition, establish a register of each vocational placement agreement for a placement under the scheme.

Maximum penalty—70 penalty units.

(3) After the parties sign a vocational placement agreement for a short placement, the organisation must immediately register the agreement by entering the particulars prescribed under a regulation in the register.

Maximum penalty—70 penalty units.

(4) However, the organisation must not register the agreement if it does not conform with the requirements stated in any approved guidelines for a vocational placement.

Maximum penalty—70 penalty units.

(5) In this section—

“**short placement**” means a vocational placement for not more than 240 hours in a year.

### **Registration of vocational placement agreement for long placement**

**118.(1)** After the parties sign a vocational placement agreement for a long placement, the registered training organisation must immediately send the signed agreement to the council for registration.

Maximum penalty—70 penalty units.

(2) The council may refuse to register the agreement only if—

- (a) the placement person under the agreement is a prohibited employer; or
- (b) the agreement does not conform with the requirements stated in any approved guidelines for a vocational placement.

(3) However, the council must refuse to register the agreement if the industrial commission has not made an order under the *Industrial Relations Act 1999*, section 140A,<sup>12</sup> fixing remuneration and conditions for the placement.

(4) The council must immediately give the organisation signed notice of its decision to register, or refuse to register, the agreement.

(5) If the council gives the organisation signed notice of its refusal to register the agreement, the organisation must immediately tell the student and the placement person of the refusal.

Maximum penalty—70 penalty units.

(6) The agreement ceases to have effect immediately the student and the placement person are advised of the refusal.

(7) In this section—

“**long placement**” means a vocational placement for more than 240 hours in a year.

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<sup>12</sup> *Industrial Relations Act 1999*, section 140A (Vocational placement)

**Registered training organisation to be satisfied about facilities**

**119.** A registered training organisation must not enter into a vocational placement agreement unless it is satisfied the proposed placement person can provide, or arrange to provide, to the student the facilities, range of work, supervision and training required under the training plan for the placement.

Maximum penalty—80 penalty units.

**Remuneration and other conditions under vocational placement agreements**

**120.(1)** Subsection (2) applies if a student undertakes a course that requires vocational placement, under 1 or more vocational placement agreements, of not more than 240 hours in a year.

(2) The student is not entitled to be paid remuneration for the placement.

(3) Subsection (4) applies if a student undertakes a course that requires vocational placement, under 1 or more vocational placement agreements, of more than 240 hours in a year.

(4) The student is entitled—

- (a) to be paid the remuneration; and
- (b) to the benefit of the conditions;

ordered by the industrial commission under the *Industrial Relations Act 1999*, section 140A<sup>13</sup> for the placement.

(5) Training for a student under a vocational placement may be given only in the ordinary working hours of the placement person.

**Extending vocational placement**

**121.(1)** This section applies if a registered training organisation considers—

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<sup>13</sup> *Industrial Relations Act 1999*, section 140A (Vocational placement)

- (a) a student about to undertake, or undertaking, a vocational placement would not be able to complete the training under the placement in the approved time on either of the following grounds—
- (i) the student has an impairment that impacts adversely on the student’s ability to undertake training;
  - (ii) another ground the organisation considers reasonable in the circumstances; and
- (b) it is necessary to extend the approved time.

(2) The organisation may apply in writing to the council to extend the approved time.

(3) The council may approve the extension only if the council is reasonably satisfied the student would be able to complete the training under the placement in the extended time.

(4) The council must notify the organisation in writing immediately after making its decision.

(5) Section 120(3) and (4) does not apply if an approved time of not more than 240 hours is extended to more than 240 hours.

(6) In this section—

**“approved time”**, means the time for a vocational placement approved by the council when the council approved the vocational placement scheme for the student’s course.

“**impairment**”, has the meaning given by *Anti-Discrimination Act 1991*, section 4.<sup>14</sup>

### **Amending vocational placement agreement**

**122.(1)** A vocational placement agreement may not be amended.

(2) However, subsection (1) does not prevent a registered training organisation from amending a vocational placement agreement to correct a minor or typographical error or omission.

(3) If the council has registered the agreement, the organisation must promptly advise the council of the amendment to the agreement.

### **Cancelling vocational placement agreement**

**123.(1)** A student, registered training organisation or placement person under a vocational placement agreement may cancel the agreement at any time by signed notice to the other parties to the agreement.

(2) The cancellation is effective when the notice is given, unless the person giving the notice agrees to a later time.

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<sup>14</sup> The *Anti-Discrimination Act 1991*, section 4, defines ‘impairment’ as follows—

“**impairment**”, in relation to a person, means—

- (a) the total or partial loss of the person’s bodily functions, including the loss of a part of the person’s body; or
- (b) the malfunction, malformation or disfigurement of a part of the person’s body; or
- (c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or
- (d) a condition, illness or disease that impairs a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- (e) the presence in the body of organisms capable of causing illness or disease; or
- (f) reliance on a guide dog, wheelchair or other remedial device; whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—
- (g) presently exists; or
- (h) previously existed but no longer exists.

(3) If the council has registered the agreement, the organisation must promptly advise the council of its cancellation.

### **Workers compensation cover**

**124.** A registered training organisation conducting a course requiring a vocational placement must enter into, and keep in force until the course is no longer offered, an insurance contract under the *WorkCover Queensland Act 1996*, section 24<sup>15</sup> to cover a student undertaking the placement.

Maximum penalty—80 penalty units.

### **Liability insurance**

**125.(1)** This section applies if a registered training organisation conducts a course requiring a vocational placement.

(2) The organisation must enter into, and keep in force until the course is no longer offered, an approved insurance policy.

Maximum penalty—80 penalty units.

(3) In this section—

“**approved insurance policy**”, for a course requiring a vocational placement, means an insurance policy—

- (a) indemnifying, to the extent of the policy, each person who is a placement person for a placement under the course against—
  - (i) proceedings for damages brought by—
    - (A) a student undertaking the course for injury to the student, or loss of or damage to the student’s property, arising out of the placement; or
    - (B) another person for injury to the person, or loss of or damage to the person’s property, arising out of the placement; and
  - (ii) loss of, or damage to, the placement person’s property caused by the student in the placement; and

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<sup>15</sup> *WorkCover Queensland Act 1996*, section 24 (Students)



- (b) indemnifying, to the extent of the policy, the student against proceedings for damages brought by the placement person or the placement person's employee or agent, or another person for injury to a person, or loss of or damage to property, arising out of the placement; and
- (c) providing coverage for a single claim or action relating to an injury, loss or damage in an amount not less than \$10 000 000 excluding GST.

## **PART 3—TRAINING PLANS FOR VOCATIONAL PLACEMENTS**

### **Training plan for vocational placement**

**126.(1)** There must be a training plan for every vocational placement.

**(2)** A registered training organisation that provides a course requiring a vocational placement must ensure there is a training plan conforming with the requirements of this division for the placement before a student starts the placement.

Maximum penalty for subsection (2)—50 penalty units.

### **Negotiating training plan for vocational placement**

**127.** The training to be delivered to a student under a training plan for a vocational placement by the proposed placement person is the training agreed on by the registered training organisation and the proposed placement person.

### **Signing training plan for vocational placement**

**128.** The training plan for a vocational placement must be signed by all the parties.

**Copies of signed training plan for vocational placement**

**129.** After the training plan is signed by all the parties, the registered training organisation must ensure a copy of the signed plan is given to the student and the placement person before the placement starts.

Maximum penalty—50 penalty units.

**Placement person to deliver training**

**130.** The placement person must deliver to the student being trained under the placement the training stated in the signed training plan for the placement.

Maximum penalty—60 penalty units.

**Automatic cancellation of training plan for vocational placement**

**131.** If a vocational placement agreement is cancelled, the training plan for the placement ends on the same day the agreement ends.

**Changing training plan for vocational placement**

**132.** The training to be delivered under a signed training plan for a vocational placement may be changed if the student, the registered training organisation and the placement person agree to the change.

## **CHAPTER 5—OMBUDSMAN, BOARD AND COUNCIL**

### **PART 1—APPRENTICESHIP AND TRAINEESHIP OMBUDSMAN**

#### *Division 1—Appointment and functions*

#### **Appointing apprenticeship and traineeship ombudsman**

**133.(1)** The Governor in Council may, by gazette notice, appoint a person as the apprenticeship and traineeship ombudsman.

(2) The ombudsman is appointed for the term stated in the notice.

(3) The stated term must not be longer than 3 years.

#### **Functions of ombudsman**

**134.(1)** The ombudsman has the following functions—

- (a) to receive and send to the council a complaint by a party to a training contract about any of the following matters (“**referrable matters**”)—
  - (i) the training being delivered to the apprentice or trainee under the contract;
  - (ii) the adequacy of the facilities, range of work and supervision provided by the employer under the contract;
  - (iii) the circumstances in which the contract was signed or subsequently amended or cancelled;
  - (iv) the failure of the employer to register the contract within the time required under section 53;<sup>16</sup>

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<sup>16</sup> Section 53 (Employer to give training contract to council for registration)

- (v) the failure of the apprentice or trainee to make progress under the training plan for the apprentice or trainee;
- (vi) the council's exercise of a power or performance of a function under chapter 3, part 1;<sup>17</sup>
- (b) if asked by a party to a training contract, to review the council's investigation of a complaint about a referable matter arising under the contract;
- (c) to make recommendations to the council about a matter arising from the ombudsman's review of a matter under paragraph (b);
- (d) to refer a matter coming to the ombudsman's attention to another entity having jurisdiction to deal with the matter.

(2) Despite subsection (1)(a), the ombudsman may receive and send to the council a complaint about a referable matter from any person if the ombudsman decides the person has a sufficient interest in the matter.

(3) The ombudsman has power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her functions.

### **Administrative support**

**135.** The chief executive must ensure the ombudsman has the administrative support services reasonably required for the ombudsman to discharge the ombudsman's functions effectively and efficiently.

### **Ombudsman may refuse to deal with certain complaints**

**136.(1)** The ombudsman may refuse to deal with, or to continue to deal with, a complaint if—

- (a) the complaint is about a referable matter and the circumstances giving rise to the matter happened more than 3 months before the complaint was made; or
- (b) the ombudsman reasonably believes—

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<sup>17</sup> Chapter 3 (Apprentices and trainees), part 1 (Apprenticeship and traineeship contracts)

- (i) the complaint is frivolous or vexatious; or
- (ii) the complaint lacks substance; or
- (iii) the complainant does not have a sufficient interest in the matter raised in the complaint; or
- (iv) that, having regard to all the circumstances of the case, a review, or the continuance of a review, of the matter raised in the complaint is unnecessary or unjustifiable.

(2) If the ombudsman decides to refuse to deal with, or to refuse to continue to deal with, a complaint, the ombudsman must, as soon as practicable after making the decision, give the complainant an information notice.

### **Ombudsman to refuse to deal with matters before industrial commission**

**137.** The ombudsman must refuse to deal with, or refuse to continue to deal with, a complaint if—

- (a) an appeal is started in the industrial commission about the referable matter that gave rise to the complaint; or
- (b) the industrial commission makes a decision on an appeal about the referable matter that gave rise to the complaint.

### *Division 2—Ombudsman’s powers*

### **Ombudsman may require information and documents from council**

**138.(1)** The ombudsman may, by signed notice, require the council to give the ombudsman all information and documents in its possession or control about—

- (a) a complaint about a referable matter; or
- (b) the council’s investigation of the complaint.

(2) The council must comply with the requirement.

**Ombudsman may recommend further steps in investigation**

**139.(1)** This section applies if the ombudsman reasonably believes the council's investigation of a complaint about a referable matter is inadequate.

(2) The ombudsman may, by signed notice to the council, recommend that the council take the further steps stated in the notice to investigate the matter.

**Ombudsman may recommend exercise of power**

**140.(1)** This section applies if, after reviewing the council's investigation of a complaint, the ombudsman reasonably believes the council should have exercised a power or performed a function under chapter 3, part 1<sup>18</sup> while investigating the complaint or as a result of the investigation.

(2) The ombudsman may, by signed notice to the council, recommend that the council exercise the power or perform the function.

**Ombudsman to report findings**

**141.(1)** As soon as practicable after completing a review of the council's investigation of a complaint about a referable matter, the ombudsman must—

- (a) give the complainant signed notice of the findings of the review; and
- (b) give the council and the Minister a signed report of the review that includes the findings.

(2) The report may include any recommendation the ombudsman considers appropriate.

(3) If the report includes a recommendation, the Minister may ask the council to notify the Minister, within a stated time, of—

- (a) the steps that have been or are proposed to be taken to give effect to the recommendation; or

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<sup>18</sup> Chapter 3 (Apprentices and trainees), part 1 (Apprenticeship and traineeship contracts)

- (b) if no steps have been, or are proposed to be, taken to give effect to the recommendations, the reasons for not taking the steps.

(4) The ombudsman must not make an adverse comment in the report about a person unless the person has been given an opportunity to respond to the proposed comment and the person's response is fairly stated in the report.

### *Division 3—Other provisions*

#### **Vacating office**

**142.(1)** The office of the ombudsman becomes vacant if—

- (a) the ombudsman resigns by signed notice of resignation given to the Minister; or
- (b) the ombudsman is convicted of—
  - (i) an indictable offence; or
  - (ii) an offence against this Act; or
- (c) the ombudsman's appointment ends under subsection (2).

**(2)** The Minister may end the appointment of the ombudsman if the ombudsman—

- (a) becomes incapable of performing the ombudsman's functions because of physical or mental incapacity; or
- (b) becomes an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (c) is guilty of misconduct of a kind that could warrant dismissal from the public service if the ombudsman were an officer of the public service.

#### **Acting ombudsman**

**143.** The Governor in Council may appoint a person to act as ombudsman—

- (a) during a vacancy in the office; or
- (b) during any or all periods when the ombudsman is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

### **Conditions of appointment**

**144.(1)** The ombudsman is entitled to be paid the remuneration and allowances decided by the Governor in Council.

**(2)** The ombudsman holds office—

- (a) on the conditions stated in this Act; and
- (b) the other conditions decided by the Minister.

### **Annual report**

**145.(1)** The ombudsman must prepare and give to the Minister, within 3 months after the end of each financial year, a report on the discharge of the ombudsman's functions during the year.

**(2)** The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

## **PART 2—TRAINING AND EMPLOYMENT BOARD**

### *Division 1—Establishment and functions*

#### **Establishment of board**

**146.** The Training and Employment Board is established.

#### **Board's functions**

**147.(1)** The board has the following functions—



- (a) to provide up-to-date and strategic advice to the Minister on—
  - (i) current vocational education and training issues and strategies; and
  - (ii) current employment issues and strategies as they relate to vocational education and training;
- (b) to provide advice to the Minister on—
  - (i) the appropriate development of vocational education and training infrastructure; and
  - (ii) matters, including access and equity matters, relating to the continued development of a high quality vocational education and training system;
- (c) to recommend to the Minister an annual training plan including priorities for vocational education and training;
- (d) to recommend to the Minister guidelines for the board or the council about the following—
  - (i) registering and regulating training organisations, training contracts and vocational placement agreements;
  - (ii) declarations of apprenticeships or traineeships;
  - (iii) declaring a calling to be a restricted calling;
  - (iv) deciding probationary periods;
  - (v) declaring an employer to be a prohibited employer;
  - (vi) accrediting and regulating courses;
  - (vii) issuing qualifications or statements of attainment;
  - (viii) recognising vocational placement schemes;
  - (ix) recognising industry training advisory bodies;
  - (x) recognising group training organisations;
  - (xi) the effective and equitable operation and regulation of vocational education and training;
- (e) to recognise industry training advisory bodies and group training organisations;

- (f) to perform the functions of an approving authority under the *Workplace Relations Act 1996* (Cwlth) and the *Industrial Relations Act 1999*;
- (g) to perform the functions of the State Training Agency for the *Australian National Training Authority Act 1992* (Cwlth);
- (h) to undertake other functions requested by the Minister.

