

# **TRAINING AND EMPLOYMENT BILL 2000**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of legislation**

The principal objective of the legislation is to provide a framework for vocational education and training in the State of Queensland by:

- establishing a State training 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
- providing mechanisms by which industry, employers, employees and the community can advise government on vocational education and training needs and priorities to meet those needs; and
- encouraging and supporting the continued development of high quality training by and within industry; and
- facilitating the provision of vocational education and training that is relevant to employment or will encourage the generation of employment opportunities; and
- regulating the registration of training organisations, accreditation of courses and the training of apprentices and trainees under registered apprenticeship or traineeship contracts within the State; and
- promoting the development of a national vocational education and training system including the implementation of nationally agreed policies.

Consequential amendments are being made to the following Acts to reflect the objectives of this legislation and to standardise certain terms common to those Acts and this Bill:

- *Agricultural Colleges Act 1994*
- *Anti-Discrimination Act 1991*
- *Charitable and Non-Profit Gaming Act 1999*
- *Community Services (Aborigines) Act 1984*
- *Community Services (Torres Strait) Act 1984*
- *Criminal Code 1899*
- *Criminal Law (Rehabilitation of Offenders) Act 1986*
- *Dental Technicians and Dental Prosthetists Act 1991*
- *Education (Senior Secondary School Studies) Act 1988*
- *Education (School Curriculum P-10) Act 1996*
- *Education (Teacher Registration) Act 1988*
- *Education (Tertiary Entrance Procedures Authority) Act 1990*
- *Education (Work Experience) Act 1996*
- *Public Sector Ethics Act 1994*
- *Sewerage and Water Supply Act 1949*
- *Whistleblowers Protection Act 1994*
- *WorkCover Queensland Act 1996*
- *Workers' Accommodation Act 1952*
- *Workplace Health and Safety Act 1995*

The primary objective of the amendments to the *Industrial Relations Act 1999* is to amend provisions to ensure they operate in the manner intended. In addition, the industrial provisions for vocational placement have been transferred to the *Industrial Relations Act 1999*.

The objective of the amendments to the *Criminal Code 1899* is to repeal moribund sections relating to apprentices.

The *Vocational Education and Training (Industry Placement) Act 1992* is repealed because its provisions have been included in this Bill.

## **Reasons for the Bill**

Since the enactment of the *Vocational Education, Training and Employment Act 1991* there have been major changes to the training system both nationally and in Queensland. As a result, the legislation can no longer offer the flexibility to accommodate the new policies and administrative procedures.

The new legislation will facilitate the full implementation of the changes to the system and allow it to meet the emerging and future challenges of vocational education and training.

The Bill is based on the following principles:

- simplified registration procedures for training organisations that reflect nationally agreed policies;
- simplified accreditation procedures for courses that reflect nationally agreed policies;
- increased flexibility in the registration and administration of Apprenticeship and Traineeship Contracts and the regulation of apprentices and trainees;
- increased emphasis on training delivery in vocational placement;
- new processes to enhance the quality of training in apprenticeships, traineeships and vocational placements;
- simplified and transparent appeal mechanisms;
- the establishment of the Apprenticeship and Traineeship Ombudsman; and
- simplified governance structures.

## **Consistency with fundamental legislative principles**

The provisions of the Bill are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*, with the possible exception of the following:

- *Clause 31* limits a registered training organisation's activities during an investigation into the amendment, suspension or cancellation of its registration. This provision relates only to the registered training organisation's ability to enrol new students, allow existing students to commence new training or advertise

their business as a registered training organisation while there is an investigation into the training organisation's registration. The provision has no effect on the training organisation's ability to deliver training to its existing students. Where the delivery of training is conducted as one component of a business, the provision does not restrict the organisation from carrying on its activities that are not related to its training activities. In addition, where the training is only one area of a business and is under investigation, the rest of the business can operate as usual. If the investigation results in no action being taken, the registered training organisation can resume all activities immediately. The provision has been retained as it is considered necessary to protect students and the public.

- *Clause 280* requires executive officers of corporations to ensure that the corporation complies with specific provisions of the Bill. The operation of these provisions is limited to certain activities that are fundamental requirements of the vocational education and training system in Queensland. The provision has been retained as it is considered necessary to protect the public.

### **Estimated cost for government implementation**

Costs associated with the establishment of a new office of the Apprenticeship and Traineeship Ombudsman and the implementation of reforms to the legislation will be met from within the existing Departmental budget.

The proposed amendments to the *Industrial Relations Act 1999* are cost neutral.

### **Consultation**

Extensive consultation has taken place with stakeholders in the vocational education and training system. A discussion paper was distributed to major stakeholders before policy options were finalised. The stakeholders included: unions, employer associations, training organisations, group training organisations, industry training advisory bodies, the Australian National Training Authority, the Department of Employment, Education, Training and Youth Affairs, TAFE and Education Queensland. In addition, meetings to discuss the paper and examine additional policy options were held with major stakeholders.

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After this consultation, the *Training and Employment Bill 2000* was drafted. In early 2000, draft sections of the proposed Bill were used as a basis of consultation with unions, employer associations, training organisations, group training organisations, industry training advisory bodies, the Australian National Training Authority, TAFE and Education Queensland. These consultations, including the resolution of issues that arose, informed the finalisation of the Bill.

## **NOTES ON PROVISIONS**

### **CHAPTER 1—PRELIMINARY**

#### **PART—1 INTRODUCTION**

##### **Short title**

*Clause 1* provides the short title for the Act.

##### **Commencement**

*Clause 2* provides that *Clause 15* of *Schedule 1 (Amendments of Industrial Relations Act 1999)* relating to continuity of service for long service leave purposes for casual employees, commences on 1 July 1999.

The remainder of the Act (including the consequential amendments) will commence on a day fixed by proclamation.

##### **Objectives**

*Clause 3* sets out the objectives of the Bill. As indicated in the general outline above, this Bill will provide a framework for the development and delivery of high quality vocational education and training while ensuring that industries and communities have the opportunity to participate in the development and maintenance of a vocational education and training system in Queensland.

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### **Act binds all persons**

*Clause 4* ensures that the Act is binding on the State and the Commonwealth. This provision is necessary because under the *Acts Interpretation Act 1954* the State is not bound by an Act unless expressly stated in the Act. However, the clause also provides that while the State and Commonwealth are bound by the Act, they are not liable for prosecution for an offence. This is a normal provision, as otherwise the Crown may be required to take an action against the Crown. The main implication of this clause is that TAFE Institutes cannot be prosecuted for committing a breach of the Act. However, TAFE Institutes will be subject to the requirements for registration of training organisations and appropriate and relevant action will be able to be initiated for non-compliance with a registration approval.

### **Notes in text**

*Clause 5* clarifies that a note in the text is part of the Act. Notes in the text are used to clarify certain provisions (for example, where a reference is made to a provision that occurs later in the Bill, a note is used to link the two provisions).

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

### **Definitions—the dictionary**

*Clause 6* provides for a dictionary in *Schedule 3* at the back of the Bill. The dictionary defines particular words.

### **What is an “apprenticeship”**

*Clause 7* provides that an apprenticeship consists of employment based training that the Training Recognition Council has declared as an apprenticeship.

This clause links with *Clause 183*, which gives the Training Recognition Council the power to recognise that a qualification or statement of attainment may be obtained through employment based training. The Training Recognition Council may then declare the employment based training to be an apprenticeship.

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### **What is a “traineeship”**

*Clause 8* provides that a traineeship consists of employment based training that the Training Recognition Council has declared as a traineeship.

This clause links with *Clause 183* that gives the Training Recognition Council the power to recognise that a qualification or statement of attainment may be obtained through employment based training. The Training Recognition Council may then declare the employment based training to be a traineeship.

### **Who is an “apprentice”**

*Clause 9* defines an apprentice as an employee who is being trained in employment based training that the Training Recognition Council has approved as an apprenticeship (under *Clause 183*). A person is an apprentice if they are under an Apprenticeship Contract (regardless of whether the contract has been registered) or if they are still in the probationary period of the apprenticeship.

Although not specifically stated in the Bill, apprentices may be employed on a full-time or part-time basis. In addition, there are a number of training and employment arrangements for apprentices including: employment with a single employer, employment with a group training organisation and apprentices who are also, concurrent with an apprenticeship, undertaking a school education.

An employee being trained in an apprenticeship (either during the probationary period or after the apprenticeship contract has been signed) is an apprentice unless the Training Recognition Council has placed a prohibition on the employer employing an apprentice.

[The Training Recognition Council can place prohibition on an employer employing an apprentice under *Clause 83*.]

### **Who is a “trainee”**

*Clause 10* defines a trainee as an employee who is being trained in employment based training that the Training Recognition Council has approved as a traineeship (under *Clause 183*). A person is a trainee if they are under a Traineeship Contract (regardless of whether the contract has

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been registered) or if they are still in the probationary period of the traineeship.

Although not specifically stated in the Bill, trainees may be employed on a full-time or part-time basis. In addition, there are a number of training and employment arrangements for trainees including: employment with a single employer, employment with a group training organisation and trainees who are also, concurrent with an traineeship, undertaking a school education.

An employee being trained in a traineeship (either during the probationary period or after the traineeship contract has been signed) is a trainee unless the Training Recognition Council has placed a prohibition on the employer employing a trainee.

[The Training Recognition Council can place prohibition on an employer employing a trainee under *Clause 83*.]

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

*Clause 11* provides that an apprenticeship contract is a contract for the training and employment of a person in an apprenticeship. The apprenticeship contract must be in the form approved by the Training Recognition Council. The apprenticeship contract will state the obligations of the parties to the training and employment of the apprentice.

The training plan (detailed in *Clause 13*) does not form part of the apprenticeship contract. However, the establishment of the training plan by the end of the probationary period is considered to be a prerequisite for the signing of the apprenticeship contract.

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

*Clause 12* provides that a traineeship contract is a contract for the training and employment of a person in a traineeship. The traineeship contract must be in the form approved by the Training Recognition Council. The traineeship contract will state the obligations of the parties to the training and employment of the trainee.

The training plan (detailed in *Clause 13*) does not form part of the traineeship contract. However, the establishment of the training plan by the end of the probationary period is considered to be a prerequisite for the signing of the traineeship contract.



**What is a “training plan”**

*Clause 13* provides that a training plan is a written document relating to an apprenticeship, a traineeship or a vocational placement.

Where the training plan is for an apprenticeship or traineeship, it must state the training to be delivered by the employer and (where it is agreed that some of the training is to be delivered by a registered training organisation), by the registered training organisation. (In some cases, the employer for example, roof tiling apprentices, will deliver all the training.) If training is to be delivered by the supervising registered training organisation, the training plan will state the maximum duration of time that the training will take. The training plan will also state the qualification or statement of attainment the apprentice or trainee will be awarded by the registered training organisation upon the successful completion of all the training in the training plan.

Where the training plan is for a vocational placement, the training plan will state the training to be delivered to the student by the employer who will provide the placement.

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

*Clause 14* provides that a registered training organisation is a training organisation that offers vocational education and training and is registered under this Bill to provide training services or recognition services.

A training organisation can be an individual person or an organisation.

The provisions for the registration of training organisations are in *Chapter 2, Part 1*.

Training services include the delivery of training, assessment of skills and knowledge and issue of qualifications or statements of attainment.

Recognition services include the recognition of skills and knowledge, assessment of skills and knowledge and issue of qualifications or statements of attainment.

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

*Clause 15* defines a supervising registered training organisation as a registered training organisation that:

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- where necessary, delivers training to the apprentice or trainee under a training plan. The training to be delivered by the supervising training organisation will complement the training to be delivered by the employer; and
- issues the qualification or statement of attainment to the apprentice or trainee when satisfied of the successful completion of all the training required under the training plan.

The intent of this clause is to define the functions of a supervising registered training organisation. The supervising registered training organisation is not a party to the apprenticeship or traineeship contract but is an integral participant in the training delivery.

In most cases, the apprentice or trainee will require some training to be delivered outside the work environment by a registered training organisation. The supervising registered training organisation will be the registered training organisation that delivers, or arranges for the delivery of training outside the work environment. In addition, the organisation will monitor the training delivered by the employer to the apprentice or trainee to ensure that training will lead to the nominated qualification or statement of attainment.

It should be noted that a few apprenticeships or traineeships exist, such as roof tiling, where the employer delivers all the training. In these instances the supervising registered training organisation will be required to monitor the training being delivered to the apprentice or trainee and issue the qualification or statement of attainment.

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

*Clause 16* defines a vocational placement scheme as a scheme for a vocational placement component of training delivered by a registered training organisation. The vocational placement is a compulsory component of the training during which the student attains specified skills and knowledge in a work environment.

[*Clause 17* defines vocational placement.]

A vocational placement scheme is a document that outlines the vocational placement and its relationship to the training being delivered by the registered training organisation. The scheme must state:

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- the qualification or statement of attainment the student will attain upon successful completion of the training;
- the skills and knowledge the student will attain during the vocational placement and how these skills and knowledge relate to the requirements for the qualification or statement of attainment; and
- the duration of the placement.

**What is a “vocational placement”**

*Clause 17* defines vocational placement as the placement of a student in a work environment to allow the student to undertake training and gain experience in the work environment.

The training that the student will undertake during the vocational placement is agreed between the employer who will provide the vocational placement (to be known as the “placement person”) and the registered training organisation that offers the student's training. The vocational placement is a compulsory part of the student's training.

**CHAPTER 2—TRAINING ORGANISATIONS****PART 1—REGISTRATION OF TRAINING ORGANISATIONS**

New recognition arrangements under the Australian Recognition Framework commenced implementation on 1 January 1998. The Australian Recognition Framework was designed to make recognition and approval processes more streamlined and efficient. The new recognition arrangements establish relationships between nationally recognised training packages, nationally recognised qualifications and nationally recognised training organisations. The new arrangements centre on registering organisations that can deliver training and services.

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Training packages are the resource that training organisations will use to develop training programs. They integrate nationally recognised and endorsed competency standards, assessment guidelines and qualifications.

Ministers have agreed that nationally recognised training packages will be recognised by each State/Territory without the need for further endorsement. However, where an area is not covered by a training package, a course may be developed by the States/Territories to fit the needs of individual enterprises or specific industries or the community. Where these courses are recognised through a Queensland accreditation process, they will be mutually recognised throughout Australia and a nationally recognised qualification or statement of attainment can be conferred on a student who successfully completes the course.

*Division 1—Applying for registration*

State and Commonwealth Ministers have agreed on core principles for registration. These will be supported by a set of core national standards that all organisations seeking registration will need to meet. The four core principles that are relevant to the legislation framework are:

- All organisations, whether public or private, seeking national recognition of their training products and services must be registered by a State/Territory Training Authority or operate in partnership with an existing registered training organisation.
- Initial registration is dependent upon demonstrated capacity to meet the national core standards and relevant product/service standards and any other requirements of the relevant State or Territory. Continued registration is dependent upon compliance with these standards and measured through monitoring and audit by the State/Territory Training Authority.
- Organisations must be registered against a defined scope that identifies the particular products and services to be delivered in specific areas of operation. The products and services include: the delivery of training and assessment services and the issuance of nationally recognised qualifications; and the recognition of skills, provision of assessment services and the issuance of nationally recognised qualifications.

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- Registration is limited to a period of up to five years.

State and Commonwealth Ministers have agreed that where a training organisation meets the agreed national principles, and is registered by a State/Territory, it will not be necessary to register with other State/Territory authorities in order to operate interstate (i.e. mutual recognition of registration).

### **Applying for registration**

*Clause 18* provides that a training organisation may apply to the Training Recognition Council to be registered. Registration will be granted only if:

- the organisation meets the guidelines for registration approved by the Minister (published in the Government Gazette); and
- it is a suitable organisation for registration. [Suitability is addressed under *Clause 20*.]

It is not compulsory for a training organisation to be registered in Queensland. However, a training organisation must be registered if it wishes to provide:

- training services (including the issue of qualifications or statements of attainment); or
- Recognition services (including the issue of qualifications or statements of attainment).

The training, assessment and qualifications or statements of attainment issued by a registered training organisation will be recognised under this Bill or a corresponding law in another State or Territory.

### **Council to keep register**

*Clause 19* provides that the Training Recognition Council must keep a register of all the training organisations it registers under this Bill.

The requirement for a register ensures that a record is maintained of the training organisations that are granted registration in Queensland.

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### **Suitability for registration**

*Clause 20* stipulates the criteria that the Training Recognition Council must consider before registering a training organisation in Queensland. The criteria are directly related to the business reputation, current financial position and background of the applicant. In addition, the Training Recognition Council must take into consideration whether the training organisation has been convicted of an offence under this Bill or refused registration in another State or Territory.

The criteria are important considerations in ensuring that the training organisation that is to be registered will be able to carry out the functions of a provider of training and/or assessment services. The criteria also support the maintenance of the integrity of the vocational education and training system and safeguard users of the system, particularly students and industry.

The primary source of information on the reputation and financial position of an applicant will be documentation provided with the application in the form of financial records and referee statements. Historical information, where relevant, will also be taken into consideration: for example, if the principal of an applicant business had a previous registration cancelled or had committed a breach of the Bill.

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

*Clause 21* states that the Training Recognition Council may register or refuse to register a training organisation. Where the Training Recognition Council decides to grant registration, it will issue a certificate of registration to the organisation. The certificate of registration must include any conditions on the registration that the Training Recognition Council has imposed under *Clause 22* (such as restrictions on the courses the organisation can provide). Where the Training Recognition Council declines to grant registration, it must advise the organisation by an information notice that states the reasons for the decision and where the appeal against the decision lies.

The detailed procedure for registration of a training organisation shall be prescribed in a regulation.

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**Type of registration**

*Clause 22* allows the Training Recognition Council to register a training organisation to provide:

- training services (including the issue of qualifications or statements of attainment); or
- recognition services (including the issue of qualifications or statements of attainment).

A training organisation may apply for one or both of these classes of registration and must meet the guidelines approved by the Minister.

Training services are the delivery of training, assessment or recognition of skills and knowledge and issue of qualifications or statements of attainment.

Recognition services are the recognition of skills and knowledge, assessment of skills and knowledge and issue of qualifications or statements of attainment.

Training organisations that will be registered to provide both training and assessment services will, in the main, be TAFE institutes and private providers of vocational education and training courses. However, certain industry enterprises that conduct their own off-the-job training and schools may also be registered.

**Registration conditions**

*Clause 23* provides that the Training Recognition Council may grant a training organisation registration on reasonable and relevant conditions. These could include:

- that the registered training organisation may provide a specified type of training or assessment; or
- a restriction on the use of the registration. For example, when developing and delivering courses, the registered training organisation must conform to nationally approved criteria and guidelines.

There is a right of appeal against the imposition of conditions that a registered training organisation considers are unreasonable.

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The clause also makes it an offence for a training organisation to contravene a condition of its registration. Offences under this provision may include:

- issuing a qualification or statement of attainment that is outside those stated in the registration; or
- providing training leading to a qualification although the organisation is registered only to provide assessment services.

**Registering training organisations registered under corresponding law**

*Clause 24* applies if a training organisation is registered under a corresponding law of another State or Territory and subsequently seeks to offer, in Queensland, the training and/or recognition services for which it is registered in its “home” State or territory.

The training organisation must notify the Training Recognition Council that it intends to provide services in Queensland that are in accordance with its interstate registration. Upon receipt of the notification, the Training Recognition Council will include it in the Queensland register of training organisations. This has the effect of registering the organisation in Queensland and will confer, as far as possible, the same registration as the organisation has in the other State or Territory (i.e. either to provide training and/or assessment services). In addition, the organisation will be registered on the same conditions as apply to other registered training organisations in Queensland. Accordingly, the Training Recognition Council may impose a condition on the training organisation's registration and, hence, operation in Queensland (for example, the Training Recognition Council may impose a condition that the training organisation have premises in Queensland).

Under an agreement between the Commonwealth and State Ministers, national criteria have been established for the registration of training organisations. Generally, the Training Recognition Council will include the training organisation on the Queensland register if it is registered in another State or Territory and seeks registration in Queensland on the same basis as in its “home” State or Territory. However, the Training Recognition Council may refuse to include an interstate training organisation on the Queensland register if the organisation's registration in its home State/Territory is currently suspended. Additionally, the Training Recognition Council may, if there are reasonable grounds, refuse the



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registration. For example, the Training Recognition Council may refuse to register a training organisation that does not have any facilities in Queensland to provide the services it has advised it will provide.

A training organisation that is refused registration or has a condition placed on its registration in Queensland will have a right of appeal to a Magistrates Court.

The intention of this clause is to provide an expeditious method of registering a training organisation registered in another State or Territory and seeking to operate in Queensland. The training organisation will be granted registration with the same conditions of registration in Queensland as apply in the other State or Territory. In granting this level of registration, the organisation must meet the criteria and conditions set down under Queensland law. However, it is intended to ensure that registration will not be granted to a training organisation that is disreputable, or where there is concern about the training organisation's activities.

The offering of training in Queensland by training organisations registered interstate will include the provision of training by correspondence or over the Internet to clients who are resident in Queensland and undertake the training in Queensland. Therefore, a training organisation that is registered in New South Wales and based in Sydney could offer a course by correspondence in Queensland only if it follows the procedures for registration laid down in this clause.

However, the registration of a training organisation that was originally under a corresponding law of another State or Territory does not authorise an action that would not be authorised under the Bill. For example, if the original registration is for recognition services, the training organisation may not deliver training services in Queensland without additional registration.

In addition, if the training organisation's registration expires or is amended, cancelled or suspended by the registering body in its "home" State or Territory, the registration in Queensland is taken to expire or be amended, cancelled or suspended in the same way. Where one of these events occurs, it is an offence for the training organisation not to immediately advise the Training Recognition Council, and a penalty may apply.

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

*Clause 25* makes it an offence for a training organisation registered under a corresponding law of another State or Territory to provide or offer to provide a service in Queensland unless it has notified the Training Recognition Council and been registered under *Clause 23*. A penalty for non-compliance may apply.

**Term of registration**

*Clause 26* provides that a training organisation maybe registered for a term not exceeding 5 years. The registration may be renewed; however, the total term of registration (that is, original registration plus all renewals) must not exceed 10 years.

On the expiration of a registration, it will be necessary for the training organisation that wishes to continue to deliver vocational education and training services to reapply for registration. The intention of this clause is to allow a training organisation to be registered for a maximum period of up to 10 years. After this, the training organisation will again be required to show that it meets the requirements and criteria for registration. This will support the protection of the provision of high quality vocational education and training in Queensland by periodically requiring training organisations to show they continue to meet the requirements for registration.

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

*Clause 27* allows the Training Recognition Council to amend or cancel the registration of a registered training organisation where the training organisation makes an application for the amendment or cancellation.

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Where a registration is cancelled, the training organisation must, unless it has a reasonable excuse (for example, the certificate has been lost in a fire) return the registration certificate to the Training Recognition Council within 28 days. It will be an offence not to return the certificate and a penalty may apply.

It is not necessary to require fair procedures to apply to the amendment or cancellation of registration as the application for the amendment or cancellation will come from the registered training organisation.

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

*Clause 28* provides the grounds by which the Training Recognition Council may cancel, suspend or amend the registration of a training organisation, without application from the organisation. These grounds are that:

- the registration was obtained because of incorrect or misleading information (for example, the organisation claimed to have training premises in Queensland when it did not); or
- the organisation contravened a condition of registration (for example, the organisation offered training services when it was registered only to offer recognition services); or
- the organisation is convicted of an offence against this Bill or a corresponding piece of legislation in another State or Territory; or
- the organisation is not or is no longer a suitable organisation for registration (for example, if the company has been placed in the hands of liquidators); or
- the organisation is unable to provide training or recognition services in accordance with its registration; or
- the organisation is convicted of an indictable offence (for example, fraud).

The intention of this clause is to allow the Training Recognition Council to take action in specified circumstances to remove a training organisation's registration. The grounds set out under the clause are based on the organisation's inability to comply with their obligations to provide services in line with their registration. This will support the maintenance of the

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integrity of the vocational education and training system in Queensland and protect the community from poor quality or inadequate services.

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

*Clause 29* enables the Training Recognition Council to cancel, suspend or amend the registration of a training organisation, without application, by fair procedures.

The provisions include a requirement for the Training Recognition Council to give the training organisation a “show cause notice” that includes details of the proposed action and the reasons for the action. The training organisation will be invited to make representations as to why the action should not be carried out. After considering any grounds put forward by the organisation, the Training Recognition Council will decide whether to amend, suspend or cancel the registration and must advise the training organisation of its decision. If the Training Recognition Council decides to cancel, suspend or amend the registration, the Council must give the training organisation an information notice stating the decision, giving reasons for the decision and also informing of the right of appeal.

A decision to amend, suspend or cancel a registration takes effect on the day the information notice is given to the training organisation. However, if the decision is to amend, suspend or cancel the registration because the training organisation has been convicted of an offence, the decision cannot take effect until the end of the time to lodge an appeal against a conviction or, if an appeal is lodged, when the appeal is decided.

**Return of registration certificate**

*Clause 30* applies where the Training Recognition Council decides to amend, suspend or cancel the registration of a training organisation. In these cases, the training organisation must return the registration certificate to the Training Recognition Council within 14 days of the decision becoming effective, unless it has a reasonable excuse (for example, the certificate was burnt in a fire).

Where the Training Recognition Council amends the registration, it must return the certificate to the training organisation promptly after the amendment is made.

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Where the Training Recognition Council suspends the registration, it must return the certificate to the training organisation promptly after the end of the suspension period.

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

*Clause 31* applies to a registered training organisation that has received a show cause notice from the Training Recognition Council that the Council proposes to amend, suspend or cancel its registration. (This links with *Clause 29*.)

Where the proposed action is to amend the registration, the clause creates the following offences in relation to the area of the registration that is proposed to be changed.

It is an offence for a training organisation:

- to accept a new student; or
- to allow an existing student to begin a new course; or
- to publish an advertisement for its business as a training organisation.

A penalty for non-compliance may apply.

For example, if the proposed action is to amend the registration so that the training organisation can no longer deliver clerical training, the training organisation cannot accept a new student in clerical training or allow an existing student to commence clerical training or advertise that it provides clerical training.

Where the proposed action is to suspend or cancel the registration, the clause makes it an offence for the organisation to accept a new student or to allow an existing student to begin a new course or to publish an advertisement for its business as a training organisation. A penalty for non-compliance may apply.

The clause relates only to the part of the business related to the registration that is under investigation. For example:

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- If a group training organisation also conducted a registered training organisation, and the group training organisation received a notice of proposed action to cancel the registration of the training organisation, the group training organisation could not:
  - accept any new student into the training organisation; or
  - allow an existing student of the training organisation to commence new training; or
  - advertise the services of the training organisation.

However, the group training organisation could carry on the other business activities of a group training organisation and promote these activities.

- If a registered training organisation received a notice of a proposed action to amend its registration so it could no longer deliver clerical training, the training organisation could not:
  - accept a new student into clerical training; or
  - allow an existing student to commence clerical training; or
  - advertise that it provides clerical training.

However, the registered training organisation could continue to provide other non-clerical training and promote training in non-clerical training.

The intention of this clause is to restrict the activities of a registered training organisation that is under investigation. Under this clause, a training organisation that is under investigation for being in breach of its registration or for a possible offence against the Bill (both of which may lead to the amendment, suspension or cancellation of registration) cannot commence new courses or advertise to attract new students. This is necessary to ensure that a student is not disadvantaged due to the closure of a course if the registration is amended, suspended or cancelled. However, during the investigation, the registered training organisation can continue to provide training to the students it already has and can issue qualifications or statements of attainment to students who complete training that was commenced before the investigation started.

The clause is created to protect the public. If a registered training organisation accepted new students during an investigation (including accepting payment from them for training) it would not be possible for the

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students to complete their training before the results of the investigation were known. If the investigation subsequently resulted in the cancellation of the training organisation's registration the student would be considerably disadvantaged. They would need either to change to a registered training organisation in order to be issued a qualification or statement of attainment, or continue the training and not be to be issued a qualification or statement of attainment. Thus, it would not be in the public interest for a training organisation that is under investigation to accept or attempt to attract new students during the investigation.

If the Training Recognition Council decides not to proceed with the proposed action, the registered training organisation can again accept students or advertise its business as a training organisation.

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

*Clause 32* provides that the Training Recognition Council must notify in the Government Gazette:

- an amendment or cancellation of the registration of a training organisation where the amendment or cancellation has occurred at the request of the organisation; or
- an amendment, suspension or cancellation of the registration of a training organisation where the amendment, suspension or cancellation has not occurred at the request of the organisation.

This links with *Clause 27* and *Clause 29*.

The intention of this provision is to provide a mechanism to inform industry and the community when changes to the registration of training organisations occur.

***Division 3—False statements*****False statements by training organisation**

*Clause 33* creates the following offences. A training organisation must not:

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- state anything that is likely to induce a person to believe it is registered unless it is registered; or
- state anything that is likely to induce a person to believe it is authorised by its registration to offer an accredited course unless the organisation is registered to offer the course and the course is already accredited; or
- state anything that is likely to induce a person to believe it is authorised to issue a qualification or statement of attainment unless it is authorised by its registration to issue it; or
- state anything that is likely to induce a person to believe a qualification or statement of attainment it issues will be nationally recognised unless it is authorised by its registration to issue the qualification or statement of attainment; or
- publish an advertisement stating that it is registered or may issue a qualification or statement of attainment or that its courses are accredited unless it is registered.

