

TRAINING REFORM BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Short title

Training Reform Bill 2003.

Policy objectives

Education and Training Reforms for the Future

In 2002, the Education and Training Reforms for the Future were announced. The *Training Reform Bill 2003* provides for a vocational education and training system that complements these reforms and supports young people through the compulsory participation phase.

The objective of these reforms is to retain young people in education, vocational education or training, or employment in order to equip them with the necessary skills for success in life.

National consistency in the vocational education and training system

In 2002, the Australian National Training Authority Ministerial Council (ANTA MINCO) agreed to make regulatory arrangements to ensure national consistency in the registration of training organisations and the accreditation of courses in vocational education and training. The *Training Reform Bill 2003* gives effect to this decision and seeks to improve the consistency across the vocational education and training jurisdictions.

Miscellaneous amendments

In 2001, a review of the *Training and Employment Act 2000* was undertaken and identified operational anomalies requiring legislative change. This legislation will rectify these operational anomalies.

Title of the Act

The legislation is being renamed the *Vocational Education and Training Act 2000* to emphasise the importance of vocational education in the training system.

Reasons for the policy objectives

Education and Training Reforms for the Future

The *Training Reform Bill 2003* complements the reforms outlined in the *Youth Participation in Education and Training Bill 2003*. These reforms seek to increase the retention of young people in education or training until they achieve certain milestones or turn 17 years old. The reason for these reforms is to provide young people with a better opportunity for succeeding in life.

The Bill provides more integrated pathways for young people participating in the compulsory participation phase and seamless transitions between the education, employment and vocational education and training systems.

National consistency in the vocational education and training system

Legislative change is necessary to give effect to the decision made by the ANTA MINCO to bring about greater consistency across Australia's vocational education and training system. The Bill provides for a more integrated system which encourages and supports registered training organisations to deliver vocational education and training and accredit courses in various jurisdictions.

Miscellaneous amendments

The amendments to the *Industrial Relations Act 1999* will preserve the entitlements of existing workers who undertake an apprenticeship or traineeship.

Title of the Act

Vocational education and training is a specific type of training and its significance is reflected in the new title of the legislation – the *Vocational Education and Training Act 2000*.

How the policy objectives will be achieved

Education and Training Reforms for the Future

The legislative framework outlined in the Bill will bring about greater collaboration between the Department of Education, the Department of Employment and Training and other learning providers to ensure the vocational education and training system is accessible by young people.

Specifically, the Bill will amend the *Training and Employment Act 2000* and complement the provisions of the *Youth Participation in Education and Training Bill 2003*. The Bill will provide for participation in vocational education and training, employment and employment skills development programs as options a young person may undertake when completing their compulsory participation phase.

The Bill will amend the objectives of the Act to incorporate a community commitment to young people through the building of partnerships at the local level, and the intent of the Ministerial Declaration “Stepping Forward: improving pathways for all young people”. Local communities will play a key role in promoting the options available to young people during the compulsory participation phase and ensuring the accessibility of these options.

National consistency in vocational education and training system

The Bill amends Chapter 2 of the *Training and Employment Act 2000* to incorporate the model clauses as agreed to by ANTA MINCO for the registration of training organisations and the accreditation of courses. The incorporation of these clauses will bring about greater consistency across the vocational education and training jurisdictions as other jurisdictions also make similar legislative changes.

Miscellaneous amendments

The *Industrial Relations Act 1999* will be amended to preserve the rights of existing workers who undertake an apprenticeship or traineeship.

Title of the Act

The Bill provides for the *Training and Employment Act 2000* to be renamed the *Vocational Education and Training Act 2000*.

Estimated administrative cost to government for implementation

All costs associated with implementing the new legislation will be met within existing budget resources.

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*.

Consultation

Extensive consultation has taken place with stakeholders in the vocational education and training system and the schooling system. Specifically, stakeholders included registered training organisations, state schools, non-state schools, unions, employer associations, industry training advisory bodies, group training organisations and community organisations.

Consultations were conducted face to face and stakeholders were supportive of the *Training Reform Bill 2003* and the policy objectives it seeks to implement.

Following these consultations, the *Training Reform Bill 2003* was drafted.

NOTES ON PROVISIONS**PART 1—PRELIMINARY****Short title**

Clause 1 states the short title of the Bill is the *Training Reform Act 2003*.

Commencement

Clause 2 provides for the Act to commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF TRAINING AND EMPLOYMENT ACT 2000**Act amended in Part 2**

Clause 3 provides that the Bill will amend the *Training and Employment Act 2000*.

Replacement of title

Clause 4 amends the title of the Act to describe that it is an Act to provide for vocational education, training and employment.

Replacement of short title

Clause 5 provides for the short title to be amended to reflect the change in name from the *Training and Employment Act 2000* to the *Vocational Education Training and Employment Act 2000*. This name change reflects the significance of vocational education in the training system.

Amendment of s3 (objectives)

Clause 6 provides for the objectives to include the furthering of the commitment by the States, Territories and Commonwealth to work with industry to increase participation in an improved, integrated, national vocational education and training system.