(2) Subsection (1) does not limit the board in performing another function conferred on it under this Act.

(3) The board has power to do all things necessary or convenient for performing its functions.

### **Board subject to Minister**

**148.(1)** The board is subject to the Minister.

(2) The board must comply with the Minister's signed directions about exercising its powers or performing its functions.

## ***Division 2—Board membership***

### **Board membership**

**149.(1)** The board consists of not more than 15 members appointed by signed notice by the Minister.

(2) Up to 4 members must be persons having standing with unions.

(3) Up to 4 members must be persons having standing with employers.

(4) Each other member must have standing in vocational education and training, industry or the general community.

### **Board chairperson and deputy chairperson**

**150.(1)** The Minister must appoint a member to be the chairperson of the board and may appoint another member to be the deputy chairperson of the board.

(2) The chairperson or deputy chairperson holds office as chairperson or deputy chairperson—

- (a) for the term decided by the Minister; or
- (b) if the person's term of office as member ends before the person's term of office as chairperson or deputy chairperson ends—until the day the person's term of office as member ends; or
- (c) if the person's term of office as member and the person's term of office as chairperson or deputy chairperson end on the same day—until the day the person's offices end.

(3) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office—

- (a) is removed from office by signed notice from the Minister; or
- (b) resigns the office by signed notice of resignation given to the Minister.

(4) However, a person removed from, or resigning, the office of chairperson or deputy chairperson may continue to be a member of the board.

### **Term of appointment to board**

**151.(1)** A board member is appointed for a term not longer than 3 years.

(2) A board member may resign by signed notice of resignation given to the Minister.

### **Conditions of appointment to board**

**152.(1)** A board member is to be paid the remuneration and allowances decided by the Minister.

(2) A board member holds office—

- (a) on the conditions stated in this Act; and
- (b) the other conditions decided by the Minister.

**Disqualifications for appointment to board**

**153.** A person is not qualified to be, or continue as, a board member if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) is convicted of an indictable offence, whether on indictment or summarily.

**Vacating office**

**154.** The office of a board member becomes vacant if the member—

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is absent without the board's permission from 3 consecutive board meetings of which proper notice has been given; or
- (c) is no longer qualified to be a member; or
- (d) is removed from office by signed notice from the Minister.

***Division 3—Board meetings*****Times and places of board meetings**

**155.(1)** Board meetings are to be held at the times and places it decides.

**(2)** However, the chairperson may call a board meeting at any time.

**(3)** The Minister may also call a board meeting at any time.

**(4)** The board must meet at least once a year.

**Presiding at board meetings**

**156.(1)** The chairperson is to preside at all board meetings at which the chairperson is present.

**(2)** If the chairperson is absent, the deputy chairperson, if present, is to preside.

**(3)** If the chairperson and the deputy chairperson are absent, the member chosen by the members present is to preside.

**Voting at board meetings**

**157.(1)** At board meetings, all questions are to be decided by a majority of votes of the members present.

**(2)** If a member abstains from voting, the member is taken to vote for the negative.

**(3)** The chairperson or member presiding at a meeting is to have a vote, and if the votes are equal, a second or casting vote.

**Quorum for board meeting**

**158.** A quorum for a board meeting is the number equal to one half of the number of its appointed members or, if one half is not a whole number, the next highest whole number.

**Conduct of board meetings**

**159.(1)** The board may conduct its meetings as it considers appropriate.

**(2)** The board may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

**(3)** A member who participates in a board meeting under a permission under subsection (2) is taken to be present at the meeting.

**(4)** A resolution is a valid resolution of the board, even though it is not passed at a meeting of the board, if—

- (a) notice of the resolution is given to the board members under procedures approved by the board; and
- (b) the number of members required for a quorum agree in writing to the resolution.

### **Board minutes**

**160.** The board must keep a record of the minutes of its meetings and its decisions.

### *Division 4—Other provisions*

#### **How board signs documents**

**161.** A document required to be signed by the board may be signed by—

- (a) the board’s chairperson; or
- (b) if the chairperson is absent or is otherwise unable to sign the document and a deputy chairperson has been appointed—the deputy chairperson; or
- (c) otherwise—the person authorised in writing by the chairperson.

#### **Delegation by board**

**162.(1)** The board may delegate the board’s powers to an appropriately qualified entity.

**(2)** An entity delegated a power may subdelegate the power to an appropriately qualified entity.

**(3)** In this section—

**“appropriately qualified”**, for an entity to whom a power under this Act may be delegated or subdelegated, includes having the qualifications, experience or standing appropriate to exercise the power.

**Establishing committees**

**163.(1)** The board may, with the Minister's earlier signed approval, establish a committee to help it to perform its functions.

**(2)** When seeking the Minister's approval, the board must give the Minister a statement of the proposed committee's terms of reference or functions.

**(3)** Appointments to the committee are to be made by the board by signed notice.

**(4)** The board may appoint a person to the committee only if the person has skills or experience appropriate to the committee's terms of reference or functions.

**(5)** A committee member is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance, unless the remuneration is approved in writing by the Minister.

**(6)** Subsection (1) does not apply to a committee of the board's own members.

**Chief executive to help board**

**164.(1)** The chief executive is to give the board reasonable help to perform its functions.

**(2)** Without limiting subsection (1), the chief executive must nominate an appropriately qualified departmental officer to assist the board in performing its functions.

**(3)** A departmental officer is appropriately qualified if the officer has qualifications, experience or standing appropriate to assist the board in performing its functions.

**Report on board's operations**

**165.(1)** The board must prepare and give to the Minister, within 3 months after the end of each financial year, a report on its operations during the financial year.

(2) If the Minister has given the board a signed direction under section 148<sup>19</sup> in the year, the report must include a copy of the direction.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

### **Minister's approval for guideline**

**166.(1)** A guideline recommended by the board becomes effective when it is approved in writing by the Minister.

(2) If a guideline is approved by the Minister, the board must ensure the guideline is published in the gazette.

## **PART 3—TRAINING RECOGNITION COUNCIL**

### *Division 1—Establishment and functions*

#### **Establishment of council**

**167.** The Training Recognition Council is established.

#### **Council's functions**

**168.(1)** The council has the following functions—

- (a) if asked by the Minister, to make recommendations to the Minister on national training systems of qualifications;
- (b) to advise the board on policy and guidelines for—
  - (i) registering and regulating training organisations and training contracts; and
  - (ii) accrediting courses and regulating accredited courses; and
  - (iii) the training requirements for apprentices and trainees; and

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<sup>19</sup> Section 148 (Board subject to Minister)



- (iv) vocational placements;
- (c) to register and regulate training organisations and training contracts;
- (d) to accredit courses and regulate accredited courses;
- (e) to recognise vocational placement schemes and register and regulate vocational placement agreements;
- (f) to regulate the issuing of qualifications and statements of attainment;
- (g) to declare apprenticeships or traineeships;
- (h) to declare a calling to be a restricted callings;
- (i) to decide probationary periods and nominal terms for apprenticeships and traineeships;
- (j) to issue recognition certificates;
- (k) to perform other functions requested by the board.

(2) Subsection (1) does not limit the council in performing another function conferred on it under this Act.

(3) The council has power to do all things necessary or convenient for performing its functions.

### **Council subject to Minister and board**

**169.(1)** In performing its functions under section 168(1)(a), the council is subject to the Minister.

(2) In performing its functions under section 168(1)(b) to (k), the council is subject to the board.

(3) The council must comply with the signed directions of the Minister or the board given under subsection (1) or (2).

***Division 2—Council membership*****Council membership**

**170.(1)** The council consists of not more than 14 members appointed by signed notice by the Minister.

(2) Up to 4 members must be persons having standing with unions.

(3) Up to 4 members must be persons having standing with employers.

(4) Each other member must have standing in vocational education and training, general or higher education or the general community.

**Council chairperson**

**171.(1)** The Minister must appoint a member to be the chairperson and may appoint another member to be the deputy chairperson of the council.

(2) The chairperson or deputy chairperson holds office as chairperson or deputy chairperson—

(a) for the term decided by the Minister; or

(b) if the person's term of office as member ends before the person's term of office as chairperson or deputy chairperson ends—until the day the person's term of office as member ends; or

(c) if the person's term of office as member and the person's term of office as chairperson or deputy chairperson end on the same day—until the day the person's offices end.

(3) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office—

(a) is removed from office by signed notice from the Minister; or

(b) resigns the office by signed notice of resignation given to the Minister.

(4) However, a person removed from, or resigning, the office of chairperson or deputy chairperson may continue to be a member of the council.

**Term of appointment to council**

**172.(1)** A council member is appointed for a term not longer than 3 years.

**(2)** A council member may resign by signed notice of resignation given to the Minister.

**Conditions of appointment to council**

**173.(1)** A council member is to be paid the remuneration and allowances decided by the Minister.

**(2)** A council member holds office—

- (a) on the conditions stated in this Act; and
- (b) the other conditions decided by the Minister.

**Disqualifications for appointment to council**

**174.** A person is not qualified to be, or continue as, a council member if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) is convicted of an indictable offence, whether on indictment or summarily.

**Vacating office**

**175.** The office of a member of the council becomes vacant if the member—

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is absent without the council's permission from 3 consecutive meetings of the council of which proper notice has been given; or

- (c) is no longer qualified to be a member; or
- (d) is removed from office by signed notice from the Minister.

### *Division 3—Council meetings*

#### **Times and places of council meetings**

- 176.(1)** Council meetings are to be held at the times and places it decides.
- (2)** However, the chairperson may call a council meeting at any time.
- (3)** The Minister may also call a council meeting at any time.
- (4)** The council must meet at least once a year.

#### **Presiding at council meetings**

- 177.(1)** The chairperson is to preside at all council meetings at which the chairperson is present.
- (2)** If the chairperson is absent, the deputy chairperson, if present, is to preside.
- (3)** If the chairperson and the deputy chairperson are absent, the member chosen by the members present is to preside.

#### **Voting at council meetings**

- 178.(1)** At council meetings, all questions are to be decided by a majority of votes of the members present.
- (2)** If a member abstains from voting, the member is taken to vote for the negative.
- (3)** The chairperson or member presiding at a meeting is to have a vote, and if the votes are equal, a second or casting vote.

**Quorum for council meetings**

**179.** A quorum for a council meeting is the number equal to one half of the number of its appointed members or, if one half is not a whole number, the next highest whole number.

**Conduct of council meetings**

**180.(1)** The council may conduct its meetings as it considers appropriate.

**(2)** The council may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

**(3)** A member who participates in a council meeting under a permission under subsection (2) is taken to be present at the meeting.

**(4)** A resolution is a valid resolution of the council, even though it is not passed at a meeting of the council, if—

- (a) notice of the resolution is given to the council members under procedures approved by the council; and
- (b) the number of members required for a quorum agree in writing to the resolution.

**Council minutes**

**181.** The council must keep a record of the minutes of its meetings and its decisions.

***Division 4—Recognition certificates*****Recognition of work or training by council**

**182.(1)** A person who has worked, or undertaken training, in a calling may apply to the council to have the person's skills and knowledge in the calling recognised.

(2) If the council is satisfied the person has necessary skills and knowledge in the calling, the council may issue the person with a certificate (“**recognition certificate**”).

(3) To remove doubt, it is declared that a recognition certificate is not a qualification or a statement of attainment.

(4) The council may cancel a recognition certificate by fair procedures prescribed under a regulation if the recognition certificate was issued—

- (a) in error; or
- (b) because of a document or representation that—
  - (i) is false or misleading; or
  - (ii) was obtained or made in another improper way.

(5) If the recognition certificate is cancelled, the person to whom it was issued must return it to the council within 7 days after the council gives notice of the cancellation to the person, unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—40 penalty units.

### *Division 5—Declaring apprenticeships or traineeships*

#### **Declaring apprenticeships or traineeships**

**183.(1)** This section applies if a person can obtain a qualification or statement of attainment by completing employment based training with an employer.

(2) The council may declare the employment based training leading to the qualification or statement of attainment to be an apprenticeship or traineeship.

(3) A declaration under subsection (2) does not prevent the qualification or statement of attainment from being attained in a way other than by completing an apprenticeship or traineeship.

***Division 6—Other provisions*****How council signs documents**

**184.** A document required to be signed by the council may be signed by—

- (a) the council’s chairperson; or
- (b) if the chairperson is absent or is otherwise unable to sign the document and a deputy chairperson has been appointed—the deputy chairperson; or
- (c) otherwise—the person authorised in writing by the chairperson.

**Council may require production of documents**

**185.(1)** The council may, by signed notice, require a person to produce to the council for inspection—

- (a) a document issued to the person under this Act; or
- (b) a document required to be kept by the person under this Act.

**(2)** The notice must state a reasonable time for compliance with the requirement.

**(3)** The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

**Delegation by council**

**186.(1)** The council may delegate the council’s powers to an appropriately qualified entity.

**(2)** An entity delegated a power may subdelegate the power to an appropriately qualified entity.

**(3)** In this section—

**“appropriately qualified”**, for an entity to whom a power under this Act may be delegated or subdelegated, includes having the qualifications, experience or standing appropriate to exercise the power.

**Establishing committees**

**187.(1)** The council may establish a committee to help it to perform its functions under chapter 3.

(2) Appointments to the committee are to be made by the council by signed notice.

(3) The council may appoint a person to a committee only if the person has skills or experience appropriate for the functions the committee is to perform.

(4) A committee member is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance, unless the remuneration is approved in writing by the Minister.

**Chief executive to help council**

**188.** The chief executive is to give the council reasonable help to perform its functions.

**Council to comply with approved guidelines**

**189.** In performing its function or exercising its powers, the council must comply with all approved guidelines.

**Approval of forms**

**190.** The council may approve a form (an “**approved form**”) for use under this Act.



## CHAPTER 6—TAFE INSTITUTES

### PART 1—PRELIMINARY

#### What is a “TAFE institute”

**191.(1)** A “TAFE institute” is an institution operated by the State that provides vocational education and training.

**(2)** A TAFE institute may also provide—

- (a) adult community education; or
- (b) post compulsory general education.

**(3)** A TAFE institute may also include colleges or campuses as part of it.

#### Establishing TAFE institutes

**192.(1)** The Minister may establish—

- (a) TAFE institutes; or
- (b) colleges or campuses of TAFE institutes.

**(2)** The Minister may—

- (a) amalgamate an institute or part of an institute with another institute or part of an institute; or
- (b) abolish or close an institute or part of an institute.

### PART 2—TAFE INSTITUTE COUNCILS

#### *Division 1—TAFE institute councils*

#### TAFE institute councils

**193.** There is a TAFE institute council for each TAFE institute.

**TAFE institute council's functions**

**194.(1)** A TAFE institute council has the following functions—

- (a) to support vocational education and training through the institute;
- (b) to advise and report on the activities of the institute to—
  - (i) the Minister; and
  - (ii) the board; and
  - (iii) the institute director;
- (c) to develop and approve institute directions.