The intention of this clause is to stop a training organisation from falsely making statements or advertising that it is registered or can carry out the functions (including the issuing of qualifications or statement of attainment) that only a registered training organisation can do. The creation of offences will protect the integrity of the vocational education and training system and the community from unscrupulous operators.

A penalty may apply upon conviction for an offence against this clause. In addition, where a training organisation has been convicted of an offence against this section and continues the contravening behaviour, a further penalty may apply for each day that the training organisation continues the offence.

*Division 4—Other provisions***Issuing qualifications and statements of attainment**

*Clause 34* provides that a registered training organisation must issue a qualification or statement of attainment to a person who has:



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- undertaken an accredited course or vocational education and training that is under a national training system of qualifications at the training organisation and has attained the skills and knowledge that entitle them to the qualification or statement of attainment; or
- been assessed by the registered training organisation as having the skills and knowledge that entitle them to the qualification or statement of attainment.

The registered training organisation must issue the qualification or statement of attainment within 21 days of the student attaining the skills and knowledge that entitle the person to the qualification or statement of attainment. An offence is created for non-compliance and a penalty may be applied.

The clause also makes it an offence for a training organisation to issue a qualification or statement of attainment to a person unless the organisation is registered to issue the qualification or statement of attainment and the person has attained the skills and knowledge to be entitled to it. A penalty for non-compliance may apply.

The intent of this clause is to ensure that people receive the appropriate qualification or statement of attainment if they:

- Undertake vocational education and training and attain all the skills and knowledge for a qualification or statement of attainment; or
- Are assessed by the registered training organisation as having all the skills and knowledge for a qualification or statement of attainment.

The creation of an offence for issuing a qualification or statement of attainment to a person who does not have all the skills and knowledge for it protects the integrity of the vocational education and training system and the community.

This clause links with *Clause 35* that provides for the assessment of skills and knowledge by registered training organisations.

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

*Clause 35* applies where a person has the skills and/or knowledge for which a qualification or statement of attainment may be issued by a registered training organisation. The person may make application to a registered training organisation to have those skills and/or knowledge assessed to determine if the person can be granted the appropriate qualification or statement of attainment.

Where the registered training organisation assesses the person as having the skills and knowledge that entitle them to the qualification or statement of attainment, the registered training organisation must issue the qualification or statement of attainment to the person.

The intention of this clause is to allow a registered training organisation to recognise skills and knowledge that a person has attained outside the institution as being the same as those that would entitle the person to a qualification or statement of attainment.

**Cancellation of qualification or statement of attainment**

*Clause 36* authorises a registered training organisation to cancel a qualification or statement of attainment where an error was made in issuing the qualification or statement of attainment or where a supporting document or representation was:

- False or misleading, or omitted a significant particular (for example, if it is found that a false statement has been made as to the student's exam results); or
- obtained or made in another improper manner (for example, the theft and unauthorised use of a training organisation's qualification forms).

Cancellation action must be taken only by fair procedures contained in a regulation. A qualification or statement of attainment that has been cancelled must be returned to the registered training organisation within 21 days unless the person has a reasonable excuse (for example, if the qualification or statement of attainment was destroyed in a fire). An offence is created for non-compliance and a penalty may apply.

A person who considers that a decision made under this clause is unfair may appeal the decision.

## **PART 2—COURSE ACCREDITATION**

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

*Clause 37* states the reason for accrediting a vocational education and training course.

Accreditation of courses applies only where the skills and knowledge are not already recognised in a national training system of qualifications. The accreditation allows a registered training organisation that provides the course to issue a qualification or statement of attainment to any student that successfully completes the course. Where a course is accredited, it becomes nationally recognised and any registered training organisation may offer it (provided the course fits within its registration).

“Course” is defined in *Schedule 3* as meaning a structured approach to developing and attaining skills.

A “national training system of qualifications” is defined in *Schedule 3* as meaning a training system that applies nationally and has been endorsed by the State, Territory and Commonwealth Ministers for vocational education and training. The training system may include competencies, and assessment and qualifications frameworks.

### **Council may accredit courses**

*Clause 38* applies where the skills and knowledge attained under a vocational education and training course are not already recognised in a national training system of qualifications. The clause allows an application to be made to the Training Recognition Council to accredit a course. The course may be granted accreditation only if the course meets the guidelines for accreditation approved by the Minister.

A right of appeal exists where the Training Recognition Council refuses to grant accreditation.

The clause also provides that the Training Recognition Council must keep a register of the courses it accredits.

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**Issue of qualification or statement of attainment**

*Clause 39* provides that a person who successfully completes an accredited course is entitled to be issued with the appropriate qualification or statement of attainment by the registered training organisation that provided the course.

**How council may deal with application**

*Clause 40* provides that the Training Recognition Council may grant or refuse to grant the accreditation. The Training Recognition Council must notify the person applying for accreditation of the course of their decision. Where the accreditation has been approved subject to certain conditions, or where the accreditation has been refused, the Training Recognition Council must provide the applicant with an information notice. This notice must state the reasons for the decision. A person aggrieved by the Training Recognition Council's decision to impose conditions on accreditation or a decision to refuse to accredit a course may appeal the decision.

**Accreditation conditions**

*Clause 41* allows the Training Recognition Council, when granting accreditation, to impose reasonable and relevant conditions. Conditions may be imposed to ensure that the course meets guidelines or continues to be relevant to industry and the community. These conditions could include a restriction on the use of the course. For example, a culturally specific course developed for Aboriginal people or Torres Strait Islander people may have a condition that the course can be delivered only by an indigenous person.

A right of appeal exists against the imposition of a condition on the accreditation of a course if it is felt the condition is unreasonable.

**Term of accreditation**

*Clause 42* provides for the accreditation of a course to be for a term not to exceed 5 years. The accreditation may be renewed for additional periods, but the total period of accreditation must not exceed 10 years. (That is, the sum of the original accreditation term plus all the terms of renewals must not exceed 10 years).

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On the expiration of the accreditation, if the person holding the accreditation wish to continue the accreditation it will be necessary that they reapply for accreditation. The intention of this clause it to allow a course to be accredited for a maximum period of up to 10 years. After the accreditation period has expired, the holder of the accreditation will again be required to show that the course meets the guidelines and criteria for accreditation. This requirement will assist in protecting the quality of vocational education and training in Queensland by periodically requiring proof that an accredited course continues to meet the requirements for accreditation and remains relevant to industry.

**Cancelling accreditation on application**

*Clause 43* allows the Training Recognition Council to cancel an accreditation if the person who obtained the accreditation applies for the cancellation.

It is not necessary to require fair procedures to apply to the cancellation of accreditation as the cancellation will result from an application from the holder of the accreditation.

**Procedure for granting and amending accreditation**

*Clause 44* provides that the process for granting or amending the accreditation of a course is to be prescribed in a regulation.

**Amendment or cancellation of accreditation without application**

*Clause 45* empowers the Training Recognition Council to amend or cancel the accreditation of a course. This action may be taken without application from the person who was granted accreditation for the course. However, the action can be undertaken only by fair procedures under a regulation.

The procedures prescribed in the regulation will include the Training Recognition Council giving adequate notice of the intended amendment or cancellation and inviting representations from the holder of the accreditation. If a decision is made to amend or cancel the accreditation, the Training Recognition Council will be required to give written advice of the decision

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and the reasons for the decision, and inform the applicant of the right of appeal against the decision.

Where an accreditation is amended, the amendment may take the form of a new condition being imposed on the accreditation or an existing condition being changed.

This clause allows the Training Recognition Council to amend or cancel the accreditation of a course on reasonable grounds. Examples of reasonable grounds would include where the Training Recognition Council reasonably believes the course no longer meets the requirements of the industry. This may be evidenced by a lack of students enrolling in the course.

**Recognition of courses accredited under corresponding laws**

*Clause 46* provides that a course that has been accredited under a corresponding law of another State or Territory is taken to be accredited in Queensland. As far as possible, the Queensland accreditation will be the same as the original accreditation in the home State or Territory; however, the Training Recognition Council may impose conditions on the accreditation to ensure that the accreditation meets the criteria required in Queensland.

The accreditation under the law of another State or Territory cannot allow something to be done which would not be allowed if the course had been accredited in Queensland.

The intention of this clause is to allow registered training organisations to utilise courses that have been accredited in other States or Territories without having them re-accredited in Queensland.

*Subclause (4)* provides that a registered training organisation intending to use a course that has been accredited in another State or Territory must advise the Training Recognition Council before starting to offer the course. A penalty may be incurred for failure to comply with this provision.

*Subclauses (5) and (6)* apply where the original accreditation of a course is in another State or Territory and that accreditation is cancelled or expires. In these circumstances, the accreditation in Queensland is similarly cancelled or expired. Where the accreditation is cancelled or expired, the registered training organisation that is offering the course must advise the Training Recognition Council. A failure to comply may incur a penalty.

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The intention of this clause is to ensure that the accreditation of a course is not continued in Queensland if the accreditation has been cancelled by the original accrediting State, or has expired.

**Reassessment of accredited course**

*Clause 47* allows that the Training Recognition Council may undertake a reassessment of an accredited course to ensure that it continues to meet the needs of industry and the community. The reassessment of an accredited course only applies to a course that is accredited by the Training Recognition Council under *Clause 38*.

The reassessment must be done by fair procedures prescribed in the Regulation. These procedures would include the Training Recognition Council giving notice of the reassessment of the accredited course and inviting the holder of the accreditation to make representations as to why the accreditation should be retained.

The intention of this clause is to allow a mechanism for the Training Recognition Council to reassess an accredited course. A reassessment may be carried out where a deficiency in the course is indicated either by a lack of use of the course or by complaints about the course. Also, industry could suggest improvements to enable the course to better meet its needs. A reassessment may result in a recommendation that the course be revised and then re-accredited.

**CHAPTER 3—APPRENTICES AND TRAINEES**

A major objective, in ensuring the State's skills needs are met, is the establishment and maintenance of registered training contracts through to the successful completion of the training.

The specific objectives of this chapter relate to:

- establishing procedures for training apprentices and trainees and for the registration, administration, completion, cancellation or suspension of registered apprenticeship or traineeship contracts; and

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- providing for the obligations of the parties to the apprenticeship or traineeship contract, and the disciplinary action which may be taken for contravention of the apprenticeship or traineeship contract.

The apprenticeship and traineeship system is centred on three parties:

- the person who becomes the apprentice or trainee;
- the employer who agrees to employ and provide training in the workplace for the apprentice or trainee; and
- the registered training organisation that monitors the training in the workplace, provides additional vocational education and training that complements the workplace training, and issues the qualification or statement of attainment on successful completion of the training.

The chapter will give effect to the Ministers' agreement that an apprentice or trainee is a person who meets the following criteria:

- is a signatory to a training contract;
- is undertaking structured training that may involve training in the workplace and outside the work environment; and
- is undertaking a negotiated training program that involves obtaining a nationally recognised qualification.

In addition, provisions in the *Industrial Relations Act 1999* complement the provision of this Bill and provide that an apprentice or trainee:

- be employed under an industrial instrument, agreement of other contract of employment; and
- be paid for the work they perform.

The provisions in the chapter are based on the following sequence of events that will make up an apprenticeship or traineeship:

- The employer and person who will become the apprentice or trainee will agree to the commencement of the apprenticeship or traineeship.
- The apprenticeship or traineeship commences on the day agreed.



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- The apprentice or trainee is employed for a probationary period during which time either party can terminate the apprenticeship or traineeship. The probationary period is part of the term of the apprenticeship or traineeship.
- During the probationary period, a training organisation that will become the supervising training organisation for the apprentice or trainee assists the employer and apprentice or trainee to develop the training plan.
- Before the end of the probationary period:
  - the training plan is signed and a copy is given to the employer and apprentice or trainee and a copy is retained by the supervising registered training organisation; and
  - the apprenticeship or traineeship contract is signed.
- The apprenticeship or traineeship contract must be sent to the Training Recognition Council for registration within 1 month of the end of the probationary period.
- The apprenticeship and traineeship continues until the apprentice or trainee has attained all the skills and knowledge specified in the training plan.
- Upon the successful completion of the training specified in the training plan provided by the employer:
  - the employer and apprentice or trainee advise the supervising registered training organisation that determines if all the training for the apprenticeship or traineeship has been completed;
  - if all the training has been completed, the employer, apprentice or trainee and supervising registered training organisation agree in writing that the training is completed;
  - the agreement in writing ends the training plan and the apprenticeship or traineeship contract;
  - the supervising registered training organisation issues the qualification;

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- the supervising registered training organisation advises the Training Recognition Council that the training has been completed; and
- the Training Recognition Council issues a completion certification.

The registration of the apprenticeship or traineeship contract remains a pivotal point of the apprenticeship and traineeship system. The apprenticeship or traineeship contract is a legally binding contract that defines the training arrangement. It formalises the commitment of the employer to provide systematic training and the apprentice or trainee to apply themselves to learning. The fundamental principles underpinning registered apprenticeship or traineeship contracts are also identified, namely:

- the parties must comply with their obligations under the apprenticeship and traineeship contract and this Bill;
- both the employer and the registered training organisation (where applicable) must provide training;
- every effort should be made to ensure the contract is completed; and
- a contract can be cancelled or suspended only for good reason and in accordance with this Bill.

This system continues and improves upon the traditional apprenticeship and traineeship system that has existed for many years.

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

### *Division 1—Preliminary*

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

*Clause 48* provides that the person who is to become the apprentice or trainee and the person who is to become the employer of the apprentice or trainee must agree when the apprenticeship or traineeship is to start. The apprenticeship or traineeship then starts on the agreed day.

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The clause only requires the agreement to be made orally. However, if an employer and person who is to become the apprentice or trainee choose, they may also evidence the agreement in writing.

**Term of training contract**

*Clause 49* provides for the Training Recognition Council to state the nominal term of an apprenticeship or traineeship contract to be agreed by the parties. The nominal term is a period of time during which it is anticipated that the majority of apprentices or trainees can complete the training. The Training Recognition Council may set the nominal term of the contract for all apprentices/trainees generally or for the apprentices/trainees in a specified apprenticeship/traineeship or for a specific apprentice or trainee.

This clause is necessary to ensure that open-ended contracts are avoided (i.e. the training is provided piecemeal over an extended number of years). Currently, most apprenticeships have a nominal period of 4 years and most traineeships have a nominal period of 1 year.

If necessary the nominal term can be extended (this specific provision is in *Clause 77*).

**Probationary period**

*Clause 50* provides that the Training Recognition Council will decide a probationary term for an apprenticeship or traineeship. The Training Recognition Council may set the probationary period for all apprentices/trainees generally or for the apprentices/trainees in a specified apprenticeship/traineeship or for a specific apprentice or trainee. The probationary period forms part of the nominal term of the apprenticeship or traineeship contract.

A probationary term is provided to allow the apprentice or trainee and employer an adjustment period. During this time both the apprentice or trainee and the employer can evaluate the training requirements and the abilities of the parties to undertake or deliver the training. During this period either party may terminate the arrangement.

[*Clause 51* provides for the ending of the apprenticeship or traineeship during the probationary period.]

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*Subclause (4)* provides that, where the employer and apprentice or trainee wish to reduce or extend the probationary period, they may request the Training Recognition Council to make the reduction or extension. The Training Recognition Council will reduce or extend the period only if it is satisfied that good reasons exist for the extension or reduction.

The intention of this clause is to allow for flexibility in the probationary period. For example, where the apprentice or trainee has worked with the employer for some period of time before commencing the apprenticeship or traineeship, the employer and apprentice or trainee may decide that they do not require the full probationary period. Conversely, if an apprentice or trainee is new to a workplace and suffers an extended illness during the probationary period, the employer and apprentice or trainee may seek an extension to the probationary period.

**Ending apprenticeship or traineeship in probationary period**

*Clause 51* provides that an apprenticeship or traineeship may be ended during the probationary period by:

- The apprentice or trainee giving the employer 1 week's notice; or
- The employer giving the apprentice or trainee 1 week's notice.

When ending the apprenticeship or traineeship during the probationary period, it is not necessary that the apprentice or trainee and employer mutually agree to the ending of the apprenticeship or traineeship (i.e. it may be unilaterally ended).

The clause links with Section 138A of the *Industrial Relations Act 1999*. This section prescribes the procedure for termination of employment of an apprentice or trainee during the probationary period.

The clause also links with *Clause 60* that provides for the reinstatement of a person who was previously an employee of the employer if the apprenticeship or traineeship ends during the probationary period.

***Division 2—Signing and registration of training contracts*****Training contract to be signed**

*Clause 52* requires the employer to ensure that the parties to the apprenticeship or traineeship contract sign the contract before the end of the probationary period. An offence is created for non-compliance and a penalty may apply.

The clause clearly places the onus on the employer for ensuring that the apprenticeship or traineeship contract is signed. The clause creates an offence where the employer fails to meet the obligation and a penalty may be incurred.

In addition, an offence is created where any person coerces or attempts to coerce another person to become a party to a training contract, and a penalty may apply.

The clause also specifies that parties to the apprenticeship and traineeship contract as: the employer, the apprentice or trainee and if the apprentice or trainee is under 18 years old and in the care and control of a parent, the parent.

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

*Clause 53* requires an employer to submit the signed apprenticeship or traineeship contract to the Training Recognition Council for registration. The contract must be submitted within 1 month of the end of the probationary period.

An offence is created for non-compliance, and a penalty may apply.

The intention of this provision, together with *Clause 52*, is to ensure that the apprenticeship or traineeship contract is submitted for registration without unnecessary delay following the end of the probationary period.

**Registering training contract**

*Clause 54* provides that the Training Recognition Council may register, or refuse to register, an apprenticeship or traineeship contract.

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The Training Recognition Council may register the apprenticeship or traineeship contract only if it complies with the guidelines approved by the Minister. An example of the matters to be included in the guidelines would be that the contract must be fully completed and the training under the training plan must lead to a qualification or statement of attainment.

If the Training Recognition Council registers the apprenticeship or traineeship contract, the Council must give the parties to the contract notification that it is registered. The contract is effective from the day it is registered and the apprentice or trainee is taken to have commenced the apprenticeship or traineeship on the date specified in the apprenticeship or traineeship contract.

If the Training Recognition Council registers the apprenticeship or traineeship contract, the Council must give the parties to the contract an information notice stating that the registration of the contract has been refused, and giving reasons for the refusal. A decision to refuse the registration of an apprenticeship or traineeship contract may be appealed.

Where the Training Recognition Council has refused to register an apprenticeship or traineeship contract, the apprenticeship or traineeship ends on the day stated in the information notice. However, the employer, apprentice or trainee (and if applicable, the apprentice's or trainee's parent) may agree on a day earlier than the one stated in the information notice.

Where the employer has been declared by the Training Recognition Council to be a prohibited employer for the apprenticeship or traineeship (see *Clause 83*), the Training Recognition Council must refuse to register the apprenticeship or traineeship contract.

It should be noted that it is not necessary for an employee undertaking training in a workplace to be an apprentice or trainee, unless the apprenticeship or traineeship is in a restricted calling (see *Clause 89*) and the person to become an apprentice or trainee is under the age of 21 years. For example, an employer may decide to give an employee training in office procedures, and may pay for the employee to attend a registered training organisation to undertake training, without the employee becoming a clerical trainee. However, if the training takes place as part of an apprenticeship or traineeship under an apprenticeship or traineeship contract:

- the employer is eligible for any Government subsidy for training an apprentice or trainee;

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- the employer may take advantage of the provisions for apprentices and trainees under this Bill and under the *Industrial Relation Act 1999* (for example, lower rates of pay for people in training);
- the employee who becomes the apprentice or trainee will have some certainty as to the training they will receive; and
- the employee who becomes the apprentice or trainee will receive a qualification or statement of attainment upon the successful completion of all the training.

### **False or misleading information in training contract**

*Clause 55(1)* makes it an offence for a person to state anything that they know to be false or misleading in an apprenticeship or traineeship contract. A penalty for contravention may apply.

The intention of this clause is to allow a person who enters into an apprenticeship or traineeship contract knowing that they cannot meet the obligations of the contract to be penalised. For example, it is an offence for an employer to enter into an apprenticeship or traineeship contract knowing that they cannot provide, or arrange for the provision of, appropriate facilities or range of work for the apprentice or trainee.

*Subclause (2)* makes it an additional offence for a person to induce or coerce another person to state anything that they know to be false or misleading in an apprenticeship or traineeship contract. A penalty for contravention may apply.

The intention of this subclause is to allow a third party who induces or coerces another person into entering into an apprenticeship or traineeship contract knowing that the person cannot meet the obligations of the contract to be penalised. For example, it is an offence for a third party to coerce an employer who cannot provide, or arrange for the provision of, appropriate facilities or range of work for the apprentice or trainee to enter an apprenticeship or traineeship contract in order to obtain Government subsidies.

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**Premiums prohibited**

*Subclause 56(1)* prohibits a person from demanding or accepting (or agreeing to accept) a direct or indirect premium from another person for:

- employing a person as an apprentice or trainee;
- inducing (or attempting to induce) another person to employ an apprentice or trainee;
- amending a registered apprenticeship or traineeship contract; or
- cancelling a registered apprenticeship or traineeship contract.

An offence is created for non-compliance and a penalty may apply.

*Subclauses (2), (3) and (4)* provide that if a person is found guilty by a court of accepting a premium, the court may order the return of the premium or its reimbursement to the person who gave it. Such an order would not affect the court's power to impose a penalty.

*Subclause (5)* provides that provision of a grant or incentive from the State or Commonwealth Government, or a person authorised by either Government, for employing or training or promoting the employment or training of an apprentice or trainee is not a premium within the meaning of this clause. The State and Commonwealth Governments provide:

- incentives to employers to encourage the employment or training of apprentices and trainees; and
- grants or incentives to organisations, including registered training organisations, to promote the employment or training of apprentices and trainees.

The subclause is necessary to ensure that the State or Commonwealth Government or somebody authorised by either Government is not in contravention of the Bill if they offer an incentive or grant to encourage the employment and training of apprentice or trainees. For example, from time to time the Government may offer incentives to encourage employers in a certain industry to employ and train more apprentices or trainees in order to avoid future skills shortages. The provision also ensures that employers are not penalised for accepting grants or incentives from the Government for employing and training apprentices or trainees.



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***Division 3—Amending or assigning registered training contract*****Amending or assigning registered training contract**

*Clause 57* allows for the amendment or transfer (assignment) of a registered apprenticeship or traineeship contract only if the parties to the contract agree in writing. This does not apply in the case of statutory assignments (see *Clause 59*) or minor amendments to the contract (see *Clause 58*).

The regulation will prescribe the procedure for the amendment of an apprenticeship or traineeship contract.

An apprenticeship or traineeship contract can be temporarily transferred only in the following circumstances:

- if the employer is temporarily unable to meet the training obligations under the training plan for their apprentice or trainee; and
- where the parties to the apprenticeship or traineeship contract and the new employer who is to provide the training all agree to the temporary assignment.

An apprenticeship or traineeship contract may, for example, be temporarily transferred where an employer does not have facilities to train an apprentice in a particular field of specialisation. In this case, arrangements could be made for a short, temporary transfer to another employer who has the facilities, to enable the apprentice's training to be finalised. Upon completion of the training under the temporary transfer, the apprentice or trainee returns to the employer who is the signatory to the apprenticeship or traineeship contract.

The regulation will prescribe the procedure for the temporary assignment of an apprenticeship or traineeship contract.

It will be an offence for a party to an apprenticeship or traineeship contract to coerce or attempt to coerce any other party to agree to an amendment or transfer, and a penalty may apply for contravention.

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**Minor amendment of registered training contract**

*Clause 58* provides that one of the parties to a registered training contract may notify the other parties to the contract and the Training Recognition Council of a minor amendment to the contract. The notification must be in writing. The contract is taken to be amended when the notification is given.

A minor change is a change that does not alter the substance or effect of the contract: for example, a notification of a change of address or a change of name. A notification that would alter a party's responsibilities under the contract (such as an inability to perform the work) would not be a minor amendment.

The intention of this clause is to allow minor changes to the registered apprenticeship or traineeship contract to be made quickly and efficiently. A requirement to send a written notice signed by all the parties for minor changes such as a change of address would be cumbersome and inefficient.

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

*Clause 59* provides that in the following situations a registered apprenticeship or traineeship contract is automatically transferred:

- If the employer sells the business to someone else and the purchaser agrees to continue the employment of the apprentice or trainee, the contract is automatically transferred to the purchaser.
- If there were only 2 partners and the partnership is dissolved but one of the other partners continues the business, the contract is automatically transferred to the partner who continues the business.
- If a partnership of more than 2 partners is dissolved and, before the affairs are wound up, two or more of the former partners agree to re-enter the same business under a new partnership, the contract is automatically transferred to the new partnership.

(Under the *Partnership Act 1891*, where a partner dies the partnership is automatically dissolved.)

Where the transfer of an apprenticeship or traineeship contract following the dissolution of a partnership cannot be covered by one of the above provisions, the registered apprenticeship or traineeship contract is

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automatically cancelled. For example, where there were only 2 partners and the partnership is dissolved, but neither of the partners continues the business, the registered apprenticeship or traineeship contract is automatically cancelled.

This provision for the automatic transfer of a registered apprenticeship or traineeship contract ensures the continuity of training under the contract and eliminates excessive administrative procedures. In the cases specified, the parties will not have to cancel the registered apprenticeship or traineeship contract and enter into a new contract.

If a business is dissolved and the automatic transfer of the registered apprenticeship or traineeship contract is disputed, the person to whom the contract is automatically transferred may seek a cancellation of the registered apprenticeship or traineeship contract.

This provision is linked to *Clause 82*, which places a responsibility to notify the Training Recognition Council in the following situations:

- The employer is to advise of the selling or purchasing of the business to another person (the purchaser).
- The purchaser of a business is to advise that the employment of an apprentice or trainee will be continued.
- The employer is to advise of the dissolution of a partnership.

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

*Clause 60* applies where the apprentice or trainee held a position with the employer immediately before the commencement of the apprenticeship or traineeship and one of the following situations arises:

- the Training Recognition Council refuses to register an apprenticeship or traineeship contract; or
- the apprenticeship or traineeship ends during the probationary period; or
- the apprenticeship or traineeship contract is cancelled with the agreement of all the parties to the contract.

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In these circumstances, the employer will be required to offer re-employment to the person. The re-employment must be in the position they held before the commencement of the apprenticeship or traineeship or in another position with similar pay and conditions. Where the apprenticeship or traineeship ends, the employer is required to immediately advise the apprentice or trainee of their eligibility for reinstatement. An offence is created where an employer fails to advise the apprentice or trainee of their eligibility under this provision, and a penalty for non-compliance may apply.

If the person who was the apprentice or trainee requests reinstatement within 5 days of the end of their apprenticeship or traineeship, the employer must reinstate them. An offence is created where an employer fails to reinstate a person, and a penalty may apply. In addition, the person who was refused reinstatement will be eligible for the remedies under Chapter 3 of the *Industrial Relations Act 1999* for unfair dismissal.

Increasingly, the people who are becoming apprentices or trainees have experience in the workplace and often are already employed with the employer who agrees to train them in an apprenticeship or traineeship. The purpose of this provision is to protect the employment of these people if it becomes necessary to terminate the apprenticeship or traineeship. The termination of the apprenticeship or traineeship may occur for a number of reasons, including difficulty with the training or changes in the circumstances or the apprentice or trainee or employer. Unless this provision was made, the person's employment contract would automatically terminate on cancellation of the apprenticeship or traineeship contract [see *Clause 68*].

However, a person who was an apprentice or trainee and was employed by the employer prior to the commencement of the apprenticeship or traineeship is not eligible for reinstatement under this clause if they were employed as:

- a casual employee; or
- an employee engaged by the hour or day; or
- an employee engaged for a specific period or task (for example, for 2 weeks to publish a report); or
- an employee participating in a labour market program.

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**Agreeing to cancel training contract**

*Clause 61* provides for the cancellation of an apprenticeship or traineeship contract if all the parties to the contract agree.

Where all the parties to the apprenticeship or traineeship contract mutually agree to its cancellation, it is desirable that the cancellation proceed quickly and simply.

However, the provision also makes it an offence for one of the parties to the apprenticeship or traineeship contract to coerce or attempt to coerce another party to give their consent to cancellation, and a penalty may apply. This provision is necessary as there have been previous instances in which one of the parties to an apprenticeship or traineeship contract has subsequently claimed that the other party used undue influence or coercion to encourage them to sign a mutual cancellation.

**Reinstatement of training contract cancelled by coercion**

*Clause 62* applies if a registered apprenticeship or traineeship contract is cancelled as a result of coercion (see *Clause 61(2)*). In these circumstances, a person who was a party to the apprenticeship or traineeship contract and is aggrieved by the cancellation may apply to the Industrial Relations Commission to have the contract reinstated.

The party must lodge the application with the Industrial Relations Commission within 21 days of the apprenticeship or traineeship contract being cancelled. However, if the Industrial Relations Commission considers it appropriate, it may extend the time for lodging the application.

The intention of this clause is to allow a mechanism for a party to apply to have an apprenticeship or traineeship contract reinstated if it has been cancelled as a result of coercion.

Examples of where an application for reinstatement could be lodged include:

- an apprentice or trainee may have agreed to the cancellation of the apprenticeship or traineeship contract due to the employer falsely stating that they are going to close the business and it was in the apprentice's or trainee's best interests to cancel their contract and look for a new employer; or

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- an employer may have agreed to the cancellation of the apprenticeship or traineeship contract due to the apprentice or trainee falsely stating that they are going to move away from the area when in fact they had been offered another apprenticeship or traineeship with another employer.