The clause also provides for the objectives to include a whole of community commitment to young people and to implement initiatives consistent with the ministerial declaration “Stepping Forward: improving pathways for all young people”.

The community commitment to young people will involve:

- improved planning and coordination between schools, vocational education and training providers and community agencies to improve services;
- better use of local expertise and innovation, building on existing networks and generating solutions to cater for all young people in local areas;
- working with local employers and authorities to generate new solutions, including the provision of career advice.

The ministerial declaration involves a commitment to developing practical ways to increase the social, educational and employment outcomes for all young people including those who are at risk, disconnected or in vulnerable circumstances. The declaration will also form an attachment to the Act.

Amendment of s7 (what is an apprenticeship)

Clause 7 provides that the definition of “apprenticeship” includes a school based apprenticeship which may be undertaken by a young person participating in the compulsory participation phase as defined in the Youth Participation in Education and Training Bill 2003.

Amendment of s8 (what is a traineeship)

Clause 8 provides that the definition of “traineeship” includes a school based traineeship which may be undertaken by a young person participating in the compulsory participation phase as defined in the Youth Participation in Education and Training Bill 2003.

Replacement of ch 2 (Training organisations)

Clause 9 provides for the replacement of Chapter 2 and inserts:

CHAPTER 2—TRAINING ORGANISATIONS

Application

Section 18 states that chapter 2 only applies to the provision of training or assessment leading to qualifications or statements of attainment that relate to vocational education and training.

Definitions for ch 2

Section 19 introduces the definitions referred to in Chapter 2 of the Bill. The terms that are defined in this section are cross-referenced in the Dictionary at Schedule 3.

PART 2—NATIONAL REGISTRATION

National register and national effect of registration

Section 20 establishes that the national register is the National Training Information Service. The section also establishes that the national register consists of anything:

- registered by the Council; and
- registered under a corresponding law in another State or Territory; and
- registered under a corresponding law or regulation by ANTA or another entity.

National effect is achieved by all States and Territories enacting the provision which will then ensure that anything recorded on the national register is recognised in all States and Territories.

PART 3—REGISTERED TRAINING ORGANISATION

Offence to falsely claim to be a registered training organisation

Section 21 creates the following offences:

- a person who is not a registered training organisation must not claim to be a registered training organisation. A person ‘claims’ to be a registered training organisation if:
- the person makes the claim; or
- purports to be registered or to be able to do a particular thing authorised by registration; or
- does any act likely to induce another person to believe that it is a registered training organisation or that it is able to do a particular thing authorised by registration.
- a person who is not, or not acting for a registered training organisation must not issue or claim to be able to issue qualifications or statements of attainment defined under the AQF;
- a person or person not acting for a registered training organisation must not claim to be able to provide training or assessments resulting in a qualification or statement of attainment defined under the AQF; and
- a person must not claim that another person is able to provide training that will result in a qualification or statement of attainment knowing that that person is not registered and cannot issue the qualification or statement of attainment defined under the AQF.

The intention of this section is to stop a training organisation from falsely claiming that it is registered or that it can carry out the functions (including the issuing of qualifications or statements 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 section.

Division 2—Registration activities in this jurisdiction**Registration and Scope of Registration**

Section 22 provides for two categories of registration:

- to provide training and assessments resulting in the issue of qualifications or statements of attainment; or
- to provide assessments, not training, that result in the issuance of qualifications or statement of attainment.

A training organisation may apply for one of these categories of registration.

This section also defines “Scope of Registration” to be:

- the training and/or assessment services the training organisation is registered to provide; and
- the qualifications, statement of attainment or units of competency for which the training organisation is registered to provide training or assessments.

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

Applying in this jurisdiction for registration

Section 23 provides that a person may apply to the Council for registration as a training organisation. The application must be on the approved form and be accompanied by prescribed fee. The applicant must also provide the Council with any information it needs when considering the application.

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 and assessments resulting in the issue of qualifications or statements of attainment defined under the AQF; or

- assessments resulting in the issue of qualifications or statements of attainment defined under the AQF.

Decision about registration

Section 24 provides that the council may approve an application for registration or refuse to approve it.

While the council may refuse registration on any reasonable grounds, it must not grant the application if:

- the applicant is already registered as a training organisation in another State or Territory by any registering body;
- the principal place of business or most or all of the training organisation's operations will not be in the jurisdiction where the application for registration is made;
- it considers that the applicant does not comply with the *Standards for Registered Training Organisations*.

When conducting a compliance audit, the council must have regard to the audit requirements stated in the *Standards for State and Territory Registering/Course Accrediting Bodies*, and it must apply the *Standards for Registered Training Organisations*. The council has to audit for compliance with *Standards for Registered Training Organisations* but this does not include auditing for compliance with all other Commonwealth and State or Territory legislation (e.g. workplace health and safety legislation) as these require specialist knowledge which the auditor may not possess. However, training organisations will still need to comply with these statutes and regulatory regimes to be registered and maintain their registration.