**(2)** The institute council has power to do all things necessary or desirable to be done for the performance of its functions.

**TAFE institute council subject to Minister's directions**

**195.(1)** A TAFE institute council is subject to the Minister and must comply with the Minister's written directions about the performance of its functions.

**(2)** The institute council must disclose directions given to it by the Minister in a financial year in the TAFE institute's annual report for the financial year.

***Division 2—TAFE institute council membership*****Composition of TAFE institute council**

**196.(1)** A TAFE institute council consists of—

- (a) up to 20 persons appointed by the Minister (“**appointed members**”); and
- (b) the institute's director, without further appointment.

**(2)** An appointed member may be from—

- (a) any industry that is closely linked to the economic, social and employment environment in which the institute operates; or
- (b) the local community; or

- (c) any industrial union of employees; or
- (d) the staff and students of the institute; or
- (e) the indigenous community.

### **TAFE institute council chairperson**

**197.(1)** The Minister is to appoint an appointed member of a TAFE institute council to be the chairperson of the institute council and may appoint another appointed member to be the deputy chairperson of the institute council.

**(2)** The chairperson or deputy chairperson holds office as chairperson or deputy chairperson—

- (a) for the term decided by the Minister; or
- (b) if the person's term of office as member ends before the person's term of office as chairperson or deputy chairperson ends—until the day the person's term of office as member ends; or
- (c) if the person's term of office as member and the person's term of office as chairperson or deputy chairperson end on the same day—until the day the person's offices end.

**(3)** A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office—

- (a) is removed from office by signed notice from the Minister; or
- (b) resigns the office by signed notice of resignation given to the Minister.

**(4)** However, a person removed from, or resigning, the office of chairperson or deputy chairperson may continue to be a member of the institute council.

### **Term of appointment of appointed member**

**198.(1)** An appointed member is appointed for a term not longer than 3 years.

**(2)** An appointed member may resign by signed notice of resignation given to the Minister.

**Conditions of appointment of appointed member**

**199.(1)** An appointed member is to be paid the remuneration and allowances decided by the Minister.

**(2)** An appointed member holds office—

- (a) on the conditions stated in this Act; and
- (b) on the other conditions decided by the Minister.

**Disqualifications for appointment as appointed member**

**200.** A person is not qualified to be, or continue as, an appointed member if the person—

- (a) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (b) is incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) is convicted of an indictable offence, whether on indictment or summarily.

**Vacating office**

**201.** The office of an appointed member becomes vacant if the member—

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is absent without the TAFE institute council's permission from 3 consecutive institute council meetings of which proper notice has been given; or
- (c) is no longer qualified to be an appointed member; or
- (d) is removed from office by signed notice from the Minister.

***Division 3—TAFE institute council meetings*****Times and places of TAFE institute council meetings**

**202.(1)** A TAFE institute council meeting is to be held at the times and places the institute council decides.

(2) However, the chairperson may call an institute council meeting at any time.

(3) The Minister may also call an institute council meeting at any time.

**Presiding at TAFE institute council meetings**

**203.(1)** The chairperson is to preside at all TAFE institute council meetings at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson, if present, is to preside.

(3) If the chairperson and the deputy chairperson are absent, the member chosen by the members present is to preside.

**Voting at TAFE institute council meetings**

**204.(1)** At TAFE institute council meetings, all questions are to be decided by a majority of votes of the members present.

(2) If a member abstains from voting, the member is taken to vote for the negative.

(3) The chairperson or member presiding at a meeting is to have a vote, and if the votes are equal, a second or casting vote.

**Quorum for TAFE institute council meeting**

**205.** A quorum for a TAFE institute council meeting is the number equal to one half of the number of the members on the institute council or, if one half is not a whole number, the next highest whole number.

**Conduct of TAFE institute council meetings**

**206.(1)** A TAFE institute council may conduct its meetings as it considers appropriate.

**(2)** The institute council may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

**(3)** A member who participates in an institute council meeting under a permission under subsection (2) is taken to be present at the meeting.

**(4)** A resolution is a valid resolution of the institute council, even though it is not passed at a meeting of the institute council, if—

- (a) notice of the resolution is given to the institute council members under procedures approved by the institute council; and
- (b) the number of members required for a quorum agree in writing to the resolution.

**TAFE institute council minutes**

**207.** A TAFE institute council must keep a record of the minutes of its meetings and its decisions.

*Division 4—Other provisions***How TAFE institute council signs documents**

**208.** A document required to be signed by a TAFE institute council may be signed by—

- (a) the institute council's chairperson; or
- (b) if the chairperson is absent or is otherwise unable to sign the document and a deputy chairperson has been appointed—the deputy chairperson; or
- (c) otherwise—the person authorised in writing by the chairperson.

**Prohibition on certain activities**

**209.** To remove doubt, it is declared that despite any other provision of this Act, a TAFE institute or a TAFE institute council may not—

- (a) alter an institute building, other than in a minor way; or
- (b) extend an institute building; or
- (c) build or buy a building for use by the institute; or
- (d) sell institute land or an institute building.

**TAFE institute director to help TAFE institute council**

**210.** A TAFE institute director is to give the TAFE institute council reasonable help to perform its functions.

**Report on TAFE institute council's operations**

**211.(1)** A TAFE institute council must prepare and give to the Minister, within 3 months after the end of each financial year, a report on its operations during the financial year.

**(2)** If the Minister has given the institute council a signed direction under section 195<sup>20</sup> in the year, the report must include a copy of the direction.

**PART 3—COLLEGE COUNCILS****Application**

**212.** This part applies if—

- (a) a TAFE institute includes 1 or more colleges; and
- (b) the institute council decides a college needs a college council.

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<sup>20</sup> Section 195 (TAFE institute council subject to Minister's directions)

**Ministerial approval for establishment of college council**

**213.(1)** The TAFE institute council must, by signed notice to the Minister, ask for the Minister's approval to establish the college council.

**(2)** The notice must state the following—

- (a) the structure and function of the proposed college council;
- (b) the sectors and interests the proposed college council will represent;
- (c) the procedures for appointing members to the proposed college council.

**(3)** If the Minister gives written approval to the establishment of the college council—

- (a) the college council is established in accordance with the Minister's approval; and
- (b) the members of the college council are the members appointed by the Minister under section 214; and
- (c) the functions of the college council are those stated in the Minister's approval.

**College council membership**

**214.** The college council consists of the members appointed to it by signed notice from the Minister.

**Duration and conditions of appointment**

**215.** A member of the college council is appointed for the term and on the conditions decided by the Minister.

**Conducting college council meetings**

**216.** A college council may conduct its meetings in the way it considers appropriate.



## **PART 4—CHIEF EXECUTIVE TO ADMINISTER TAFE INSTITUTES**

### **Chief executive's functions for TAFE institutes**

**217.** The chief executive has the following functions for TAFE institutes—

- (a) to ensure the provision of vocational education and training services;
- (b) to produce and sell vocational education and training products and services or other products and services connected with TAFE institutes;
- (c) to prepare, publish, distribute or license the use of literary or artistic work, audio or audiovisual material, or computer software;
- (d) to exploit commercially—
  - (i) TAFE institute resources, including any study, research or knowledge; or
  - (ii) the practical application of any study, research or knowledge;
- (e) to undertake research and development related to a function of the chief executive.

## **CHAPTER 7—INDUSTRY TRAINING ADVISORY BODIES AND GROUP TRAINING ORGANISATIONS**

### **PART 1—INDUSTRY TRAINING ADVISORY BODIES**

#### **Recognition of industry training advisory bodies**

**218.(1)** The board may, by signed notice to a corporation, recognise the corporation as an industry training advisory body for—

- (a) an industry; or
- (b) an industry sector; or
- (c) a grouping of industries.

(2) However, the board may recognise a corporation as an industry training advisory body only if the corporation conforms with the requirements of the approved guidelines for an industry training advisory body.

### **Role of industry training advisory bodies**

**219.** An industry training advisory body is the principal source of advice to the board about vocational education and training within its industry, industry sector or grouping.

### **Withdrawal of recognition**

**220.(1)** The board may withdraw the recognition of a corporation as an industry training advisory body by fair procedures prescribed under a regulation.

(2) If the board withdraws the recognition of a corporation as an industry training advisory body, the board must promptly give the corporation an information notice.

## **PART 2—GROUP TRAINING ORGANISATIONS**

### **Recognition of group training organisation**

**221.(1)** The board may, by signed notice to a corporation, recognise the corporation as a group training organisation for—

- (a) an industry; or
- (b) an industry sector; or
- (c) an area.

(2) However, the board may recognise a corporation as a group training organisation only if the corporation conforms with the requirements of the approved guidelines for a group training organisation.

### **Function of group training organisation**

**222.** The main function of a group training organisation is, by agreement between the organisation and an entity, to arrange for the entity to train under a training plan, an apprentice or trainee employed by the organisation.

### **Withdrawal of recognition**

**223.(1)** The board may withdraw the recognition of a corporation as a group training organisation by fair procedures prescribed under a regulation.

(2) If the board withdraws the recognition of a corporation as a group training organisation, the board must promptly give the corporation an information notice.

## **CHAPTER 8—APPEALS**

### **PART 1—TRAINING RECOGNITION DECISIONS**

#### **Appeal to Magistrates Court**

**224.** A person aggrieved by any of the following decisions may appeal to a Magistrates Court—

- (a) a decision about the registration of a training organisation;
- (b) a decision about the accreditation of a course;
- (c) a decision about the recognition of an industry training advisory body;
- (d) a decision about the recognition of a group training organisation.

**Starting appeals**

**225.(1)** The appeal is started by—

- (a) filing a written notice of appeal with the court; and
- (b) serving a copy of the notice on the chairperson of the council or board.

(2) The notice of appeal must be filed within 21 days after the day the aggrieved person is given an information notice for the decision being appealed.

(3) The court may, at any time, extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal.

**Stay of operation of decisions**

**226.(1)** The court may grant a stay of the operation of the decision being appealed to secure the effectiveness of the appeal.

(2) The stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of the stay must not extend past the time when the court decides the appeal.

(4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

**Hearing procedures**

**227.(1)** In deciding the appeal, the court has the same powers as the council or board in making the decision being appealed.

(2) The appeal is by way of rehearing.

**Powers of court on appeal**

**228.(1)** In deciding the appeal, the court may—

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the decision being appealed and substitute another decision; or
- (c) allow the appeal and amend the decision; or
- (d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the council or the board to act according to law.

**(2)** If the court amends the decision or substitutes another decision for it, the amended or substituted decision is, for this Act (other than this part) taken to be the council's or board's decision.

**Appeal to District Court on question of law**

**229.** A party to an appeal to a Magistrates Court may appeal against the Magistrates Court's decision to the District Court on a question of law only.

**PART 2—DECISIONS RELATING TO APPRENTICES  
AND TRAINEES***Division 1—Appeals to industrial commission***Appeal to industrial commission against council or other decisions**

**230.(1)** A person aggrieved by any of the following decisions may appeal to the industrial commission—

- (a) the council's refusal to register a training contract;
- (b) the amendment or assignment of a registered training contract;

- (c) an order under section 71;<sup>21</sup>
- (d) the cancellation of a training contract for serious misconduct;
- (e) the cancellation of a training contract for a reason other than for serious misconduct;
- (f) the cancellation of the registration of a training contract;
- (g) the cancellation of a completion certificate;
- (h) the cancellation of, or a refusal to cancel, a qualification or statement of attainment by a registered training organisation;
- (i) the extension of the nominal term of a registered training contract;
- (j) the declaration, variation of a declaration or refusal to vary a declaration of a prohibited employer;
- (k) the stand down, or the refusal to approve the stand down, of an apprentice or trainee.

(2) A parent of an apprentice or trainee can not be a person aggrieved for any of the decisions mentioned in subsection (1).

(3) The appeal must be started, as required under the rules made under the *Industrial Relations Act 1999*, within 21 days after the aggrieved person is given an information notice for the decision being appealed.

(4) However, the commission may extend the time for starting an appeal.

### **Stay of decision being appealed**

**231.** The industrial commission may order that the decision being appealed be wholly or partly stayed pending—

- (a) the determination of the appeal; or
- (b) a further order of the commission.

### **Nature of appeal**

**232.(1)** An appeal to the industrial commission is by way of rehearing on the record.

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<sup>21</sup> Section 71 (Discipline)

(2) However, the commission may hear evidence afresh, or hear additional evidence, if the commission considers it appropriate to effectively dispose of the appeal.

### **Decision on appeal**

**233.(1)** The industrial commission must deal with an appeal as quickly as possible.

(2) The commission may—

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the decision being appealed and substitute another decision; or
- (c) allow the appeal and amend the decision; or
- (d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the person who made the decision to act according to law.

(3) Subject to section 244, the commission's decision—

- (a) is final and conclusive; and
- (b) can not be impeached for informality or want of form.

### **Exclusive jurisdiction**

**234.(1)** The industrial commission's jurisdiction is exclusive of any court's jurisdiction and an injunction or prerogative order can not be issued, granted or made in relation to proceedings in the commission that are within the commission's jurisdiction.

(2) Subsection (1) is subject to section 244.

### ***Division 2—Industrial commission's orders***

#### **Application of div 2**

**235.** This division applies if—

- (a) an appeal to the industrial commission is about the cancellation of a registered training contract; and
- (b) the commission decides the employer or the apprentice or trainee has purported to cancel the contract other than in a way allowed under this Act.

### **Order to resume training**

**236.(1)** The industrial commission may order—

- (a) the employer to resume training the apprentice or trainee; or
- (b) the apprentice or trainee to resume training.

**(2)** If the commission makes an order under subsection (1), the commission may—

- (a) make an order it considers necessary to maintain the continuity of the training; or
- (b) order the employer to pay to the apprentice or trainee the remuneration lost, or likely to have been lost, by the apprentice or trainee because of the purported cancellation; or
- (c) order the apprentice or trainee to repay an amount paid to the apprentice or trainee by or for the employer on the purported cancellation.

### **Order cancelling contract**

**237.** If the industrial commission considers it would be inappropriate in the circumstances for training to continue, the commission may order—

- (a) the contract be cancelled; and
- (b) the employer pay to the apprentice or trainee the compensation decided by the commission if the commission is satisfied the payment of compensation is reasonable in all the circumstances.



**Limit of compensation**

**238.** The industrial commission must not award an amount under section 237 that is more than the amount that could be awarded if the compensation were payable under the *Industrial Relations Act 1999*, section 79.<sup>22</sup>

**Account of amounts paid to apprentice or trainee**

**239.** In deciding remuneration payable under section 236(2)(b) or compensation payable under section 237, the industrial commission may take into account an amount paid to the apprentice or trainee by the employer on the purported cancellation.

**Payment of additional amount**

**240.** If satisfied the employer has purported to cancel the contract other than in a way allowed under this Act, the industrial commission may, in addition to amounts ordered to be paid under section 236(2)(b) or 237, order the employer to pay the apprentice or trainee an amount of not more than the monetary value of 135 penalty units.

**Instalments**

**241.** The industrial commission may allow an amount ordered to be paid under this division to be paid in the instalments decided by the commission.

**Contravening orders**

**242.(1)** A person must not contravene an industrial commission order made under this division.

Maximum penalty—40 penalty units.