The clause links with *Chapter 8, Part 2, Division 2* that defines the orders the Industrial Commission may make in deciding the application. The orders the Industrial Relations Commission may make include an order for:

- reinstatement of the apprenticeship or traineeship contract and a resumption of the training of the apprentice or trainee;
- reimbursement of lost wages;
- cancelling the apprenticeship or traineeship if it is not practicable to resume the training and compensation.

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

*Clause 63* applies to specified grounds to cancel an apprenticeship or traineeship contract. It provides that an employer or apprentice or trainee may apply to the Training Recognition Council to cancel an apprenticeship or traineeship contract in the following situations:

- An employer may apply for the cancellation of an apprenticeship or traineeship contract if they have ceased to operate the business or there has been a substantial change in the business that detrimentally affects their ability to perform the obligations under the contract. For example, the employer may no longer perform a large percentage of the work in which the apprentice or trainee was to receive training.
- An apprentice or trainee may apply for cancellation of the apprenticeship or traineeship contract if the employer has moved the business to a location that is difficult to travel to (for example, if the business moves from Bundaberg to Cairns).
- An apprentice or trainee may apply for a cancellation of the apprenticeship or traineeship contract if there has been a substantial change in the apprentice's or trainee's circumstances

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that detrimentally affects their ability to perform the obligations under the contract. For example, the apprentice or trainee may find they have a degenerative disease that affects their capacity to perform the work.

The Training Recognition Council must promptly decide the application by fair procedures. The fair procedures would include inviting both the employer and apprentice or trainee to explain their position on the situation. When the Training Recognition Council makes its decision, it must give all the parties an information notice stating its decision and reasons for the decision. There is a right of appeal against a decision made under this clause.

A cancellation cannot take effect less than 4 weeks after the information notice has been given. This provision is intended to ensure that at least 4 week's notice is given to the parties of an impending cancellation. However, if the Training Recognition Council considers it to be in the best interests of the parties, it may specify that the cancellation will become effective on a day that is less than 4 weeks after the information notice is given. For example, the cancellation of an apprenticeship or traineeship contract may be effective immediately if it is no longer possible for the employer to provide training and another employer has agreed to continue the training of the apprentice or trainee.

As stated at the commencement of this part, a principal objective of the legislation is to ensure that every reasonable attempt is taken to maintain an apprenticeship or traineeship contract through to completion. However, it is unavoidable that occasionally circumstances arise that make it impossible for a contract to be continued to finality. Where these circumstances arise, it is necessary that the parties be able to quickly cancel the contract so that they do not incur additional obligations under the contract or under this Bill.

**Cancellation for serious misconduct**

*Clause 64* allows for the immediate suspension of an apprentice or trainee to occur in the specified cases while the employer applies for a cancellation of the registered apprenticeship or traineeship contract.

*Subclauses (1) and (2)* provide that an employer can immediately suspend an apprenticeship or traineeship contract if the apprentice engages in serious misconduct that would make continuation of the training unreasonable.

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Serious misconduct that would make immediate suspension reasonable include:

- theft;
- assault;
- fraud;
- being under the influence of liquor or drugs while at work. However, this provision is not intended to include being under the influence of a prescription drug that has been prescribed by a doctor or another pharmaceutical (e.g. cold tablets) taken for a health reason;
- while at work, causing an imminent risk of bodily injury to another person or a work caused illness or a dangerous event (e.g. an explosion) to occur;
- while at work, behaving in a way that is inconsistent with the continuation of the apprenticeship or traineeship contract (for example, intentionally damaging the employer's equipment in order to discontinue training).

[*Subclause (10)* defines the activities that constitute serious misconduct.]

*Subclauses (2) and (3)* require the employer to give the apprentice or trainee a written notice stating that the apprentice or trainee is suspended and the reason for the suspension. The notice must be given within 1 working day of the commencement of the suspension.

*Subclauses (4), (5), (6) and (7)* require the employer to advise the Training Recognition Council of the suspension within 1 working day and apply to the Council for cancellation of the apprenticeship or traineeship contract within 5 working days of the commencement of the suspension. The application for the cancellation must also state the reasons for seeking the cancellation (i.e. the serious misconduct that is alleged). The Training Recognition Council is to make a decision promptly after receipt of the application. The decision must be made by the fair procedures prescribed under a regulation that will require the employer and apprentice or trainee to explain why the contract should or should not be cancelled. In addition, the Training Recognition Council can cancel the contract only if:



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- the employer has fulfilled all their obligations under this clause (i.e. the giving of written notice to the apprentice or trainee);
- the Training Recognition Council reasonably believes the apprentice or trainee engaged in the misconduct; and
- it would be unreasonable for the apprentice or trainee to resume training with the employer.

There is a right of appeal against the Training Recognition Council's decision.

*Subclause (8)* makes it clear that, if the employer does not apply for cancellation as required, the suspension does not have effect and the employer is required to resume training and reimburse the apprentice or trainee for any lost wages. An offence is created for non-compliance under the subclause and a penalty may apply.

The purpose of this clause is to empower an employer to immediately suspend an apprenticeship or traineeship contract in circumstances where an apprentice or trainee engages in serious misconduct and it is unreasonable for the apprentice or trainee to remain in the workplace. However, the employer must then apply to the Training Recognition Council within 1 working day for cancellation of the contract. If such an application is not submitted, then the suspension has no effect and the apprentice or trainee is to resume training.

This clause is intended to address the same concept contained in Section 83 of the *Industrial Relations Act 1999*, which provides for the immediate termination of employment by an employer for gross misconduct of an employee.

The clause differs from *Clause 71*, which provides for the suspension of apprentices or trainees as a disciplinary measure. Under *Clause 71*, the Training Recognition Council, as a disciplinary measure, may impose a suspension. In many cases, an employer applies under *Clause 71* for a cancellation of the registered training contract because the apprentice or trainee has behaved in an inappropriate way. However, the situation is often resolved by a short suspension and the employment and training of the apprentice or trainee continues after the suspension period. Examples where *Clause 71* may apply include situations where:

- the apprentice or trainee is failing to make progress in training;

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- the apprentice or trainee has not attended classes at the registered training organisation; or
- there has been a dispute in the workplace.

**Council's powers to reinstate training**

*Clause 65* applies where a party to an apprenticeship or traineeship contract believes the apprenticeship or traineeship contract has not been cancelled in accordance with the provisions of the Bill. In this case, the party may apply to the Training Recognition Council to have the apprenticeship or traineeship contract reinstated.

The Training Recognition Council must make the decision to reinstate the apprenticeship or traineeship contract by fair procedures prescribed under a Regulation. These procedures include inviting all the parties to the apprenticeship or traineeship contract to make representations as to how the contract was initially terminated.

If the Training Recognition Council decides the apprenticeship or traineeship contract has not been cancelled in accordance with the Bill, it may make one of the following orders:

- an order reinstating the apprenticeship or traineeship contract; or
- if reinstatement is not practicable, an order cancelling the apprenticeship or traineeship contract.

Where the Training Recognition Council makes an order reinstating the apprenticeship or traineeship contract, it may also order:

- the employer to resume training the apprentice or trainee; and
- the apprentice or trainee to resume participating in the training provided by the employer.

It is an offence for a party not to comply with an order by the Training Recognition Council, and a penalty for non-compliance may apply.

The intention of the clause is to provide a mechanism for an apprenticeship or traineeship contract to be reinstated when it has not been legally cancelled and for the training of the apprentice or trainee to resume. However, if reinstatement of the apprenticeship or traineeship is not practicable (for example, due to a total breakdown of the working

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relationship between the employer and apprentice or trainee) the Training Recognition Council may cancel the apprenticeship or traineeship contract and release all the parties from their obligations.

This clause cannot apply to the reinstatement of an apprenticeship or traineeship contract that has been cancelled as a result of coercion. (*Clause 62* applies to applications for reinstatement of apprenticeship or traineeship contracts that have been cancelled as a result of coercion.)

**Cancelling registration of training contract**

*Clause 66* provides that the Training Recognition Council may cancel the registration of an apprenticeship or traineeship contract where it reasonably believes:

- the contract was registered in error, for example, a contract that is not fully completed is accidentally registered; or
- the contract was registered because of a false or misleading statement or declaration it contained, for example, the employer falsely stated they had, or could arrange for, the apprentice or trainee to receive all the training required for the apprenticeship or traineeship; or
- a party to the contract is convicted of an offence under this Bill, for example, the employer may be convicted of a number of offences of failing to advise when previous apprentices or trainee have completed their training; or
- there has been a substantial change to the circumstances of the employer or apprentice or trainee that makes completion of the apprenticeship or traineeship contract unlikely, for example, the business may be placed in the hands of liquidators.

In making the decision to cancel the registration of the apprenticeship or traineeship contract, the Training Recognition Council must use fair procedures prescribed under a regulation which will include requiring both the employer and the apprentice or trainee to make representations as to why the contract should not be cancelled.

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Where the Training Recognition Council decides to cancel the registration, it must give all the parties to the contract an information notice of its decision. The information notice must provide details of the decision and the reasons for the decision.

A party aggrieved by the decision of the Training Recognition Council to cancel the registration of an apprenticeship or traineeship contract may appeal the decision.

This clause links to *Clause 67*.

**Training contract ends if registration cancelled**

*Clause 67* provides that where the registration of an apprenticeship or traineeship contract is cancelled before it has been completed, the apprenticeship or traineeship contract ends on the day of the cancellation.

This clause is necessary because the definition of an apprentice or trainee states that a person is an apprentice or trainee even if the apprenticeship or traineeship contract is not registered. If the apprenticeship or traineeship contract was deregistered due to a contravention of the legislation or it is unlikely that the contract can be completed, it is not intended that the apprentice or trainee will continue in that apprenticeship or traineeship. This clause maintains the integrity of the apprenticeship or traineeship system by clarifying that the apprentice or trainee cannot continue under a deregistered apprenticeship or traineeship contract.

**Effect of cancelling or ending training contract**

*Clause 68* states that when a registered apprenticeship or traineeship contract is cancelled or ends before it is completed, the apprenticeship or traineeship ends on the day the contract is cancelled or ends.

This clause is necessary because the definition of an apprentice or trainee requires an apprentice or trainee to have a signed apprenticeship or traineeship contract or the apprentice or trainee to still be in the probationary period. This clause maintains the integrity of the definition by clarifying that the apprenticeship or traineeship cannot continue where the registered apprenticeship or traineeship contract has been cancelled or ended under this Bill.

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**Employer to notify supervising registered training organisation**

*Clause 69* places an obligation on the employer to advise the supervising registered training organisation for an apprentice or trainee when the apprenticeship or traineeship contract has ended or been cancelled. The notice must be in writing and given to the supervising registered training organisation within 7 days of:

- Where the parties to the contract have agreed to cancel it—the day of the cancellation; or
- Where the Training Recognition Council has made the decision to cancel the contract or registration of the contract—the day the employer was given notice of the Council's decision.

This clause is necessary because the supervising registered training organisation is not a party to the apprenticeship or traineeship contract. Therefore, it would not automatically be notified of the cancellation or ending of the contract. However, as the supervising registered training organisation has specific obligations to the apprentice or trainee under the training plan, it is necessary that it is advised if the apprenticeship or traineeship ends.

The clause makes it an offence for an employer to fail to notify the supervising registered training organisation of the end or cancellation of the apprenticeship or traineeship contract. A penalty for contravention may apply.

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

*Clause 70* defines misconduct, for the purposes of this division.

Where the misconduct is conduct attributed to an employer, apprentice or trainee it may mean:

- the employer has failed to carry out a reasonable and lawful instruction from the Training Recognition Council; or

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- the apprentice or trainee has failed to carry out a reasonable and lawful instruction from the Training Recognition Council or the employer or the employer's agent (for example, a supervisor in the workplace) or the supervising registered training organisation; or
- the employer, apprentice or trainee has not kept the record of training that is required to be kept or has not produced the record when requested by another party to the apprenticeship or traineeship contract; or
- the employer, apprentice or trainee has been convicted of an offence under the Bill.

Where the misconduct is conduct attributed to an apprentice or trainee it may mean:

- the apprentice or trainee is absent from the employer's service without the authority of the Bill and without the employer's consent (for example, the apprentice or trainee is absent from the workplace without calling in sick); or
- the apprentice or trainee is absent from training required to be provided by the supervising registered training organisation under the training plan without the consent of the supervising registered training organisation (for example, the apprentice or trainee does not attend classes without calling in sick); or
- the apprentice or trainee does not participate in the training provided under the training plan; or
- the apprentice or trainee does not make adequate progress in the training provided under the training plan; or
- the apprentice or trainee causes serious risk or damage to the employer's business or business reputation (for example, the apprentice or trainee wilfully damages a piece of equipment or diminishes the quality of the work done by the employer to a client).

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**Discipline**

*Clause 71* empowers the Training Recognition Council to take disciplinary action against a party to a registered apprenticeship or traineeship contract who has contravened the contract or has engaged in other misconduct as defined under *Clause 70*. Disciplinary action can be taken against both an employer and an apprentice or trainee, in accordance with the fair procedures set out in a regulation. The procedures will require the Training Recognition Council to hear representations from the employer and/or apprentice or trainee about the disciplinary matter under consideration.

Disciplinary actions the Training Recognition Council may impose include any of the following orders or a combination of them:

- reprimanding the party; or
- ordering a party to pay a penalty of not more than \$300 [4 penalty units]; or
- Ordering a party to comply with the contract; or
- suspending the apprenticeship or traineeship contract for not more than 30 days or cancelling the apprenticeship or traineeship contract.

There is a right of appeal against the Training Recognition Council's decision in making an order under this clause.

Where the monetary penalty is imposed, the order of the Training Recognition Council may allow that the amount be paid in instalments. For example, if the penalty is \$225, the order could allow a person to pay the amount of \$50 per fortnight if that is the most he/she can reasonably pay each fortnight. In addition, where the person fined is an apprentice or trainee, the Training Recognition Council may direct the employer to deduct the fine (either directly or in instalments) from the wages of the apprentice or trainee and pay the money to the chief executive of the department.

Where an apprenticeship or traineeship contract is suspended, the employment of the apprentice or trainee is also stood down, without pay, for the period of suspension. However, if the employer so wishes the employment of the person could continue in another capacity (for example, as a cleaner).

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The intention of this clause is to ensure that the provisions of the apprenticeship or traineeship contract can be enforced and that the continuity of the training can be protected. In addition, the clause allows for a third party (the Training Recognition Council) to become involved in disciplinary matters. This enhances the possibility of mediation resulting in a disciplinary measure (for example a fine or suspension) rather than the cancellation of the apprenticeship or traineeship contract and, therefore, protects the continuity of the apprenticeship or traineeship contract.

It must be noted that the power of the Training Recognition Council to impose a penalty of up to 4 penalty units may not be consistent with the fundamental legislative principles (provided for under the *Legislative Standards Act 1992*), as it provides for a civil penalty or sanction which may be imposed against a party to a registered contract. However, it is considered that the imposition of such a penalty is warranted, as it provides some flexibility and an alternative sanction in enforcing the integrity of contracts. Also, the maximum penalty is relatively small. Accordingly, it is felt that the penalty is justified as it helps to emphasise the importance of complying with the apprenticeship or traineeship contract and maintaining the contract wherever possible.

The clause creates an offence against a person who does not comply with an order made by the Training Recognition Council to impose a penalty or to suspend or cancel an apprenticeship or traineeship contract. A penalty for non-compliance may apply.

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

*Clause 72* applies if the employer and apprentice or trainee agree that all the training required to be delivered by the employer under the training plan has been successfully completed. The clause requires the employer and apprentice or trainee to notify the supervising registered training organisation that the “employer based” training is complete (i.e. the apprentice has achieved the necessary competencies other than those to be provided by the registered training organisation). The notification, in writing, is to be made within 10 working days of the apprentice or trainee completing the training.



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The role and responsibilities of a supervising registered training organisation are detailed in *Chapter 3, Part 2 (Supervising Registered Training Organisations)*.

The role and requirements of training plans are detailed in *Chapter 3, Part 3 (Training Plans for Apprentices or Trainees)*.

The clause also creates the following offences:

- An employer and apprentice or trainee fails to notify the supervising registered training organisation of the completion of the training.
- An employer and apprentice or trainee fails to notify the supervising registered training organisation within 10 working days.
- An employer and apprentice or trainee gives a false or misleading notice to the supervising registered training organisation.

Penalties for contravention may apply.

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

*Clause 73* requires a supervising registered training organisation to issue the apprentice or trainee with the qualification or statement of attainment stated in the training plan, after it:

- receives advice from the employer and apprentice or trainee that the apprentice or trainee has completed the “employer based” training under the training plan; and
- is satisfied the apprentice or trainee has successfully completed all the training that both the employer and the supervising registered training organisation are to provide under the training plan.

The role and requirements of training plans are detailed in *Chapter 3, Part 3 (Training Plans for Apprentices or Trainees)*.

When satisfied all the training has been completed, the supervising registered training organisation must ensure that the employer, apprentice or trainee and supervising registered training organisation sign an agreement acknowledging the completion of all the training. The agreement must be

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signed as soon as it is reasonably practicable. A penalty for non-compliance may apply.

The supervising registered training organisation is required to issue the qualification or statement of attainment within 21 days of the agreement, acknowledging the completion of the apprentice's or trainee's training. A penalty for non-compliance may apply.

Within 14 days of issuing a qualification or statement of attainment, the supervising registered training organisation must send a signed notification to the Training Recognition Council that it has issued the qualification or statement of attainment. The supervising registered training organisation must also advise the employer of the apprentice or trainee that the qualification or statement of attainment has been issued. A penalty for non-compliance may apply.

Receipt of the notice from the supervising registered training organisation will allow the Training Recognition Council to take necessary administrative action, including finalising the apprenticeship or traineeship contract data in the register. The Training Recognition Council is required to promptly issue the apprentice or trainee with a completion certificate after receiving the notification from the supervising registered training organisation.

The clause makes it an offence for a supervising registered training organisation to issue a qualification or statement of attainment that is false or misleading or provide information to the employer or Training Recognition Council that is false or misleading. A penalty for contravention may apply.

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

*Clause 74* provides that the apprenticeship or traineeship contract ends on the day, when the employer, apprentice or trainee and supervising registered training organisation sign a completion agreement that all the training required under the training plan of the apprentice or trainee has been completed.

The intention of the provision is to allow for the end of an apprenticeship or traineeship contract despite the nominal term of the contract. This means that even if 6 months remains of the nominal term of the apprenticeship or traineeship when the completion agreement is signed, the apprenticeship or traineeship contract ends.

**Signing of completion agreement ends training plan**

*Clause 75* provides that when the employer, apprentice or trainee and supervising registered training organisation sign a completion agreement agreeing all the training required under the training plan of the apprentice or trainee has been completed, the training plan ends on the day the agreement is signed.

The intention of the provision is to clarify when the obligations under the training plan end.

**Cancelling completion certificate**

*Clause 76(1)* authorises the Training Recognition Council to cancel a completion certificate that it issued under *Clause 73*, in the following circumstances:

- The certificate was issued in error (for example, two apprentices had the same name and the completion certificate was issued to the wrong apprentice who had not yet completed training); or
- the completion certificate was issued as a result of a false or misleading document or representation (for example, the supervising registered training organisation erroneously notified Training Recognition Council that the training had been completed).

The action must be taken within 6 months of the completion certificate being issued. For example, if the certificate was issued as a result of an administrative error, it would be unreasonable to cancel a completion certificate some years after the mistake was made and require the person to enter into a new apprenticeship or traineeship.

*Subclause (2)* provides that the completion certificate can be cancelled only by fair procedures contained in a regulation. The procedures will include requiring the apprentice or trainee and possibly the supervising registered training organisation to explain why the certificate should not be cancelled. When the Training Recognition Council makes a decision to cancel or not cancel a completion certificate, it must notify the holder of the certificate by an information notice, stating the decision and the grounds for the decision. It is considered necessary to notify the holder of the certificate of the decision, regardless of whether the decision is to cancel or not

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because the holder's livelihood may depend on the decision. For example, if the holder is a working as a subcontractor tradesperson, the loss of the completion certificate may also result in the loss of his or her livelihood.

There is a right to appeal a decision made under this clause.

*Subclause (5)* provides that when the Training Recognition Council cancels a completion certificate, it must place a notification of the cancellation in the Government Gazette. The reasons for this requirement are:

- A number of licensing requirements are predicated on the completion certificate (for example, licensing of electrical workers or plumbers and gasfitters). Where the completion certificate is cancelled due to incomplete training, a person who had obtained a trade licence on the basis of the completion certificate would no longer be eligible for the licence.
- The person who was the apprentice or trainee may have become a subcontractor on the basis of the completion of an apprenticeship or traineeship. The person could be involved in a number of jobs actively impacting on the public, such as a carpenter building houses. It would be reasonable to warn the public that the completion certificate had been cancelled because the training required under the apprenticeship or traineeship had not been successfully completed.
- Several statutes place an onus on an employer to ensure that the people he/she employs are fully qualified for their positions (for example, the *Electricity Regulation 1994* places an onus on the employer to ensure that the people employed on electrical work are qualified to perform the work). Therefore, it would be reasonable to let industry know when a completion certificate had been cancelled as the holder would no longer be qualified to perform certain types of work.

*Subclause (6)* provides that where the Training Recognition Council cancels a completion certificate, the person to whom it was issued must return it to the council. The certificate must be returned within 7 days of the cancellation taking effect unless the person has a reasonable excuse (for example, the certificate was lost in a fire). An offence is created for non-compliance and a penalty may apply.

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*Subclause (7)* specifies that the cancellation of a completion certificate does not reinstate the previous apprenticeship or traineeship contract. Where a completion certificate has been cancelled, a person wishing to complete the apprenticeship or traineeship will be required to complete the training that was required for the apprenticeship or traineeship. The person may complete this training in a number of ways including the following:

- if they have acquired the skills and/or knowledge, seek formal recognition of those skills and/or knowledge from a registered training organisation; or
- complete the training with a registered training organisation that offers the training that is still to be completed; or
- be re-employed as an apprentice or trainee to complete the training.

This provision is necessary as the employer who had previously employed the person as an apprentice or trainee may be unable or unprepared to re-employ the person to complete their training.

**Delayed completion of registered training contract**

*Clause 77* applies if the nominal term of a registered apprenticeship or traineeship contract is to end before the training required for the apprenticeship or traineeship is completed. The clause enables the parties to the apprenticeship or traineeship contract to apply to the Training Recognition Council to have the nominal term of the contract extended. In allowing a reasonable extension, the Training Recognition Council must be satisfied that the apprentice or trainee can complete all their training within the extended nominal term.

A circumstance justifying an extension could be if an apprentice or trainee suffers injury in a road accident in the final period of the nominal term and still has not completed all the training required under the training plan. In this situation, the parties to the registered apprenticeship or traineeship contract could make application to the Training Recognition Council to have the nominal term extended by several months to enable all the training to be completed.

When approving the extension, the Training Recognition Council must reasonably believe the apprentice or trainee can complete all the training

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within the extended period. The intention of this provision is to avoid the situation in which the apprentice or trainee does not have the capacity to complete the training but the parties seek to have the term extended for a very lengthy period. In these cases it could be more desirable for the person to be employed in another capacity (for example, as a labourer or trades assistant) rather than to remain in the apprenticeship or traineeship.

There is a right to appeal a decision made under this clause.

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

*Clause 78* states that when a registered apprenticeship or traineeship contract is finalised under this Bill, either by completion or cancellation, the employment of the person who was the apprentice or trainee is terminated. However, where the parties agree otherwise, employment in another capacity (for example, as a tradesperson) may continue after the end of the apprenticeship or traineeship. In addition, the employment of the person who was the apprentice or trainee may continue where an apprentice or trainee is eligible for reinstatement under *Clause 60*.

This provision continues the current general practice that when the apprenticeship or traineeship is either cancelled or completed, the apprentice or trainee is not automatically entitled to continue employment in another capacity with the employer.

The clause also clarifies that if the employment is automatically terminated (following completion or cancellation of an apprenticeship or traineeship contract), the rights which the employee may have under the *Industrial Relations Act 1999* are safeguarded. Such rights would include payment and recovery of wages and annual leave.

However, it should be noted that, under the *Industrial Relations Act 1999*, apprentices and trainees who are still in the probationary period or are under a registered apprenticeship or traineeship contract are specifically excluded from provisions of Chapter 3 (Dismissals) of that Act. Accordingly, an apprentice or trainee has all the rights of an “employee” under the *Industrial Relations Act 1999*, with the exception of the provisions covering unfair dismissals and requirements for dismissals, which may apply only where the apprentice or trainee is entitled to reinstatement under *Clause 60* of this Bill.

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

*Clause 79* requires an employer who enters into a training plan to be able to provide, or ensure the provision of the necessary:

- facilities;
- range of work; and
- supervision;

to train the apprentice or trainee as specified in the training plan.

The clause makes it an offence for an employer to fail to provide the required facilities, range of work and supervision, and a penalty for non-compliance may apply.

An employer who is unable to provide all necessary facilities, range of work or supervision, must make arrangements to ensure these are provided for the apprentice or trainee. For example, the employer might arrange a temporary assignment with another employer, or arrange for the apprentice or trainee to attend training provided by a registered training organisation.

If an employer is unable to ensure the provision of all necessary facilities and range of work, a further option would be for the employer to become a “host employer” with a group training organisation. The recognition of group training organisations is provided for under *Clause 221*.

The requirements of training plans are detailed in *Chapter 3, Part 3 (Training Plans for Apprentices or Trainees)*.

**Employer to comply with training plan**

*Clause 80* provides that an employer of an apprentice or trainee must deliver to the apprentice or trainee the training that they have agreed to deliver under the training plan.

The clause makes it an offence for an employer to fail to deliver the training required for the successful completion of the training plan, and a penalty for non-compliance may apply.

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The clause differs from *Clause 79* in that an employer may have the facilities, range or work and supervision necessary to train an apprentice or trainee and still fail to provide the training. In this case, action would be taken against the employer under *Clause 80*.

### **Employer not to prevent participation in training**

*Clause 81* places an obligation on an employer to release an apprentice or trainee to participate in the training provided by a supervising registered training organisation under the training plan. An employer must not obstruct, interfere with or discourage an apprentice or trainee from participating in such training or induce or coerce an apprentice or trainee not to participate in the training. Also, attendance at the training must not prejudice the apprentice's or trainee's employment or place the apprentice or trainee at a disadvantage.

An offence is created for non-compliance and a penalty may apply.

### **Employer to report notifiable events**

*Clause 82* defines notifiable events for the purposes of the Bill. An employer, who is a party to a registered apprenticeship or traineeship contract, must give written notification to the Training Recognition Council of a notifiable event within 14 days of the event happening. Notifiable events include:

- an agreement by the parties to amend, temporarily assign or cancel the apprenticeship or traineeship contract [the links with *Clause 57* and *Clause 61*];
- the sale or disposal of the business by the employer;
- dissolution of a partnership;
- if the employer thinks the apprentice or trainee is failing to make reasonable progress in training; or
- if the employer thinks the apprenticeship or traineeship cannot be completed within the nominal term of the apprenticeship or traineeship contract.



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In addition, where the employer has sold the business to another person, the purchaser must give written notification to the Training Recognition Council, within 14 days of the purchase, if they intend to continue the employment of the apprentice or trainee.

Because of the likely impact these events will have on the apprenticeship or traineeship contract, including the delivery of training or the terms and conditions of the contract, it is considered necessary that the Training Recognition Council be advised of the event quickly.

An offence is created for non-compliance, and a penalty for contravention may apply.

This clause directly links with *Clause 59* which provides for the Training Recognition Council to automatically assign or cancel the apprenticeship or traineeship contract when advised of the following events:

- sale or disposal of the business by the employer; or
- dissolution of a partnership.

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

*Clause 83* provides that the Training Recognition Council may declare an employer to be a prohibited employer if the Council believes the employer is not a suitable person to train an apprentice or trainee.

A prohibited employer cannot employ either:

- any apprentice and/or any trainee at all; or
- an apprentice and/or trainee in a particular apprenticeship and/or traineeship specified by the Training Recognition Council.

In addition, the Training Recognition Council may declare an employer to be a prohibited employer:

- for an indefinite length of time; or
- for a period of time specified in the declaration (e.g. for 5 years).

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In making the declaration, the Training Recognition Council must use fair procedures prescribed under a regulation, which will include inviting representations from the employer as to why they should not be declared a prohibited employer. In addition, in deciding whether or not to declare an employer to be a prohibited employer, the Training Recognition Council must have regard to the following:

- The employer's ability to and history of providing (or arranging for the provision) of facilities, range of work, supervision and delivering training under a training plan. This provision allows the Training Recognition Council to consider the employer's history with regard to training apprentices and/or trainees. The examination of the employer's history will establish if a single event or offence has occurred or if the employer has a history of contravening the requirements of the training system. A person who has an extensive history of employing apprentices or trainees and not providing them with adequate facilities, range of work or training may be considered to be an unsuitable person to employ further apprentices or trainees.
- Whether the employer has previously contravened this Bill, a repealed training and employment act, the *Industrial Relations Act 1999* or the *Workplace Health and Safety Act 1995* or any other State or Commonwealth legislation relating to employment. This provision allows the Council to establish if the employer has a history of not providing adequate training and employment conditions to employees. An employer who has an extensive history of underpaying employees or providing dangerous working conditions may be considered to be an unsuitable person to employ an apprentice or trainee.
- Whether the employer has been convicted of an indictable offence. This provision will allow the Training Recognition Council to consider any previous criminal history that may be relevant to the employment and training of a young person. For example, a person with extensive criminal convictions for sexual offences against young people may be considered an unsuitable person to employ an apprentice or trainee.