The council will not be required to consider the applicant's compliance with the *standards for registered training organisations* when the following conditions are met:

- the training organisation is already registered in another jurisdiction; and
- the training organisation has received notice from the registering body that registered it that the registering body is seeking to cancel the registration, as its principal place of business or most of its operations are no longer in the registering body's jurisdiction; and
- the training organisation is not seeking to change its scope of registration.

When registering a training organisation, the council may impose reasonable conditions on the registration which will be effective for the term of the registration. These conditions will apply nationally. If the council decides to impose a condition it must notify the training organisation.

Where the council decides to grant the application it must immediately register the training organisation on the national register, including the training organisation's details such as its scope of registration and any additional conditions imposed on it.

Where the council decides to grant registration, it must immediately issue a certificate of registration to the organisation. The certificate of registration must include any conditions on the registration that the council has imposed.

Where the application is from a training organisation seeking to change its jurisdiction of registration (see section 33), the training organisation and scope of registration must be registered on the national register immediately after the existing registration has been cancelled under section 36.

If the council decides not to grant the application, it must advise the training organisation by an information notice that states the reasons for the decision and where the appeal against the decision lies.

Suitability of registration

Section 25 provides an additional ground the council may consider when deciding an application for registration of a training organisation. Without limiting the grounds on which the council may decide not to grant the application in section 24(5), the council may have regard to the organisation's suitability for registration.

In deciding a training organisation's suitability for registration, the council may consider the prior conduct of the training organisation or an associate of the organisation, whether in this State or elsewhere.

The council may also consider additional matters pertaining to the suitability of the applicant as a registered training organisation.

A person would be considered an 'associate' in circumstances where the person:

- is a partner; or

- the person and the associate are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- the person or the associate is a body corporate and the other is a member of the board or committee of management of the body corporate; or
- the person or the associate is a body corporate and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate; or
- a chain of relationships can be traced between the person and the associate under any one or more of the preceding scenarios.

The suitability requirement supports the maintenance of the integrity of the vocational education and training system and safeguards users of the system, particularly students and industry.

Registration conditions

Section 26 provides that the registration of a training organisation is subject to conditions. These conditions, which apply throughout the period of registration and in every jurisdiction (unless they are specifically stated not to apply in a certain jurisdiction), are:

- the training organisation must comply with the requirements under the *Standards for Registered Training Organisations*;
- the training organisation must immediately notify the council if there is any substantial change to their control, management or operation;
- the training organisation must immediately notify the council of anything it is required to give notification of under the *Standards for Registered Training Organisations*;
- the training organisation must submit to any compliance audit required by the council;
- where a compliance audit has found that the training organisation does not comply with the *Standards for Registered Training Organisations* or any additional conditions imposed by council, the training organisation must take all necessary steps to rectify the non-compliance, within the time frame required by the council;

- the training organisation must submit to a compliance audit conducted by a registering body of another State or Territory;
- the training organisation must not contravene a provision of this Act or a similar law of another State or Territory;
- the training organisation must give the council any reasonable information required by it under section 32 (Amending, suspending or cancelling registration without application on particular grounds); and
- the training organisation must give the registering body in another jurisdiction any reasonable information it requires about a condition imposed by that registering body because the training organisation has contravened a condition of its registration in that jurisdiction.

Registration conditions imposed by the council or another registering body on the training organisation apply to it in every State and Territory unless the contrary intention is detailed on the national register.

A training organisation must not contravene a condition of its registration. Where contravention is discovered, the council may impose a sanction of amending scope of registration, imposing a condition, suspending or cancelling registration (under section 32).

Condition – continued suitability for registration

Section 27 provides that the council may impose further conditions, in addition to those detailed in section 26, requiring training organisations to remain suitable for registration.

In deciding suitability of registration, the council may apply section 25 – Suitability for registration.

Term of registration

Section 28 establishes the term of registration to be up to 5 years. A training organisation must apply for renewal of its registration at least three months before the term of registration expires.

Amending registration on application by registered training organisation

Section 29 allows the council to amend the registration of a training organisation if the training organisation applies for the amendment.

If the application is for an amendment to scope of registration, the application must be on the appropriate form and accompanied by the prescribed fee. The training organisation must provide the council with any reasonable information it requires to decide the application.

The council may approve an application for amendment to registration or refuse to approve it. While the council may refuse to grant an amendment to registration on any reasonable grounds, it must not grant the application if after the scope has been amended, the main place of business or most or all of the training organisation's operations will not be in the jurisdiction where the application for registration is made.

The council must not grant the application for amendment unless it considers that the applicant complies with the national standards (other than the legislative compliance standard) and this Act insofar as the proposed amendment.

The council will not be required to consider the applicant's compliance with the *standards for registered training organisations* when the following conditions are met:

- the training organisation is already registered in another jurisdiction; and
- the training organisation has received notice from the registering body that registered it that the registering body is seeking to cancel the registration, as its principal place of business or most of its operations are no longer in the registering body's jurisdiction.

When deciding on an amendment to a training organisation's scope of registration, the council may impose reasonable conditions on the registration which will be effective for the term of the registration. These conditions will apply nationally. If the council decides to impose a condition it must notify the training organisation.