**(2)** If the employer wilfully contravenes an order to continue training made under section 236, the industrial commission may—

- (a) further order the employer to pay to the apprentice or trainee—

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<sup>22</sup> *Industrial Relations Act 1999*, section 79 (Remedies—compensation)

- (i) an amount of not more than the monetary value of 50 penalty units; and
  - (ii) an amount as remuneration for lost wages; or
- (b) make a further order the commission considers necessary about the continuity of training.

### *Division 3—Other provisions*

#### **Recovery of amounts under orders**

**243.(1)** If the industrial commission orders, under division 2, an amount be paid (as a penalty or otherwise), the registrar may issue a certificate, under the commission's seal, stating—

- (a) the amount payable; and
- (b) who is to pay the amount; and
- (c) to whom the amount is payable; and
- (d) any conditions about payment.

**(2)** The amount may be recovered in proceedings as for a debt.

**(3)** When the certificate is filed in a court having jurisdiction for the recovery of the amount in an action for a debt, the order evidenced by the certificate is enforceable as if it were an order made by the court where the certificate is filed.

**(4)** This section does not limit other ways in which amounts may be recovered on an order of the commission.

#### **Appeal to Industrial Court on question of law**

**244.** A party to an appeal to the industrial commission may appeal against the commission's decision to the Industrial Court on a question of law only.

## CHAPTER 9—GENERAL

### PART 1—ADMINISTRATION

#### *Division 1—Chief executive's functions and powers*

##### **Chief executive's powers**

**245.(1)** The chief executive has, under the Minister and as agent of the State, all the powers of the State that are necessary or desirable for performing the chief executive's functions.

(2) Anything the chief executive does in the name of, or for, the State in performing the chief executive's functions is taken to be done for, and binds, the State.

(3) Without limiting subsection (1), the chief executive may, for example, in performing the chief executive's functions—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with, and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) form or establish, or participate in forming or establishing, an association, corporation, trust or other arrangement for a purpose calculated to further in any way the objects of this Act; and
- (e) compound, or prove in a court having jurisdiction for the recovery of the amount claimed, all debts or amounts owing to the State; and
- (f) accept gifts, including testamentary gifts and grants and create and administer trust funds; and
- (g) charge, and fix terms, for goods, services, facilities and information supplied; and
- (h) seal a document; and
- (i) issue guidelines and directions for the performance of a function in relation to a TAFE institute; and

- (j) do other things necessary or desirable to be done in connection with the functions.

(4) Without limiting subsection (1), the chief executive has the powers given to the chief executive under this or another Act or at common law.

(5) However, the chief executive's powers are subject to any restriction expressly imposed on the chief executive under this or another Act.

(6) In this section—

“**law**” includes a common law rule.

“**restriction**” includes prohibition.

### Delegations

**246.(1)** The chief executive may delegate the chief executive's powers to an appropriately qualified officer of the department.

(2) In this section—

“**appropriately qualified**”, for an officer of the department to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of 'standing'—*

An officer's classification level in the public service.

### Committees

**247.** The chief executive may establish committees to help the chief executive to perform the chief executive's functions.

### Membership of other bodies

**248.(1)** The chief executive—

- (a) may become and be a member or manager of an entity that—
- (i) has among its objects—
- (A) a declared object; or

- (B) the conduct of research relevant to a declared object; or
- (ii) the chief executive personally considers, is engaged in furthering a declared object; and

(b) may enter into agreements with an entity for a declared object.

(2) The chief executive may be a member or manager of an entity only if its governing body agrees.

(3) The chief executive may be a member of the governing body of an entity of which the chief executive is a member or manager.

(4) In this section—

**“chief executive”** includes the chief executive’s nominee.

**“declared object”** means—

- (a) vocational education and training; or
- (b) adult and community education; or
- (c) post compulsory general education.

### **Returns to be given as required**

**249.(1)** A corporation in whose formation the chief executive has participated, and an entity of which the chief executive is a member or manager, must give to the Minister reports, returns and information about its affairs as required by the Minister.

(2) In this section—

**“chief executive”** includes the chief executive’s nominee.

### **Use of facilities and staff**

**250.** The chief executive may contract, or enter into an arrangement, with an entity for the use by the entity of the facilities and staff available to the chief executive.

***Division 2—Trusts*****Definitions for div 2**

**251.** In this division—

**“approved arrangement”** means an arrangement—

- (a) approved by the Minister under section 252(4); and
- (b) notified by gazette notice under section 252(5).

**“trust property”** see section 252(1).

**Variation of trust purposes**

**252.(1)** This section applies if—

- (a) property (**“trust property”**) is held by or for the State, at the commencement of this section or at a later time, on terms requiring the property or income from the property to be applied to a purpose (the **“original purpose”**) intended to further in any way the objects of this Act; and
- (b) 1 or more of the following happen—
  - (i) the original purpose is carried out;
  - (ii) the original purpose ceases to exist;
  - (iii) the original purpose is adequately provided for otherwise;
  - (iv) the original purpose is uncertain or insufficiently defined or can not be identified;
  - (v) it is or becomes impossible, impracticable or inexpedient to carry out the original purpose;
  - (vi) the property or income from the property is not enough to carry out the original purpose.

**(2)** The chief executive may propose an arrangement to apply the trust property or a part of it or the income from the property to a purpose stated in the proposal.

**(3)** The chief executive must submit the proposed arrangement in writing to the Minister.

(4) The proposed arrangement has no effect unless it is approved by the Minister.

(5) If the Minister approves the proposed arrangement, the approval must be notified by gazette notice.

(6) The approval is effective from the publication of the notice or a later day stated in the notice.

(7) Despite the original purpose for which the trust property was held immediately before the proposed arrangement becomes effective, when the approved arrangement becomes effective the trust property or income from it is to be applied to the purpose stated in the approved arrangement.

(8) However, the chief executive may not propose an arrangement under subsection (2) for trust property if the trust instrument under which the property is held on trust states the way the property is to be dealt with if something mentioned in subsection (1)(b) happens.

### **Variation of approved arrangement**

**253.(1)** The chief executive may propose a variation of an approved arrangement.

(2) The chief executive must submit the proposed variation in writing to the Minister.

(3) The proposed variation has no effect unless it is approved by the Minister.

(4) If the Minister approves the proposed variation—

- (a) the variation must be notified by gazette notice; and
- (b) the approved arrangement as varied, is taken to be the approved arrangement for the trust property, or the part of the property to which it relates, on publication of the notice or a later day stated in the notice.

### **Requirements about purposes for arrangements**

**254.(1)** This section applies if the chief executive proposes—

- (a) an arrangement under section 252(2); or

- (b) a variation of an approved arrangement under section 253(1) and the proposal is to change the purpose of the approved arrangement.

**(2)** The chief executive must—

- (a) choose a purpose that, in the chief executive's opinion, is as similar as possible to the purpose for which the trust property is held by or for the State immediately before—
  - (i) the proposal of the arrangement; or
  - (ii) the variation of the approved arrangement; and
- (b) in choosing the purpose, have regard to—
  - (i) its usefulness; and
  - (ii) how easily it can be achieved.

**(3)** If the chief executive might have chosen another purpose for the arrangement or variation, other than the chosen purpose, it is not a sufficient ground for a court—

- (a) to declare the chief executive's chosen purpose invalid or defective; or
- (b) to stop the chief executive's chosen purpose from being carried out.

### **Recording arrangements and variations in land register**

**255.(1)** This section applies if trust property to which an approved arrangement, or a variation of an approved arrangement, relates consists wholly or partly of land.

**(2)** The chief executive must notify the registrar of titles or other person (each a "**recorder**") charged by law with recording dealings for the land of the approved arrangement or variation of an approved arrangement within 1 month after the approval of the arrangement or variation takes effect.

**(3)** On receiving the notification and any other particulars about the land, arrangement or variation the recorder requires, the recorder must make, in the appropriate register, the entries necessary to record the existence of the approved arrangement or variation.



**Rights and jurisdiction in equity not affected**

**256.** Other than as provided in this division, this division does not affect—

- (a) rights, entitlements and obligations conferred or imposed by law for property held on trust; or
- (b) the jurisdiction of a court to enforce, or declare about, trusts.

**PART 2—ENFORCEMENT*****Division 1—Inspectors*****Appointment**

**257.(1)** The chief executive may appoint a public service officer or a person prescribed under a regulation as an inspector.

**(2)** The chief executive may appoint an officer or a person as an inspector only if, in the chief executive's opinion, the officer or person has the necessary expertise or experience to be an inspector.

**Limitation of inspector's powers**

**258.** The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by signed notice of the chief executive given to the inspector.

**Inspector's appointment conditions**

**259.(1)** An inspector holds office on the conditions stated in the instrument of appointment.

**(2)** An inspector ceases holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; or
- (b) if the appointment conditions provide—on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) An inspector may resign by signed notice of resignation given to the chief executive.

(4) However, an inspector may not resign from the office as inspector under this Act (the “**secondary office**”) if a condition of appointment to the main office requires the inspector to hold the secondary office.

### **Inspector’s identity card**

**260.(1)** The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the chief executive; and
- (c) be signed by the inspector; and
- (d) identify the person as an inspector under this Act.

(3) A person who ceases to be an inspector must return the person’s identity card to the chief executive within 21 days after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—40 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

### **Production or display of inspector’s identity card**

**261.(1)** An inspector may exercise a power under this Act in relation to a person only if the inspector—

- (a) first produces the inspector’s identity card for inspection by the person; or

- (b) has the inspector's identity card displayed so that it is clearly visible to the person.

(2) However, if, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

### *Division 2—Powers of inspectors*

#### *Subdivision 1—Entry of places*

#### **Power to enter places**

**262.(1)** An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) it is a place where a registered training organisation carries on business and the entry is made when the place is open for the conduct of business or otherwise open for entry; or
- (d) the entry is authorised by a warrant; or
- (e) the place is a place where the inspector reasonably believes—
  - (i) a registered training organisation or an employer is—
    - (A) training an apprentice or trainee under a registered training contract or a student under a vocational placement agreement; or
    - (B) providing vocational education and training to a student for the issue of a qualification or statement of attainment; or
    - (C) assessing a person's skills and knowledge for the issue of a qualification or statement of attainment; or

(ii) a delegate of the council is exercising a power delegated to the delegate by the council;

and the entry is made when the place is open for work or the conduct of business or otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(c) and (e), the place does not include part of the place where a person resides.

### *Subdivision 2—Procedure for entry*

#### **Entry with consent**

**263.(1)** This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 262(1)(a).

(2) Before asking for the consent, the inspector must tell the occupier—

(a) the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

(a) the occupier has been told—

(i) the purpose of the entry; and

(ii) that the occupier is not required to consent; and

(b) the purpose of the entry; and

- (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

(6) A court must find the occupier of a place did not consent to an inspector entering the place under this part if—

- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 262(1)(a); and
- (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **Application for warrant**

**264.(1)** An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **Issue of warrant**

**265.(1)** The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and

(b) the evidence is at the place or, within the next 72 hours, may be at the place.

(2) The warrant must state—

(a) that a stated inspector may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry; and

(ii) exercise the inspector's powers under this part; and

(b) the offence for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the warrant's issue, the warrant ends.

### **Warrants—procedure before entry**

**266.(1)** This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place by producing the inspector's notice of appointment or other document evidencing the appointment;

(b) give the person a copy of the warrant;

(c) tell the person the inspector is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

***Subdivision 3—Powers after entry*****General powers after entering places**

**267.(1)** This section applies to an inspector who enters a place.

**(2)** However, if an inspector—

- (a) enters a place to get the occupier's consent to enter premises, this section applies to the inspector only if the consent is given; or
- (b) enters a place under a warrant, this section applies subject to the warrant.

**(3)** For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect a document in or on the place; or
- (c) take extracts from, or make copies of, a document in or on the place; or
- (d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this Act; or
- (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (d); or
- (f) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether this Act is being complied with.

**(4)** When making a requirement mentioned in subsection (3)(e) or (f), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

**Failure to help inspector or give inspector information**

**268.(1)** A person required to give reasonable help under section 267(3)(e) or information under section 267(3)(f), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) If the requirement is to be complied with by the person giving information, or producing a document, other than a document required to be kept by the person under this Act, it is a reasonable excuse for the person to fail to comply with the requirement if complying with it might tend to incriminate the person.

***Subdivision 4—Power to seize evidence*****Power to seize evidence from places**

**269.(1)** An inspector who enters a place under section 262(1)(e) may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

(2) An inspector who enters a place under this division under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector who enters a place under this division under a warrant, or enters a place with the occupier's consent, may seize a thing if the inspector reasonably believes—

- (a) the thing is evidence of the commission of an offence against this Act; and
- (b) the seizure is necessary to prevent—
  - (i) the thing's concealment, loss or destruction; or
  - (ii) the thing's use in committing, continuing or repeating the offence.

**Receipts for seized things**

**270.(1)** As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.



(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

### **Inspector to allow inspection etc.**

**271.** Until a seized thing is returned or otherwise finally dealt with under this Act, an inspector must allow a person who would be entitled to possession of it, if it had not been seized—

- (a) to inspect it free of charge; or
- (b) if it is a document, to obtain a copy of it free of charge.

### **Obligation to return seized things**

**272.(1)** This section applies if a thing is seized under this Act.

(2) The chief executive must return the seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving the thing is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

(3) Despite subsection (2), the chief executive must return the seized thing to its owner immediately if the chief executive stops being satisfied its retention as evidence is necessary.

### ***Subdivision 5—Power to obtain information***

#### **Power to require production of documents**

**273.(1)** An inspector may require a person to make available for inspection by an inspector, or produce to an inspector for inspection, at a reasonable time and place nominated by the inspector—

- (a) a document issued to the person under this Act; or
- (b) a document required to be kept by the person under this Act.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### *Subdivision 6—General enforcement matters*

#### **Obstructing etc. an inspector**

**274.** A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

#### **Pretending to be an inspector**

**275.** A person must not pretend to be an inspector.

Maximum penalty—40 penalty units.

#### **Compensation**

**276.(1)** A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court having jurisdiction for the recovery of the amount of compensation claimed; or
- (b) an offence against this Act brought against the person claiming compensation.

(3) A court may order the payment of compensation for the loss or expense only if satisfied that it is just to make the order in the circumstances of the particular case.

## PART 3—OTHER PROVISIONS

### *Division 1—Offences*

#### **False or misleading statements to official**

**277.(1)** A person must not state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) In this section—

“**official**” means any of the following—

- (a) the board;
- (b) the council;
- (c) the ombudsman;
- (d) the chief executive;
- (e) an inspector.

#### **False or misleading documents to official**

**278.(1)** A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person who when giving the document—

- (a) tells the official, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can get, the correct information, gives the correct information to the official.

(3) In this section—

“**official**” has the meaning given by section 277.

**Offences about false or misleading statements or documents**

**279.(1)** For an offence against a prescribed provision, it is enough to allege that the relevant statement or document was ‘false or misleading’ without specifying which.

**(2)** In this section—

“**prescribed provision**” means section 55, 72(4), 73(6), 102, 277(1) or 278(1).<sup>23</sup>

***Division 2—General accountability provisions*****Executive officers must ensure corporation complies with prescribed provision**

**280.(1)** This section applies if a corporation commits an offence against a prescribed provision.

**(2)** Each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the prescribed provision.

Maximum penalty—the maximum penalty for the contravention of the prescribed provision by an individual.

**(3)** Evidence that a corporation has been convicted of an offence against a prescribed provision is evidence each of the corporation’s executive officers committed the offence of failing to ensure the corporation complies with the prescribed provision.