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Regardless of whether or not the Training Recognition Council decides to declare an employer to be a prohibited employer, it must give the employer an information notice detailing the decision and the reasons for the decision. The declaration of a prohibited employer by the Training Recognition Council must be notified in the Government Gazette.

If the employer employs apprentices or trainees at the time the declaration is made, it may be necessary for the Training Recognition Council to make an order under *Clause 71* either cancelling the apprenticeship or traineeship contract or requiring the employer to comply with the apprenticeship or traineeship contract. (Where the employer continues to employ an apprentice or trainee, it would not be possible for the Training Recognition Council to declare that they cannot employ any apprentice or trainee.)

A decision of the Training Recognition Council to declare an employer to be a prohibited employer may be appealed.

The intent of this section is to provide a protection for apprentices or trainees against unscrupulous or dangerous employers.

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

*Clause 84* provides that a person who has been declared a prohibited employer under *Clause 83* may request the Training Recognition Council to revoke its declaration. The Training Recognition Council may revoke its declaration by fair procedures prescribed under the Regulation. These procedures would include hearing representations from the person declared a prohibited employer and examining where the conditions relevant for the initial declaration still apply.

The Training Recognition Council may fully revoke its declaration only if the person is considered a suitable person to employ an apprentice or trainee. However, the Training Recognition Council may partially revoke its declaration in the following situations:

- If the initial declaration was not to employ any apprentice or trainee, the person may now be considered suitable to employ an apprentice or trainee in a specified apprenticeship or traineeship. For example, the prohibition may be changed to the employer being allowed to employ an administration or retail trainee but prohibited from employing any other apprentice or trainee.

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- If the initial declaration was not to employ an apprentice or trainee in a number of specified apprenticeships or traineeships and the person may now be considered suitable to employ an apprentice or trainee in 1 or more of these apprenticeships or traineeships. For example, the employer may have been initially prohibited from employing cooking, bread-baking or pastry-cooking apprentices and hospitality trainees. The employer may now be prohibited from employing cooking apprentices or hospitality trainees but allowed to employ other apprentices or trainees.

When the Training Recognition Council makes a decision about a revocation of a declaration (regardless of whether the decision is to uphold or change or fully revoke the original decision) it must give the person an information notice stating its decision. If the Training Recognition Council partially or fully revokes a declaration, it must notify its decision in the Government Gazette. If the Training Recognition Council has decided to partially revoke the declaration, the notification in the Government Gazette must state the apprenticeships or traineeships that the prohibition still relates to.

The intention of this clause is to allow a mechanism for a person who has been declared a prohibited employer to apply to have the prohibition revoked. For example, a company that has been declared a prohibited employer may change ownership. The new owners may seek to have the prohibition lifted.

**Prohibited employer not to contravene declaration**

*Clause 85* makes it an offence for a prohibited employer to employ or offer to employ a person as an apprentice or trainee in contravention of the declaration.

Where an employer has been declared a prohibited employer for all apprenticeships and traineeships, the employer must not employ or offer to employ a person in any apprenticeship or traineeship.

Where an employer has been declared a prohibited employer for a specified apprenticeship and/or traineeship, the employer must not employ or offer to employ a person in the specified apprenticeship and/or traineeship.

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A penalty for contravention may apply.

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

*Clause 86* provides for an employer of an apprentice or trainee to apply to the Training Recognition Council to stand down an apprentice or trainee without pay if the employer is temporarily unable to provide the apprentice or trainee with training. The application must be in writing. Where the Training Recognition Council approves the application, the Council must give the employer a notice stating the maximum period of the stand-down, whether the stand-down is for the entire period or for a specified number of days during the period, and the date on which the stand down commences.

The maximum period of stand down the Training Recognition Council can approve is a period of 30 days. The Training Recognition Council may approve that an apprentice or trainee be stood down for the entire period of the stand down or that the apprentice or trainee be stood down for a pre-determined number of days within the stand down period. For example:

- A stand down period of 10 working days may be approved by the Training Recognition Council and the Council may approve that the apprentice or trainee be stood down for all 10 days.
- A stand down period of 21 days may be approved by the Training Recognition Council but the Council may approve that the apprentice or trainee be stood down for 10 working days within the 21 days.

Where an apprentice or trainee is stood down from training, the employment in the apprenticeship or traineeship is also temporarily suspended for the same period. However, if the employer wishes, they can provide employment for the person in another capacity during the stand down period. For example, an apprentice bread baker could be stood down from the apprenticeship but re-employed as a waiter in a restaurant also operated by the employer.

An employer may only stand down an apprentice or trainee in accordance with the notice given by the Training Recognition Council. Therefore, an employer may not stand down an apprentice or trainee for a period longer

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than that decided by the Training Recognition Council. The clause makes it an offence for an employer to stand-down an apprentice or trainee in a way that does not comply with the Training Recognition Council's notice, and a penalty may apply.

There is a right to appeal a decision made under this clause.

### **Employer restriction on training**

*Clause 87* makes it an offence for an employer to knowingly enter into an apprenticeship or traineeship contract with a person who is already an apprentice or trainee with another employer for the same apprenticeship or traineeship. However, where the other employer of the apprentice or trainee agrees in writing, it is permissible for a second employer to employ the apprentice or trainee in the same apprenticeship or traineeship.

This provision is to prevent the practice of an employer 'poaching' an apprentice or trainee already being trained by an employer under a registered apprenticeship or traineeship contract.

A penalty may apply for breaching this provision.

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

*Clause 88* applies where an apprentice or trainee is already under an apprenticeship or traineeship contract. The clause makes it an offence for an apprentice or trainee to enter into another apprenticeship or traineeship contract with another employer for training in the same apprenticeship or traineeship. However, where the initial employer of the apprentice or trainee agrees in writing, it is permissible for a second employer to employ the apprentice or trainee in the same apprenticeship or traineeship.

The intention of this clause is to make it an offence for an apprentice to unilaterally "sever" a registered apprenticeship or traineeship contract to go to another employer for training in the same apprenticeship or traineeship, without first having the original apprenticeship or traineeship contract cancelled in accordance with this Bill.

A penalty may apply for breaching this provision.

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**Restricted callings**

*Clause 89* provides that the Training Recognition Council may specify a calling to be a restricted calling. Notice of the decision must be placed in the Government Gazette.

The dictionary provides the definition of a calling to include a craft, trade, occupation or vocation.

The declaration of a restricted calling restricts the employment of a person under 21 years of age in the calling, unless the person:

- has already completed a qualification or statement of attainment relevant to the calling; or
- is being trained as an apprentice or trainee in the calling under a registered apprenticeship or traineeship contract.

An offence is created for contravention and a penalty may apply.

The purpose of this clause, which continues the current practice for apprentices under the *Vocational Education, Training and Employment Act 1991*, is to protect the integrity of training in certain trade areas and the employment of young people in those occupations. However, the clause will require the Training Recognition Council to exercise a discretionary power in deciding which apprenticeships or traineeships the provision will apply.

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

**Requirement for supervising registered training organisation**

*Clause 90* provides that there must be a supervising registered training organisation for every apprentice or trainee.

[A supervising registered training organisation is defined in *Clause 15*.]

In order to ensure that quality training, in accordance with the training plan, is delivered to an apprentice or trainee, there must be a supervising registered training organisation for every apprentice or trainee. The supervising registered training organisation has a number of roles under the

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legislation including ensuring the training plan is established and signed and, on the completion of all the training required under the training plan, issuing the qualification or statement of attainment. The appointment of a supervising registered training organisation does not prevent a supervising registered training organisation from contracting another training organisation to deliver certain aspects of training to an apprentice or trainee (for example, St John's Ambulance may be contracted to deliver a first aid course to an apprentice or trainee). However, the supervising registered training organisation is responsible for ensuring the quality of the training delivered by a contracted training organisation.

If an apprentice or trainee has more than one registered apprenticeship or traineeship contract, there must be a supervising registered training organisation appointed for each apprenticeship or traineeship. For example, if a person is undertaking an apprenticeship in cooking and a traineeship in hospitality, there must be a supervising registered training organisation appointed to monitor the training and issue the qualification for the apprenticeship and a supervising registered training organisation appointed to monitor the training and issue the qualification for the traineeship. However, the provision does not restrict the person from appointing the same supervising registered training organisation to monitor the training and issue the qualifications for both.

### **Becoming a supervising registered training organisation**

*Clause 91* provides that the supervising registered training organisation will be the one agreed to by the parties to the apprenticeship or traineeship contract (i.e. the employer, apprentice or trainee and, if applicable, the parent of the apprentice or trainee). In addition, the registered training organisation must agree to become the supervising registered training organisation.

The intention of this clause is to ensure:

- the parties to the apprenticeship or traineeship contract mutually agree on the registered training organisation that will be responsible for monitoring the training, providing any additional training to complement the training provided by the employer and issuing the qualification or statement of attainment. This agreement may be particularly relevant in regional or remote areas where the apprentice or trainee is required to travel to attend any



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training to be provided by the supervising registered training organisation; and

- the registered training organisation agrees with the parties to perform these responsibilities. In order to agree to this, the training to be provided and the qualification or statement of attainment to be issued must be within the scope of the training organisation's registration.

The clause also specifies that there cannot be more than one supervising registered training organisation for an apprentice or trainee at any one time. This means that for every apprenticeship or traineeship contract the apprentice or trainee is a party to, there cannot be more than one supervising registered training organisation at a time. This is necessary to ensure that only one registered training organisation has the responsibilities to monitor the training and issue the qualification or statement of attainment for each apprentice or trainee.

### **Availability of facilities**

*Clause 92* makes it an offence for a registered training organisation to become a supervising registered training organisation if it is unable to provide, or arrange for the provision of, facilities, services or supervision to deliver the training required under a training plan to the apprentice or trainee. A penalty for contravention may apply.

The intention of this clause is to impose a penalty on registered training organisations that become supervising registered training organisation when they do not have the ability to fulfil their obligations. (However, it is acceptable for a supervising registered training organisation that does not have the full range of facilities, work or supervision to make arrangements for this to be provided by another entity.) The clause is to protect the community from unscrupulous training organisations.

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

*Clause 93* makes it an offence for a supervising registered training organisation not to deliver, or arrange for the delivery of, the training required under a training plan to the apprentice or trainee. A penalty for non-compliance may apply.

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The intention of this clause is to impose a penalty on registered training organisations that become supervising registered training organisations and do not fulfil their obligation to deliver (or arrange for the delivery of) the training required under a training plan. The purpose of the clause is to protect the community from unscrupulous training organisations.

This clause has been included in addition to *Clause 92* as it is possible for the supervising registered training organisation to have the facilities, services or supervision to support the training (or to arrange for the facilities, services or supervision to be made available) but not provide the training. It is intended to penalise these supervising registered training organisations as well.

**Replacing supervising registered training organisation**

*Clause 94* allows the parties to a registered apprenticeship or traineeship contract, by mutual agreement, to change the supervising registered training organisation. When changing the supervising registered training organisation, a new registered training organisation must agree to carry out the functions of a supervising registered training organisation for each apprentice or trainee.

Where there is agreement to a new supervising registered training organisation (including agreement by the new registered training organisation), the employer must give a written notification of the change to the previous supervising registered training organisation. The change cannot become effective until at least 14 days after the notice has been given to the previous supervising registered training organisation. This provision will ensure the previous supervising registered training organisation is advised that it is no longer responsible for performing the functions of a supervising registered training organisation (i.e. delivering or monitoring training). It also ensures the previous supervising registered training organisation has some time to adjust any administrative arrangements it may have had for the apprentice or trainee.

The clause makes it an offence for an employer to fail to notify the previous supervising registered training organisation of the change or for the change to become effective less than 14 days after the notice is given. Penalties for non-compliance may apply.

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The intention of this clause is to allow the employer, apprentice or trainee and (if applicable) parent of the apprentice or trainee to change the supervising registered training organisation. Examples of where this may apply include where another registered training organisation can provide a more responsive service or where the employer changes location (for example, from Cairns to Brisbane). While the previous supervising registered training organisation does not have to be agreeable to being replaced, it must be given notice of the decision.

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

*Clause 95* provides that, where a supervising registered training organisation has been replaced, it must issue a statement of attainment to the apprentice or trainee. The statement of attainment must state the training that the apprentice or trainee completed under the training plan during the period that the registered training organisation was a supervising registered training organisation for the apprentice or trainee.

The clause makes it an offence for a supervising registered training organisation that has been replaced to fail to issue the statement of attainment and a penalty may apply.

This clause is necessary because the new supervising registered training organisation will be responsible for ensuring that a new training plan is entered into for the apprentice or trainee. In order to complete the new training plan, the supervising registered training organisation will need to know all the training that the apprentice or trainee has already successfully completed. If the statement of attainment was not issued, the apprentice or trainee may be required to repeat training that had already been successfully completed.

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

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

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

*Clause 96* provides that there must be a training plan for every apprentice or trainee. The training plan will establish:

- the training that is to be delivered by the employer and, if applicable, the supervising registered training organisation; and
- the qualification or statement of attainment that is to be issued to the apprentice or trainee upon completing of the training.

[A training plan is defined in *Clause 13*.]

If an apprentice or trainee has more than one registered apprenticeship or traineeship contract, there must be a training plan for each apprenticeship or traineeship. For example, if a person has an apprenticeship in cooking and a traineeship in hospitality, there must be a training plan detailing the training and qualification for the apprenticeship and a training plan detailing the training and qualification for the traineeship.

The intent of this clause is to ensure that every apprentice or trainee has a training plan that outlines the training they will undertake and the qualification or statement of attainment they will receive upon successful completing of the training.

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

*Clause 97* provides that the parties to the training plan are:

- the employer;
- the apprentice or trainee; and
- the supervising registered training organisation.

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In addition, the supervising registered training organisation must be a party to the training plan even if it is not to deliver any training to the apprentice or trainee.

There are a few apprenticeships or traineeship where the training is fully delivered by the employer. In these cases, it is necessary for the supervising registered training organisation to still be a signatory to the training plan as it will be responsible for ensuring that all the training is delivered to the apprentice or trainee and issuing the qualification or statement of attainment upon the successful completion of the training.

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

*Clause 98* provides that neither the employer nor the supervising registered training organisation can unilaterally decide the training that is to be delivered under the training plan and who will deliver the training. The training plan for an apprentice or trainee must be negotiated and agreed to by the employer, the apprentice or trainee and supervising registered training organisation.

This clause ensures that the parties agree on who is going to provide what training and that the two parties who are to provide training under the training plan (i.e the employer and the supervising registered training organisation) jointly agree on their responsibilities. The intent of the clause is to support a coordinated and systemic approach to training under the training plan. The clause also protects the parties who provide training, by ensuring that one party cannot transfer their responsibilities on to another party or have training obligations imposed on them without their knowledge or consent.

### **Coercion**

*Clause 99* provides that a person must not coerce or attempt to coerce a person to become a party to a training plan or a person who is already a party to a training plan, to change the training plan. An offence is created for non-compliance and a penalty may apply.

The intention of this clause is to ensure that a person, whether they are a party to the training plan or not, cannot coerce another person to agree to:

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- deliver certain training by entering into a training plan; or
- change the training that is to be delivered under a training plan.

The clause is included to protect people entering into training plans or those who are already signatories to a training plan.

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

*Clause 100* requires all the parties to the training plan to sign it. In becoming a signatory to a training plan it is intended to indicate that the person is aware of the requirements of the training plan (for example, who is going to deliver what training).

The supervising registered training organisation must take all reasonable steps to ensure that all the parties to the training plan sign it. [The parties to the training plan are defined in *Clause 97*.]

Where the apprentice or trainee is just commencing the apprenticeship or traineeship, the training plan must be signed before the end of the probationary period. However, if the training plan is being established due to a change of supervising registered training organisation during the term of the registered apprenticeship or traineeship contract, the new training plan must be signed within 14 days of the commencement of the new supervising registered training organisation.

It is an offence for a supervising registered training organisation not to ensure the training plan is signed within the designated time and a penalty may apply.

The intent of the clause is to ensure that the training plan is developed and agreed to early in the apprenticeship or traineeship so that all the parties are aware of their obligations and responsibilities in providing training. The onus has clearly been put on the supervising registered training organisation to ensure the training plan is established and signed by all the parties.

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

*Clause 101* makes it an offence for a supervising training organisation not to provide all the parties to the training plan with a copy of the plan within 7 days of it being signed. A penalty for non-compliance may apply.

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As the training plan is integral to the systematic approach to training, it is considered essential that all the parties to the plan have a copy. In addition, as two of the parties have obligations to deliver training, it is essential that they have a copy of the training plan so that they are aware of their obligations and responsibilities.

### **False or misleading information in training plan**

*Clause 102(1)* makes it an offence for a person to state anything that they know to be false or misleading in a training plan. A penalty for contravention may apply.

The intention of this clause is to allow a person who enters into a training plan, knowing they cannot meet the obligations of the plan, to be penalised. For example, an employer who states they will provide certain training under the training plan, knowing it cannot be provided.

*Subclause (2)* creates the additional offence for a person who induces or coerces another person to state anything that they know to be false or misleading in a training plan. A penalty for contravention may apply.

The intention of this subclause is to allow a third party who induces or coerces another to state something in a training plan that is known to be false or misleading, to be penalised. For example, where a third party coerces an employer who cannot provide appropriate training for the apprentice or trainee to state in a training plan that they can deliver the training or arrange for its delivery. This third party would be liable for a penalty.

### ***Division 2—Ending or changing training plan for apprentice or trainee***

#### **Automatic cancellation on replacement of supervising registered training organisation**

*Clause 103* applies where the supervising registered training organisation is replaced. The clause provides that the training plan ends on the same day the organisation ceases to be a supervising registered training organisation for that apprentice or trainee.

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This clause links with *Clause 94*, which provides for the employer and apprentice or trainee to replace the supervising registered training organisation and requires them to notify the supervising registered training organisation that they are being replaced. The training plan will automatically be cancelled on the day that the replacement becomes effective which, in accordance with *Clause 94*, can be no sooner than 14 days after the notice is given.

It is necessary that the training plan ceases on the same day that the registered training organisation ceases to be the supervising registered training organisation for the apprentice or trainee, because it would be inappropriate for the organisation to continue to have training responsibilities under a plan when it is no longer the supervising registered training organisation. The provision is necessary to ensure that the integrity of the definition of a supervising registered training organisation is maintained.

**Automatic cancellation if apprenticeship or traineeship ends**

*Clause 104* applies where the supervising registered training organisation receives a notice from the employer that the apprenticeship or traineeship is to end. The clause provides that the training plan ends on the same day the apprenticeship or traineeship ends.

The clause links with *Clause 69*, which requires an employer to advise the supervising registered training organisation when:

- the parties to a registered apprenticeship or traineeship contract have agreed to its cancellation; or
- the Training Recognition Council has cancelled a registered apprenticeship or traineeship contract.

It is necessary that the training plan ceases on the same day as the apprenticeship or traineeship ends, because it would be inappropriate for the supervising registered training organisation to continue to have training responsibilities for a person who is no longer an apprentice or trainee. The provision is necessary to ensure that the integrity of the definition of a supervising registered training organisation and a training plan is maintained.



**Statement of attainment**

*Clause 105* provides that, where a training plan is cancelled due to the ending of an apprenticeship or traineeship, the supervising registered training organisation must issue a statement of attainment to the apprentice or trainee. The statement of attainment must be issued within 14 days of the supervising registered training organisation receiving notice of the end of the apprenticeship or traineeship. An offence is created for non-compliance and a penalty may be incurred.

[This clause links with *Clause 104*.]

This clause ensures that an apprentice or trainee receives a written record of the training they have received during the apprenticeship or traineeship. The statement of attainment may be used at the start of another apprenticeship or traineeship to ensure that training already successfully completed is not repeated. Alternatively, the statement of attainment may be used to gain credit towards another qualification or statement of attainment.

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

*Clause 106* provides that the training plan can be changed only in the way prescribed under a regulation. The regulation will require that a change be negotiated and agreed upon by the parties to the plan, and recorded in writing.

**CHAPTER 4—VOCATIONAL PLACEMENT****PART 1 PRELIMINARY**

Registered training organisations can offer vocational education and training in a variety of ways including:

- fully institutional based (i.e. diploma courses);
- a combination of institutional based and practice in a simulated work environment; or

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- institutional based courses with a small component of training delivered in a work environment (i.e. vocational placement).

Vocational placement is a component of the training being delivered by a registered training organisation to a student that is delivered in a work environment. (Training that includes vocational placements are full-time institutional courses and not part of an apprenticeship or traineeship.) It is structured training that is a compulsory component of the training offered by a registered training organisation. The student undertaking the vocational placement remains a student and does not become an employee of the employer who has offered to deliver the training (the “placement person”). Neither does that placement person receive any payment for delivering the training.

The training, which is to be delivered under a vocational placement, must be recognised by the Training Recognition Council as a vocational placement scheme. In recognising a scheme, the Training Recognition Council also examines the length of the placement and how the vocational placement conforms to the requirements for the qualification or statement of attainment.

Vocational placement schemes will not be recognised generally for a course. Each registered training organisation will need to have a vocational placement scheme approved by the Training Recognition Council for training it intends to offer. Only a registered training organisation that has received recognition of a vocational placement scheme can offer the scheme, and the vocational placement must be offered in accordance with the recognised scheme.

Vocational placements fall into two categories: up to 240 hours in a year and over 240 hours in a year. Where the vocational placement is up to 240 hours in a year, the student does not receive any remuneration for the placement. However, where the placement is over 240 hours, the placement person who provides the training pays the student remuneration. The level of remuneration is established by an order under the *Industrial Relations Act 1999*.

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The registered training organisation offering training that includes vocational placement is responsible for arranging vocational placements for the students undertaking the training. The registered training organisation must also ensure that the placement person has the facilities and range of work to provide the training during the placement.

Vocational placements take place under a vocational placement agreement. This is signed by the placement person who will deliver training under the placement, the student who will undertake the placement and the registered training organisation. Registered training organisations will register vocational placement agreements for placements up to 240 hours but the Training Recognition Council will register placements above 240 hours and ensure the industrial arrangements are in place to support these placements.

For each student undertaking a vocational placement, a training plan must also be established setting out the training that will be provided during the placement. The training plan will support quality training being delivered during the vocational placement and assist the registered training organisation to monitor the training provided by the placement person in the workplace.

*Division 1—Definitions for chapter 4***Definition for ch 4**

*Clause 107* defines “course” for the purposes of vocational placement as a structured approach to the development and attainment of skills and knowledge leading to a qualification or statement of attainment that is provided by a registered training organisation.

The clause defines the “parties” to a vocational placement to be the student undertaking the placement, the registered training organisation that offers the course the student is undertaking and the person who will provide the vocational placement (to be known as the placement person).

The clause also provides a definition of “vocational placement” and states that the definition does not apply to *Division 2* of this chapter. (*Division 2* relates to the Training Recognition Council's recognition of a vocational placement scheme which must occur before a placement occurs.)

***Division 2—Vocational placement schemes*****Applying for recognition of vocational placement scheme**

*Clause 108* provides that a registered training organisation may apply to the Training Recognition Council for recognition of a vocational placement scheme.

Under this clause, a registered training organisation that offers training may apply to the Training Recognition Council to offer part of the training via training in a work environment (to be known as a vocational placement). The details of the training that is offered in the workplace are known as the vocational placement scheme.

This clause links with *Clauses 16* and *17*. A vocational placement scheme is defined in *Clause 16* as a scheme that is a part of the training to be offered by the organisation that includes vocational placement. Vocational placement is defined in *Clause 17* as a placement of a student with an employer who has agreed to provide training in a work environment. The training under a vocational placement scheme, to be delivered during a vocational placement, must be directly related to the training the student is undertaking.

**How council deals with application**

*Clause 109* provides that the Training Recognition Council may recognise or refuse to recognise a vocational placement scheme. When the Training Recognition Council makes a decision to recognise or refuse to recognise a scheme, it must promptly notify the registered training organisation of its decision.

If the Training Recognition Council recognises the scheme, it must include particulars of the scheme in the notice it gives to the registered training organisation. The particulars would include the duration of the scheme, the skills and knowledge to be attained during the scheme and the qualification to be issued upon the successful completion of the course. (The particulars of the vocational placement scheme are detailed in *Clause 16*.)

A decision of the Training Recognition Council not to recognise a vocational placement scheme is not appealable, as it will not stop the registered training organisation from offering the training without a vocational placement scheme.

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

*Clause 110* makes it an offence for a registered training organisation to offer training that requires vocational placement unless it has applied to and received recognition from the Training Recognition Council of the vocational placement scheme. A penalty may apply for non-compliance.

The intention of this clause is to ensure that vocational placement is offered only by a registered training organisation that has a vocational placement scheme recognised by the Training Recognition Council. This clause supports the quality of training in vocational placement schemes by ensuring that only those schemes that have been recognised are offered by registered training organisations that have been approved to offer them.

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

*Clause 111* makes it an offence for a registered training organisation offering training that includes vocational placement to fail to arrange the vocational placement for a student undertaking the training. A penalty for non-compliance may apply.

The intention of this clause is to clearly place the onus on the registered training organisation offering the training to arrange the vocational placement for students who undertake the training.

However, the registered training organisation does not have to arrange the placement if it has a reasonable excuse for not doing so and the Training Recognition Council has given its written consent. In these circumstances, it would be expected that the registered training organisation would make alternative arrangements for the student to attain the skills and knowledge they would have obtained through the placement (i.e. in a simulated environment).

The clause also makes it an offence for a registered training organisation that is required to arrange a vocational placement for one of its students to arrange the placement with a prohibited employer. A penalty for non-compliance may apply.

[This provision links with *Clause 83*.]

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The intention of this clause is to ensure protection for vocational placement students from employers who do not provide appropriate training or who are considered unsuitable for another reason. However, if the Training Recognition Council agrees, the registered training organisation may place a vocational placement student with a prohibited employer. For example, the employer may have been prohibited from employing apprentices and trainees because of a record of exploiting them by not paying the correct wages and entitlements. As these provisions do not apply to most vocational placement students, the Training Recognition Council may approve a vocational placement with such an employer.

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

*Clause 112* applies where a registered training organisation has a vocational placement scheme recognised by the Training Recognition Council. The clause makes it an offence for the registered training organisation to offer a vocational placement that is not in accordance with the recognised scheme. A penalty may apply for contravention.

The intention of this clause is to create an offence for a vocational placement that is not in accordance with the recognised vocational placement scheme. For example, if the duration of the placement under the vocational placement scheme had been recognised as 300 hours in a year, it would be an offence to arrange a placement that was 400 hours in a year.

**Placement person not student's employer**

*Clause 113* clarifies that the placement person is not the student's employer during the vocational placement.

This clause is needed to clarify the status of the student. If the placement person became the student's employer, the placement person would not only have to pay wages but also provide employment entitlements (i.e. sick leave, pro-rata annual leave etc.) It is not the intention of vocational placement schemes to impose these obligations on placement persons.

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

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*Clause 114* provides that if a law (such as an Act, regulation or an Industrial Award), other than the *Anti-Discrimination Act 1991*, prohibits or regulates the employment of persons, that law does not apply to a student undertaking vocational placement.

However, it is not permissible to place a vocational placement student in a process, business or occupation if a law prohibits employment or regulates the working conditions in that process, business or occupation on the grounds of:

- age (For example, a person serving alcohol or working in a casino must be at least 18.);
- sex (For example, there are restrictions under the Workplace Health and Safety (Lead) Compliance on the employment of pregnant women or women of reproductive capacity working in a lead risk job.);
- a requirement for a specific licence, qualifications or registration (For example, a person may not work as an electrician or a forklift driver unless they hold the appropriate qualification or licence.).

The intention of this clause is to ensure that vocational placements cannot be made in situations where the employment of certain people is prohibited by certain laws. The clause is to ensure that protective provisions contained in other legislation also apply to vocational placement students.

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

*Clause 115* states that, for the purposes of the *Workplace Health and Safety Act 1995*, a student is to be regarded as an “employee”, and the person providing the vocational placement is regarded as an “employer”. This provision ensures that the protection provided to an “employee” under the *Workplace Health and Safety Act* is also provided to a student in vocational placement.

This requirement applies despite *Clause 113*, which states that the person providing the placement is not the student’s employer.

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

### **Signing vocational placement agreement**

*Subclause 116(1)* requires a vocational placement agreement to be signed before the placement commences. The vocational placement agreement must be in the approved form and signed by the registered training organisation, the student and the person who will provide the placement.

It is an offence not to comply with this requirement and a penalty for contravention may apply.

*Subclauses (2) and (3)* provide that the registered training organisation may enter into an agreement with a person to provide a stated number of placements during a stated period.

The purpose of this is to allow for the following situations:

- “multiple placements” with one business organisation or Government department (For example, a large enterprise may agree to place 10 students at one time.); or
- a series of placements with a business organisation or Government department (For example, an enterprise may agree that over an 8 month period it will provide placements for 4 students, each for a 4 weeks period.); or
- a business organisation or Government department agrees to a placement in advance (For example, in a rural area, an enterprise may agree to place one student during the year but may sign the agreement at the beginning of the year as it is difficult to complete the paperwork expeditiously due to infrequent postal services.).