Where the council decides to grant the application it must immediately amend the training organisation's details on the national register, including any additional conditions imposed on it, and advise the training organisation of the decision.

If the council decides not to grant the application, it must advise the training organisation by an information notice that states the reasons for the decision and where the appeal against the decision lies.

Removal of registered details on registration expiry or on application

Section 30 provides that the council must remove the details from the national register when a training organisation's registration has expired or been cancelled upon the request of the training organisation.

Procedure for amending, suspending or cancelling registration

Section 31 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.

An amendment to a training organisation's registration must be the same as that proposed in the 'show cause' notice, unless the training organisation consents to a new amendment.

A suspension of a training organisation's registration must not be for more than the proposed maximum suspension period proposed in the 'show cause' notice, unless the training organisation consents to a longer period.

A decision to amend, suspend or cancel a registration takes effect on the day the information notice is given to the training organisation, or if a later day is stated in the information, the later day.

However, if the decision is to amend, suspend or cancel the registration because the training organisation has been convicted of an offence under section 27, 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.

Amending, suspending or cancelling registration without application on particular grounds

Section 32 allows the council to amend, suspend or cancel the registration of a training organisation if it is found that the:

- registration or part of the scope of registration was obtained because of false or misleading information (for example, the organization claimed to have training premises in Queensland when it did not); or
- training organisation has contravened a condition of its registration.
- Where one or more of these situations are found, the council may:
- amend the scope of registration or registration conditions of the training organisation that was registered by another registering body , but only to impose a restriction which would only apply in Queensland; or
- amend the scope of registration, or registration conditions of a training organisation that it registered, including imposing a restriction that would apply in Queensland as well as all other States and Territories;
- suspend the registration or part of the scope of registration of the training organisation that it registered by imposing a prohibition applying in Queensland or another State or Territory; or
- cancel the registration of the training organisation that was registered by it.

The council has primary responsibility for those training organisations that are registered by it. The council may not impose a restriction on a training organisation, registered by another registering body, unless the registering body that registered the training organisation:

- fails to take any steps to deal with the matter within 30 days of being advised of the matter;
- advises the council that it does not propose taking any action to deal with the matter;

- after taking any step, fails to take another step within 30 days; or advises the council that it does not propose taking another step.

However, this time delay, does not stop the council from taking all steps necessary to impose a restriction immediately after the 30 day period has ended.

Restriction imposed by the council must be consistent with the registration of training organisations, the accreditation of courses under this chapter, and the *Standards for registered training organisations*.

Before cancelling the registration of a training organisation, the council must consult the registering bodies in any other jurisdiction where the training organisation operates, however, failure to do this does not affect a cancellation of the registration of a training organisation.

These sanctions apply nationally. Where the registration or part of a scope of registration is to be suspended in exceptional circumstances (e.g. risk of harm to a person), the council may direct a training organisation to stop conducting operations immediately.

Cancelling registration on change of business operations

Section 33 applies where a training organisation no longer has its principal place of business or no longer conducts all or most of its operation in Queensland. In these circumstances, the Council may cancel the training organisation's registration either on an application from the training organisation or on its own initiative.

Where the council decides to cancel the registration, it must follow the procedure prescribed under section 31 (Procedure for amending, suspending or cancelling registration).

Once the procedure required under section 31 has been followed, the training organisation must return the certificate of registration required by section 35 (Return of registration certificate).

If, before the end of the time to show cause under section 31, the training organisation makes a transfer application to another registering body for registration as a training organisation, the council must not cancel the registration of the training organisation until the transfer application is decided.

Effect of suspension of registration of training organisation

Section 34 applies where the council suspends the registration or part of the scope of registration of the training organisation that was registered by it because the registration was obtained by incorrect or misleading information or because the training organisation has contravened a condition of its registration.

If a suspension is imposed on a training organisation, the training organisation must not, for training or assessment provided or to be provided in operations the subject of the suspension, do anything for any of the following purposes:

- recruiting or enrolling anyone;
- soliciting or accepting any payment from anyone for their recruitment or enrolment, or
- starting anyone's training or assessment.

A penalty for non-compliance may apply.

However, if the training organisation had entered into an agreement to provide training or assessment to anyone before the suspension was imposed, it may continue to provide the training or assessment or accept payment for the provision of the training or assessment.

It is the intention of this section that where a part of the scope of registration of the training organisation has been suspended, the training organisation may continue training and assessment operations in the part of the scope that has not been suspended.

A penalty applies to a training organisation which has been directed to immediately stop operations under section 32(2) but continues to train or assess anyone. If the training organisation has entered into an agreement to provide training or assessment to anyone before the suspension was imposed, it cannot continue to provide the training or assessment.

Return of registration Certificate

Section 35 applies where the council decides to suspend or cancel the registration of a training organisation. In these cases, the training organisation must return the registration certificate to the 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 council suspends the registration, it must return the certificate to the training organisation promptly after the end of the suspension period.