**(4)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—that the officer took reasonable steps to ensure the corporation complied with the prescribed provision; or

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<sup>23</sup> Section 55 (False or misleading information in training contract), 72 (Employer and apprentice or trainee to notify completion of training), 73 (Issuing qualification or statement of attainment on completion of training), 102 (False or misleading information in training plan), 277 (False or misleading statements to official) or 278 (False or misleading documents to official)

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) In this section—

**“prescribed provision”** means section 23(2), 24(8), 25(2), 31, 33(1), (2), (3), (4), (6) or (7), 34(3), 46(4) or (6), 52(1) or (2), 54(1), 55, 56, 57(2), 60(2) or (3), 61(2), 64(8), 65(7), 71(7), 73(6), 79, 80, 85(1), 93, 99, 102, 110, 111 or 112.<sup>24</sup>

### **Responsibility for acts or omissions of representatives**

**281.(1)** This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

<sup>24</sup> Section 23 (Registration conditions), 24 (Registering training organisations registered under corresponding law), 25 (Training organisation registered under corresponding law not to provide service unless registered), 31 (Restrictions after action to amend, suspend or cancel registration started), 33 (False statements by training organisation), 34 (Issuing qualifications and statements of attainment), 46 (Recognition of courses accredited under corresponding laws), 52 (Training contract to be signed), 54 (Registering training contract), 55 (False or misleading information in training contract), 56 (Premiums prohibited), 57 (Amending or assigning registered training contract), 60 (Reinstatement in previous position), 61 (Agreeing to cancel training contract), 64 (Cancellation for serious misconduct), 65 (Council’s power to reinstate training), 71 (Discipline), 73 (Issuing qualification or statement of attainment on completion of training), 79 (Employer to provide facilities), 80 (Employer to comply with training plan), 85 (Prohibited employer not to contravene declaration), 93 (Supervising registered training organisation to ensure delivery of training), 99 (Coercion), 102 (False or misleading information in training plan), 110 (Offering course if vocational placement scheme not recognised), 111 (Registered training organisation to arrange vocational placement) or 112 (Vocational placement not to be arranged contrary to recognition)

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves—

- (a) if the person was in a position to influence the conduct of the representative in relation to the act or omission, the person took reasonable steps to prevent the act or omission; or
- (b) the person was not in a position to influence the conduct of the representative in relation to the act or omission.

(4) In this section—

**“representative”** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

### **Disclosure of interests by member of disclosure body**

**282.(1)** This section applies if a member of a disclosure body has a direct or indirect interest in a matter being considered, or about to be considered, by the body.

(2) The member must disclose the nature of the interest to a meeting of the body as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—50 penalty units.

(3) The disclosure must be recorded in the minutes of the meeting of the body.

(4) In this section—

**“disclosure body”** means any of the following—

- (a) the board;
- (b) the council;
- (c) a TAFE institute council;
- (d) a TAFE college council;

- (e) a committee established by an entity mentioned in paragraphs (a) to (d);
- (f) a committee established by the chief executive.

### **Voting etc. by interested member of disclosure body**

**283.(1)** If a member of a disclosure body has a material personal interest in a matter being considered by the body, the member must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (2)(a) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the body; or
- (d) otherwise take part in any decision of the body in relation to the matter or a related resolution.

Maximum penalty—50 penalty units.

**(2)** Subsection (1) does not apply to the matter if—

- (a) the body has passed a resolution that—
  - (i) states the member, the interest and the matter; and
  - (ii) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter; or
- (b) if a quorum of the body can not be formed because of subsection (1)—the Minister has given a written direction to that effect for the matter.

**(3)** In this section—

“**disclosure body**” has the meaning given by section 282.

**Other disclosure of interests**

**284.(1)** This section applies if a person, other than a public service employee, has a direct or indirect interest in a matter that appears likely to conflict, or appears capable of conflicting, with the exercise of the person's powers or the performance of the person's functions under this Act.<sup>25</sup>

(2) The person must disclose the interest to—

- (a) if the person is the ombudsman—the Minister; or
- (b) if the person is an owner or executive officer of an registered training organisation—the chief executive; or
- (c) otherwise—the chief executive.

Maximum penalty—50 penalty units.

(3) The Minister or chief executive may, by signed notice, direct the person to take the reasonable action stated in the notice to resolve the conflict.

(4) The person must not contravene the direction, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—40 penalty units.

**Duty to act honestly**

**285.(1)** This section applies if a person exercises a power or performs a function under this Act.

(2) In exercising the power or performing the function, the person must act honestly.

Maximum penalty—50 penalty units.

(3) The person must not use any information acquired in exercising the power or performing the function to, directly or indirectly—

- (a) gain a benefit for the person or someone else; or

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<sup>25</sup> The *Public Service Act 1996*, sections 56 and 84 provide for the disclosure of interests by public service employees.



- (b) cause a detriment to someone else.

Maximum penalty for subsection (3)—50 penalty units.

### **Protection of confidentiality**

**286.(1)** This section applies if a person exercises a power or performs a function under this Act.

(2) The person must not disclose to anyone else information that comes to the person's knowledge in exercising the power or performing the function or because of an opportunity provided by the exercise of the power or performance of the function.

Maximum penalty—50 penalty units.

(3) However, a person does not contravene subsection (2) if the person discloses information—

- (a) under this Act; or
- (b) with the authorisation of the chief executive; or
- (c) required to be disclosed under a matter before the council or ombudsman; or
- (d) ordered by a court, commission or tribunal constituted by law to be disclosed under proceedings before it; or
- (e) otherwise required by law to be disclosed.

### ***Division 3—Procedural and evidentiary provisions***

#### **Summary proceedings for offences**

**287.(1)** A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

(2) A proceeding for an offence under this Act must be commenced—

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 18 months after the offence was committed.

**Representation of parties**

**288.(1)** A party to a proceeding for an offence against this Act may be represented in the proceedings by an agent appointed in writing or a lawyer.

**(2)** However, a party who is represented by an agent or lawyer can not be awarded costs of the representation.

**Evidentiary provisions**

**289.(1)** This section applies to a proceeding under this Act.

**(2)** It is not necessary to prove—

(a) the appointment of—

(i) the ombudsman; or

(ii) a member of the board or the council or a member of a committee established by the board or the council; or

(iii) the chief executive or an inspector; or

(b) the authority of the council, chief executive or an inspector to take an action, commence a proceeding or make or give an order, direction or requirement;

unless a party, by reasonable notice of at least 7 days, requires proof of the appointment or authority.

**(3)** A signature on a document purporting to be that of the ombudsman, a person authorised to sign the document for the board or council, the chief executive, an inspector, or an owner or executive officer of a registered training organisation is evidence of the signature it purports to be.

**(4)** An entry in a register required to be kept under this Act, or a copy or extract from a register, certified to be a true copy or extract by a person authorised to sign a document for the council or the chief executive is evidence of the matters contained in the register.

**(5)** A certificate signed by a person authorised to sign a document for the council, the chief executive or an inspector and stating any of the following matters is evidence of the matter—

- (a) on a stated day, or during a stated time, a stated person was, or was not, a party to a registered training contract or a registered vocational placement agreement;
- (b) on a stated day, or during a stated time, a stated training organisation was, or was not, a registered training organisation.

(6) A registered training contract or vocational placement agreement is evidence of the things stated in it.

(7) A document apparently published by or for the Minister, the board or council or the chief executive, is evidence that the document and the things stated in it are authorised by the Minister, the board or council or the chief executive.

(8) A copy signature on a document purporting to be a facsimile of the signature of a person (“**signatory**”) who is, or was, a person authorised to sign a document for the council, the chief executive or an inspector is evidence—

- (a) of the signature of the person who is, or was, the signatory; and
- (b) the signature was placed on the document by or with the authority of the person who is, or was, the signatory.

#### *Division 4—Other provisions*

### **Protection from liability**

**290.(1)** An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches instead to the State.

(3) In this section—

“**indemnified person**” means any of the following—

- (a) the Minister;
- (b) the ombudsman;
- (c) a member of the board or council or a member of a committee established by the board or council;

- (d) a member of a TAFE institute council or college council;
- (e) the chief executive;
- (f) an officer or employee of the department;
- (g) an inspector;
- (h) a person mentioned in section 267(3)(e).<sup>26</sup>

### **Regulation-making power**

**291.(1)** The Governor in Council may make regulations under this Act.

**(2)** Without limiting subsection (1), a regulation may—

- (a) provide for the fees payable under this Act; or
- (b) create offences and impose penalties (including different penalties for successive offences) of not more than 20 penalty units.

## **CHAPTER 10—AMENDMENTS, REPEALS AND TRANSITIONAL PROVISIONS**

### **PART 1—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

#### *Division 1—Consequential amendments of Industrial Relations Act 1999*

### **Consequential amendment of Industrial Relations Act 1999**

**292.** Schedule 1 amends the *Industrial Relations Act 1999*.

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<sup>26</sup> Section 267 (General powers after entering places)

*Division 2—Consequential amendments of other Acts***Consequential amendment of other Acts**

293. Schedule 2 amends the Acts stated in it.

**PART 2—REPEALS****Repeal of Acts**

294. The following Acts are repealed—

- *Vocational Education, Training and Employment Act 1991*
- *Vocational Education and Training (Industry Placement) Act 1992.*

**PART 3—TRANSITIONAL PROVISIONS***Division 1—Preliminary***Definitions for pt 3**

295. In this part—

“**commission**” means the Vocational Education, Training and Employment Commission established under the former VETE Act.

“**corporation**” means the Vocational Education, Training and Employment Corporation established under the former VETE Act.

“**former body**” means any of the following bodies constituted or established under the former VETE Act—

- (a) the commission;

- (b) the accreditation council;
- (c) the state planning and development council;
- (d) the state training council.

**“former industry placement Act”** means the repealed *Vocational Education and Training (Industry Placement) Act 1992*.

**“industrial body”** means the industrial commission or an industrial magistrate.

**“new training contract”** see section 307.

**“State Training Council”** means the State Training Council constituted under the former VETE Act.

### *Division 2—Transitional provisions for former VETE Act*

#### **Dissolution of corporation and former bodies**

**296.(1)** The corporation and each former body are dissolved.

**(2)** The members of each former body go out of office.

#### **Assets and liabilities**

**297.(1)** The assets and liabilities of the corporation and each former body vest in the State.

**(2)** If the corporation held property on trust, the State holds the property on the terms of the trust.

#### **Proceedings**

**298.(1)** A proceeding by or against the corporation or a former body that has not ended before the commencement of this section may be continued and finished by or against the State.

**(2)** A proceeding that could have been taken by or against the corporation or a former body if the corporation or former body had continued to exist, may be taken by or against the State.

**Existing contracts**

**299.(1)** If the corporation or a former body was a party to a contract in force immediately before the commencement of this section, the contract continues in force and the State is taken to be a party instead of the corporation or former body.

**(2)** In this section—

**“contract”** means a contract other than a training contract.

**References**

**300.** A reference in an Act or document to—

- (a) the former VETE Act or the former industry placement Act may, if the context permits, be taken to be a reference to this Act; or
- (b) the corporation may, if the context permits, be taken to be a reference to the chief executive; or
- (c) a former body may, if the context permits, be taken to be a reference to—
  - (i) if the reference is to the commission or the state planning and development council—the board; or
  - (ii) if the reference is to the accreditation council or state training council—the council.

**Existing approvals**

**301.(1)** An approval in force immediately before the commencement of this section is taken to be an approval granted under this Act.

**(2)** The approval continues in force subject to this Act and is not renewable.

**(3)** The approval ends when it would have ended under the former VETE Act, unless the council by fair procedures prescribed under a regulation—

- (a) if the approval is the registration of a training organisation—sooner suspends or cancels the registration; or

(b) if the approval is the accreditation of a course—sooner cancels the accreditation.

(4) Subsection (2) applies despite a provision of the approval or the former VETE Act about renewing the approval.

(5) In this section—

**“approval”** means—

- (a) the registration of a training organisation under the former VETE Act; or
- (b) the accreditation of a course under the former VETE Act.

### **Awards conferred under former VETE Act**

**302.(1)** An award conferred, or continued in force, under the former VETE Act is taken to be a qualification issued under this Act.

(2) In this section—

**“award”** means any of the following—

- (a) a certificate of completion given under section 73<sup>27</sup> of the former VETE Act;
- (b) a certificate, advanced certificate, associate diploma, diploma or other award that was approved by the commission under the former VETE Act;
- (c) another academic award or certificate.

### **Certificate for work or training recognised under former VETE Act**

**303.** A certificate issued under section 82<sup>28</sup> of the former VETE Act by the State Training Council and in force immediately before the commencement of this section is taken to be a recognition certificate issued by the council under this Act.

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<sup>27</sup> Section 73 (Period of a training scheme) of the former VETE Act

<sup>28</sup> Section 82 (Recognition of work or training) of the former VETE Act



**Existing decisions under former VETE Act**

**304.(1)** This section applies to a decision made under the former VETE Act by the corporation or a former body if the decision has not had full effect at the commencement of this section.

(2) The decision continues in force subject to this Act and—

- (a) if the decision was made under the former VETE Act by the corporation—is taken to be a decision made by the chief executive; or
- (b) if the decision was made under the former VETE Act by a former body—
  - (i) if the former body was the commission or state planning and development council—is taken to be a decision made by the board; or
  - (ii) if the former body was the accreditation council or the state training council—is taken to be a decision made by the council.

(3) If a person had a right to appeal against a decision mentioned in subsection (2)(a) under the former VETE Act that had not ended immediately before the commencement of this section, the person may, within the time allowed for appealing under the former VETE Act, appeal against the decision under chapter 8 as if the decision were made under this Act.

(4) However, the decision does not authorise a matter that can not be decided under this Act.

(5) In this section—

“**decision**” includes determination, direction and ruling.

**Existing orders of industrial body**

**305.(1)** This section applies to an order made under the former VETE Act by an industrial body if the order has not had full effect at the commencement of this section.

(2) The order continues in force as if it were made under the provisions of the *Industrial Relations Act 1999* corresponding with provisions of the former VETE Act under which the order was made.

### **Existing proceedings before industrial body**

**306.** A proceeding for an offence started before an industrial body under the former VETE Act but not finished at the commencement of this section may be carried on and prosecuted as if it had been started under this Act.

### **Existing training agreements**

**307.(1)** A training agreement (the “**former training agreement**”) for an apprentice or trainee approved under section 70<sup>29</sup> of the former VETE Act and in force immediately before the commencement of this section continues in force, subject to this Act, as if it were a registered training contract (the “**new training contract**”) under this Act.

(2) Despite any contrary or inconsistent provision of the former training agreement, the new training contract is taken to provide that, at its completion, the apprentice or trainee being trained under it is eligible to receive the qualification or statement of attainment—

- (a) identified in a national training system of qualifications or an accredited course as the most appropriate qualification or statement of attainment for the training undertaken by the apprentice or trainee under the former training agreement and the new training contract; and
- (b) issued by the supervising registered training organisation appointed under section 311 for the new training contract.

(3) Also, despite a provision of the former training agreement, at the completion of the new training contract, the council must issue a completion certificate to the apprentice or trainee.

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<sup>29</sup> Section 70 (Training agreements) of the former VETE Act

(4) The apprentice or trainee continues to be entitled under the new training contract to the same conditions of employment under the *Industrial Relations Act 1999* the apprentice or trainee was entitled to under the former training agreement.