In these cases, there must be a written agreement between the registered training organisation and the placement person signed immediately before the placement commences. The training organisation and the student must also sign a vocational placement agreement before the placement starts which consists of two components:

- the agreement between the registered training organisation and the placement person; and



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- the agreement between the registered training organisation and the student.

*Subclause (4)* states that the vocational placement is effective from the day the placement starts. This clause is necessary because the vocational placement agreement may be signed some days before the placement commences. For example, in a rural area, the vocational placement agreement may be signed a week before the placement starts and the student may spend the intervening time travelling to the property where the vocational placement is to take place.

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

*Clause 117* provides for a registered training organisation to register a vocational placement agreement where the duration of the placement is to be up to 240 hours duration.

When the vocational placement scheme is recognised by the Training Recognition Council, the registered training organisation that will arrange the vocational placements must establish and maintain a register for the placements it arranges. The register must contain the particulars prescribed in the regulation. A penalty for non-compliance may apply.

After the parties to a vocational placement sign a vocational placement agreement, the registered training organisation that arranged the placement must enter the details of the agreement in the register. However, the registered training organisation must not enter details of any agreement that does not conform to the requirements stated in the guidelines approved by the Minister. Penalties for non-compliance with these provisions may apply.

These guidelines for vocational placement agreements may include:

- requirements for the agreements to be fully completed; or
- details of the number of students who may be placed with a placement person (i.e. there must be at least one person who can provide appropriate training, and is available to provide the training, before a student can be placed).

The purpose of this clause is to require registered training organisations to establish and maintain a register of the placements that it arranges.

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

*Clause 118* provides that a registered training organisation must give a vocational placement agreement for a placement that is over 240 hours to the Training Recognition Council for registration.

The Training Recognition Council may register or refuse to register a vocational placement agreement if:

- the placement person is a prohibited person under *Clause 83*; or
- the agreement does not conform to the approved guidelines for a vocational placement.

These guidelines may include:

- requirements for the agreement to be fully completed; or
- details of the number of students who may be placed with a placement person (i.e. there must be at least one person who can provide appropriate training, and is available to provide the training, before a student can be placed).

In addition, the Training Recognition Council must refuse to register the vocational placement agreement if the Industrial Relations Commission has not fixed an order for remuneration and conditions of employment.

The Training Recognition Council must immediately give the registered training organisation notice of its decision to register or not to register the vocational placement agreement. If the Training Recognition Council has refused to register the vocational placement agreement, the registered training organisation must immediately tell the student and the placement person. An offence is created for non-compliance and a penalty may apply.

If the Training Recognition Council has refused to register the vocational placement agreement, the agreement ceases to have effect immediately and the registered training organisation must advise both the student and placement person of the refusal. In these circumstances, the registered training organisation would be required to find an alternative vocational placement for the student.

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

*Clause 119* provides that, before signing an agreement, the registered training organisation must ensure that the person who is to provide the vocational placement has the facilities, range of work and can provide the supervision necessary to ensure the training for the student.

An offence is created where a registered training organisation fails to ensure that the facilities, range of work and necessary supervision are available, and a penalty may apply.

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

*Subclauses 120(1) and (2)* apply where a student undertakes one or more vocational placements in a year and the total duration of all the vocational placements is not more than 240 hours in the year. In this circumstance, the student is not entitled to be paid remuneration for the placement.

*Subclauses (3) and (4)* apply where a student undertakes one or more vocational placements in a year, and the total duration of all the vocational placements undertaken in the year is more than 240 hours. The subclauses provide that the student is entitled to the remuneration and employment conditions ordered by the Industrial Relations Commission throughout the placement.

*Subclause (5)* provides that the training under a vocational placement may occur only during the ordinary working hours of the placement person. This clause is to protect the student from exploitation. For example, a placement person might request a student to undertake “training” outside ordinary working hours with the intention of getting the student to perform work rather than paying an employee overtime to do the work.

**Extending vocational placement**

*Clause 121* allows for the duration of a vocational placement to be extended by the Training Recognition Council upon application by the registered training organisation offering the course.

The basis for an application would be that the registered training organisation believes:

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- the student has an impairment that impacts adversely on the student's ability to undertake the training; or
- a longer period than that stated in the course is necessary for the student to achieve the required practical training and experience.

In approving the extension of the placement, the Training Recognition Council must reasonably believe that the student can complete all the training required under the placement during the extension. The Training Recognition Council must notify the registered training organisation in writing of the extension.

In deciding an application for extending a placement, the Training Recognition Council must take into account guidelines approved by the Minister. These guidelines would include a requirement that the term of the extension cannot be longer than is reasonably required for the student to complete the training.

The clause defines "impairment" in the same way as under the *Anti-Discrimination Act 1991*. This definition has been inserted on advice of the Anti-Discrimination Commission. It allows for every possible circumstance that could require an extension of a placement period, including a permanent or temporary condition or illness.

However, it is stressed that the existence of an impairment does not automatically mean that a placement will be extended. The registered training organisation must be satisfied that the impairment adversely impacts on the student's ability to complete the required training and experience. In addition, when placing a student with an impairment, the registered training organisation would be required to ensure that the placement person had the facilities and support mechanisms to accommodate the student.

#### **Amending vocational placement agreement**

*Clause 122* provides that a vocational placement agreement cannot be amended except to correct a typographical error or omission. Where an amendment has been made to a vocational placement agreement for a placement that is in excess of 240 hours, the registered training organisation must notify the Training Recognition Council.

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As the majority of vocational placements are for short periods of time (i.e. for 240 hours or less) it is not intended that these agreements will be subject to amendment. If a substantial change is required to the agreement (e.g. to change the placement person) it would be necessary for the agreement to be cancelled and a new vocational placement agreement entered into.

### **Cancelling vocational placement agreement**

*Clause 123* provides that a student, registered training organisation or placement person may cancel a vocational placement agreement by giving a signed notice of the cancellation to the other parties. Examples of where a vocational placement agreement is cancelled may include the following:

- The registered training organisation may cancel the vocational placement agreement if it is found that the placement person is not providing appropriate training to the student.
- The placement person may cancel the vocational placement agreement if they find they cannot provide the training required under the training plan for the placement.
- The student may cancel the vocational placement agreement if they find they cannot travel to the placement person's premises each day.

The cancellation becomes effective when the notice is given unless the parties agree to a later day. For example, the placement person may cancel a contract, to be effective in several days, on the knowledge that after this day they will no longer be able to provide the training required under the training plan because the equipment for the training will no longer be available.

Where a vocational placement agreement for a placement that is in excess of 240 hours has been cancelled, the registered training organisation must notify the Training Recognition Council.

It should be noted that this clause does not allow for an appeal of the cancellation. It is considered that appeals would be excessively onerous and would discourage employers from participating as placement persons. An employer who was a placement person might perceive such procedures as presenting a difficulty if a placement did not work out.

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**Workers compensation cover**

*Clause 124* requires the registered training organisation to enter into an insurance contract under the *WorkCover Queensland Act 1996* to cover the student for any injury suffered during a vocational placement.

An offence is created for contravention of this requirement, and a penalty may be imposed.

**Liability insurance**

*Clause 125* imposes a responsibility on a registered training organisation to obtain an insurance policy to indemnify:

- the placement person against proceedings for damages arising out of the vocational placement which may be brought by:
  - the student for injury, loss or damage to the student's property; and
  - any other person for injury, loss or damage to property;
- the placement person for loss or damage associated with the business's property caused by the student during the vocational placement; or
- the student against proceedings by the business or an employee of the business due to injury, or loss or damage to property arising out of the vocational placement.

The amount payable under the policy for a single claim must not be less than \$10 000 000. The training organisation may, at its discretion, take out indemnity cover in excess of \$10 000 000.

This clause will ensure that indemnity insurance is taken out by the registered training organisation to cover any possible claim by the student, the placement person or another person, arising from any injury, loss or damage which could occur during a vocational placement.

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

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

*Clause 126* provides that there must be a training plan for each vocational placement. The registered training organisation that provides the training must ensure that there is a training plan before the student starts the placement. An offence is created for non-compliance and a penalty may apply.

The training plan [which is defined in *Clause 13*] will outline training that is required to be delivered by the placement person during the vocational placement. The purpose of the training plan is to ensure that the registered training organisation and placement person are aware of the training obligations during the vocational placement. The training plan helps to support the delivery of quality training that meets the requirements of the course the student is undertaking.

The clause clearly places the onus on the registered training organisation arranging the placement to ensure that a training plan conforming to the requirements of the Bill is in place before the placement starts.

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

*Clause 127* provides that the proposed placement person and the registered training organisation must agree on the training that is to be provided during the vocational placement.

The intention of this clause is to facilitate negotiation and agreement between the registered training organisation and proposed placement person on the training that is to be delivered during the vocational placement.

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

*Clause 128* applies after a training plan for a vocational placement has been negotiated. The training plan must be signed by the registered training organisation offering the student's course, the placement person and the student.

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Under this clause, the registered training organisation and proposed placement person formalise their agreement on the training to be delivered during the vocational placement.

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

*Clause 129* requires the registered training organisation to ensure a copy of the training plan is given to the proposed placement person and the student before the vocational placement starts. This will ensure that both the placement person and the student know the training that is to be delivered during the vocational placement. An offence is created and a penalty for non-compliance may apply.

### **Placement person to deliver training**

*Clause 130* requires a placement person to deliver to the student the training stated in the training plan. An offence is created and a penalty for non-compliance may apply.

The intention of this clause is to create a clear requirement for the placement person to provide the agreed training, and to provide a mechanism to take action where the requirement is contravened.

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

*Clause 131* provides that, where a vocational placement agreement is cancelled, the training plan for the placement is also cancelled.

This clause is necessary to ensure that a placement person does not continue to have an obligation to train a student under a vocational placement if the agreement for the placement no longer exists.

### **Changing training plan for vocational placement**

*Clause 132* provides that a training plan for a vocational placement may only be changed if the registered training organisation, placement person and student agree.



This clause allows a training plan to be changed after the vocational placement has started. It is necessary that all the parties to the vocational placement agree as a change to the training plan would impact on the initial expectations of the training to be delivered during the placement. For example, a placement person may request a training plan to be changed if they find they are unable to provide certain aspects of the agreed training after the vocational placement has begun. However, any change to the training must still be within the ambit of the vocational placement scheme originally approved by the Training Recognition Council and be agreed by all the parties.

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

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

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

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

*Clause 133* provides that the Governor in Council may appoint a person as the apprenticeship and traineeship ombudsman. The appointment and term of the appointment will be notified in the Government Gazette. However, the term of the appointment shall be for a term not longer than 3 years and the person may be reappointed.

The purpose of this clause is to provide the mechanism for the appointment of the apprenticeship and traineeship ombudsman.

##### **Functions of the ombudsman**

*Clause 134* defines the functions of the ombudsman to be:

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- to refer complaints about the training or training conditions of apprentices and trainees to the Training Recognition Council for investigation;
- when requested by a party to an apprenticeship or traineeship contract (i.e. the employer, apprentice or trainee and, if applicable, a parent of an apprentice or trainee) or a person who has a substantial interest in the matter (for example, the supervising registered training organisation), to review an investigation of the Training Recognition Council of a complaint about the training or training conditions of an apprentice or trainee;
- after reviewing an investigation by the Training Recognition Council of a complaint about the training or training conditions of an apprentice or trainee, to make any recommendations to the council considered necessary (for example, to recommend that the matter be reconsidered, taking into account some other information not available at the time of the initial investigation);
- to refer a complaint to another competent person or body (for example, to refer a complaint about underpayment of wages to the Industrial Inspectorate of the Department of Employment, Training and Industrial Relations).

The clause also provides that the apprenticeship and traineeship ombudsman will have the powers to do all things necessary to perform these functions.

**Administrative support**

*Clause 135* provides that the chief executive must ensure the apprenticeship and traineeship ombudsman has the administrative support (for example, administrative officers to arrange meetings) necessary to perform the functions effectively and efficiently.

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

*Clause 136* provides that the apprenticeship and traineeship ombudsman may refuse to deal with a complaint if:

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- the situation that gave rise to the complaint occurred more than 3 months before the complaint was lodged;
- the ombudsman believes the complaint is frivolous or vexatious or lacks substance;
- the ombudsman believes the complaint does not have direct interest in the matter raised (for example, the complaint is made by a coworker but not a party to the apprenticeship or traineeship contract);
- the ombudsman believes a review or a continuance of the review would not be justifiable (for example, if after the review was commenced, information was found that showed, beyond a reasonable doubt, that the Training Recognition Council had acted using the correct procedures to make a fair decision).

If the ombudsman decides to refuse to deal with, or to continue to deal with, a complaint the ombudsman must as soon as possible give the complainant an information notice stating the decision and the reasons for the decision.

The intention of this clause is to allow the ombudsman to refuse to investigate a complaint or to discontinue an investigation of a complaint if it is considered that further investigation would be futile.

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

*Clause 137* states that the ombudsman must refuse to deal with a complaint that is:

- also the subject of an appeal made with the industrial relations commission; or
- has been the subject of an appeal with the industrial relations commission and the commission has made a decision about it.

The intention of this clause is to ensure that the ombudsman does not investigate and make recommendations about a matter that is also under investigation by a judicial body. In addition, the ombudsman could not review any process used by the industrial relations commission to decide an appeal as this would be outside the functions of the ombudsman.

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***Division 2—Ombudsman's powers*****Ombudsman may require information and documents from council**

*Clause 138* provides that the ombudsman may require the Training Recognition Council to supply all the information or documents it has about:

- a complaint the ombudsman is reviewing; and
- the Training Recognition Council's investigation of a complaint the ombudsman is reviewing.

Where the ombudsman makes the requirement in writing, the Training Recognition Council must comply.

This clause ensures that the ombudsman will be able to obtain all the information about the investigation of a complaint carried out by the Training Recognition Council.

**Ombudsman may recommend further steps in investigation**

*Clause 139* applies where the ombudsman believes that the Training Recognition Council's investigation of a complaint has been inadequate (for example, it did not take certain information into consideration). The ombudsman may recommend that the Training Recognition Council reconsider the matter and take further steps to investigate the complaint. The recommendation must be in writing to the council and must state the steps that should be taken.

This clause allows the ombudsman to refer a matter back to the Training Recognition Council for further consideration. However, the ombudsman can only recommend that the matter be further considered and cannot compel the council to take any further action.

**Ombudsman may recommend exercise of power**

*Clause 140* applies where the ombudsman:

- has reviewed an investigation of the Training Recognition Council of a complaint about the training or training conditions of an apprentice or trainee; and

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- believes the council should have exercised a power or performed a function.

The ombudsman may recommend that the Training Recognition Council reconsider the matter and exercise a power or perform a function. For example, the ombudsman may have reviewed the Training Recognition Council's investigation of a disciplinary matter where no disciplinary penalties were imposed. As a result of the review, the Apprenticeship and Traineeship Ombudsman may recommend that the Training Recognition Council reconsider the matter and consider a suspension or cancellation of the apprenticeship or traineeship contract.

This clause allows the ombudsman to refer a matter back to the Training Recognition Council for further consideration and action. However, the ombudsman can only recommend that the matter be further considered and cannot compel the council to take any further action.

**Ombudsman to report findings**

*Clause 141* applies where the ombudsman has reviewed an investigation of the Training Recognition Council of a complaint about the training or training conditions of an apprentice or trainee. As soon as the review is completed, the ombudsman must give:

- the complainant a notice of the findings of the review; and
- the Minister a report of the review that includes the findings and may include the recommendations; and
- the Training Recognition Council a report of the review that includes the findings and may include the recommendations.

If the report includes the ombudsman's recommendations, the Minister may require the Training Recognition Council to provide advice of the steps that have been taken to give effect to these recommendations. Where the Minister makes this requirement and the Training Recognition Council has not taken any steps or does not propose to take any steps, it must provide the Minister with the reasons for this.

The provision allows the Minister to oversee the effective implementation of any recommendation by the ombudsman that are considered necessary to ensure the integrity of the training system. In addition, due to the Minister's power to give directions to the Training and Employment Board (and that of

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the Training and Employment Board to give directions to the Training Recognition Council) the Minister can ensure that recommendations are implemented if necessary.

The clause also provides that the ombudsman must not make an adverse comment about any person unless that person has been given an opportunity to respond. The intention of this provision is to ensure that natural justice is served.

***Division 3—Other provisions***

**Vacating office**

*Clause 142* provides that the position of apprenticeship and traineeship ombudsman becomes vacant if the ombudsman:

- dies, or resigns in writing to the Minister; or
- is convicted of an indictable offence (for example, fraud) or an offence against this Bill (for example, discloses confidential information without appropriate authorisation).

In addition, the Minister may terminate the ombudsman's appointment if the ombudsman:

- becomes incapable of performing the functions due to a physical or mental incapacity (for example, brain damage due to a road accident that makes cognitive functions impossible); or
- becomes an undischarged bankrupt or takes advantage of the laws relating to bankruptcy or insolvency; or
- is guilty of misconduct of the kind that, if the ombudsman were a public servant, would warrant dismissal

This clause allows the position of the ombudsman to become automatically vacant in certain circumstances where the continuation of the incumbent would be considered unreasonable. In addition, the Minister may end the appointment of the ombudsman in certain circumstances where the continuation of the incumbent may be considered unreasonable or inappropriate.

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**Acting ombudsman**

*Clause 143* provides that the Governor in Council may appoint a person to act as the ombudsman if there is a vacancy in the office or the appointed ombudsman is temporarily unable to perform the functions.

This clause ensures that at all times a person can be appointed to perform the functions of the ombudsman.

**Conditions of appointment**

*Clause 144* provides that the ombudsman shall be entitled to be paid the remuneration and allowances decided by the Governor in Council (for example, remuneration for performing the statutory functions or travel allowances for any travel required in connection with the performance of the statutory functions). The apprenticeship and traineeship ombudsman is appointed on the conditions stated in the Bill and the additional conditions decided by the Minister.

**Annual report**

*Clause 145* provides that the ombudsman must prepare an annual report about the discharge of the ombudsman's functions. The ombudsman must give the report to the Minister within 3 months of the end of the financial year. The Minister must table the report in the Legislative Assembly within 14 days of receiving it.

**PART 2—TRAINING AND EMPLOYMENT BOARD***Division 1—Establishment and functions***Establishment of board**

*Clause 146* provides for the establishment of the Training and Employment Board. The board will replace the existing Vocational Education, Training and Employment Commission.

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**Board's functions**

*Clause 147* sets out the functions of the Training and Employment Board. The board will have advisory and executive functions.

The advisory functions include:

- providing timely and strategic advice to the Minister on current vocational education issues and strategies, and employment issues and strategies that relate to vocational education and training;
- providing advice to the Minister on the development of vocational education and training infrastructure;
- providing advice to the Minister on matters that relate to the development and maintenance of a high quality vocational education and training system;
- recommending to the Minister:
  - an annual training plan that includes the priorities for vocational education and training in Queensland; and
  - guidelines for the Training and Employment Board or Training Recognition Council to exercise their executive or regulatory powers.

The executive powers include:

- recognising industry training advisory bodies and group training organisations;
- performing the functions of:
  - an approving authority under the *Workplace Relations Act 1996* (Cwlth) and the *Industrial Relations Act 1999* (Qld); and
  - the State Training Agency under the *Australian National Training Authority Act 1992* (Cwlth).

As an approving authority under the *Industrial Relations Act 1999*, the Training and Employment Board will have the power to determine the difference in the productive time of an employee undertaking training and an apprentice or trainee for the purposes of adjusting wages. (This specifically applies to a certified agreement or a Queensland Workplace Agreement.)



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As the State Training Agency for Queensland, the Training and Employment Board will have responsibility for carrying out the functions outlined in the *Australian National Training Authority Act 1992* (Cwlth) and the National Vocational Education and Training Statement. Under that legislation an agency is responsible for:

- providing advice to the Ministers on significant aspects of the national VET system;
- participating in the processes for the formulation of national strategic policy, national planning and national objectives and priorities;
- implementing agreed national priorities and initiatives within the context of Queensland's needs and priorities;
- administering the national training framework within Queensland;
- consulting with and supporting industry networks at the Queensland level; and
- providing advice to the Minister on resource allocation in Queensland and ensuring the effective operation of the training market within Queensland.

This clause also provides that the Training and Employment Board shall undertake any other functions requested by the Minister and has the power to do all things necessary for the performance of its functions.

**Board subject to the Minister**

*Clause 148* provides that the Training and Employment Board is subject to the Minister and must comply with a signed direction from the Minister about the exercise of a power or performance of a function.

*Division 2—Board Membership***Board membership**

*Clause 149* sets out that the Training and Employment Board is to consist of not more than 15 persons appointed by the Minister. Within the membership, up to 4 members must be persons having standing with

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unions, and up to 4 members must be persons having standing with employers. The remaining members must have standing in vocational education and training, industry or the general community.

The clause does not provide for public servants, including the chief executive, to be ex-officio members of the Training and Employment Board. However, it is possible that a public servant may be appointed to the Training and Employment Board if they have sufficient standing in vocational education and training, industry or the general community.

**Board chairperson and deputy chairperson**

*Clause 150* provides that the Minister must appoint one of the members of the Training and Employment Board as a chairperson and may appoint another member as a deputy chairperson.

The chairperson and deputy chairperson holds office for the time decided by the Minister. However, a vacancy in the office of the chairperson or deputy chairperson may occur if they resign from the office or are removed by the Minister. [This links with *Clause 154*.]

Where a chairperson or deputy chairperson resigns or is removed from office, they may continue to be a member of the Training and Employment Board.

**Term of appointment to board**

*Clause 151* provides for the appointment of members to the Training and Employment Board for a term of not more than 3 years. A member is eligible for reappointment.

The clause also provides that a member may resign from the Training and Employment Board by giving a signed notice to the Minister.

**Conditions of appointment to board**

*Clause 152* provides that a member of the Training and Employment Board may be paid any remuneration or allowances determined by the Minister (for example, remuneration for attending meetings of the Training and Employment Board or travel allowances for undertaking travel

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approved by the board). In addition to the conditions stated in the Bill, the Minister may decide the conditions under which a person holds office as a member of the Training and Employment Board.

**Disqualification for appointment to board**

*Clause 153* provides that a person is not qualified to be appointed to the Training and Employment Board, or does not continue to be qualified for appointment if they:

- are or become an undischarged bankrupt or take advantage of the laws relating to bankruptcy or insolvency; or
- become incapable of performing the functions due to a physical or mental incapacity (for example, brain damage due to a road accident that makes cognitive functions impossible); or
- are convicted of an indictable offence.

**Vacating office**

*Clause 154* provides that a member's position on the board becomes vacant if the member:

- dies or resigns in writing to the Minister; or
- is absent from 3 consecutive meetings without the board's permission; or
- is no longer qualified to be a member [This links with *Clause 153*]; or
- Is removed from office by the Minister.

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

*Clause 155* provides that the Training and Employment Board may hold meetings at the times and places it decides but must meet at least once a year. The chairperson of the board or the Minister may call a meeting of the board at any time.

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**Presiding at board meetings**

*Clause 156* provides for the chairing of meetings of the Training and Employment Board. If the chairperson is not present at a meeting, the deputy is to preside if one has been appointed. If both the chairperson and deputy are not present, the members present at the meeting are to choose a person to preside.

**Voting at board meetings**

*Clause 157* provides that questions considered at a meeting of the board are to be decided by a majority vote of the members present (including the chairperson or person presiding over the meeting). If a member abstains from voting, the member is taken to have voted in the negative.

In a situation where there is an equal number of votes, the person presiding at the meeting has the casting vote.

**Quorum for board meetings**

*Clause 158* provides that the quorum at a meeting of the board will be the number equal to one half of the members appointed to the Board, or the next highest even number. For example, if 12 members are appointed to the board the quorum will consist of 6 members; if 13 members are appointed to the board, a quorum will consist of 7 members.

**Conduct of board meetings**

*Clause 159* states the board can conduct its meetings in the way that it considers appropriate. After the members of the board are appointed, it is expected they will establish meeting procedures.

A member of the Training and Employment Board may participate in the meeting by way of telephone, closed-circuit television or another form of communication. This provision covers alternative ways of participating in a meeting if a member cannot attend it in person.

*Subclause (4)* provides that a decision of the board is a valid decision, even though it is not passed at a meeting, if:

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- notice of the resolution is given to members in accordance with the board's approved procedures; and
- the required number of members (that is, the number at least equal to the quorum) indicate their agreement in writing with the resolution.

The purpose of this provision is to cover the situation where a decision is required from the board and convening a meeting is not warranted. However, this applies only when notice of the proposed resolution is provided to members under the board's procedures and a quorum of members agree to the proposed resolution.

**Board minutes**

*Clause 160* requires the Training and Employment Board to keep a record of its minutes and its decisions.

*Division 4—Other provisions***How the board signs documents**

*Clause 161* provides that the chairperson may sign a document required to be signed by the board. Where the chairperson is unavailable, the deputy chairperson or another person authorised in writing by the chairperson may sign the document.

**Delegation by board**

*Clause 162* provides that the board may delegate its powers to an entity having the qualifications, experience or standing to exercise the power. An entity that has a delegated power from the board, they may further delegate it to another entity who has the qualifications, experience or standing to exercise the power.

The provisions of the Section 27A of the *Acts Interpretation Act 1954* (Qld) that relate to delegation of powers link with this clause.

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**Establishing committees**

*Clause 163* provides that, with the Minister's prior approval, the Training and Employment Board may establish committees to assist it to perform its functions. When seeking the Minister's approval, the board must state the terms of reference for, or functions of, the committee. However, the board does not have to seek the Minister's approval to form a committee for its own members.

Appointments to a committee are to be made by the board. However, a person cannot be appointed to a committee unless they have the skills or experience appropriate to the committee's terms of reference or functions.

The intention of this clause is to enable the board to set up committees to assist it to perform its role under this Bill (for example, to provide advice on Aboriginal and Torres Strait Islander vocational education and training issues, or small business training issues).

Unless the Minister approves it, a committee member is not to be paid any remuneration other than the reimbursement of reasonable expenses (for example, accommodation) and travel allowance.

**Chief executive to help board**

*Clause 164* requires the chief executive to provide the board with administrative support to assist it in the performance of its functions (for example, secretariat services). In addition, the chief executive must nominate a departmental officer to assist the board in the exercise of its functions and carrying out its decisions.

**Report on board's operations**

*Clause 165* provides that the Training and Employment Board must provide the Minister with an annual report on its operations within 3 months of the end of each financial year. If the Minister has given a signed direction to the board [see *Clause 148*], a copy of the direction must be included in the annual report. The Minister is required to table a copy of this report in Parliament within 14 days of receiving it.

**Minister's approval for guideline**

*Clause 166* provides that a guideline determined by the Training and Employment Board becomes effective only when the Minister approves it in writing. In addition, when the Minister approves the guideline, the Training and Employment Board must publish it in the Government Gazette.

**PART 3—TRAINING RECOGNITION COUNCIL***Division 1—Establishment and functions***Establishment of council**

*Clause 167* provides for the establishment of the Training Recognition Council. The council will replace the existing State Training Council and the Accreditation Council.

**Council's functions**

*Clause 168* sets out the functions of the Training Recognition Council. It will have advisory and executive functions.

The advisory functions include:

- at the Minister's request, to make recommendations on national training systems of qualifications;
- providing advice to the Training and Employment Board on policies and guidelines for registration and regulation functions, training requirements for apprentices and trainees or vocational placements.

The executive powers include:

- registering and regulating training organisations and apprenticeship and traineeship contracts;
- accrediting courses and regulating accredited courses;

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- recognising vocational placement schemes and registering and regulating vocational placement agreements;
- regulating the issue of qualifications and statements of attainment;
- performing the functions stated within the Bill for the regulation of the apprenticeship and traineeship system in Queensland;
- issuing recognition certificates [this links with *Clause 182*]; and
- issuing completion certificates to apprentices or trainees [this links with *Clause 73*].

This clause also provides that the Training Recognition Council shall undertake any other functions requested by the board and has the power to do all things necessary for the performance of its functions.

**Council subject to the Minister and board**

*Clause 169* provides that when the Training Recognition Council is providing advice on request from the Minister, it is subject to the Minister and must comply with a signed direction from the Minister about the exercise of a power or performance of that function.

In all other cases, the council is subject to the Training and Employment Board and must comply with a signed direction from the board about the exercise of a power or performance of that function.

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

*Clause 170* sets out that the Training Recognition Council is to consist of not more than 14 persons appointed by the Minister. Within the membership, up to 4 members must be persons having standing with unions, and up to 4 members must be persons having standing with employers. The remaining members must have standing in vocational education and training, general or higher education, or the general community.



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The clause does not provide for public servants, including the chief executive, to be ex-officio members of the Training Recognition Council. However, it is possible that a public servant may be appointed to the Training Recognition Council if they have sufficient standing in vocational education and training or the general community.

**Council chairperson**

*Clause 171* provides that the Minister must appoint one of the members of the Training Recognition Council as a chairperson and may appoint another member as a deputy chairperson.

The chairperson and deputy chairperson holds office for the time decided by the Minister. However, a vacancy in the office of the chairperson or deputy chairperson may occur if they resign from the office or are removed by the Minister. [This links with *Clause 175*.]

Where a chairperson or deputy chairperson resigns or is removed from office, they may continue to be a member of the Training Recognition Council.

**Term of appointment to council**

*Clause 172* provides for the appointment of members to the Training Recognition Council for a term of not more than 3 years. A member is eligible for reappointment.

The clause also provides that a member may resign from the council by giving a signed notice to the Minister.