Council to register amendment, suspension or cancellation

Section 36 provides that when the council decides to amend, suspend or cancel a training organisation's registration, it must register the details on the national register, for example, the:

- amended scope of registration or registration conditions of the training organisation; or
- suspended registration or part of the scope of registration of the training organisation; or
- in the case of a cancellation of the registration of the training organisation, remove the registered details from the national register.

The section also applies to the council that has, under section 32(2), cancelled the registration of a training organisation.

The section provides that the council must record the amendment or suspension on the national register. Where the registration of a training organisation has been cancelled, the council must remove the details of the training organisation from the national register.

Division 3—Audit Powers

Audit of training organisation registered by the council

Section 37 provides that the council may at any time conduct a compliance audit of the training organisation. This section applies to a training organisation registered by the council and any of the training organisation's operations.

A compliance audit is defined within chapter 2 and can mean either:

- an audit conducted by the council to establish whether the training organisation complies with the national standards, other than the legislative compliance standard, and the Act; or
- an audit conducted under a corresponding law, which is an audit conducted within the meaning of the corresponding law.

Audit of training organisation registered by another registering body

Section 38 applies to a training organisation registered by a registering body other than the council, and the training organisation's operations within Queensland.

The council may consider a compliance audit of the training organisation that was registered by another registering body if the Council:

- suspects on reasonable grounds that the training organisation may have contravened the national standards; and
- has advised the other registering body of the suspected contravention.

The council may conduct the audit if the registering body that registered the training organisation:

- fails, within 30 days of receiving the advice from council, to take steps to deal with the suspected contravention to the satisfaction of the council; or
- advises the council that it does not propose to take any step or further step to deal with the suspected contravention.

Conduct of audit

Section 39 requires that when conducting a compliance audit, the council must have regard to the *standards for State and Territory registering and course accrediting bodies*. The *standards for State and Territory registering and course accrediting bodies* apply nationally and are the standards that State and Territory registering and course accrediting bodies must have regard to for:

- evaluation of training organisations to ensure they meet, and continue to meet, the *Standards for Registered Training Organisations*;
- registration of training organisations;
- accreditation of courses; and
- mutual recognition, to ensure national effect.

However, a failure to have regard to the *standards for State and Territory registering and course accrediting bodies* is of no effect if:

- the failure does not substantially affect the outcome of the audit;
- or

- the failure arises out of inconsistency between the standards and legislation of the jurisdiction where the failure arises.

Powers not limited by compliance audit provisions

Section 40 provides that the provision for a compliance audit under this chapter does not limit the power of any registering body to inquire into the activities of a registered training organisation or other training organisation.

Other training organisations include training organisations not registered under this Bill.

Division 4—Other powers

Function or power may be used to support national scheme

Section 41 applies to a person who exercises a power or performs a function prescribed under this chapter in relation to:

- a registered training organisation; or
- an applicant for registration (under section 24).

The person may also exercise the same kind of function or exercise the same kind of power in this jurisdiction:

- at the request of the council – to make inquiries into whether a training organisation registered by another registering body is complying with this chapter or a corresponding law; or
- at the request of another registering body from another State or Territory – to conduct a compliance audit under a corresponding law on:
 - a training organisation registered by the other registering body; or
 - an applicant for registration by the other registering body under a corresponding law for section 24.

The extent of inquiring would include establishing whether the registered training organisation is complying with the Act or a corresponding law. This would include inquiring if the training organisation is complying with the *Standards for Registered Training*

Organisations as compliance with these standards is a condition of registration.

A compliance audit would be conducted on a training organisation for the purposes of either assisting a registering body from another State or Territory in determining an application for registration or in determining compliance with a condition of a training organisation on-going registration.

A person's powers and functions under this chapter are not limited by a request of the council or a request by another registering body from another State or Territory.

Information may be made available to other registering bodies

Section 42 allows the council to share with the registering bodies in other jurisdictions information about:

- applications for registration;
- a training organisation's registration;
- a compliance audit performed on a training organisation;
- action taken by the Council in relation to a registered training organisation;
- the performance of a function or exercise of power by a person at the request of another registering body.

The section also protects the person disclosing information under this section from contravening any obligations with regard to the disclosure of information imposed by another Act or rule of law.

Division 5—Other provisions

Issuing qualifications and statements of attainment

Section 43 provides that a registered training organisation must issue a qualification or statement of attainment to a person who has:

- undertaken an accredited course or vocational education and training that is under a AQF at the training organisation and has attained the skills and knowledge that entitle them to the qualification or statement of attainment; or

- been recognised by the registered training organisation as having the skills and knowledge that entitle them to the qualification or statement of attainment.

A penalty for non-compliance may apply.

The intent of this section 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 recognised by the registered training organisation as having all the skills and knowledge for a qualification or statement of attainment.

The section also requires that the registered training organisation must issue the qualification or statement of attainment within 21 days. However, this requirement is subject to the student having paid all outstanding fees to the registered training organisation.

Assessment of skills or knowledge by registered training organisation

Section 44 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.

Once the registered training organisation is satisfied that the person possesses the required 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 within 21 days. However, this requirement is subject to the student having paid all outstanding fees to the registered training organisation.