### Existing industry training advisory bodies

**308.** The industry training advisory bodies mentioned in section 14<sup>30</sup> of the former VETE Act and in existence immediately before the commencement of this section are taken to be recognised by the board as industry training advisory bodies under this Act.

### Existing group training schemes

**309.** A group training scheme under the former VETE Act in existence immediately before the commencement of this section is taken to be recognised by the board as a group training organisation under this Act.

### Existing regulations

**310.(1)** The *Vocational Education, Training and Employment Regulation 1991*, (the “**preserved regulation**”) in force under the former Act immediately before the commencement of this section remains in force for this Act and is taken to have been made under this Act.

(2) The preserved regulation—

- (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
- (b) may be amended or repealed by a regulation under this Act.

(3) The preserved regulation expires when this section expires, unless the preserved regulation is earlier repealed.

(4) This section has effect despite the *Statutory Instruments Act 1992*, section 54.

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<sup>30</sup> Section 14 (Recognition of industry training advisory bodies) of the former VETE Act

(5) This section expires 1 year after it commences or, if an earlier day is prescribed under a regulation for this section, the earlier day.

### **When supervising registered training organisation required**

**311.(1)** This section applies if the unexpired term of a new training contract for an apprentice or trainee is more than 6 months.

(2) There must be a supervising registered training organisation for the apprentice or trainee.

(3) Promptly after the commencement of this section, the parties to the contract must agree with a registered training organisation that it become the supervising registered training organisation for the apprentice or trainee.

(4) A provision of this Act, other than section 91(1),<sup>31</sup> applying in relation to a supervising registered training organisation applies in relation to a supervising registered training organisation required under this section.

### **When training plan required**

**312.(1)** This section applies if the unexpired term of a new training contract for an apprentice or trainee is more than 6 months.

(2) There must be a training plan for the apprentice or trainee.

(3) Chapter 3, part 3, other than section 100(2)<sup>32</sup> applies to the training plan, with necessary changes.

## ***Division 3—Transitional provisions for former industry placement Act***

### **Existing approved training schemes**

**313.** An approved training scheme in existence under the former industry placement Act immediately before the commencement of this section is taken to be a vocational placement scheme recognised under this Act by the council.

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<sup>31</sup> Section 91 (Becoming a supervising registered training organisation)

<sup>32</sup> Section 100 (Signing training plan for apprentice or trainee)

**Existing vocational placement agreements etc.**

**314.** A vocational placement agreement and a vocational training agreement in force under the former industry placement Act immediately before the commencement of this section continues in force, subject to this Act, as if it were a vocational placement agreement under this Act.

**Existing decisions under former industry placement Act**

**315.(1)** This section applies to a decision made under the former industry placement Act if the decision has not had full effect at the commencement of this section.

**(2)** The decision continues in force subject to this Act and is taken to be a decision made by the council.

**(3)** However, the decision does not authorise a matter that can not be decided under this Act.

**(4)** In this section—

“**decision**” includes determination, direction and ruling.

**Existing orders of industrial commission**

**316.(1)** This section applies to an order made under the former industry placement Act by the industrial commission if the order has not had full effect at the commencement of this section.

**(2)** The order continues in force as if it were made under the provisions of the *Industrial Relations Act 1999* corresponding with the provisions of the former industry placement Act under which the order was made.

**SCHEDULE 1****AMENDMENTS OF INDUSTRIAL RELATIONS ACT  
1999**

section 292

**1. Section 5(2)—***omit, insert—*

‘(2) A person who is undertaking a vocational placement within the meaning of the *Training and Employment Act 2000* is not an employee.’.

**2. Section 6(2)(d), ‘scheme’—***omit, insert—*

‘organisation’.

**3. Section 6(2)—***insert—*

‘(f) a person for whose calling or business an outworker works.’.

**4. Section 10(1)—***omit, insert—*

‘**10.(1)** This section does not apply to—

- (a) casual employees; or
- (b) pieceworkers; or
- (c) school-based apprentices or trainees.’.

**5. Section 10(5)—***renumber* as section 10(7).

## SCHEDULE 1 (continued)

**6. Section 10—***insert—***‘(5)** Sick leave may be taken for part of a day.*Examples—*

1. An employee is ordinarily required to work for 8 hours on a particular day and on that day becomes sick after working 3 hours. The employee may take sick leave for the remaining 5 hours that the employee is unable to work because of the sickness.

2. An employee is ordinarily required to perform work for 40 hours a week over 5 days, but has come to an arrangement with the employer to work 10 hours a day for 4 days a week. If the employee is unable to work because of sickness on a day, the employee may take 10 hours sick leave, which equates to 1<sup>1</sup>/<sub>4</sub> days sick leave.

**‘(6)** Sick leave accumulates, unless an industrial instrument provides otherwise.’.**7. Section 10—***insert—***‘(8)** In subsections (2) and (5)—**“day”**, for an employee who is paid on the basis of the number of hours worked, means—

- (a) for an employee for whom an industrial instrument provides sick leave—a day within the meaning of the industrial instrument so far as it relates to sick leave; or
- (b) otherwise—one-fifth of the number of ordinary hours that the employee would ordinarily have been required to work in a week, averaged over each completed 6 weeks of employment with the employer.’.

**8. Section 11(1)—***omit, insert—***‘11.(1)** This section does not apply to—

## SCHEDULE 1 (continued)

- (a) casual employees; or
- (b) pieceworkers; or
- (c) school-based apprentices or trainees.’.

**9. Section 11(6)—**

*renumber* as section 11(7).

**10. Section 11—**

*insert—*

‘(6) Annual leave accumulates, unless an industrial instrument provides otherwise.’.

**11. Section 14(6)—**

*omit.*

**12. Section 15(1), ‘, other than a casual employee or pieceworker,’—**

*omit.*

**13. Section 15(2) and (3)—**

*omit, insert—*

‘(2) Subsection (1) applies to an employee whether the employee—

- (a) works on the public holiday; or
- (b) does not work on that day because of the public holiday.

‘(2A) Despite subsection (2), subsection (1) applies to a school-based apprentice or trainee only if the apprentice or trainee works on the public holiday.

‘(3) Subsection (1) does not apply—



## SCHEDULE 1 (continued)

- (a) to a casual employee or pieceworker; or
- (b) if the employee is rostered off on the public holiday.’

**14. Section 47(4)—**

*renumber* as section 47(5).

**15. Section 47—**

*insert—*

‘(4) Subsection (3)(a)(i) does not affect an employee’s entitlement to long service leave under—

- (a) an award made before 23 June 1990; or
- (b) the *Industrial Conciliation and Arbitration Act 1961*.’

**16. Section 68(1), ‘chapter or chapter 3’—**

*omit, insert—*

‘Act or an industrial instrument’.

**17. Section 72(1) to (3)—**

*omit, insert—*

‘**72.(1)** Section 73(1) does not apply to—

- (a) an employee during the first 3 months of employment with an employer (the “probationary period”), if the dismissal is for a reason other than an invalid reason, unless the employee and employer agree in writing that the employee serve—
  - (i) a period of probation that is shorter than the probationary period; or
  - (ii) no period of probation; or
- (b) an employee serving a period of probation that is longer than the

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 SCHEDULE 1 (continued)

probationary period, if—

- (i) the period decided, by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment; and
  - (ii) the dismissal is for a reason other than an invalid reason; or
  - (c) a short term casual employee; or
  - (d) an employee engaged for a specific period or task, unless the main purpose of engaging the employee in that way is, or was at the time of the employee's engagement, to avoid the employer's obligations under part 2; or
  - (e) an employee—
    - (i) who is not employed under an industrial instrument; and
    - (ii) who is not a public service officer employed on tenure under the *Public Service Act 1996*; and
    - (iii) whose annual wages immediately before the dismissal are more than \$68 000 or a greater amount stated in, or worked out in a way prescribed under a regulation; or
  - (f) an apprentice or trainee.
- ‘(2) Parts 3 and 4<sup>33</sup> do not apply to—
- (a) a casual employee; or
  - (b) an employee engaged by the hour or day; or
  - (c) an employee engaged for a specific period or task; or
  - (d) an employee during the first 3 months of employment with an employer (the “**probationary period**”) unless the employee and employer agree in writing that the employee serve—
    - (i) a period of probation that is shorter than the probationary period; or

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<sup>33</sup> Parts 3 (Requirements for dismissal) and 4 (Dismissal of 15 or more employees)

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 SCHEDULE 1 (continued)

- (ii) no period of probation; or
- (e) an employee serving a period of probation that is longer than the probationary period if the period decided by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment; or
- (f) an employee—
  - (i) who is not employed under an industrial instrument; and
  - (ii) who is not a public service officer employed on tenure under the *Public Service Act 1996*; and
  - (iii) whose annual wages immediately before the dismissal are more than \$68 000 or a greater amount stated in, or worked out in a way prescribed, under a regulation.

‘(3) Part 4 does not apply to an employee with less than 1 year of continuous service.’.

**18. Section 72(6) and (7)—**

*omit, insert—*

‘(6) Parts 3 to 7<sup>34</sup> do not apply to—

- (a) an apprentice or trainee; or
- (b) an employee participating in a labour market program.’.

**19. Section 72(8), definition “federal award employee”—**

*omit.*

**20. Section 72(8)—**

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<sup>34</sup> Chapter 3 (Dismissals), parts 3 (Requirements for dismissal), 4 (Dismissal of 15 or more employees), 5 (Protection of injured employees), 6 (Stand-down of employees) and 7 (General)

## SCHEDULE 1 (continued)

*renumber* as section 72(7).

**21. Section 74—**

*insert—*

‘(2A) However, a person—

- (a) who, immediately before the commencement of this subsection, was a federal award employee within the meaning of section 72(8), as in force immediately before the commencement of this subsection; and
- (b) who was dismissed after 30 June 1999, but before the commencement of this subsection; and
- (c) who—
  - (i) has made an application for reinstatement relating to that dismissal to the commission, but the application was rejected or dismissed because the person was a federal award employee; and
  - (ii) has not made an application for reinstatement relating to that dismissal to the Australian commission;

may make an application within 21 days after the commencement of this subsection.’

**22. Section 74(4) and (5)(b), ‘to whom this chapter does not apply’—**

*omit, insert—*

‘mentioned in section 72(1) as a person to whom section 73(1) does not apply’.

**23. Section 75(3), from ‘, it—’ to ‘for a stated ground; and’—**

*omit, insert—*

‘or because the applicant is a person to whom section 73(1) does not apply, it—

## SCHEDULE 1 (continued)

‘(a) must issue a written certificate stating that the commission—

- (i) is so satisfied for a stated ground; or
- (ii) considers the applicant is a person to whom section 73(1) does not apply; and’.

**24. Section 75(3)(b)(i), after ‘stated ground’—**

*insert—*

‘or in relation to how the applicant is a person to whom section 73(1) does not apply’.

**25. Section 97(1), from ‘within’ to ‘instrument’—**

*omit.*

**26. Section 136(2)—**

*omit, insert—*

‘(2) An apprentice or trainee is entitled to wages at—

- (a) if an industrial instrument applying to employees in the workplace where the apprentice or trainee is employed or placed states a rate payable to apprentices or trainees—the rate stated in the instrument; or
- (b) otherwise—the rate fixed by the commission, being a proportion of the wages payable for the relevant calling to employees in the workplace where the apprentice or trainee is employed or placed.

*Examples—*

1. An apprentice plumber is placed by a group training organisation in the workplace of a host employer where a federal award applies. The apprentice is entitled to the rate of wages stated in the federal award rather than a State award.
2. An apprentice carpenter is placed by a group training organisation in the workplace of a host employer where a certified agreement applies. The certified agreement does not state the rate of wages payable to an apprentice.

## SCHEDULE 1 (continued)

The apprentice is entitled to wages at the rate fixed by the commission, being a proportion of the wages payable to a qualified carpenter under the certified agreement.’.

**27. Section 136(6)—**

*insert—*

‘**“workplace”**, for an apprentice or trainee employed by a group training organisation, includes the workplace of the host employer with whom the apprentice or trainee is placed.’.

**28. Section 137(3), after ‘industrial instrument’—**

*insert—*

‘(other than a certified agreement or QWA)’.

**29. Section 137(4)(b)(i), ‘State Training’—**

*omit, insert—*

‘Training Recognition’.

**30. Section 138(3)(b)(i), ‘State Training’—**

*omit, insert—*

‘Training Recognition’.

**31. Section 138(7), ‘subsection (5)(b)’—**

*omit, insert—*

‘subsection (9)(b)’.

**32. Section 138(5) to (7)—**

*renumber* as section 138(9) to (11).

## SCHEDULE 1 (continued)

**33. Section 138—**

*insert—*

‘(5) An offence against subsection (4) may consist of—

- (a) a single failure to provide the apprentice with the relevant tools, or tool allowance, for a level of the apprenticeship; or
- (b) a failure to provide the apprentice with the relevant tools, or tool allowance, for the term of the apprenticeship.

‘(6) The offence starts on the day of the failure and continues until the apprentice has been provided with the relevant tools or tool allowance.

‘(7) A complaint, or a series of complaints, may be made for any period over which the offence continues.

‘(8) However, a complaint may only relate to offences started within 6 years before the complaint is made.’

**34. After section 138—**

*insert—*

**‘Termination of employment during probationary period**

‘138A.(1) The employment of an apprentice or trainee may be terminated during the probationary period by 1 week’s notice given by—

- (a) the employer to the apprentice or trainee; or
- (b) the apprentice or trainee to the employer.

‘(2) An employer who terminates the employment without giving 1 week’s notice must pay the apprentice or trainee an amount equal to 1 week’s wages.

‘(3) An apprentice or trainee who terminates the employment without giving 1 week’s notice loses an amount equal to 1 week’s wages.

‘(4) However, subsection (1) does not apply if the person who was the apprentice or trainee is re-employed by the employer under the *Training*

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 SCHEDULE 1 (continued)

and Employment Act 2000, section 60.<sup>35</sup>

‘(5) In this section—

“**1 week’s wages**” means the amount that is at least equal to the total of the amounts the employer would have been liable to pay the apprentice or trainee if the apprentice’s or trainee’s employment had continued until the end of the required notice period, worked out on the basis of—

- (a) the ordinary working hours worked by the apprentice or trainee; and
- (b) the amounts payable to the apprentice or trainee for the hours, including, for example, allowances, loadings and penalties; and
- (c) any other amounts payable under the apprentice’s or trainee’s employment contract.

“**probationary period**” means the probationary period decided by the Training Recognition Council under the *Training and Employment Act 2000*.

**‘Wages payable to former apprentices or trainees**

‘**138B.(1)** This section applies if—

- (a) an employee was engaged as an apprentice or trainee; and
- (b) the employer continued to employ the employee after the end of the probationary period; and
- (c) either—
  - (i) the employer dismisses the employee; or
  - (ii) the employer does not sign a training contract.

‘(2) The employee is entitled to the higher of the following for the period after the end of the probationary period—

- (a) the wages that would have been payable under the relevant

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<sup>35</sup> *Training and Employment Act 2000*, section 60 (Reinstatement in previous position)



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 SCHEDULE 1 (continued)

industrial instrument had the employee continued to be employed as an apprentice or trainee;

- (b) the wages payable under the relevant industrial instrument applicable to the type of work the employee performed.

‘(3) This section does not apply to an employee if a training contract between the employee and employer has been sent to the Training Recognition Council for registration.’.