**Conditions of appointment to council**

*Clause 173* provides that a member of the Training Recognition Council may be paid remuneration or allowances determined by the Minister (for example, remuneration for attending meetings of the council or travel allowances for undertaking travel approved by the council). In addition to the conditions stated in the Bill, the Minister may decide the conditions under which a person holds office as a member of the council.

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**Disqualification for appointment to council**

*Clause 174* provides that a person is not qualified to be appointed to the Training Recognition Council or does not continue to be qualified for appointment if they:

- are or become an undischarged bankrupt or take advantage of the laws relating to bankruptcy or insolvency; or
- become incapable of performing the functions due to a physical or mental incapacity (for example, brain damage due to a road accident that makes cognitive functions impossible); or
- are convicted of an indictable offence.

**Vacating office**

*Clause 175* provides that a member's position on the Training Recognition Council becomes vacant if the member:

- dies, or resigns in writing to the Minister; or
- is absent from 3 consecutive meetings without the council's permission; or
- is no longer qualified to be a member [This links with *Clause 174*]; or
- Is removed from office by the Minister.

*Division 3—Council meetings***Times and places of council meetings**

*Clause 176* provides that the Training Recognition Council may hold meetings at the times and places it decides but must meet at least once a year. The chairperson of the council or the Minister may call a meeting of the council at any time.

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**Presiding at council meetings**

*Clause 177* provides for the chairing of meetings of the Training Recognition Council. If the chairperson is not present at a meeting, the deputy is to preside, if one has been appointed. If neither the chairperson nor the deputy is present, the members present at the meeting are to choose a person to preside.

**Voting at council meetings**

*Clause 178* provides that questions considered at a meeting of the Training Recognition Council are to be decided by a majority vote of the members present (including the chairperson or person presiding over the meeting). If a member abstains from voting, the member is taken to have voted in the negative.

In a situation where there is an equal number of votes, the person presiding at the meeting has a second or casting vote.

**Quorum for council meetings**

*Clause 179* provides that the quorum at a meeting of the Training Recognition Council will be the number equal to one half of the members appointed to the council, or the next highest even number. For example, if 12 members are appointed the quorum will consist of 6 members; if 13 members are appointed, a quorum will consist of 7 members.

**Conduct of council meetings**

*Clause 180* states that the Training Recognition Council can conduct its meetings in the way that it considers appropriate. After the members of the council are appointed, it is expected they will establish meeting procedures.

A member of the council may participate in the meeting by way of telephone, closed-circuit television or another form of communication. This provision covers alternative ways of participating in a meeting if a member cannot attend it in person.

*Subclause (4)* provides that a decision of the Training Recognition Council is a valid decision, even though it is not passed at a meeting, if:

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- notice of the resolution is given to members in accordance with the council's approved procedures; and
- the required number of members (that is, the number at least equal to the quorum) indicate their agreement with the resolution in writing.

The purpose of this provision is to cover the situation where a decision is required from the council and convening a meeting is not warranted. However, this applies only when notice of the proposed resolution is provided to members under the council's procedures and a quorum of members agree to the proposed resolution.

**Council minutes**

*Clause 181* requires the Training Recognition Council to keep a record of its minutes and its decisions.

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

*Clause 182* applies when a person who has worked or undertaken training in a calling applies to the Training Recognition Council to have their work or training recognised.

A calling is defined to include a trade, occupation or vocation.

If the person has the necessary skills and knowledge in a calling, the council may issue the person with a recognition certificate. However, the recognition certificate will only state that the person has certain skills and knowledge in a calling; it is not a qualification or statement of attainment. (Under the provisions of this Bill, only a registered training organisation can issue a qualification or statement of attainment.)

The intention of this clause is to allow the council to recognise previous experience or work as being equivalent to the skills that would be possessed by people in certain callings. The clause continues a system of skills recognition which has existed in Queensland for many decades. Despite the provisions of *Clause 35*, this clause is retained because some industries, particularly in the traditional trades, currently prefer to use skill recognition procedures rather than recognise qualifications or statements of attainment.

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The Training Recognition Council may cancel a recognition certificate if it was issued:

- in error (for example, if it should have been issued to another person with the same name); or
- because of a document or representation that was false, misleading or obtained or made in an improper way (for example, if the applicant provided a false copy of a certificate from an overseas training organisation).

Where the Training Recognition Council cancels a recognition certificate, it must be returned to the council within 7 days unless the person has a reasonable excuse for not returning it (for example, the certificate was destroyed in a fire). An offence for non-compliance is created and a penalty may apply.

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

*Clause 183* applies where a person can obtain a qualification or statement of attainment by completing employment based training with an employer. In these circumstances, the council may declare the employment based training to be an apprenticeship or traineeship.

The intention of this clause is to allow the Training Recognition Council to recognise certain qualifications or statements of attainment as being attainable by a person completing an apprenticeship or traineeship. However, the declaration of an apprenticeship or traineeship does not prevent the qualifications or statements of attainment from being attained in another way (for example, completion of vocational education and training through a registered training organisation on a full-time or part-time basis).

[This clause links with *Clauses 7* and *8*.]

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

*Clause 184* provides that the chairperson of the Training Recognition Council may sign a document required to be signed by the council. Where the chairperson is unavailable, the deputy chairperson or another person authorised in writing by the chairperson may sign the document.

**Council may require production of documents**

*Clause 185* provides that the Training Recognition Council may require a person to produce to the council:

- a document that they have been issued under this Bill (For example, a registered training organisation may be required to produce its certificate of registration as a training organisation.); or
- a document required to be kept by the person under this Bill (For example, a registered training organisation that arranges vocational placement may be required to produce its register of vocational placements under 240 hours.).

The council must give the person a signed notice requiring them to produce the document and the notice must state a reasonable time for compliance. An offence is created for non-compliance with the requirement and a penalty may apply. However, it is a reasonable excuse for a person not to comply with the requirement if compliance might tend to incriminate them.

**Delegation by council**

*Clause 186* provides that the Training Recognition Council may delegate its powers to an entity having the qualifications, experience or standing to exercise the power. An entity that has a delegated power from the council may further delegate it to another entity with the qualifications, experience or standing to exercise the power.

The provisions of Section 27A of the *Acts Interpretation Act 1954* (Qld) that relate to delegation of powers link with this clause.

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**Establishing committees**

*Clause 187* provides that the Training Recognition Council may establish committees to assist it to perform its functions under *Chapter 3 (Apprentices and Trainees)*. In addition, the council may form committees of its own members.

Appointments to a committee are to be made by the council. However, a person cannot be appointed to a committee unless they have the skills or experience appropriate to the committee's functions.

The intention of this clause is to enable the Training Recognition Council to set up committees to assist it to perform its role under this Bill.

Unless the Minister approves it, a committee member is not to be paid any remuneration other than the reimbursement of reasonable expenses (for example accommodation) and travel allowance.

**Chief executive to help council**

*Clause 188* requires the chief executive to provide the Training Recognition Council with administrative support to assist it in the performance of its functions (for example secretariat services).

**Council to comply with approved guidelines**

*Clause 189* provides that where a guideline has been approved by the Minister, the Training Recognition Council must comply with it when exercising its powers or performing its functions.

**Approval of forms**

*Clause 190* provides that the Training Recognition Council may approve a form for use under this Bill.

This provision links with Section 58 of the *Statutory Instruments Act 1992 (Qld)* which provides for approved forms.

## **CHAPTER 6—TAFE INSTITUTES**

### **PART 1—PRELIMINARY**

#### **What is a “TAFE institute”**

*Clause 191* defines a TAFE institute. In addition to providing vocational education and training, an institute may also provide adult community education or general education for students who would otherwise be at school in years 11 and 12.

A TAFE institute may also include one or more colleges or campuses.

#### **Establishing TAFE institutes**

*Clause 192* provides for the establishment of TAFE institutes and the colleges and campuses of TAFE institutes by the Minister. The clause also provides for the amalgamation of institutes or parts of institutes or the abolition or closure of an institute or part of an institute by the Minister.

### **PART 2—TAFE INSTITUTE COUNCILS**

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

#### **TAFE institute councils**

*Clause 193* requires a TAFE institute council for each institute.

#### **TAFE institute council's functions**

*Clause 194* provides for the functions of a TAFE institute council. These include:

- supporting vocational education and training through the institute;
- providing advice to and reporting on the activities of the institute to the Minister, the Training and Employment Board and the institute director;



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- developing and approving institute directions.

In addition to the specific functions above, the TAFE institute council has the power to do whatever is necessary for the performance of its functions.

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

*Clause 195* requires a TAFE institute council to comply with a direction from the Minister about the performance of its functions and the exercise of its powers. Where the Minister gives a direction, the TAFE institute council must disclose such directions in the TAFE institute's annual report.

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

*Clause 196* states that the Minister may appoint up to 20 members to a TAFE institute council. The members shall be drawn from:

- an industry that is closely linked to the economic, social and employment environment in which the TAFE institute operates;
- the local community;
- industrial unions of employees;
- staff and students of the TAFE institute; and
- the indigenous community.

The institute director shall also be a member of the TAFE institute council.

**TAFE institute council chairperson**

*Clause 197* provides that the Minister must appoint one of the members of a TAFE institute council as a chairperson and may appoint another member as a deputy chairperson.

The chairperson and deputy chairperson hold office for the time decided by the Minister. However, a vacancy in the office of the chairperson or deputy chairperson may occur if they resign from the office or are removed by the Minister. [This links with *Clause 201*.]

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Where a chairperson or deputy chairperson resigns or is removed from office, they may continue to be a member of a TAFE institute council.

**Term of appointment of appointed member**

*Clause 198* provides for the appointment of members (other than the institute director) to a TAFE institute council for a term of not more than 3 years. A member is eligible for reappointment.

The clause also provides that a member (other than the institute director) may resign from a TAFE institute council by giving a signed notice to the Minister.

**Conditions of appointment of appointed member**

*Clause 199* provides that a member of a TAFE institute council (other than an institute director) may be paid any remuneration or allowances determined by the Minister (for example, remuneration for attending meetings of the Training and Employment Board or travel allowances for undertaking travel approved by the board). In addition to the conditions stated in the Bill, the Minister may decide the conditions under which a person (other than an institute director) holds office as a member of a TAFE institute council.

**Disqualifications for appointment as appointed member**

*Clause 200* provides that a person (other than an institute director) is not qualified to be appointed to a TAFE institute council or does not continue to be qualified for appointment if they:

- are or become an undischarged bankrupt or take advantage of the laws relating to bankruptcy or insolvency; or
- become incapable of performing the functions due to a physical or mental incapacity (for example, brain damage due to a road accident that makes cognitive functions impossible); or
- are convicted of an indictable offence.

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**Vacating office**

*Clause 201* provides that a member's position on a TAFE institute council becomes vacant if the member (other than an institute director):

- dies, or resigns in writing to the Minister; or
- is absent from 3 consecutive meetings without the TAFE institute council's permission; or
- is no longer qualified to be a member [This links with *Clause 200*]; or
- is removed from office by the Minister.

*Division 3—TAFE institute council meetings***Times and places of TAFE institute council meetings**

*Clause 202* provides that a TAFE institute council may hold meetings at the times and places it decides. The chairperson of the TAFE institute council or the Minister may call a meeting of the TAFE institute council at any time.

**Presiding at TAFE institute council meetings**

*Clause 203* provides for the chairing of meetings of the TAFE institute council. If the chairperson is not present at a meeting, the deputy is to preside if one has been appointed. If neither the chairperson nor deputy is not present, the members present at the meeting are to choose a person to preside.

**Voting at TAFE institute council meetings**

*Clause 204* provides that questions considered at a meeting of a TAFE institute council are to be decided by a majority vote of the members present (including the chairperson or person presiding over the meeting). If a member abstains from voting, the member is taken to have voted in the negative.

In a situation where there is an equal number of votes, the person presiding at the meeting has a second, or casting vote.

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**Quorum for TAFE institute council meeting**

*Clause 205* provides that the quorum at a meeting of a TAFE institute council will be the number equal to one half of the members appointed to the council, or the next highest even number. For example, if 12 members are appointed to the council the quorum will consist of 6 members; if 13 members are appointed, a quorum will consist of 7 members.

**Conduct of TAFE institute council meetings**

*Clause 206* provides that a TAFE institute council can conduct its meetings in the way it considers appropriate. After the members of the TAFE institute council are appointed, it is expected they will establish meeting procedures.

A member of the TAFE institute council may participate in the meeting by way of telephone, closed-circuit television or another form of communication. This provision covers alternative ways of participating in a meeting if a member cannot attend it in person.

*Subclause (4)* provides that a decision of the TAFE institute council is a valid decision, even though it is not passed at a meeting, if:

- notice of the resolution is given to members in accordance with the TAFE institute council's approved procedures; and
- the required number of members (that is, the number at least equal to the quorum) indicate their agreement with the resolution in writing.

The purpose of this provision is to cover the situation where a decision is required from the TAFE institute council and convening a meeting is not warranted. However, this applies only when notice of the proposed resolution is provided to members under the TAFE institute council's procedures and a quorum of members agree to the proposed resolution.

**TAFE institute council minutes**

*Clause 207* requires the TAFE institute council to keep a record of its minutes and its decisions.

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***Division 4—Other provisions*****How TAFE institute council signs documents**

*Clause 208* provides that the chairperson of a TAFE institute council may sign a document required to be signed by the TAFE institute council. Where the chairperson is unavailable, the deputy chairperson or another person authorised in writing by the chairperson may sign the document.

**Prohibition on certain activities**

*Clause 209* provides that neither a TAFE institute nor a TAFE institute council may alter an institute building (other than in a minor way) or extend, build or buy an institute building or sell institute land or an institute building.

**TAFE institute director to help TAFE institute council**

*Clause 210* requires a TAFE institute director to provide the TAFE institute council with administrative support to assist it in the performance of its functions (for example secretariat services).

**Report on TAFE institute council's operations**

*Clause 211* provides that the TAFE institute council must provide the Minister with an annual report on its operations within 3 months of the end of each financial year. If the Minister has given a signed direction to the TAFE institute council [see *Clause 195*], a copy of the direction must be included in the annual report.

**PART 3—COLLEGE COUNCILS****Application**

*Clause 212* states that this part applies to a TAFE institute that has one or more colleges as part of it. In these circumstances, the TAFE institute council may decide that a college needs a council.

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**Ministerial approval for establishment of college council**

*Clause 213* provides that the TAFE institute council must request the Minister's approval to establish the college council. The request to the Minister must include:

- the proposed structure and function of the college council;
- the sectors and interests the college council is to represent; and
- the procedures for appointing members of the college council.

If the Minister approves the establishment of the college council, the college council is to be established and the Minister is to appoint the members.

**College council membership**

*Clause 214* provides that the members of a college council are appointed by a signed notice from the Minister.

**Duration and conditions of appointment**

*Clause 215* empowers the Minister to decide the term and the conditions for the appointment of college council members.

**Conducting college council meetings**

*Clause 216* enables a college council to conduct its meetings in a way it considers appropriate.

**PART 4—CHIEF EXECUTIVE TO ADMINISTER  
TAFE INSTITUTES****Chief executive's functions for TAFE institutes**

*Clause 217* provides that the functions of the chief executive for TAFE institutes are to include:

- ensuring the provision of vocational education and training services;

- producing and selling vocational education and training products and/or selling other products and services connected with TAFE institutes;
- preparing, publishing or licensing the use of various material including literary work, computer software, etc;
- commercially exploiting appropriate TAFE resources including research or knowledge; and
- undertaking research and development.

The intention of this clause is to ensure that the chief executive maintains the responsibility and control over TAFE institutes.

## **CHAPTER 7—INDUSTRY TRAINING ADVISORY BODIES AND GROUP TRAINING ORGANISATIONS**

### **PART 1—INDUSTRY TRAINING ADVISORY BODIES**

#### **Recognition of industry training advisory bodies**

*Clause 218* provides that the Training and Employment Board may recognise a corporation as an industry training advisory body with respect to an industry or a sector of an industry or a group of industries (for example, in the entertainment industry). The Training and Employment Board can recognise a corporation as an industry training advisory body only if it complies with the guidelines approved by the Minister.

#### **Role of industry training advisory bodies**

*Clause 219* provides that an industry training advisory body is the principal source of advice to the Training and Employment Board about vocational education and training within its industry, a sector of an industry or a group of industries.

However, this provision does not prevent the Training and Employment Board from seeking advice from other sources in addition to industry training advisory bodies.

**Withdrawal of recognition**

*Clause 220* provides that the Training and Employment Board may withdraw the recognition of an industry training advisory body. The withdrawal of recognition must be done by fair procedures that would include advising the industry training advisory body of the proposed withdrawal and inviting it to make representations as to why an action should not proceed.

**PART 2—GROUP TRAINING ORGANISATIONS****Recognition of group training organisation**

*Clause 221* provides that the Training and Employment Board may recognise a corporation as a group training organisation with respect to an industry, a sector of an industry or a geographical area. The board can recognise a corporation as a group training organisation only if it complies with the guidelines approved by the Minister.

**Function of group training organisation**

*Clause 222* provides that the main function of a group training organisation is to arrange for a person (including an unincorporated association) to train an apprentice or trainee. The arrangement is made under an agreement between the group training organisation and the person who will provide the training. The training provided to the apprentice or trainee must be in accordance with the training plan for the apprentice or trainee.

This section links with Section 6 of the *Industrial Relations Act 1999*, which provides that a group training organisation is an employer.

Group training organisations employ a “pool” of apprentices and trainees, placing them with other employers that provide the training. However, the group training organisation remains the employer of the apprentice or trainee and retains all responsibilities and obligations of an employer under this Bill. For example, the group training organisation must ensure that the apprentice or trainee is provided with an adequate range of work and supervision to receive all the training required under the training plan.



**Withdrawal of recognition**

*Clause 223* provides that the Training and Employment Board may withdraw the recognition of a group training organisation. The withdrawal of recognition must be done by fair procedures, which would include advising the group training organisation of the proposed withdrawal and inviting it to make representations as to why such an action should not proceed.

**CHAPTER 8—APPEALS****PART 1—TRAINING RECOGNITION DECISIONS****Appeal to Magistrates Court**

*Clause 224* provides that a person may appeal to a Magistrates Court if aggrieved by any of the following decisions:

- a decision of the Training Recognition Council about the registration of a training organisation (for example, a decision to cancel or change the conditions of registration);
- a decision of the Training Recognition Council about the accreditation of a course (for example, a decision to cancel or change the conditions of accreditation);
- a decision of the Training and Employment Board about the recognition of an industry training advisory body (for example, a decision to withdraw the recognition of an industry training advisory body); and
- a decision of the Training and Employment Board about the recognition of a group training organisation (for example, a decision to withdraw the recognition of a group training organisation).

**Starting appeals**

*Clause 225* provides that the appellant starts an appeal by filing a notice of the appeal with the court and serving a copy of the notice on the chairperson of the Training and Employment Board or Training Recognition Council. The notice must be filed within 21 days of the appellant receiving an information notice about the decision, which is the subject of the appeal.

The notice of the appeal must fully state the grounds for the appeal.

The court may, at its discretion, extend the time for filing the notice of an appeal.

**Stay of operation of decisions**

*Clause 226* provides that the Magistrates Court may order the decision being appealed against be stayed. The stay may be given on the conditions the Magistrates Court considers appropriate (for example, it may be a whole or partial stay), operates for the period fixed by the court and may be revoked or amended by the Court. The periods of the stay cannot extend past the time when the court decides the appeal.

**Hearing procedures**

*Clause 227* provides that in hearing the appeal, the Magistrates Court has the same powers as the Training and Employment Board or Training Recognition Council in making the decision being appealed against. An appeal is heard by way of rehearing.

**Powers of court on appeal**

*Clause 228* provides that when deciding an appeal, the Magistrates Court may make the following decisions:

- dismiss the appeal (for example, where it considers the appeal to be vexatious or lacking in substance);

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- allow the appeal, set aside the original decision and impose a new decision (for example, if the appeal was against the cancellation of an the registration of a training organisation, the Magistrates Court may set aside the decision to cancel the registration and may suspend the registration);
- allow the appeal and amend the decision (for example, if the appeal was against the cancellation of an the registration of a training organisation, the Magistrates Court may set aside the decision to cancel the registration and may amend the registration by placing a condition on the registration);
- allow the appeal, suspend the operations of the decision and remit the matter to the person who made the decision with or without directions (for example, if the appeal was against a cancellation of the accreditation of a course, the Magistrates Court may, after hearing new evidence not available to the Training Recognition Council at the time of its decision, set aside the decision of the Council and remit the matter to the council with directions to consider the new evidence).

**Appeal to District Court on question of law**

*Clause 229* provides that a party to an appeal to a Magistrates Court may appeal the decision of the Magistrates Court 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**

*Clause 230* allows a person aggrieved by specified decisions to appeal the decision in the Industrial Relations Commission. The specified decisions are:

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- a decision by the Training Recognition Council not to register an apprenticeship or traineeship contract [refer to *Clause 54*];
- a decision by the Training Recognition Council to amend or assign an apprenticeship or traineeship contract [refer to *Clauses 57 and 59*];
- a order of the Training Recognition Council that imposes a disciplinary measure (i.e. impose a fine on or reprimand an employer or apprentice or trainee, cancel or suspend an apprenticeship or traineeship contract) [refer to *Clause 71*];
- a decision by the Training Recognition Council to cancel an apprenticeship or traineeship contract for serious misconduct [refer to *Clause 64*];
- a decision by the Training Recognition Council to cancel an apprenticeship or traineeship contract for a reason other than misconduct [refer to *Clauses 59 and 63*];
- a decision by the Training Recognition Council to cancel the registration of an apprenticeship or traineeship contract [refer to *Clause 66*];
- a decision by the Training Recognition Council to cancel a completion certificate [refer to *Clause 76*];
- a decision by a registered training organisation to cancel or not to cancel a qualification or statement of attainment [refer to *Clause 36*];
- a decision by the Training Recognition Council to extend the nominal term of an apprenticeship or traineeship contract [refer to *Clause 77*];
- a declaration by the Training Recognition Council of a prohibited employer or a variation or refusal to remove a declaration of a prohibited employer [refer *Clauses 83 and 84*];
- a decision by the Training Recognition Council to stand down an apprentice or trainee or decision by the Training Recognition Council refusing to stand down an apprentice or trainee [refer to *Clause 86*].

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For the purposes of this provision, the parent of an apprentice or trainee can not lodge an appeal against one of the decisions specified above (i.e. only the employer or apprentice/trainee can appeal the decision). This is to negate the possibility of a parent appealing a decision that does not trouble the apprentice or trainee or employer. However, this does stop the parent from supporting an appeal by the apprentice or trainee.

An appeal must be lodged with the Industrial Relations Commission within 21 days of the aggrieved person receiving a notice of the decision signed by the Training Recognition Council. (In the case of a decision by a registered training organisation to cancel a qualification or statement of attainment, the appeal must be lodged within 21 days of the receipt of the notice from the registered training organisation.) However, the commission may extend the time for lodging an appeal.

Except as otherwise provided by this Bill, the provisions of the *Industrial Relations Act 1999* apply to the proceedings in the industrial relations commission.

**Stay of decision being appealed**

*Clause 231* provides that the Industrial Relations Commission may order the decision being appealed against be wholly or partly stayed. A decision may be stayed:

- pending the Industrial Relations Commission's decision on the appeal; or
- pending a further order from the Industrial Relations Commission (i.e. an order not to cancel an apprenticeship or traineeship contract but to impose a suspension).

**Nature of appeal**

*Clause 232* provides that an appeal to the Industrial Relations Commission is heard by way of rehearing. In addition, the commission must keep a record of the rehearing.

If the Industrial Relations Commission considers it appropriate, it may hear the evidence on the decision afresh and hear new evidence not previously considered by the Training Recognition Council.

**Decision on appeal**

*Clause 233* provides that the Industrial Relations Commission must deal with an appeal as quickly as possible. In deciding an appeal, the commission may make the following decisions:

- dismiss the appeal (For example, where it considers the appeal to be vexatious or lacking in substance.);
- allow the appeal, set aside the original decision and impose a new decision (For example, if the appeal was against the cancellation of an apprenticeship contract for serious misconduct, the industrial relations commission may set aside the decision to cancel the contract and may suspend the contract under the Disciplinary provisions.);
- allow the appeal and amend the decision (For example, if the appeal was against the cancellation of an apprenticeship contract for misconduct under the disciplinary provisions, the industrial relations commission may set aside the decision to cancel the contract and may suspend the contract under the same provisions.);
- allow the appeal, suspend the operations of the decision and remit the matter to the person who made the decision with or without directions (For example, if the appeal was against a cancellation of an apprenticeship contract for misconduct under the disciplinary provisions, the industrial relations commission may, after hearing new evidence not available to the Training Recognition Council at the time of its hearing, set aside the decision of the council and remit the matter to the council with directions to consider the new evidence.).

A decision by the Industrial Relations Commission on an appeal is final. However, there is a final step of appeal to the Industrial Court under *Clause 244* on a question of law only.

**Exclusive jurisdiction**

*Clause 234* provides that the Industrial Relations Commission's jurisdiction on an appeal is exclusive and another court (e.g. a Magistrate Court) cannot issue or grant an injunction or prerogative order in relation to any matter being appealed in the commission.

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***Division 2—Industrial commission's orders*****Application of div 2**

*Clause 235* states that *Division 2 (Industrial Commission's Orders)* applies where:

- the appeal to the commission is about the cancellation of a registered training contract; or
- the commission decides that an employer or apprentice or trainee has cancelled a registered training contract in a way that is not allowed under the Bill

**Order to resume training**

*Clause 236* provides that in deciding the appeal, the Industrial Relations Commission may:

- order the employer to resume training the apprentice or trainee; or
- order the apprentice or trainee to resume training with the employer.

Where the Industrial Relations Commission makes an order for the training to be resumed, it may make any order necessary for the continuity of the training. The commission may also order the employer to pay the apprentice or trainee any remuneration lost when the apprenticeship or traineeship contract was incorrectly cancelled. In addition, if the employer had paid the apprentice or trainee an amount on the incorrect cancellation of the apprenticeship or traineeship contract, the commission may order the apprentice or trainee to repay the amount to the employer.

**Order cancelling contract**

*Clause 237* provides the Industrial Relations Commission may order the apprenticeship or traineeship contract to be cancelled if it believes it would be inappropriate for the training to continue (for example, if the relationship between the employer and apprentice or trainee had irretrievably broken down). In these circumstances, the commission may, if it considers it reasonable, order the employer to pay the apprentice or trainee an amount of compensation.

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**Limit of compensation**

*Clause 238* applies to the amount of compensation that the Industrial Relations Commission orders to be paid where it cancels an apprenticeship or traineeship contract. The clause provides that the amount must not be more than the apprentice or trainee would be entitled to if they were covered by Section 79 of the *Industrial Relations Act 1999*.

This clause links with *Clause 237*.

**Account of amounts payed to apprentice or trainee**

*Clause 239* applies where the Industrial Relations Commission is ordering an employer to pay an apprentice or trainee an amount for:

- remuneration lost due to a purported cancellation of an apprenticeship or traineeship contract; or
- compensation where an apprenticeship or traineeship contract is cancelled by the commission.

In making an order, the commission may take into account any amount already paid to the apprentice or trainee by the employer.

This clause links with *Clauses 236* and *237*.

**Payment of additional amount**

*Clause 240* applies where an employer has purported to cancel an apprenticeship or traineeship contract other than in a way allowed under the Bill. The clause provides that in addition to any other amount the industrial relations commission orders to be paid, it may also order the employer to pay the apprentice or trainee an amount of not more than 135 penalty units (i.e. \$10,125).

**Instalments**

*Clause 241* applies where the Industrial Relations Commission has order an amount to be paid by either the employer or an apprentice or trainee. The clause provides that the amount may be paid by instalments.

This clause links with *Clauses 236, 237, 239* and *240*.



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**Contravening orders**

*Clause 242* provides that a person must not contravene an order of the Industrial Relations Commission. An offence is created and a penalty for non-compliance may apply.

Where an employer wilfully continues to contravene an order of the industrial relations commission to resume the training of an apprentice or trainee, the commission may:

- make a further order for the employer to pay the apprentice or trainee an amount of not more than 50 penalty units (i.e. \$3,750); and
- make a further order for the employer to pay the apprentice or trainee any remuneration for lost wages; or
- make any further order that the commission considers necessary about the continuity of the training.

***Division 3—Other provisions*****Recovery of amounts under orders**

*Clause 243* applies where the Industrial Relations Commission has ordered an amount to be paid and the amount has not been paid. In these circumstances, the registrar may issue a certificate that states:

- the amount that is to be paid;
- who is to pay the amount;
- to whom the amount is to be paid;
- any conditions about the payment (for example, the amount is allowed to be paid in instalments).

The certificate may be filed in a court of competent jurisdiction (e.g. a Magistrates Court) in a proceeding for recovery of debt. Any order evidenced by the registrar's certificate is enforceable as an order of the court where it is filed.

The intention of this clause is to allow an expeditious and easy method for people to recovery money that has not been paid after the Industrial Relations Commission has made an order.

**Appeal to Industrial Court on question of law**

*Clause 244* provides that a party to an appeal to the Industrial Relations Commission may appeal the decision of the industrial relations commission 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**

*Clause 245* provides the chief executive, subject to the Minister and as an agent of the State, with all the powers of the State necessary to perform the chief executive's functions. Anything done by the chief executive in the name of or for the State binds the State.