The intention of this section 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

Section 45 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
- a 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, and a registered training organisation that cancels a qualification or statement of attainment must give an information notice to the holder of the qualification or statement of attainment.

The holder must return the qualification or statement of attainment, which has been cancelled, 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). A penalty may apply for non-compliance.

A person who considers that a decision made under this section is unfair may appeal the decision under section 230 of the Act.

However, if the holder commences an appeal to the Magistrates Court under section 230, but withdraws the appeal or the appeal is dismissed, the holder must return the qualification or statement of attainment to the registered training organisation within 21 days.

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

PART 4—ACCREDITED COURSE

Division 1—Requirement for accreditation

Offence of falsely claiming to provide an accredited course

Section 46 provides that a person must not claim to provide an accredited course. A penalty for non-compliance may apply.

A person ‘claims’ to provide an accredited course if:

- the person makes the claim; or
- claims to provide a course that purports to be an accredited course; or
- does any act likely to induce someone else to believe a course the person is providing is accredited.

An accredited course is a structured sequence of vocational education and training that has undergone an accreditation process and leads to an AQF qualification or statement of attainment.

Applying in this jurisdiction for accreditation

Section 47 provides that a person may apply to the council for accreditation of a course. The application must be in the approved form and accompanied by the prescribed fee.

The applicant must also provide the council with any information it needs when considering the application.

Decision about accreditation

Section 47A provides that the council may approve an application for accreditation of a course or refuse to approve it. This section 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.

In deciding the application, the course accrediting body must apply the standards for accreditation of courses.

However, the council may decide not to grant the application for accreditation on grounds additional to the standards for accreditation of courses. The standards for accreditation of courses do not limit the grounds the council may consider when deciding an application for accreditation.

Where the council decides to grant the application it must immediately register the accredited course on the national register. The council must promptly give the applicant a certificate of accreditation for the course.

If the council decides not to grant the application, it must immediately give the applicant an information notice of its decision.

A right of appeal exists where the council refuses to grant accreditation under section 224 of the Act.

Accreditation conditions

Section 47B allows the 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 also include a restriction on providing the course.

Term of accreditation

Section 47C establishes the term of accreditation to be up to 5 years. A person who has been granted accreditation of a course may apply for renewal of the accreditation, but must do so at least three months before the accreditation term expires.

Procedure for amending accreditation

Section 47D provides that the process for granting or amending the accreditation of a course is to be prescribed in a regulation.

Cancellation of accreditation on application

Section 47E allows the council to cancel an accreditation if the person who obtained the accreditation applies for the cancellation.

Amendment or cancellation of accreditation without application

Section 47F empowers the 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 only be undertaken by fair procedures under a regulation.

The procedures prescribed in the regulation will include the council giving adequate notice of the intended amendment or cancellation and inviting representations from the holder of the accreditation.

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.

If a decision is made to amend or cancel the accreditation, the council must give the holder of the accreditation an information notice and information regarding a right of appeal against the decision.

Reassessment of accredited course

Section 47G allows that the 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 council under section 47A.

The reassessment must be done by fair procedures prescribed in the Regulation. These procedures would include the 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 section is to allow a mechanism for the 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.

Council to give notice of decision and register amendment or cancellation

Section 47H applies if the council amends or cancels an accreditation granted by it. If the council amends or cancels an accreditation granted by

it, it must immediately give an information notice for its decision to the person on whose application for accreditation was granted.

The council must also register details on the national register of:

- any amendment to a registered accreditation in accordance with its decision; or
- for a cancellation, remove the registered accreditation.

Return of registration certificate

Section 47I provides that where the council has amended or cancelled the accreditation of a course, the person on whose application the accreditation was granted must return the certificate of accreditation for the course to the Council within 14 days after the decision takes effect, unless the person has a reasonable excuse. Failure to do so may result in a penalty for non-compliance.

In instances where the council has amended the accreditation of a course, the Council must promptly return the certification of accreditation to the person after amending it.

Expiry of accreditation

Section 47J applies to a course that has been accredited on an application to the council, and provides that when the accreditation of a course expires, the council must remove the details of the course from the national register.

Amendment of s24 (Decision about registration)

Clause 10 provides the amendment of section 24 and inserts a note that sections 27 and 27A deal with the imposition of conditions about continued suitability for registration, and the training or assessments offered to young people in the compulsory participation phase.

Insertion of new s27A

Clause 11 inserts the new section 27A.

Condition –compulsory participation phase

Section 27A provides that the council may impose further conditions, in addition to those detailed in section 26, on training organisations that provide training or assessments to young people participating in the compulsory participation phase, as defined in the *Youth Participation in Education and Training Bill 2003*.

Amendment of s 57 (Amending or assigning registered training contract)

Clause 12 amends section 57 to provide for the Training Recognition Council's approval of the amendment or assignment of a registered training contract. If the Training Recognition Council refuses to approve the amendment or assignment, the council must give the parties an information notice. The issuing of an information notice is consistent with the appeal provisions provided in *section 230 (Appeal to Industrial Commission against council or other decision)* of the Act.