**35. Section 139(2), ‘Vocational Education, Training and Employment Act 1991, part 3’—**

*omit, insert—*

‘*Training and Employment Act 2000*’.

**36. Section 140(3)(b)(i), ‘State Training’—**

*omit, insert—*

‘Training Recognition’.

**37. Section 140(4)—**

*omit.*

**38. Chapter 5—**

*insert—*

**‘PART 7—VOCATIONAL PLACEMENT**

**Vocational placement**

‘**140A.(1)** The commission may make an order fixing remuneration and conditions that apply to the vocational placement of a student that is for more than 240 hours a year.

‘(2) The commission may make an order—

## SCHEDULE 1 (continued)

- (a) of its own initiative; or
- (b) on application by—
  - (i) the Training Recognition Council; or
  - (ii) an organisation; or
  - (iii) the Minister; or
  - (iv) another entity with an interest in vocational placement.

‘(3) In making an order, the commission may consider anything it considers relevant, including for example—

- (a) the objectives of the vocational placement scheme; and
- (b) any attribute of the students, including for example—
  - (i) the age and competency of the students; and
  - (ii) any disability or incapacity of the students; and
- (c) the kind of work done in the vocational placement scheme; and
- (d) the experience to be gained by the students; and
- (e) any relevant industrial instrument; and
- (f) any remuneration or benefit the students are receiving from the Commonwealth or the State.

‘(4) A person must not contravene the order.

Maximum penalty—40 penalty units.

‘(5) In this section—

“**vocational placement scheme**” has the meaning given by the *Training and Employment Act 2000*.’.

**39. Section 275(3), ‘commission’—**

*omit, insert—*

‘full bench’.

## SCHEDULE 1 (continued)

**40. Section 276(6)(b)—***omit, insert—*

‘(b) the person—

- (i) is not a public service officer employed on tenure under the *Public Service Act 1996*; and
- (ii) has an annual wage of more than \$68 000 or a greater amount stated in, or worked out in a way prescribed under a regulation.’.

**41. Section 278(1)—***insert—*

‘(e) remuneration unpaid because a person contravened an order mentioned in section 140A(1).’.

**42. Section 278(12)—***insert—*‘ “**employee**” includes a student to whom an order made under section 140A applies.<sup>36</sup>“**employer**” includes an employer to whom an order made under section 140A applies.’.**43. Section 307(1), ‘in accordance with an agreement between’—***omit, insert—*

‘as agreed from time to time by’.

**44. Section 350(3)(a)(ii)—***omit, insert—*

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<sup>36</sup> Section 140A (Vocational placement)

## SCHEDULE 1 (continued)

‘(ii) an inspector under the *Training and Employment Act 2000*; or’.

**45. Section 354(4) and (5), ‘(2)(d)’—**

*omit, insert—*

‘(3)(d)’.

**46. Section 366(1), after ‘workplace’—**

*insert—*

‘of the employer’.

**47. Section 366(5)—**

*omit, insert—*

‘(5) In this section—

“**employer**” includes an employer to whom an order made under section 140A<sup>37</sup> applies.

“**industrial instrument employee**” means—

- (a) a person who—
  - (i) is employed by the employer; and
  - (ii) works under an industrial instrument or permit; or
- (b) a student to whom an order made under section 140A applies.’.

**48. Section 367(1), after ‘workplace’—**

*insert—*

‘of the employer’.

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<sup>37</sup> Section 140A (Vocational placement)

## SCHEDULE 1 (continued)

**49. Section 370(2), before subparagraph (i)—**

*insert—*

- (a) the date of payment;
- (b) the period covered by the payment;
- (c) the number of hours covered by the payment at—’.

**50. Section 372(1), ‘registered calling’—**

*omit, insert—*

‘calling of the officer’s organisation’.

**51. Section 373—**

*insert—*

‘(3A) The officer may make a copy of the record, but can not require any help from the employer.’.

**52. Section 376, definition “fixed rate”, after ‘a permit’—**

*insert—*

‘or, for an apprentice or trainee, the rate applicable under section 136’.

**53. Section 391(2)(a), ‘agreement’—**

*omit, insert—*

‘contract’.

**54. Section 391(2)(b)—**

*omit, insert—*

- (b) the Training Recognition Council has allowed the employer to stand-down the apprentice or trainee under the *Training and*

## SCHEDULE 1 (continued)

*Employment Act 2000.*'.

**55. Section 392—**

*omit, insert—*

**‘Paying apprentices or trainees for supervised training**

**‘392.(1)** Time spent by an apprentice or trainee undertaking supervised training is taken to be—

- (a) time worked for the employer; and
- (b) ordinary working hours when calculating the apprentice’s or trainee’s wages and employment conditions.

*Example of paragraph (b)—*

A trainee is required to work 38 ordinary working hours a week under an award. In a particular week, the trainee spends 30 hours working for the employer and 10 hours at college. The trainee is entitled to be paid 38 hours ordinary time (which includes 10 hours ordinary time for the time spent at college) and 2 hours overtime.

**‘(2)** Subsection (1) applies irrespective of the way the supervised training is delivered.

*Examples of ways supervised training can be delivered—*

Block release, day release, workplace-delivered training or correspondence.

**‘(3)** Despite subsection (1), wages are not payable for time spent by an apprentice or trainee undertaking supervised training when the apprentice or trainee is—

- (a) a school-based apprentice or trainee; or
- (b) the subject of a decision of the approving authority under section 162 or 211.

**‘(4)** In this section—

**“supervised training”**, for an apprentice or trainee, means training up to the maximum period required, under the *Training and Employment Act 2000*, to be delivered by a supervising registered training organisation during the apprenticeship or traineeship.’.

## SCHEDULE 1 (continued)

**56. Section 399(1)—***insert—*

‘(d) remuneration unpaid because a person contravened an order mentioned in section 140A(1).’.

**57. Section 399—***insert—*

‘(7) In this section—

“**employee**” includes a student to whom an order made under section 140A<sup>38</sup> applies.

“**employer**” includes an employer to whom an order made under section 140A applies.’.

**58. Section 400(1)(b), ‘138(5)’—***omit, insert—*

‘138(9)’.

**59. Section 400(1)(d)—***omit, insert—*

‘(d) remuneration lost by an apprentice or trainee because the employer contravened section 391(2);<sup>39</sup> or

(e) remuneration unpaid because a person contravened an order mentioned in section 140A(1); or

(f) costs in proceedings relating to unpaid amounts mentioned in paragraphs (a) to (e).’.

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<sup>38</sup> Section 140A (Vocational placement)

<sup>39</sup> Section 391 (Wages etc. to be paid without deduction)

## SCHEDULE 1 (continued)

**60. Section 400—***insert—*

‘(5) In this section—

“**employer**” includes an employer to whom an order made under section 140A<sup>40</sup> applies.’.

**61. Section 409, definitions “employee organisation” and “employer organisation”—***omit.***62. Section 420(1)(b)(iii)—***omit.***63. Section 445(c)—***omit, insert—*

‘(c) that a person (“**eligible member**”) may vote in the ballot only if the person was a financial member of the organisation on a stated day during the period—

- (i) starting no earlier than 60 days before the opening time for nominations; and
- (ii) ending no later than 30 days before the opening time;’.

**64. Section 458, ‘1 year’—***omit, insert—*

‘2 years’.

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<sup>40</sup> Section 140A (Vocational placement)



## SCHEDULE 1 (continued)

**65. Section 474(2)—**

*omit.*

**66. Section 666(1), ‘employee’s wages under a relevant industrial instrument or permit’—**

*omit, insert—*

‘employee’s wages payable under a relevant industrial instrument or permit or under section 136’.

**67. Section 666—**

*insert—*

‘(8) In this section—

“**employee**” includes a student to whom an order made under section 140A applies.<sup>41</sup>

“**wages**” includes—

- (a) remuneration payable to an apprentice or trainee under section 391(2); and
- (b) remuneration payable under an order made under section 140A.’.

**68. Section 673, heading, before ‘368’—**

*insert—*

‘138,’.

**69. Section 673(1), before ‘368’—**

*insert—*

‘138,’.

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<sup>41</sup> Section 140A (Vocational placement)

## SCHEDULE 1 (continued)

**70. Section 683(7), ‘under section 406’—**

*omit, insert—*

‘against section 138, 406’.

**71. Section 686(2)(b) to (e)—**

*omit, insert—*

- ‘(b) section 13(2)(a);
- (c) section 15(4);
- (d) section 46(1);
- (e) section 366(1)(c)(iii).’.

**72. Sections 695(4), ‘immediately’—**

*omit, insert—*

‘promptly’.

**73. Section 696(4) and (5)—**

*omit, insert—*

‘(4) On receiving an application, the registrar must promptly notify the secretary of an employee organisation in the calling of—

- (a) the application; and
- (b) the time when the commission will hear any objection to the issue of the permit.

‘(5) The commission must promptly hear any objection to the issue of the permit from the organisation’s authorised representative.’.

## SCHEDULE 1 (continued)

**74. Section 696(6), ‘An’—**

*omit, insert—*

‘The’.

**75. Section 709(2)(g) and (h)—**

*renumber* as section 709(2)(h) and (i).

**76. Section 709(2)(f)—**

*omit, insert—*

- ‘(f) regulating the conduct of persons, other than lawyers,<sup>42</sup> who act for parties in an industrial cause; and
- (g) regulating the conduct of persons, other than lawyers, who appear in proceedings—
  - (i) in the court; or
  - (ii) before the commission or registrar; and’.

**77. Section 711(5), ‘1 July’—**

*omit, insert—*

‘31 December’.

**78. Schedule 2, section 2—**

*insert—*

‘(5) For the purposes of the pensions Act, the salary of a chief commissioner who retired before 2 August 1999 is the salary payable to the vice president.’.

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<sup>42</sup> See the *Acts Interpretation Act 1958*, section 36 for the definition of lawyer.

## SCHEDULE 1 (continued)

**79. Schedule 5, definitions “apprentice”, “apprenticeship”, “approving authority”, “employee organisation”, “employer organisation”, “group training scheme”, “ordinary rate”, “State Training Council”, “trainee”, “traineeship” and “training agreement”—**

*omit.*

**80. Schedule 5—**

*insert—*

“**apprentice**” see the *Training and Employment Act 2000*, section 9.<sup>43</sup>

“**apprenticeship**” see the *Training and Employment Act 2000*, section 7.

“**approving authority**” means the Training and Employment Board under the *Training and Employment Act 2000*, section 146.

“**employee organisation**” means an organisation of employees.

“**employer organisation**” means an organisation of employers.

“**group training organisation**” means a corporation recognised by the Training and Employment Board as a group training organisation under the *Training and Employment Act 2000*.

“**host employer**” means a person who contracts with a group training organisation for the training of apprentices and trainees.

“**labour market program**” means a labour market program approved by the Minister.

“**ordinary rate**”, for an employee under an industrial instrument, means the rate that the instrument states is payable for ordinary time.

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<sup>43</sup> The *Training and Employment Act 2000*, section 9, defines ‘apprentice’ as follows—

An employee who is being trained in an apprenticeship is an “**apprentice**” if—

- (a) an apprenticeship contract for the apprenticeship has been signed by the parties to the contract, whether or not the contract has been registered under this Act; or
- (b) the probationary period for the apprenticeship has not ended.

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 SCHEDULE 1 (continued)

**“school-based apprentice or trainee”** means an apprentice or trainee who—

- (a) is a student studying at a secondary school or tertiary institution; and
- (b) has entered into an arrangement about the apprenticeship or traineeship with the school or institution and the employer.

**“trainee”** see the *Training and Employment Act 2000*, section 10.<sup>44</sup>

**“traineeship”** see the *Training and Employment Act 2000*, section 8.

**“training contract”** means—

- (a) for an apprentice—an apprenticeship contract; or
- (b) for a trainee—a traineeship contract.

**“Training Recognition Council”** means the Training Recognition Council established under the *Training and Employment Act 2000*, section 167.’.

**81. Schedule 5, definition “young employee”, ‘Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

*‘Training and Employment Act 2000’.*

---

<sup>44</sup> The *Training and Employment Act 2000*, section 10, defines ‘trainee’ as follows—  
An employee who is being trained in a traineeship is a **“trainee”** if—

- (a) a traineeship contract has been signed by the parties to the contract, whether or not the contract has been registered under this Act; or
- (b) the probationary period for the traineeship has not ended.

## SCHEDULE 2

### CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

section 293

#### AGRICULTURAL COLLEGES ACT 1994

**1. Section 3, definitions “agricultural college” and “State college”**—  
*omit.*

**2. Section 3**—

*insert*—

‘**“agricultural college”**’ means a registered training organisation that is—

- (a) operated by the State; and
- (b) declared by the Minister under section 4 to be an agricultural college.

**“registered training organisation”** see the *Training and Employment Act 2000*, section 14.<sup>45</sup>

**“TAFE institute”** see the *Training and Employment Act 2000*, section 191.<sup>46</sup>.

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<sup>45</sup> The *Training and Employment Act 2000*, section 14, defines ‘registered training organisation’ as follows—

**“registered training organisation”**, is a training organisation that is registered to provide—

- (a) training services; or
- (b) recognition services.

<sup>46</sup> The *Training and Employment Act 2000*, section 191, defines ‘TAFE institute’ as follows—

**“TAFE institute”**, is an institution operated by the State that provides vocational education and training.

## SCHEDULE 2 (continued)

**3. Section 3, definition “accredited”, ‘Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

*‘Training and Employment Act 2000’.*

**4. Section 4(1), ‘State college’—**

*omit, insert—*

*‘registered training organisation operated by the State’.*

**5. Section 4(2), ‘State college’—**

*omit, insert—*

*‘registered training organisation’.*

**6. Section 5—**

*omit.*

**7. Section 8(2)(j), from ‘State’ to ‘colleges’—**

*omit, insert—*

*‘TAFE institute under the Training and Employment Act 2000, section 217’.*

**8. Section 13(3), ‘a State college’—**

*omit, insert—*

*‘an agricultural college or TAFE institute’.*

## SCHEDULE 2 (continued)

**9. Section 39(2), from ‘Corporation’ to ‘1991’—***omit, insert—*

‘State’.

**10. Section 39(3) and (4), ‘Corporation’—***omit, insert—*

‘State’.

**ANTI-DISCRIMINATION ACT 1991****1. Section 4, definition “work”, paragraph (ea)—***omit, insert—*

‘(ea) work under a vocational placement under the *Training and Employment Act 2000*; and’.

**CHARITABLE AND NON-PROFIT GAMING ACT  
1999****1. Section 10(5), definition “educational purpose”, paragraph (a)(i)—***omit, insert—*

‘(i) a school, college (including a TAFE institute within the meaning of the *Training and Employment Act 2000*), university or other educational institution;’.



## SCHEDULE 2 (continued)

**COMMUNITY SERVICES (ABORIGINES) ACT 1984****1. Section 59(2)(c), ‘contracts of apprenticeship’—***omit, insert—*

‘apprenticeship or traineeship contracts’.

**COMMUNITY SERVICES (TORRES STRAIT) ACT  
1984****1. Section 57(2)(c), ‘contracts of apprenticeship’—***omit, insert—*

‘apprenticeship or traineeship contracts’.

**CRIMINAL CODE****1. Sections 287 and 325—***omit.***CRIMINAL LAW (REHABILITATION OF  
OFFENDERS) ACT 1986****1. Section 9A(1), table, column 1, item 7, ‘in which the *Vocational Education, Training and Employment Act 1991*’—***omit, insert—*‘in which the *Training and Employment Act 2000*’.