The chief executive may, for example, enter into agreements, arrangements, agreements and deeds including fixing seals to any document; acquire, hold, deal with and dispose of property; or charge and fix terms for goods, services, facilities and information supplied.

The clause also clarifies that the chief executive's powers given under this Bill, another Act or at common law, are subject to any restriction imposed by this Bill or another Act.

**Delegations**

*Clause 246* provides that the chief executive may delegate its powers to an officer of the department who has the qualifications, experience or standing to exercise the power.

The provisions of the Section 27A of the Acts Interpretation Act that relate to delegation of powers link with this clause.

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**Committees**

*Clause 247* provides that the chief executive may establish committees to help perform their functions.

**Membership of other bodies**

*Clause 248* authorises the chief executive to become a member, or manager of an entity, the objectives of which relate to vocational education or training. However, the chief executive may only become a member or manager of an entity with the agreement of the entity's governing body.

If the chief executive is a member or manager of an entity, the chief executive may also be a member of the entity's governing body.

The clause also authorises the chief executive to incur expenditure for contributions or other liabilities that membership of the entity entails.

**Returns to be given as required**

*Clause 249* applies to a corporation in whose formation the chief executive or an entity of which the chief executive is a member or manager. The corporation or entity must furnish to the Minister the reports, returns and information on its affairs the Minister requires.

**Use of facilities and staff**

*Clause 250* empowers the chief executive to make arrangements with an entity for the entity to use facilities and staff available to the chief executive.

*Division 2—Trusts***Definitions for div 2**

*Clause 251* defines what an "approved arrangement" and "trust property" mean for the purposes of this division. These terms are further clarified under *Clause 252*.

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This division provides for the control of property, which has been bequeathed to the State including a TAFE Institute for the use or benefit of the vocational education and training system where circumstances change requiring the arrangements to be altered or revised. For example, land has been bequeathed to an institute for the purpose of providing specified training and that training becomes no longer viable for the region.

The provisions of this division facilitate the alteration of the purpose for which trust property is held. Otherwise, amendment of the purpose would involve a lengthy application to the Supreme Court.

**Variation of trust purposes**

*Clause 252* relates to property being held on trust by or for the State for a purpose connected with vocational education and training and circumstances exist or change which require the stated purpose to be varied.

These circumstances include:

- The original purpose has been effected, ceases to exist or has been adequately provided for otherwise; or
- The original purpose is uncertain or cannot be identified, or becomes impossible or impracticable to carry out; or
- The property or income is not sufficient to carry out the purpose.

*Subclauses (2), (3), (4), (5) and (6)* provide for the making and approval of a new arrangement for trust property. The chief executive is empowered to prepare an arrangement for the use of the trust property or income from it for a stated purpose. Such an arrangement must be approved by the Minister and be published in the Government Gazette.

However, the chief executive cannot prepare an arrangement where the trust instrument provides for how the property is to be dealt with if any of the circumstances described above occur.

**Variation of approved arrangement**

*Clause 253* enables the chief executive to vary an approved arrangement by submitting the proposal to the Minister for approval. If the Minister approves a variation it is to be published in the Government Gazette and the varied arrangement becomes the approved arrangement for the trust property.

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**Requirements about purposes for arrangements**

*Subclauses 254(1) and (2)* provide that when preparing an arrangement or a variation to an approved arrangement, the chief executive must select a purpose that is as near as possible to the purpose to be changed. The chief executive must also take account of how useful that purpose is and how easily it can be achieved.

*Subclause (3)* makes it clear that a court cannot invalidate or stop the chief executive's purpose simply on the grounds that another purpose might or should have been selected.

**Recording arrangements and variations in land register**

*Clause 255* requires that where the trust property involves land, the chief executive must notify the registrar of titles (or other person with responsibility for recording dealings for the land) within one month after publication of the approved scheme or amendment in the Government Gazette.

The registrar (or other person) is required to record the existence of the approved scheme or amendment.

**Rights and jurisdiction in equity not affected**

*Clause 256* clarifies that the provisions of this division, other than as specifically provided in it, do not affect entitlements and obligations under a law covering trust property, or the jurisdiction of a court with respect to trusts.

**PART 2—ENFORCEMENT***Division 1—Inspectors***Appointment**

*Clause 257* authorises the chief executive to appoint a public service employee or another persons prescribed in a Regulation as an inspector. The person to be appointed must have the expertise or experience that the chief executive considers necessary to be an inspector.

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**Limitation of inspector's powers**

*Clause 258* provides that an inspector's powers may be limited under a regulation or a condition of appointment or by a signed notice from the chief executive.

**Inspector's appointment conditions**

*Clause 259* provides that an inspector holds office on the conditions stated in their appointment.

An inspector ceases to hold office if the appointment term expires or if the appointment ceases to be effective on the inspector being appointed to another office (for example, a person may cease to hold office as an inspector if they are appointed as a director of a TAFE Institute).

An inspector may resign by giving a written notice of resignation to the chief executive. However, an inspector cannot resign if their appointment as an inspector is secondary to another office they hold.

**Inspector's identity card**

*Clause 260* requires the chief executive to issue each inspector with an identity card and specifies the details of what is required on the identity card.

Upon ceasing to be an inspector, unless the person has a reasonable excuse, they must return the identity card to the chief executive within 21 days. An offence is created for non-compliance, and a penalty may apply.

A single identity card may be given to an inspector appointed under this Bill and other Acts for other purposes.

**Production or display of inspector's identity card**

*Clause 261* provides that before exercising a power under the Bill, an inspector must either produce an identity card for a person's inspection or have the card clearly and visibly displayed. However, if it is not practicable for any reason to produce or display the identity card, the inspector must produce it for the person's inspection at the first reasonable opportunity.

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***Division 2—Powers of inspectors******Subdivision 1—Entry of places*****Power to enter places**

*Clause 262* identifies the requirements and limitations on an inspector in gaining entry to a place for the purposes of the Bill. It allows an inspector to enter a place with the consent of the occupier, or under authority of a warrant, or under each of the following circumstances:

- The owner consents to entry or entry is authorised by a warrant; or
- It is a public place and entry is made at a time when it is open to the public (for example, a registered training organisation where the reception area is open to the public); or
- It is a place where a registered training organisation carries on business and entry is made when the place is open for business or is otherwise open (for example, by arrangement with the inspector); or
- It is a place (other than a dwelling house) where a registered training organisation or an employer is training an apprentice or a student under vocational placement agreement; or where skills and knowledge are being assessed. Entry must be made when the place is open for business or is otherwise open (for example, by arrangement with the inspector); or
- It is a place (other than a dwelling house) where a delegate of the Training Recognition Council is exercising a delegation. Entry must be made when the place is open for business or is otherwise open (for example, by arrangement with the inspector).

An inspector may, without the owner's consent or without a warrant, enter land around the premises to ask the occupier for consent to enter the premises. However, unless the inspector has a warrant, the inspector may not enter a place where a registered training organisation is carrying out its business if the place is part of a place where a person resides.

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***Subdivision 2—Procedure for entry*****Entry with consent**

*Clause 263* provides that, before an inspector asks consent to enter a place, the inspector must inform the occupier of the purpose of the entry and that the occupier is not required to consent to entry. Where consent is given, the inspector may ask the occupier to sign acknowledgment of consent. Where an occupier signs an acknowledgment of consent, the inspector must immediately give the occupier a copy.

The clause also provides that where the consent to enter a place is disputed in legal proceedings and an acknowledgment of consent is not produced, a court may presume that the occupier did not consent.

**Application for warrant**

*Clause 264* authorises an inspector to make a sworn application, setting out all relevant grounds, to a magistrate for a warrant to enter a place. A magistrate may refuse to consider the application until the inspector provides all the information that the magistrate requires.

**Issue of warrant**

*Clause 265* provides that a warrant may only be issued when the magistrate is satisfied there are grounds for so doing. For example, there are reasonable grounds for suspecting that there may be evidence of an offence against this Bill or that such evidence may be at the particular place within the next 7 days.

The matters to be stated in a warrant include:

- Powers under the Bill;
- The offence for which the warrant is issued;
- Any evidence which may be seized;
- The times when the place may be entered; and
- The date when the warrant expires (within 7 days of its issue).



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**Warrants-procedure before entry**

*Clause 266* provides that if an inspector intends to enter a place under the authority of a warrant, the inspector must, or make a reasonable attempt to:

- Identify himself or herself to the person present at the place by producing a notice or documentation of their appointment as an inspector (for example, inspector's card);
- Give the person a copy of the warrant; and
- Tell the person what the warrant authorises the inspector to do; and
- Give the person an opportunity to allow the inspector entry.

However, an inspector does not have to comply with the above if it is reasonably believed that it will frustrate the effective execution of the warrant. For example, if attempts to locate the person would cause an excessive delay in the execution of the warrant.

*Subdivision 3—Powers after entry***General powers after entering places**

*Clause 267* describe the specific powers of an inspector who enters a place either with the owner's consent or under a warrant for the purpose of monitoring or enforcing compliance with this Bill.

These powers include:

- Searching any part of the place;
- Inspecting a document and taking extracts or copies of it; and
- Taking into the place any people, equipment or materials necessary for exercising the powers (for example, an accountant to provide expert advice on book keeping);

An inspector may also require a person at the place to give reasonable assistance (for example, show the inspector where records are kept) and information (for example, to answer a reasonable question). The clause also provides that an inspector must warn a person that it is an offence to fail to comply with a requirement to give assistance or information.

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**Failure to help inspector or give inspector information**

*Clause 268* provides that a person required to give an inspector reasonable assistance or information under *Clause 267* must comply with the requirement unless they have a reasonable excuse. An offence is created for non-compliance and a penalty may apply.

However, it is a reasonable excuse not to comply with the requirement if compliance would tend to incriminate a person.

*Subdivision 4—Power to seize evidence***Power to seize evidence from places**

*Clause 269* empowers an inspector who enters a place with the occupier's consent or when it is open, to seize anything that the inspector reasonably believes is evidence of an offence against this Bill. If an inspector enters a place under authority of a warrant, the inspector may seize evidence for which the warrant has been issued.

In addition, an inspector is empowered to seize anything else the inspector reasonably believes is evidence of an offence against this Bill and should be seized to prevent it being hidden, lost, destroyed or used to continue or repeat the offence.

**Receipts for seized things**

*Clause 270* requires an inspector to give a receipt for anything seized, as soon as possible after the seizure. The receipt must describe each item that was seized and its condition. If it is not possible to give a receipt to the person, the inspector may leave the receipt at the place of seizure in a reasonably secure and conspicuous position.

**Inspector to allow inspection etc.**

*Clause 271* provides that an inspector who has seized something must allow a person who would be entitled to it to inspect it and (if the thing is a document) make copies of it.

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**Obligation to return seized things**

*Clause 272* provides that, within 6 months of an item being seized, the chief executive must return the item to the person concerned. However, if a prosecution of an offence that concerns the thing has commenced within that 6 months period, the item must be returned at the completion of the proceeding and any subsequent appeal.

As soon as the chief executive is satisfied a thing that has been seized is no longer required for evidence, it must be returned to the person.

*Subdivision 5—Power to obtain information***Power to require production of documents**

*Clause 273* provides that, when required by an inspector, a person must make available for inspection or produce a document required to be held or kept under this Bill. An offence is created for non-compliance unless the person has a reasonable excuse and a penalty may apply. It is a reasonable excuse not to comply with the inspector's requirement if compliance would tend to incriminate the person.

*Subdivision 6—General enforcement matters***Obstructing etc an inspector**

*Clause 274* prohibits a person from obstructing an inspector, or a person assisting an inspector, in the exercise of a power unless the person has a reasonable excuse. An offence is created for breaching this clause and a penalty may apply.

**Pretending to be an inspector**

*Clause 275* makes it an offence for a person to pretend to be an inspector and a penalty may apply.

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**Compensation**

*Clause 276* provides that a person may claim compensation from the State for a loss or expense incurred because of the exercise or purported exercise of a power under this part. For example, if an inspector accidentally broke an expensive piece of equipment while searching a premises, the owner could claim compensation from the State.

Payment of compensation may be claimed and ordered in a proceeding in a court of competent jurisdiction or in a proceeding for an offence against this Bill. The court may order compensation if it is satisfied that it is reasonable to make the order.

**PART 3—OTHER PROVISIONS***Division 1—Offences***False or misleading statements to official**

*Clause 277* creates the offence for a person to provide false or misleading statements to the Training and Employment Board, Training Recognition Council, Apprenticeship and Traineeship Ombudsman, chief executive or an inspector. A penalty for contravention may apply.

**False or misleading documents to official**

*Clause 278* creates the offence for a person to give the Training and Employment Board, Training Recognition Council, Apprenticeship and Traineeship Ombudsman, chief executive or an inspector a document that they know contains information which is false or misleading. A penalty for contravention may apply.

However, an offence is not committed if the person states how the document is false, misleading or incomplete and gives the correct information if they are reasonably able to.

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**Offences about false or misleading statements or documents**

*Clause 279* applies to the provisions of the Bill that create offences for false or misleading statements or documents. The clause provides that for any of these offences, it is enough to allege and prove that a statement was “false or misleading”.

[This clause links with *Clause 36, Clause 55, Clause 72, Clause 73, Clause 102, Clause 277* and *Clause 278*.]

***Division 2—General accountability provisions*****Executive officers must ensure corporation complies with prescribed provision**

*Clause 280* applies to breaches of specified provisions of the Bill by a corporation’s executive officers. For the specified provision, the executive officers may be held accountable for not complying with the legislation.

The clause only relates to specific provisions of the Bill which are defined in the clause. In particular, the clause relates to:

- Non-compliance with significant obligations relating to the registration of a training organisation;
- Non-compliance with the requirements to use a course accredited by another State or Territory;
- Non-compliance with obligations that ensure the integrity of high quality training for apprentices and trainees; and
- Non-compliance with requirements for recognition of vocational placement schemes or obligations that ensure the integrity of high quality training for vocational placement students.

[The specific provisions link to *Clauses 23, 24, 25, 31, 33, 34, 46, 52, 53, 54, 57, 60, 61, 64, 65, 71, 73, 79, 80, 85, 93, 99, 102, 110, 111* and *112*.]

It is believed that the sections identified in the clause underpin the integrity of the delivery of high quality vocational education and training. In particular, clauses that create offences relating to the provision of false or misleading information or statements or coercion or attempted coercion to

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achieve certain outcomes have been identified as prescribed provisions for this clause.

*Subclause (1)* places a requirement on all executive officers of a corporation to ensure compliance with the specified sections by the corporation.

*Subclause (2)* states that where a corporation breaches a specified provision, each of the corporation's executive officers commits the offence of failing to ensure that the corporation complied with the provision. An offence is created under this subclause and a penalty may apply. The clause also states that the maximum penalty that can be imposed under the provision is the maximum penalty for contravention of a penalty by an individual. This provision is required because of the provisions of Section 181B of the *Penalties and Sentences Act 1992* that would impose a larger penalty if this were not included.

*Subclause (3)* states that evidence that a corporation's executive officers committed an offence for failing to ensure compliance by the corporation, is established if the corporation is convicted of an offence against a specified section. However, under *Subclause (4)*, it is a defence for an executive officer to show that while in a position to influence the conduct of the corporation, they took reasonable steps to ensure the corporation's compliance with this provision. It is a further defence if the officer can show they were not in a position to influence the corporation.

It is not the intention of the clause to prosecute an executive officer for a minor infraction of the legislation. However, the clause does identify the provisions that are considered to be fundamental to the vocational education and training system in Queensland and places an onus on a corporation's executive officers to ensure particular compliance with these provisions. However, the provision does provide a defence for an executive officer that took reasonable steps to ensure compliance with the legislation or was not in a position to influence the conduct of the corporation.

**Responsibility for acts or omissions of representatives**

*Clause 281* clarifies the status of an action or omission by an agent in a proceeding for an offence against this Bill.

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Where it is necessary to prove a person's state of mind about a particular act or omission, it is sufficient to show that the act or omission was done by a representative of the person within the representative's scope of authority.

Also, in proceedings for an offence, an action or an omission by a person's representative is taken to be an action or omission of the person unless the person can show:

- They were not in a position to influence the representative's conduct; or
- That if in such a position to influence the representative, they took reasonable steps to prevent the act or omission from occurring.

The clause defines a "representative". For a corporation, this is an executive officer, employee or agent of the corporation and for an individual it is an employee or agent of the corporation.

**Disclosure of interests by member of disclosure body**

*Clause 282* requires that a member of a disclosure body who has a direct or indirect interest in a matter being considered by the body must disclose the nature of the interest to a meeting of the body as soon as the member is aware of the interest. An offence is created for non-compliance and a penalty may apply.

A disclosure body is defined to be the Training and Employment Board, the Training Recognition Council, a TAFE institute council, a TAFE college council, a committee established by any of these bodies or a committee established by the chief executive.

The disclosure must be recorded in the minutes of the meeting of the body.

Generally, matters that must be disclosed are those where the member potentially stands to personally benefit financially or otherwise from a decision of the body.

**Voting etc. by interested member of disclosure body**

*Clause 283* prohibits a member of a disclosure body from voting on a matter being decided by the body in which the member has a material

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personal interest. The member must not be present while the matter is considered, or in any way participate in any decision relating to the matter. An offence for non-compliance is created and a penalty may apply.

A disclosure body is the Training and Employment Board, the Training Recognition Council, a TAFE institute council, a TAFE college council, a committee established by any of these bodies or a committee established by the chief executive.

However, this provision will not apply in relation to a matter if the body has passed a resolution clearly stating it is satisfied the person's interest is such that it should not disqualify the member from participating in the discussion or voting on the matter. In addition, the provision will not apply where a quorum would lapse if a declaring member withdrew from the meeting and the Minister has given a direction in writing to that effect.

The intention of the clause is to clearly restrict a member with a material personal interest in a matter, from participating in the discussion and voting on the matter at a meeting. In the majority of instances of conflict of interest, the member concerned would declare the interest and withdraw from the meeting while the issue is being discussed and voted on.

**Other disclosure of interests**

*Clause 284* relates to where a person has a direct or indirect interest in a matter that appears likely to (or is capable of) conflicting with the exercise of their power or functions under the Bill. The clause applies to disclosures other than those required under *Clause 282*.

The Clause identifies that a person must disclose the interest to:

- If the person is the Apprenticeship or Traineeship Ombudsman—to the Minister;
- In all other instances—to the chief executive.

An offence is created for failing to disclose an interest and a penalty may apply.

The Minister or chief executive may give a written direction to the person on action that should be taken to resolve the conflict and the person must comply with that direction unless the person has a reasonable excuse. An offence is created for not complying with a written direction of the Minister or chief executive and a penalty may apply.



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**Duty to act honestly**

*Clause 285* requires a person performing a function under this Bill to act honestly at all times. In addition, such a person is prohibited from using any information acquired during the course of performing a function under this Bill, to advantage themselves (or someone else), or to disadvantage someone else.

Offences are created for non-compliance with these provisions and penalties may apply.

**Protection of confidentiality**

*Clause 286* requires that a person who acquires information in the course of performing a function under this Bill, must treat that information confidentially and not to disclose it to anyone else. An offence is created for breaching this provision, and a penalty may apply.

However, the clause allows disclosure under clearly defined specific circumstances, namely:

- For the purposes of this Bill; or
- With the authorisation of the chief executive; or
- Required to be disclosed by the Training Recognition Council or Apprenticeship and Traineeship Ombudsman as relating to a matter currently under consideration; or
- Required by a court, commission or tribunal for proceedings before it; or
- Otherwise required by law.

The intention of this provision is to require a person acting under the authority of this Bill to treat confidentially information acquired in that role. It is an offence to disclose such information, apart from disclosure as permitted under the clause. For example, an inspector who ascertains certain information about a registered training organisation during the course of an inspection and divulges that information to a person who is in competition to that organisation, would be in breach of this clause. Likewise, a member of the authority who gains knowledge of a new training opportunity as a direct result of the membership, and sets up a training organisation to conduct that training, would commit a breach.

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***Division 3—Procedural and evidentiary provisions*****Summary proceedings for offences**

*Clause 287* authorises that proceedings for offences are to be instituted under the *Justices Act 1886*. However, a proceeding must be commenced within one year of the offence being committed. However, where information of an offence is not known until sometime after it is committed, a proceeding may be commenced within six months after it comes to the complainant's knowledge but within 18 months of the offence being committed. Accordingly, the latest a proceeding can be commenced is 18 months after it was committed.

**Representation of parties**

*Clause 288* allows a party to a proceeding under this Bill to be represented in person or by an agent appointed in writing or by a lawyer. However, costs associated by a party being represented by an agent or a lawyer cannot be awarded.

**Evidentiary provisions**

*Clause 289* provides that in a proceeding under this Bill, certain appointments, authorities, signatures, approvals, statements or published documents are to be taken as proved unless a party, by notice, requires proof. These may relate to the Apprenticeship and Traineeship ombudsman, the Training and Employment Board or Training Recognition Council (or one of their committees), chief executive, an inspector, or the registration of a training organisation, apprenticeship or traineeship contract or a vocational placement agreement.

In addition, an entry in a register kept under this Bill (or a certified copy or extract) is to be evidence of the matters contained in the register.

The intention of this clause is to facilitate and save time in court proceedings by not having to prove certain appointments, signatures, etc.

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***Division 4—Other provisions*****Protection from liability**

*Clause 290* provides protection from civil liability for an indemnified person. Instead, any civil liability prevented under this clause, will attach to the State.

An indemnified person is defined to be:

- The Apprenticeship and Traineeship ombudsman;
- A member of the Training and Employment Board or the Training Recognition Council or one of their committees;
- A member of a TAFE institute council or a college council;
- The Minister;
- The chief executive;
- An officer or employee of the department;
- An inspector; or
- A person an inspector calls upon to assist in the entry and search of a premises.

**Regulation-making power**

*Clause 291* empowers the Governor in Council to make regulations for the purposes of this Bill. In particular, it is provided that regulations may be made for fees payable under this Bill, and for the creation of offences and the imposition of penalties. The maximum penalty that can be prescribed is 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**

*Clause 292 states that the consequential amendments to the Industrial Relations Act 1999 are in Schedule 1.*

#### *Division 2—Consequential amendments of other Acts*

##### **Consequential amendment of other Acts**

*Clause 293 states that the consequential amendments of other Acts are in Schedule 2.*

### **PART 2—REPEALS**

#### **Repeal of Acts**

*Clause 294 repeals the Vocational Education Training and Employment Act 1991 and the Vocational Education and Training (Industry Placement) Act 1992.*

## **PART 3—TRANSITIONAL PROVISIONS**

### *Division 1—Preliminary*

#### **Definitions for pt 3**

*Clause 295* defines certain terms used in this division to assist in facilitating transitional arrangements and to clarify existing approvals, decisions, agreements, etc which are to be saved for transition to the new Act.

### *Division 2—Transitional provisions for former VETE Act*

#### **Dissolution of corporation and former bodies**

*Clause 296* dissolves the Vocational Education, Training and Employment Corporation and Vocational Education, Training and Employment Commission and the statutory subcommittees of the Commission. It also provides for the members of Vocational Education, Training and Employment Commission and the statutory subcommittees of the Commission to go out of office.

#### **Assets and liabilities**

*Clause 297* vests any assets and liabilities of the Vocational Education, Training and Employment Corporation and Vocational Education, Training and Employment Commission (and its standing committees) in the State. Property held by the Vocational Education, Training and Employment Corporation on trust is to be held by the State on the terms of the trust.

#### **Proceedings**

*Clause 298* allows for a proceeding by or against the Vocational Education, Training and Employment Corporation or Vocational Education, Training and Employment Commission (or one of its standing committees) to be continued and finished by or against the State. The clause also

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provides that if a proceeding could have been taken by or against one of those bodies if they had continued to exist, the proceeding may be taken by or against the State.

**Existing contracts**

*Clause 299* makes provision for an existing contract involving the Vocational Education, Training and Employment Corporation or Vocational Education, Training and Employment Commission (or one of its standing committees) to be continued in force with the State being taken to be the party.

**References**

*Clause 300* makes it clear that, provided the context is consistent, a reference to the former *Vocational Education, Training and Employment Act 1991* or the former industry placement Act may be taken to be a reference to the new Act.

On the same basis, a reference to the Vocational Education, Training and Employment Corporation may be taken to be a reference to the chief executive. A reference to the Vocational Education, Training and Employment Commission (or one of its standing committees) may be taken to be reference to the Training and Employment Board or the Training Recognition Council.

**Existing approvals**

*Clause 301* continues an approval that was in force immediately prior to commencement of the new Act.

An “approval” is defined to relate to mean the registration of a training organisation or accreditation of a course.

An approval continued under this clause is subject to the new Act and cannot be renewed. It ends when the original approval would have ended, unless suspended or cancelled under the new Act.

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**Awards conferred under former VETE Act**

*Clause 302* allows an award conferred or continued in force under the former *Vocational Education, Training and Employment Act 1991* to be taken to be a qualification issued under the new Act.

“Award” is defined to mean a certificate of completion as an apprentice or trainee under the former *Vocational Education, Training and Employment Act 1991*; or a certificate, advanced certificate, associate diploma or other award that was approved by the Commission under the former *Vocational Education, Training and Employment Act 1991* Act; or another academic award or certificate that was issued or conferred under previous vocational education and training legislation and continue in force under the *Vocational Education, Training and Employment Act 1991*.

**Certificate for work or training recognised under former VETE Act**

*Clause 303* provides the a certificate recognising previous work or training issued by the former State Training Council under the *Vocational Education, Training and Employment Act 1991* is taken to be a recognition certificate issued by the Training Recognition Council issued under the new Act.

**Existing decisions under former VETE Act**

*Clause 304* continues, subject to the Act, a decision made under the repealed legislation by the Vocational Education, Training and Employment Corporation or the Vocational Education, Training and Employment Commission (or one of its standing committees), where the decision’s effect is not finished at the start of the new Act. A ‘decision’ is defined as including a determination, direction and ruling.

The clause sets out those decisions that may be taken to be decisions made by the Training and Employment Board or Training Recognition Council.

The clause preserves the right of a person to appeal against a decision. This provision ensures that a person who is aggrieved by a decision of the former Vocational Education, Training and Employment Commission (or one of its standing committees) may apply appeal the decision under the new Act.

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**Existing orders of industrial body**

*Clause 305* continues in force an order made under the former *Vocational Education, Training and Employment Act 1991* by the Industrial Commission or an industrial magistrate where the order's effect is not finished at the start of the new Act. The order continues as if it were made under the *Industrial Relations Act 1999*.

**Existing proceedings before industrial body**

*Clause 306* allows for a proceeding which was commenced (but not completed) before the Industrial Commission or an industrial magistrate under the former *Vocational Education, Training and Employment Act 1991*, to be continued and prosecuted as if it were commenced under the new Act.

**Existing training agreements**

*Clause 307* continues a training agreement approved under the former *Vocational Education, Training and Employment Act 1991* (former training agreement) as if it were a registered apprenticeship or traineeship contract under the new Act. Regardless of a provision of the former training agreement, the person being trained is eligible to receive the qualification or statement of attainment identified in the national training system of qualifications and issued by the supervising registered training organisation. In addition, the person will be eligible to receive a completion certificate from the Training Recognition Council.

**Existing industry training advisory bodies**

*Clause 308* continues each of the existing industry training advisory bodies under the *Vocational Education, Training and Employment Act 1991* and takes them to be recognised by the Training and Employment Board under the new Act.



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**Existing group training schemes**

*Clause 309* continues each of the existing group training schemes under the *Vocational Education, Training and Employment Act 1991* and takes them to be recognised as group training organisations by the Training and Employment Board under the new Act.

**Existing regulations**

*Clause 310* provides for the continuation of sections and the schedule to the *Vocational Education, Training and Employment Regulation 1991* with respect to fees. This will allow the regulation and existing fees to continue until they are repealed by a regulation made under the new Act. This provision will expire 1 year after it commences.

**When supervising registered training organisation required**

*Clause 311* provides that if the unexpired term of the former training agreement recognised under *Clause 307* is more than 6 months, there must be a supervising registered training organisation for the agreement.

**When training plan required**

*Clause 312* provides that if the unexpired term of the former training agreement recognised under *Clause 307* is more than 6 months, there must be a training plan for the apprentice or trainee.

***Division 3—Transitional provisions for former industry placement Act*****Existing approved training schemes**

*Clause 313* provides that an approved training scheme that was in existence under the *Vocational Education and Training (Industry Placement) Act 1992* is taken to be a vocational placement scheme under the new Act.

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**Existing vocational placement agreements etc.**

*Clause 314* provides that a vocational placement agreement that was in force under the *Vocational Education and Training (Industry Placement) Act 1992* at the start of the new Act continues as if it were a vocational placement agreement under the new Act.

**Existing decisions under the former industry placement Act**

*Clause 315* continues, subject to the new Act, a decision made under the *Vocational Education and Training (Industry Placement) Act 1992* where the decision's effect is not finished at the start of the Act. The decision is taken to be a decision of the Training Recognition Council. A 'decision' is defined as including a determination, direction and ruling.

**Existing orders of industrial commission**

*Clause 316* continues in force an order made under the *Vocational Education and Training (Industry Placement) Act 1992* by the Industrial Relations Commission where the order's effect is not finished at the start of the new Act. The order continues as if it were made under the *Industrial Relations Act 1999*.

**SCHEDULE 1****AMENDMENTS OF *INDUSTRIAL RELATIONS ACT*  
*1999***

Amendments are made to the *Industrial Relations Act 1999* and are listed below.