Amendment of s 59 (Statutory assignment or cancellation of registered training contract)

Clause 13 amends section 59 to provide for the assignment of the training contract to occur on the day agreed between the employer and the purchaser and not when the Training Recognition Council receives notice.

This provision continues to be linked to *section 82 (Employer to report notifiable events)* of the Act and the requirement to notify the Training Recognition Council remains.

Omission of s 60 (Reinstatement in previous position)

Clause 14 omits section 60. This section is replaced by *section 139A (Reinstatement to previous position)* of the *Industrial Relations Act 1999* (refer "Schedule – Amended Legislation – *Industrial Relations Act 1999* – clause 4" of the Explanatory Notes).

Replacement of s64 (Cancellation for serious misconduct)

Clause 15 replaces section 64 *Section 64* is amended to allow an employer to immediately suspend an apprentice or trainee in circumstances where the employer reasonably believes that the apprentice or trainee has

engaged in serious misconduct, and it would be inappropriate for the employer to immediately continue to train the apprentice or trainee. This provision also allows for the employer to further apply for cancellation of the registered apprenticeship or traineeship contract and to provide the reasons for seeking the cancellation. [Subclause (11) defines the activities that constitute serious misconduct]

The employer must inform the apprentice or trainee of the suspension by signed notice stating the apprentice or trainee is suspended, the grounds for the suspension and whether the employer proposes to apply for cancellation of the contract.

The employer must within 1 working day after the suspension, notify the Training Recognition Council of the suspension. The employer must also within 5 working days, give the council a copy of the suspension notice stating that the apprentice or trainee is suspended, the grounds for the suspension and whether the employer proposes to apply for cancellation of the contract. If the training contract is suspended and the employer does not state that it is proposed to apply for cancellation of the training contract, the trainee or apprentice is taken to be stood down without wages for the stated period, up to a maximum of 1 working day.

If the suspension notice states that the employer proposes to apply for cancellation of the training contract, the employer is taken to have applied for the cancellation by giving the council a copy of the suspension notice and the apprentice or trainee is taken to be stood down without pay until the council decides the application.

The Training Recognition Council must promptly and in accordance with fair procedures, decide the application for cancellation of the training contract or confirm or refuse to confirm the suspension and give the employer and the apprentice or trainee an information notice for its decision.

If the employer fails to give the Training Recognition Council a copy of the suspension notice; or the council refuses to confirm the suspension or refuses to cancel the contract; or the industrial commission on appeal does not confirm the suspension or cancellation of the contract, the employer is required to resume training of the apprentice or trainee and to pay the apprentice or trainee wages lost during the suspension period.

A right of appeal against the decision of the Training Recognition Council is provided under *section 230 (Appeal to Industrial Commission against council or other decisions)* of the Act.

Amendment of s 66 (Cancelling registration of training contract)

Clause 16 amends section 66 is amended to extend the right to a party to a training contract to make application for the exercise of the powers held by the Training Recognition Council under this section. The Training Recognition Council will retain the power to act on its own initiative.

An additional event is now included to allow cancellation for failure to make reasonable progress for reasons other than misconduct, as provided in *section 70 (Definition for div 5)* of the Act. For example, the Training Recognition may cancel a training contract on the basis that an apprentice or trainee has failed to progress due to a debilitating illness.

Amendment of s 70 (Definition for div 5)

Clause 17 amends section 70 to include a clear indication that failure to make reasonable progress in training due to an apprentice or trainee's deliberate neglect or default, constitutes "misconduct".

Cancellation for failure to progress for a reason other than misconduct, is provided for in *section 66 (Cancelling registration of training contract)* of the Act.

Amendment of s 77 (Delayed completion of registered training contract)

Clause 18 amends section 77 to provide for the Training Recognition Council's approval of the extension of the nominal term of a registered training contract. If the Training Recognition Council refuses to approve the extension of the nominal term, the council must give the parties an information notice. The issuing of an information notice is consistent with the appeal provisions provided in *section 230 (Appeal to Industrial Commission against council or other decisions)* of the Act.

Amendment of s 78 (Cancellation or completion of registered training contract terminates employment)

Clause 19 amends section 78 to reflect the omission of *section 60 (Reinstatement in previous position)* and its replacement with a provision in *section 139A (Reinstatement to previous position)* of the *Industrial Relations Act 1999*. (Refer "Schedule – Amended Legislation – *Industrial Relations Act 1999* – clause 4" of the Explanatory Notes).

Amendment of s 83 (Prohibited employers)

Clause 20 amends section 83(4) to extend the circumstances under which the Training Recognition Council can declare an employer to be a “prohibited employer” to include instances where the Training Recognition Council reasonably believes an employer behaves, or allows his or her employees to behave, in an objectionable way towards an apprentice or trainee.

Amendment of s 86 (Temporary stand down under a registered training contract)

Clause 21 amends section 86 to provide for the Training Recognition Council, when it decides an application for temporary stand down, to promptly give the parties an information notice. The issuing of an information notice is consistent with the appeal provisions provided in *section 230 (Appeal to industrial commission against council or other decisions)* of the Act.