## SCHEDULE 2 (continued)

**2. Section 9A(1), table, column 1, item 7(d), ‘State college under the Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

‘TAFE institute under the *Training and Employment Act 2000*’.

**DENTAL TECHNICIANS AND DENTAL  
PROSTHETISTS ACT 1991****1. Section 25(1)(b)(i) and (2)(b)(i), ‘Employment, Vocational Education and Training Act 1988’—**

*omit, insert—*

‘*Training and Employment Act 2000*’.

**EDUCATION (SCHOOL CURRICULUM P—10) ACT  
1996****1. Section 16(2)(g), ‘Vocational Education, Training and Employment Commission’—**

*omit, insert—*

‘Training and Employment Board established under the *Training and Employment Act 2000*’.

**2. Schedule 3, definition “Vocational Education Minister”, ‘Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

‘*Training and Employment Act 2000*’.

## SCHEDULE 2 (continued)

## EDUCATION (SENIOR SECONDARY SCHOOL STUDIES) ACT 1988

### 1. Section 4, definition “State college”—

*omit.*

### 2. Section 4—

*insert—*

‘**“agricultural college”** see *Agricultural Colleges Act 1994*, section 3.<sup>47</sup>

**“registered training organisation”** see the *Training and Employment Act 2000*, section 14.<sup>48</sup>

**“TAFE institute”** see the *Training and Employment Act 2000*, section 191.<sup>49</sup>.

### 3. Section 4, definition “higher education”, from ‘other than’ to ‘technical and further education colleges’—

*omit, insert—*

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<sup>47</sup> The *Agricultural Colleges Act 1994*, section 3, defines ‘agricultural college’ as follows—

**“agricultural college”** means a State college that is declared to be an agricultural college.

<sup>48</sup> The *Training and Employment Act 2000*, section 14, defines ‘registered training organisation’ as follows—

**“registered training organisation”**, is a training organisation that is registered to provide—

- (a) training services; or
- (b) recognition services.

<sup>49</sup> The *Training and Employment Act 2000*, section 191, defines ‘TAFE institute’ as follows—

**“TAFE institute”**, is an institution operated by the State that provides vocational education and training.

## SCHEDULE 2 (continued)

‘other than vocational education, and includes advanced education courses offered in registered training organisations’.

**4. Section 4, definition “recorded subject”, ‘State college’—**

*omit, insert—*

‘agricultural college, TAFE institute’.

**5. Section 4, definitions “vocational education” and “Vocational Education Minister”, ‘Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

‘*Training and Employment Act 2000*’.

**6. Section 5(3)(d), ‘Vocational Education, Training and Employment Commission’—**

*omit, insert—*

‘Training and Employment Board established under the *Training and Employment Act 2000*’.

**7. Sections 6(1)(h) and 44, ‘Vocational Education, Training and Employment Act 1991, section 26’—**

*omit, insert—*

‘*Training and Employment Act 2000*, section 186<sup>50</sup>’.

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<sup>50</sup> *Training and Employment Act 2000*, section 186 (Delegation by council)

## SCHEDULE 2 (continued)

**EDUCATION (TEACHER REGISTRATION) ACT 1988****1. Section 2, definition “higher education”, from ‘other than’ to ‘technical and further education colleges’—**

*omit, insert—*

‘other than vocational education, and includes advanced education courses offered in registered training organisations’.

**EDUCATION (TERTIARY ENTRANCE PROCEDURES AUTHORITY) ACT 1990****1. Sections 5(1)(d) and 6(1)(f)(v), ‘Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

*‘Training and Employment Act 2000’.*

**2. Section 5(1)(d), ‘technical and further education’—**

*omit, insert—*

‘vocational education’.

**EDUCATION (WORK EXPERIENCE) ACT 1996****1. Section 5(1)(f) and (g)—**

*omit, insert—*

‘(f) if the student is enrolled in an agricultural college under the *Agricultural Colleges Act 1994* or a TAFE institute under the *Training and Employment Act 2000*—the college or institute; and

## SCHEDULE 2 (continued)

- (g) if the student is enrolled in a training organisation registered under the *Training and Employment Act 2000*—the organisation; and’.

**2. Section 11—**

*omit, insert—*

**‘Work experience in restricted callings**

‘**11.(1)** The *Training and Employment Act 2000*, section 89,<sup>51</sup> does not apply to work experience in restricted callings.

‘**(2)** In this section—

“**restricted calling**” means a calling declared to be a restricted calling under the *Training and Employment Act 2000*, section 89(1).’.

**PUBLIC SECTOR ETHICS ACT 1994****1. Schedule, definition “State college”—**

*omit.*

**2. Schedule—**

*insert—*

‘ “**TAFE institute**” see the *Training and Employment Act 2000*, section 191.<sup>52</sup>’.

<sup>51</sup> *Training and Employment Act 2000*, section 89 (Restricted callings)

<sup>52</sup> The *Training and Employment Act 2000*, section 191, defines ‘TAFE institute’ as follows—

“**TAFE institute**”, is an institution operated by the State that provides vocational education and training.

## SCHEDULE 2 (continued)

**3. Schedule, definition, “public sector entity” paragraph (e), ‘State college’—**

*omit, insert—*

‘TAFE institute’.

**SEWERAGE AND WATER SUPPLY ACT 1949****1. Sections 7AA(1)(b) and 16(2)(b), ‘Vocational Education, Training and Employment Act 1991’—**

*omit, insert—*

‘Training and Employment Act 2000’.

**WHISTLEBLOWERS PROTECTION ACT 1994****1. Schedule 5, section 2(1)(h), ‘State college’—**

*omit, insert—*

‘TAFE institute’.

**2. Schedule 6, definition “State college”—**

*omit.*

## SCHEDULE 2 (continued)

**3. Schedule 6—**

*insert—*

- ‘ **“TAFE institute”** see the *Training and Employment Act 2000*, section 191.<sup>53</sup>’.

**WORKCOVER QUEENSLAND ACT 1996****1. Section 24(1)(c), ‘the college attended by an industry placement student’—**

*omit, insert—*

‘a registered training organisation attended by a vocational placement student’.

**2. Section 24(2), ‘industry placement’—**

*omit, insert—*

‘vocational placement’.

**3. Section 24(4), definitions “college” and “industry placement student”—**

*omit.*

**4. Section 24(4)—**

*insert—*

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<sup>53</sup> The *Training and Employment Act 2000*, section 191, defines ‘TAFE institute’ as follows—

“**TAFE institute**”, is an institution operated by the State that provides vocational education and training.



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 SCHEDULE 2 (continued)

‘**“registered training organisation”**’ see the *Training and Employment Act 2000*, section 14.<sup>54</sup>

**“vocational placement”** see the *Training and Employment Act 2000*, section 17.<sup>55</sup>.

**5. Schedule 2, part 1, item 6, ‘scheme’—**

*omit, insert—*

‘organisation’.

**6. Schedule 2A, item 2, ‘scheme’—**

*omit, insert—*

‘organisation’.

**7. Schedule 3, definition “contract of service”, ‘an apprenticeship agreement’—**

*omit, insert—*

‘an apprenticeship contract or traineeship contract under the *Training and Employment Act 2000*’.

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<sup>54</sup> The *Training and Employment Act 2000*, section 14, defines ‘registered training organisation’ as follows—

**“registered training organisation”**, is a training organisation that is registered to provide—

- (a) training services; or
- (b) recognition services.

<sup>55</sup> The *Training and Employment Act 2000*, section 17, defines ‘vocational placement’ as follows—

**“vocational placement”**, for a student, is the placement under a vocational placement agreement of the student in a work environment with a placement person who agrees to deliver to the student the training stated in the training plan for the placement.

## SCHEDULE 2 (continued)

**8. Schedule 3, definition “group training scheme”—**

*omit, insert—*

- ‘ “**group training organisation**” means a group training organisation under the *Training and Employment Act 2000*.’

**WORKERS’ ACCOMMODATION ACT 1952****1. Section 4, heading—**

*omit, insert—*

‘**Definitions**’.

**2. Section 4, definition “worker”—**

*omit, insert—*

- ‘ “**worker** ” means a person performing work under—

- (a) a contract of service; or
- (b) an apprenticeship contract or a traineeship contract under the *Training and Employment Act 2000*.’

**WORKPLACE HEALTH AND SAFETY ACT 1995****1. Section 10(3), ‘scheme’—**

*omit, insert—*

‘organisation’.

**2. Section 10(4), definitions “apprentice”, “group training scheme” and “trainee”—**

*omit.*

## SCHEDULE 2 (continued)

**3. Section 10(4)—***insert—*

‘**“apprentice”** means an apprentice under the *Training and Employment Act 2000*.

**“group training organisation”** means a group training organisation under the *Training and Employment Act 2000*.

**“trainee”** means a trainee under the *Training and Employment Act 2000*.’.

**4. Section 10(4), definition “host employer”, ‘scheme’—***omit, insert—*

‘organisation’.

## SCHEDULE 3

### DICTIONARY

section 6

**“accredited”** means accredited under this Act.

**“advertisement”** includes circular, notice, sign and matter that is not in writing but which conveys a message because of the form or context in which it appears.

**“appointed members”**, for chapter 6, part 2, division 2, see section 196.

**“apprentice”** see section 9.

**“apprenticeship”** see section 7.

**“apprenticeship contract”** see section 11.

**“approved arrangement”**, for chapter 9, part 1, division 2, means an arrangement approved by the Minister under section 252(4).

**“approved form”** see section 190.

**“approved guideline”** means a guideline approved by the Minister under section 166.

**“board”** means the Training and Employment Board established under section 146.

**“calling”** means—

(a) a craft, manufacture, occupation, trade, undertaking or vocation;  
or

(b) a section of something mentioned in paragraph (a).

**“commission”**, for chapter 10, part 3, see section 295.

**“completion agreement”** see section 73.

**“completion certificate”** means a certificate issued by the council stating that the person named in the certificate has successfully completed the apprenticeship or traineeship stated in the certificate.

## SCHEDULE 3 (continued)

“**convicted**” means a finding of guilt, or the acceptance of a plea of guilt, by a court, whether or not a conviction is recorded.

“**corporation**”, for chapter 10, part 3, see section 295.

“**corresponding law**” means a law of another State about vocational education and training that corresponds with this Act.

“**council**” means the Training Recognition Council established under section 167.

“**course**”—

- (a) generally—means a structured approach to the development and attainment of skills and knowledge; or
- (b) for chapter 4—see section 107.

“**deliver**” includes arrange to deliver.

“**employee**” see *Industrial Relations Act 1999*, section 5.

“**employee organisation**” means an organisation of employees.

“**employer**” see *Industrial Relations Act 1999*, section 6.

“**employer organisation**” means an organisation of employers.

“**executive officer**”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“**former body**”, for chapter 10, part 3, see section 295.

“**former industry placement Act**”, for chapter 10, part 3, see section 295.

“**former VETE Act**” means the repealed *Vocational Education, Training and Employment Act 1991*.

“**group training organisation**” means a corporation recognised by the board as group training organisation.

“**guideline**” includes criteria.

“**industrial body**”, for chapter 10, part 3, see section 295.

## SCHEDULE 3 (continued)

**“industrial registrar”** means the industrial registrar under the *Industrial Relations Act 1999*.

**“industrial registry”** means the industrial registry under the *Industrial Relations Act 1999*.

**“industry training advisory body”** means a corporation recognised by the board as an industry training advisory body.

**“information notice”**, for a decision of the ombudsman, the board or the council, means a signed notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) the day the decision has effect;
- (d) for a decision other than a decision of the ombudsman, the person to whom the notice is given may appeal the decision within 21 days.

**“misconduct”**, for chapter 3, part 1, division 5, see section 70.

**“national training system of qualifications”** means a training system that—

- (a) is endorsed by the Minister, the Ministers administering corresponding laws of other States and the Commonwealth Minister responsible for vocational education and training; and
- (b) applies nationally; and
- (c) may contain—
  - (i) a competencies framework; or
  - (ii) an assessment framework; or
  - (iii) a qualifications framework.

**“new training contract”**, for chapter 10, part 3, see section 295.

**“nominal term”** see section 49.

**“obstruct”** includes hinder, interfere with, resist and attempt to obstruct.

## SCHEDULE 3 (continued)

**“ombudsman”** means the apprenticeship and traineeship ombudsman appointed under section 133.

**“parent”** includes guardian and each person who is liable to maintain, or has the care and control of, a minor.

**“placement person”** means an employer who has signed a vocational placement agreement with—

- (a) if the agreement is signed under section 116(1)—the registered training organisation and the student; or
- (b) if the agreement is signed under section 116(2)(a)—the registered training organisation.

**“probationary period”**, for an apprenticeship or traineeship, means the period decided by the council under section 50 as the probationary period for the apprenticeship or traineeship.

**“prohibited employer”** means an employer declared to be a prohibited employer under section 83.

**“publish”**, for an advertisement—

- (a) means publish the advertisement in any way and includes publishing it in any of the following ways—
  - (i) in a newspaper or periodical;
  - (ii) by radio or television, on the internet or in another electronic way;
  - (iii) in a film or video recording;
  - (iv) by a circular, notice or sign; and
- (b) includes cause to be published.

**“purchaser”** see section 82.

**“qualification”** means a certification recognising a person has achieved learning outcomes identified—

- (a) in a national training system of qualifications or an accredited course; and

## SCHEDULE 3 (continued)

- (b) in the system or course as being relevant to community, individual, industry or professional needs.

**“reasonably believes”** means believes on grounds that are reasonable in all the circumstances.

**“recognition certificate”** see section 182.

**“recognition services”** means—

- (a) the recognition of skills and knowledge; or
- (b) the assessment of skills and knowledge; or
- (c) the issue of qualifications or statements of attainment.

**“referrable matter”** see section 134.

**“registered”** means registered under this Act.

**“registered training contract”** means a training contract registered under section 54.

**“registered training organisation”** see section 14.

**“relevant particulars”** see section 16.

**“replacement day”**, for chapter 3, part 2, see section 95.

**“restricted calling”** means a calling declared by the council to be restricted calling under section 89.

**“statement of attainment”** means a certification recognising that a person has achieved 1 or more of the learning outcomes identified for a particular qualification or accredited course.

**“State Training Council”**, for chapter 10, part 3, see section 295.

**“student”** means a person undertaking a course at a registered training organisation.

**“supervising registered training organisation”** see section 15.

**“TAFE institute”** see section 191.

**“trainee”** see section 10.

**“traineeship”** see section 8.



## SCHEDULE 3 (continued)

**“traineeship contract”** see section 12.

**“training contract”** means—

- (a) for an apprentice—an apprenticeship contract; or
- (b) for a trainee—a traineeship contract.

**“training organisation”** means a person or an organisation providing, or offering to provide, training or assessment of skills and knowledge.

**“training plan”**—

- (a) for an apprentice or trainee—see section 13(1); or
- (b) for a student under a vocational placement—see section 13(2).

**“training services”** means—

- (a) the delivery of training; or
- (b) the assessment or recognition of skills and knowledge; or
- (c) the issue of qualifications or statements of attainment.

**“trust property”**, for chapter 9, part 1, division 2, see section 252.

**“vocational placement”**—

- (a) generally—see section 17; or
- (b) for chapter 4—see section 107.

**“vocational placement agreement”** means an agreement in the approved form for the vocational placement of a student.

**“working day”**, for an employee, means a day on which the employee normally performs work.