**Amendment to Section 5—(Who is an employee)**

*Clause 1* amends reference to the repealed *Vocational Education and Training (Industry Placement) Act 1992* to the new *Training and Employment Act 2000*.

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**Amendment to Section 6—(Who is an employer)**

*Clause 2* amends definition of Group Training Scheme to Group Training Organisation to ensure consistency with the *Training and Employment Act 2000*.

**Amendment to Section 6—(Who is an employer)**

*Clause 3* inserts a new section 6(2)(f) that defines who is the employer of an outworker.

**Amendment to Section 10—(Entitlement)**

*Clause 4* exempts school-based apprentices or trainees from the sick leave entitlements. The amendment is consistent with arrangements that currently exist under a range of industrial instruments. *Clause 80* provides a new definition of school-based apprentices or trainees.

**Amendment to Section 10—(Entitlement)**

*Clause 5* serves to renumber section 10(5) as section 10(7).

**Amendment to Section 10—(Entitlement)**

*Clause 6* inserts two new subsections, (5) and (6) to section 10.

Sub-section (5) provides that sick leave may be taken for part of a day when the employee is absent sick. The employee is to be paid sick leave for the period of absence and ordinary wages for the period worked. An employee is therefore not restricted to taking leave in full day periods. Examples are provided on how an employee can take sick leave for less than a full day and receive payment of ordinary pay for the remainder and on how sick leave applies where an employee works ordinary hours in excess of that employee's average daily hours.

Sub-section (6) provides that sick leave may be accumulated indefinitely unless an industrial instrument provides otherwise.

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**Amendment to Section 10—(Entitlement)**

*Clause 7* inserts a definition of the term “day” for the purposes of sections 10(2) and 10(5). The term is defined for both employees who are covered by an industrial instrument, which provides for sick leave for the employee, and those who are not. For employees who are covered by an industrial instrument that provides for sick leave for the employee the effect of the definition is to refer the employee back to their industrial instrument and the meaning within the instrument of a day for sick leave purposes. For other employees, a day is the average number of hours worked by the employee over the six-week period in which the sick day was accumulated. The definition makes it clear that a “day” for the purposes of sick leave is not necessarily the same as the number of ordinary hours worked on a particular calendar day.

The effect of this definition and the new sub-section 10(5) is that an employee may take more or less than one “day’s” sick leave, as defined, for one calendar day’s absence.

**Amendment to Section 11—(Entitlement)**

*Clause 8* exempts school-based apprentices or trainees from annual leave entitlements. The amendment is consistent with arrangements that currently exist under a range of industrial instruments. *Clause 80* provides a new definition of school-based apprentices or trainees.

**Amendment to Section 11—(Entitlement)**

*Clause 9* serves to renumber section 11(6) as section 11(7).

**Amendment to Section 11—(Entitlement)**

*Clause 10* inserts a new section 11(6) that clarifies that annual leave is to accumulate indefinitely, unless an industrial instrument provides otherwise.

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**Amendment to Section 14—(Payment for annual leave on termination of employment)**

*Clause 11* deletes section 14(6) to avoid any confusion with section 69 (Continuity of service-transfer of calling).

**Amendment to Section 15—(Public Holidays)**

*Clause 12* deletes reference to casual employees and pieceworkers. The exemption is retained in new section 15(3).

**Amendment to Section 15—(Public Holidays)**

*Clause 13* exempts school-based apprentices or trainees from the payment of public holidays not worked. The amendment formalises arrangements that currently exist under a range of industrial instruments. All other provisions of this Division are applicable to school-based apprentices or trainees. The other exemptions provided by section 15 are maintained.

**Amendment to Section 47—(Continuity of service—additional considerations for casual employees)**

*Clause 14* serves to renumber section 47(4), which deals with the long service leave entitlements of casual employees, as section 47(5).

**Amendment to Section 47—(Continuity of service—additional considerations for casual employees)**

*Clause 15* inserts a new section 47(4) that provides that sub-section (3)(a)(i) does not affect an employee's entitlement to long service leave under an award made before 23 June 1990 or under the *Industrial Conciliation and Arbitration Act 1961*. The amendment continues the provisions of the repealed *Workplace Relations Act 1997*.

*Clause 2* of the Bill provides that this clause commences on 1 July 1999.

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**Amendment to Section 68—(How part applies)**

*Clause 16* amends section 68(1) by deleting certain words that restrict the application of the Part to rights and entitlements prescribed under Chapters 2 and 3 of the *Industrial Relations Act 1999*. As a result, the continuity of service and employment provisions will apply in determining an employee's rights or entitlements, whether or not they accrued under Chapters 2 and 3.

**Amendment to Section 72—(Who this chapter does not apply to)**

*Clause 17* deletes section 72 (1) to (3) and replaces it with a new section 72(1) to (3) to clarify a number of existing provisions. The amendments involve:

- Subsection (1) is amended to provide that section 73(1) does not apply to those employees listed.
- Apprentices and trainees are included in those employees mentioned in section 72(1).
- Those employees mentioned in section 72(2) who were excluded from part 3 are now also excluded from part 4 of the chapter, to continue the provisions of the repealed *Workplace Relations Act 1997*.
- The wording of the exclusion of employees during the probationary period is amended to clarify that the probationary period mentioned in section 72(1) is the same as that in section 72(2).

**Amendment to Section 72—(Who this chapter does not apply to)**

*Clause 18* deletes section 72 (6) and (7). Section 72(6) is reinserted, however, the sub-section now applies only to parts 3 to 7. See also new section 72(1)(f).

The effect of deleting section 72(7) is that a federal award employee of a non-constitutional corporation in Queensland is now able to seek re-instatement for an unfair dismissal in the Queensland Industrial Relations Commission instead of the Australian Industrial Relations Commission. See also new section 74(2A).

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**Amendment to Section 72—(Who this chapter does not apply to)**

*Clause 19* omits the definition of “federal award employee” contained in section 72(8).

**Amendment to Section 72—(Who this chapter does not apply to)**

*Clause 20* renumbers section 72(8) as section 72(7) as a consequence of deleting section 72(7).

**Amendment to Section 74—(Application for reinstatement)**

*Clause 21* provides that a federal award employee who was previously excluded from the operation of the unfair dismissal provisions may lodge an application for reinstatement with the Queensland Industrial Relations Commission.

Those employees are allowed to make an application within 21 days of the commencement of the subsection. However, certain conditions need to be met. The first is that the employee has previously lodged an application with the commission for reinstatement and the application has been rejected by the registrar or dismissed by the commission because the employee was a federal award employee. The second is that the employee has not lodged an application with the Australian commission for the dismissal.

**Amendment to section 74—(Application for reinstatement)**

*Clause 22* amends section 74(4) and (5) by clarifying that the Registrar may reject an application if the employee is an employee mentioned in section 72(1).

**Amendment to section 75—(Conciliation before application heard)**

*Clause 23* amends section 75(3) by introducing an additional requirement that the commission must also issue a written certificate if it believes that the person is a person to whom section 73(1) does not apply.

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**Amendment to section 75—(Conciliation before application heard)**

*Clause 24* amends section 75(3)(b)(i) by introducing an additional requirement that the commission must inform the parties to the conciliation the reason why the commission believes the employee is a person to whom section 73(1) does not apply.

**Amendment to Section 97—(Employee stood-down in December then re-employed in January)**

*Clause 25* amends section 97(1) so that all casual employees are excluded from section 97.

**Amendment to Section 136—(Apprentice's and trainee's employment conditions)**

*Clause 26* amends section 136(2) so that both apprentices and trainees receive either the rate stated in the industrial instrument applying in the workplace or the proportionate rate fixed by the commission for the calling in the workplace where the apprentice or trainee is employed. In the case of Group Training Organisations the rate is to be the rate applicable in the workplace where the apprentice or trainee is placed. Examples on the operation of this clause are included. This continues the provisions of the repealed section 86(1) of the *Vocational Education, Training and Employment Act 1991*.

**Amendment to Section 136—(Apprentice's and trainee's employment conditions)**

*Clause 27* inserts a definition of “workplace” for use in section 136.

**Amendment to Section 137—(Order setting minimum wages and conditions)**

*Clause 28* amends section 137(3) to provide that an order does not prevail over a certified agreement or QWA. The amendment corrects an anomaly between sections 137(3) and sections 165 and 213.



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**Amendment to Section 137—(Order setting minimum wages and conditions)**

*Clause 29* amends section 137(4)(b)(i) and is a consequence of the change of name of the State Training Council to the Training Recognition Council.

**Amendment to Section 138—(Order setting tool allowance)**

*Clause 30* amends section 138(3)(b)(i) and is a consequence of the change of name of the State Training Council to the Training Recognition Council.

**Amendment to Section 138—(Order setting tool allowance)**

*Clause 31* amends section 138(7) by changing a cross-reference as a consequence of new sections 138(5) to (8).

**Amendment to Section 138—(Order setting tool allowance)**

*Clause 32* renumbers sections 138(5) to (7) to allow for the inclusion of four new sub-sections.

**Amendment to Section 138—(Order setting tool allowance)**

*Clause 33* introduces new sections 138(5) to (8) that provides that an offence under section 138(4) is a continuing offence. This ensures that an apprentice's tool allowance is recoverable after the apprentice completes or cancels the training program.

**Insertion of new Section 138A—(Termination of employment during probationary period) and new Section 138B—(Wages payable to former apprentices or trainees)**

*Clause 34* introduces two new sections 138A and 138B.

Section 138A transfers the provisions relating to the termination of employment of apprentices and trainees during the probationary period from the *Vocational Education, Training and Employment Act 1991* to the *Industrial Relations Act 1999*.

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Definitions of the terms “1 week’s wages” and “probationary period” are provided for use in this section.

Section 138B provides for the wages that are to be payable to an employee who has been engaged as an apprentice or trainee. This section applies where the employee continued employment beyond the end of the probationary period for the apprenticeship or traineeship and the employer either subsequently dismissed the employee or the training contract was not signed by the employer.

After the end of the probationary period, the employee is entitled to receive at least the wages payable for an apprentice or trainee under the relevant industrial instrument, despite the fact that they are no longer an apprentice or trainee.

However, if it can be established that the employee performed the type of work of another classification, which attracted a higher rate under the relevant industrial instrument, such as a labourer, the employee would be entitled to the higher rate applicable to that classification.

**Amendment to Section 139—(Termination of employment before apprenticeship or traineeship cancelled or completed)**

*Clause 35* amends reference in section 139(2) to the repealed *Vocational Education, Training and Employment Act 1991* to the new *Training and Employment Act 2000*.

**Amendment to Section 140—(Orders for wages and employment conditions)**

*Clause 36* amends section 140(3)(b)(i) and is a consequence of the change of name of the State Training Council to the Training Recognition Council.

**Amendment to Section 140—(Orders for wages and employment conditions)**

*Clause 37* deletes section 140(4). The definition of labour market program will now be included in the Dictionary and the term will be defined for the whole Act.

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**Insertion of new Part 7—(Vocational Placement)**

*Clause 38* transfers the provisions relating to the setting of remuneration and conditions by the commission for students under vocational placement of more than 240 hours from the repealed *Vocational Education and Training (Industry Placement) Act 1992* to the *Industrial Relations Act 1999*.

A definition of “vocational placement scheme” is provided for use in this section.

**Amendment to Section 275 - (Power to declare persons to be employees)**

*Clause 39* amends section 275(3) by substituting “full bench” for “commission”.

**Amendment to Section 276—(Power to amend or void contracts)**

*Clause 40* amends section 276(6) to limit the exclusion from section 276 to persons whose annual wage is greater than \$68,000 or a greater amount prescribed by a regulation, and who are not public service officers employed on tenure under the *Public Service Act 1996*.

**Amendment to Section 278—(Power to recover unpaid wages and superannuation contribution etc)**

*Clause 41* provides that the commission has power to make an order for the recovery of remuneration for vocational placement students where a person contravenes an order made under new section 140A.

**Amendment to Section 278—(Power to recover unpaid wages and superannuation contribution etc)**

*Clause 42* provides definitions of the terms “employer” and “employee” for use in this section. In this section, in addition to those persons defined as an employee by section 5, an employee includes a student to whom a vocational placement order made under section 140A applies. An employer in addition to those persons defined as an employer by section 6, includes

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an employer to whom a vocational placement order made under section 140A applies.

**Amendment to Section 307—(Role of dual commissioner)**

*Clause 43* amends section 307 so that the wording is consistent with the corresponding section of the Commonwealth *Workplace Relations Act 1996*.

**Amendment to Section 350—(Appointment of inspectors)**

*Clause 44* amends section 350 (3)(a)(ii) to make it consistent with the *Training and Employment Act 2000*.

**Amendment to Section 354—(General powers after entering workplace)**

*Clause 45* corrects two cross-references to subsection (2)(d) in sub-sections 354(4) and (5).

**Amendment to Section 366 (Time and wages records—industrial instrument employees)**

*Clause 46* amends section 366 to require that time and wages records be kept at a workplace of the employer in Queensland.

**Amendment to Section 366 (Time and wages records—industrial instrument employees)**

*Clause 47* inserts a new definition of employer for use in section 366. In addition to those persons defined as an employer by section 6, an employer also includes an employer to whom a vocational placement order made under section 140A applies

The definition of “industrial instrument employee” is amended for the purposes of section 366 to also include a student to whom an order concerning vocational placement applies.

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**Amendment to 367—(Time and wages records—non-industrial instrument employees)**

*Clause 48* amends section 367 to require that time and wages records be kept at a workplace of the employer in Queensland.

**Amendment to Section 370—(Notation of wages details)**

*Clause 49* makes a correction to section 370(2) by including further matters that must be included in a written statement provided to the employee with their wages. The *Workplace Relations Act 1997* required these particulars to be noted in the statement.

**Amendment to Section 372—(Right of entry—authorised industrial officer)**

*Clause 50* amends section 372 (1) by clarifying that an authorised industrial officer's right of entry under section 372 is to a workplace at which the employer carries on a calling for which the officer's organisation is registered.

**Amendment to Section 373—(Right to inspect and request information—authorised industrial officer)**

*Clause 51* inserts a new section 373(3A). This sub-section gives a right to an authorised industrial officer to copy time and wages records that they have a right to inspect and is continued from the *Workplace Relations Act 1997*.

**Amendment to Section 376—(Definitions for pt 2)**

*Clause 52* extends the definition of "fixed rate" to include wages payable under section 136. This amendment is necessary to ensure recovery arrangements for amounts payable to apprentices and trainees subject to section 136 are in place.

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**Amendment to Section 391—(Wages etc to be paid without deduction)**

*Clause 53* amends section 391(2)(a) by deleting the term “training agreement” and replacing it with the current term “training contract”.

**Amendment to Section 391—(Wages etc to be paid without deduction)**

*Clause 54* amends section 391(2)(b) by deleting the terms State Training Council and the *Vocational Education, Training and Employment Act 1991* and replacing them with current terms.

**Amendment to Section 392—(Paying apprentices or trainees for course time)**

*Clause 55* deletes reference to “approved course of instruction or qualification” and replaces it with the term “supervised training”. The previous operation of the section is not altered.

The term “Supervised training” is defined for the purpose of this section.

**Amendment to Section 399—(Recovery of unpaid wages etc)**

*Clause 56* amends section 399(1) by providing that an application may be made to a magistrate for remuneration unpaid because a person did not comply with an order made under new section 140A.

**Amendment to Section 399—(Recovery of unpaid wages etc)**

*Clause 57* provides definitions of the terms “employee” and “employer” for use in this section.

In this section, in addition to those persons defined as an employee by section 5, an employee includes a student to whom a vocational placement order made under section 140A applies. An employer in addition to those persons defined as an employer by section 6, includes an employer to whom a vocational placement order made under section 140A applies.

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**Amendment to Section 400—(Enforcement of Magistrate’s orders)**

*Clause 58* amends section 400(1)(b) by changing a cross-reference as a consequence of new sections 138(5) to (8).

**Amendment to Section 400—(Enforcement of Magistrate’s orders)**

*Clause 59* amends clause 400(1)(d) and provides that the section also applies to remuneration lost by an apprentice or trainee because the employer has contravened section 391(2) and section 140A(1).

**Amendment to Section 400—(Enforcement of Magistrate’s orders)**

*Clause 60* provides a definition of the term employer for use in this section. In addition to those persons defined as an employer by section 6, an employer includes an employer to whom a vocational placement order made under section 140A applies.

**Amendment to Section 409—(Definitions for chapter 12)**

*Clause 61* deletes from section 409 the definitions of “employee organisation” and “employer organisation”. Section 409 provides definitions for use in Chapter 12 only. *Clause 80* will incorporate these definitions in Schedule 5 (Dictionary) and will apply to the whole Act.

**Amendment to Section 420—(Additional criteria for registration as employee organisation)**

*Clause 62* deletes section 420(1)(b)(iii) so that an applicant for registration as an organisation may no longer give a demarcation dispute undertaking (as defined in section 409) as an alternative to showing there is no organisation to which the applicant’s members might belong or to which they could conveniently belong that would effectively represent them in a way consistent with the objects of the Act.

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**Amendment to Section 445—(Required contents—ballots)**

*Clause 63* amends section 445(c) to provide that an organisation's rules must state that a person is eligible to vote in a ballot only if they were a financial member of the organisation on a stated day that is between 60 and 30 days before the opening of nominations.

**Amendment to Section 458—(Model rules apply if election rules do not comply with pt 4)**

*Clause 64* extends the period in which an organisation's rules must comply with chapter 12, part 4 before the model election rules will be deemed to be the organisation's rules, from 1 year after the commencement of the *Industrial Relations Act 1999* to 2 years.

**Amendment to Section 474—(Approval for eligibility rule amendment)**

*Clause 65* deletes section 474(2) to remove the exception to the requirement that there is no other organisation to which the applicant's members could conveniently belong that would effectively represent them in a way consistent with the objects of the Act.

**Amendment to Section 666—(Non-payment of wages)**

*Clause 66* amends section 666(1) to provide that it is an offence not to pay the entitlements bestowed by section 136.

**Amendment to Section 666—(Non-payment of wages)**

*Clause 67* inserts two new definitions for use in section 666.

In addition to those persons defined as an "employee" by section 5, an employee includes a student to whom a vocational placement order made under section 140A applies. In addition to the definition of wages contained in the Dictionary, wages also includes remuneration payable to an apprentice or trainee under section 391(2) and remuneration payable under an order made under section 140A.



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**Amendment to Section 673, heading—(Executive officers must ensure corporation complies with ss 368, 406 and 666)**

*Clause 68* amends the heading of section 673 to extend the operation of this section to offences against section 138.

**Amendment to Section 673—(Executive officers must ensure corporation complies with ss 368, 406 and 666)**

*Clause 69* amends section 673(1) and extends the operation of this section to offences against section 138.

**Amendment to Section 683—(Offence proceedings generally)**

*Clause 70* amends section 683(7) and extends the operation of this section to offences against section 138.

**Amendment to Section 686—(Application of Act to State)**

*Clause 71* deletes references to sections 13(2)(b) and 46(2) and replaces them with the correct references to sections 13(2)(a) and 46(1).

**Amendment to Section 695—(Student's work permit)**

*Clause 72* amends section 695(4) by requiring the Registrar to provide prompt notification of the receipt of an application for a student's work permit.

**Amendment to Section 696—(Aged or infirm persons permits)**

*Clause 73* amends section 696(4) by requiring the registrar to provide prompt notification of the receipt of an application and the time when the application is to be heard. The commission is obliged to hear any objection to the application promptly.

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**Amendment to Section 696—(Aged or infirm persons permits)**

*Clause 74* amends section 696(6) to make it clear that the organisation that may apply to cancel a permit is the same organisation as that mentioned in sub-section (4).

**Amendment to Section 709—(Regulation- making power)**

*Clause 75* renumbers section 709 (2)(g) and (h) to allow for the insertion of new section (g).

**Amendment to Section 709—(Regulation -making power)**

*Clause 76* amends section 709(2)(f) to provide that a regulation may be made to regulate the conduct of persons, other than lawyers, who act for parties in an industrial cause. A new section 709(g) is inserted to allow for the making of a regulation to regulate the conduct of persons, other than lawyers, who appear in proceedings in the court or before the commission or registrar.

**Amendment to Section 711—(Regulation and rules to continue)**

*Clause 77* extends the operation of the Regulation and Rules made under the *Workplace Relations Act 1997* and the *Industrial Organisations Act 1997* to 31 December 2000.

**Amendment to Schedule 2, section 2—(Benefits—Judges (Pensions and Long Leave) Act)**

*Clause 78* inserts a new provision into section 2 of schedule 2 to provide a basis on which to calculate the pension of a chief commissioner who retired before 2 August 1999. This results from removing the position of chief commissioner from the structure of the commission. The pension of a retired chief commissioner is to be calculated on the basis of the salary of the Vice-President.

**Amendment to Schedule 5—(Dictionary)**

*Clause 79* deletes terms from schedule 5 (Dictionary).

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**Amendment to Schedule 5—(Dictionary)**

*Clause 80* inserts new definitions into schedule 5 (Dictionary).

The terms “apprentice”, “apprenticeship”, “approving authority”, “group training organisation”, “host employer”, “trainee”, “traineeship”, “training contract”, “Training Recognition Council” reflect the definitions of the terms in the *Training and Employment Act 2000*.

Definitions of the terms “employee organisation”, “employer organisation” and “labour market program” are moved to the Dictionary. The definitions remain unchanged.

The definition of “ordinary rate” is amended to clarify that it only applies to those employees who are employed under an industrial instrument.

A new definition of “school-based apprentice or trainee” is included.

**Amendment to Schedule 5—(Dictionary)**

*Clause 81* amends the definition of “young employee” by changing reference to the *Vocational Education, Employment and Training Act 1991* to the *Training and Employment Act 2000*.

**SCHEDULE 2****CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

Consequential amendments are made to the Acts listed below to reflect the objectives of this legislation and to standardise certain terms common to those Acts and this Bill. Major amendments to the Acts are outlined under each Act’s title in the following pages:

- *Agricultural Colleges Act 1994*
- *Anti-Discrimination Act 1991*
- *Charitable and Non-Profit Gaming Act 1999*

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- *Community Services (Aborigines) Act 1984*
- *Community Services (Torres Strait) Act 1984*
- *Criminal Code 1899*
- *Criminal Law (Rehabilitation of Offenders) Act 1986*
- *Dental Technicians and Dental Prosthetists Act 1991*
- *Education (Senior Secondary School Studies) Act 1988*
- *Education (School Curriculum P-10) Act 1996*
- *Education (Teacher Registration) Act 1988*
- *Education (Tertiary Entrance Procedures Authority) Act 1990*
- *Education (Work Experience) Act 1996*
- *Public Sector Ethics Act 1994*
- *Sewerage and Water Supply Act 1949*
- *Whistleblowers Protection Act 1994*
- *WorkCover Queensland Act 1996*
- *Workers' Accommodation Act 1952*
- *Workplace Health and Safety Act 1995*

**AGRICULTURAL COLLEGES ACT 1994**

*Clause 1* omits definitions that are no longer relevant.

*Clause 2* inserts new definitions for agricultural college, registered training organisation and TAFE institute that are consistent with the *Training and Employment Act 2000*.

*Clause 3* ensures consistency with the *Training and Employment Act 2000* in referring to the name of the legislation.

*Clause 4* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to a “State college” with “a registered training organisation operated by the State”.

*Clause 5* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to a “State college” with “registered training organisation”.

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*Clause 6* omits a section that is no longer relevant under the *Training and Employment Act 2000*.

*Clause 7* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to a “State college” with “TAFE institute”.

*Clause 8* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to a “State college” with “TAFE institute or agricultural college”.

*Clause 9* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to the Vocational Education, Training and Employment Corporation with State.

*Clause 10* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to the Vocational Education, Training and Employment Corporation with State.

***ANTI-DISCRIMINATION ACT 1991***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in the reference to vocational placement in the definition of “work”.

***CHARITABLE AND NON-PROFIT GAMING ACT 1999***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in the reference to a TAFE institute.

***COMMUNITY SERVICES (ABORIGINES) ACT 1984***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in the reference to the apprenticeship or a traineeship contract.

***COMMUNITY SERVICES (TORRES STRAIT) ACT 1984***

The clause ensures consistency with *Training and Employment Act 2000* in the reference to the apprenticeship or traineeship contract.

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**CRIMINAL CODE**

*Clause 1* omits sections that refer to apprentices and are no longer necessary or relevant.

**CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986**

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in referring to the name of the legislation.

*Clause 2* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to a “State college” and the previous legislation with “TAFE institute under the *Training and Employment Act 2000*”.

**DENTAL TECHNICIANS AND DENTAL PROSTHETISTS ACT 1991**

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in referring to the name of the legislation.

**EDUCATION (SCHOOL CURRICULUM P-10) ACT 1996**

*Clause 1* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to the “Vocational Education, Training and Employment Commission” with the “Training and Employment Board under the *Training and Employment Act 2000*”.

*Clause 2* ensures consistency with the *Training and Employment Act 2000* in the reference to the legislation's name in the definition of “Vocational Education Minister”.

**EDUCATION (SENIOR SECONDARY SCHOOL STUDIES) ACT 1988**

*Clause 1* omits a definition of “State college” that is no longer relevant.

*Clause 2* inserts a definition of agricultural college consistent with the *Agricultural Colleges Act 1994* and TAFE institute consistent with the *Training and Employment Act 2000*.

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*Clause 3* ensures consistency with the *Training and Employment Act 2000* in the definition of “higher education” by replacing “State college” with “registered training organisations”.

*Clause 4* ensures consistency with the *Training and Employment Act 2000*, in the definition of “recorded subject” by replacing “State college” with “agricultural college, TAFE institute”.

*Clause 5* updates the title of the *Training and Employment Act 2000* in the definition of “vocational education” and “Vocational Education Minister”.

*Clause 6* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to the “Vocational Education, Training and Employment Commission” with the “Training and Employment Board established under the *Training and Employment Act 2000*”.

*Clause 7* ensures consistency with the *Training and Employment Act 2000* in referring to the title of the legislation.

***EDUCATION (TEACHER REGISTRATION) ACT 1988***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* by replacing “technical and further education colleges” with “registered training organisations”.

***EDUCATION (TERTIARY ENTRANCE PROCEDURES AUTHORITY) ACT 1990***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in referring to the title of the legislation.

*Clause 2* ensures consistency with the *Training and Employment Act 2000* by replacing “technical and further education” with “vocational education”.

***EDUCATION (WORK EXPERIENCE) ACT 1996***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in referring to a TAFE institute or training organisation registered under the *Training and Employment Act 2000*.

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*Clause 2* ensures consistency with the *Training and Employment Act 2000* in the reference to restricted callings.

***PUBLIC SECTOR ETHICS ACT 1994***

*Clause 1* omits a definition of “State college” that is no longer relevant.

*Clause 2* ensures consistency with the *Training and Employment Act 2000* by introducing a definition “TAFE institute”.

*Clause 3* ensures consistency with the *Training and Employment Act 2000* by replacing a reference to a “State college” with “TAFE institute”.

***SEWERAGE AND WATER SUPPLY ACT 1949***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* in the reference to the legislation.

***WHISTLEBLOWERS PROTECTION ACT 1994***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* by replacing “State college” with “TAFE institute”.

*Clause 2* omits the definition of “State college” as it is no longer relevant.

*Clause 3* inserts a definition of “TAFE institute” that is consistent with the *Training and Employment Act 2000*.

***WORKCOVER QUEENSLAND ACT 1996***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* by referring to a registered training organisation attended by a vocational placement student.

*Clause 2* ensures consistency with the *Training and Employment Act 2000* by replacing “industry placement” with “vocational placement”.

*Clause 3* omits definitions of “college” and “industry placement student”.

*Clause 4* inserts definitions for “registered training organisation” and “vocational placement” consistent with the *Training and Employment Act 2000*.



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*Clause 5* ensures consistency with the *Training and Employment Act 2000* by replacing “group training scheme” with “group training organisation”.

*Clause 6* ensures consistency with the *Training and Employment Act 2000* by replacing “group training scheme” with “group training organisation”.

*Clause 7* ensures consistency with the *Training and Employment Act 2000* by in referring to an apprenticeship contract or traineeship contract in the definition of “contract of service”.

*Clause 8* ensures consistency with the *Training and Employment Act 2000* by replacing the definition of a “group training scheme” with a definition of a “group training organisation”.

***WORKERS’ ACCOMMODATION ACT 1952***

*Clause 1* is a minor machinery amendment to update the heading of Section 4 to “Definitions”.

*Clause 2* ensures consistency with the *Training and Employment Act 2000* in referring to an apprenticeship contract or traineeship contract in the definition of “worker”.

***WORKPLACE HEALTH AND SAFETY ACT 1995***

*Clause 1* ensures consistency with the *Training and Employment Act 2000* by replacing “group training scheme” with “group training organisation”.

*Clause 2* deletes the definitions of “group training scheme”, “apprentice” and “trainee”.

*Clause 3* inserts new definitions for group training organisation, apprentice and trainee that are consistent with the *Training and Employment Act 2000*.

*Clause 4* ensures consistency with the *Training and Employment Act 2000* by replacing “group training scheme” with “group training organisation”.

**SCHEDULE 3****DICTIONARY**

This Schedule introduces a Dictionary of definitions as referred to in *Chapter 1* of the Bill. This Dictionary defines terms for the purposes of the Bill. Terms already defined and 'signposted' in the body of the Bill are repeated and cross-referenced in the Dictionary.