Insertion of new ch 3A

Clause 22 inserts:

After section 106 insert:

**CHAPTER 3A—SPECIAL PROVISIONS TO
COMPLEMENT COMPULSORY PARTICIPATION
PHASE****Insertion of new Chapter 3A**

Chapter 3A will provide for the special provisions to complement the compulsory participation phase.

Relationship with other legislation

Section 106A outlines the relationship between the *Training Reform Bill 2003* and the *Youth Participation in Education and Training Bill 2003*.

Ministerial declaration ‘Stepping forward: improving pathways for all young people’

Section 106B refers to the ministerial declaration “Stepping Forward: improving pathways for all young people”. It states that while the declaration itself is not part of the Act, an objective of the Act is to implement initiatives consistent with the declaration.

Insertion of new s106C

Clause 23 inserts the new 106C:

Chief executive to ensure diversity of employment skills development programs

Section 106C prescribes the Chief Executive’s responsibility for ensuring that employment skills development programs are developed to meet the diverse needs of young people, and that they are accessible by young people participating in the compulsory participation phase.

This provision recognises that young people have diverse talents and skill sets and participation in an employment skills development program may provide young people with an opportunity to realise their potential.

The clause also allows the chief executive to provide employment skills development programs.

Amendment of Chapter 5, Part 1, heading**PART 1—TRAINING OMBUDSMAN**

Clause 24 amends the heading of chapter 5 from “Apprenticeship and Traineeship Ombudsman” to “Training Ombudsman” to better reflect the Ombudsman’s new role.

Amendment of s133 Appointing Apprenticeship and Traineeship Ombudsman

Clause 25 amends s133 to change the Apprenticeship and Traineeship Ombudsman’s title to Training Ombudsman.

Amendment of s134 Functions of Ombudsman

Clause 26 adds a new subsection to s134. The new subsection outlines the Ombudsman's new function of reviewing, on application, the Training and Employment Recognition Council's decision regarding an application for an employment exemption.

This clause also renumbers the subsections of s134 accordingly.

Amendment and relocation of Chapter 5, Part 1, Division 2, heading

Clause 27 relocates the Chapter 5, Part 1, Division 2 heading to after section 135.

Renumbering of Chapter 5, Part 1, Division 3

Clause 28 renumbers Chapter 5, Part 1, Division 3 as Division 4.

Insertion of new Chapter 5, Part 1, Division 3***Division 3 – Reviewing decisions about employment exemptions***

Clause 29 inserts a new Chapter 5, Part 1, Division 3 – Reviewing decisions about employment exemptions.

The clause inserts a new section 141A outlining who may apply for a review of the council's decision regarding an application for an employment exemption.

Who may apply for review

Section 141A provides for a young person or their parent to apply to the ombudsman for a review of an adverse decision by the council about an employment exemption for the young person.

This section also provides that an adverse decision about an employment exemption means a decision by the council refusing to grant an employment exemption, or a decision by the council to amend or cancel an employment exemption.

How to apply for review

Section 141B details how to apply to the ombudsman for a review of an adverse decision about an employment exemption.

The application for review must be in the approved form, give the particulars of the decision, stating in detail the grounds on which the applicant disputes the decision and be made within 30 days after the information notice for the decision is given to the applicant or within the longer period if the ombudsman allows.

Council to provide material to ombudsman

Section 141C requires the council, at the written request of the ombudsman stating receipt of an application for review, to give the ombudsman a copy of the material before the council in making its decision.

Ombudsman to review decision and report findings

Section 141D provides that on application, the ombudsman is to review the council's adverse decision on an application for an employment, and report its findings.

This section also provides that the ombudsman must, as soon as practicable after completing the review, give the applicant and the interested person signed notice of the findings of the review, as well as give the council and the Minister a signed report of the review. The report must include any findings and recommendation/s the ombudsman considers appropriate.

Section 141D(2) requires that the notice given to the young person and their parent, must state that a person aggrieved by the decision may, within 21 days after being given the notice, appeal the decision and how to appeal the decision.

If the ombudsman includes a recommendation/s in its report to the Minister and the council, the Minister may ask the council to notify the Minister within a certain period of time of any steps that have been taken to give effect to the recommendation/s, or if no steps have been taken, or are planned to be taken, the reason for not giving effect to the recommendation/s.

Section 141D (5) states the ombudsman must not make an adverse comment in the report to the Minister and the council, about a person,

unless the person is given an opportunity to respond. If the report is to include an adverse comment about a person, then the report must also fairly state the person's response to the adverse comment.

Section 141D (6) defines "interested person" for the purpose of this section.

Amendment of s145 (Annual report)

Clause 30 amends s145 (1) so that the ombudsman must give its annual report to the Minister within 4 months after the end of the financial year. Changing the timeframe from 3 months to within 4 months is in keeping with the *Financial Administration and Audit Act 1977*.

Amendment of s147 (Board's functions)

Clause 31 inserts a new subsection 147(1)(d) giving the Training and Employment Board a new function to recommend to the Minister guidelines for the board or council about the recognition of learning and qualifications within the education and training systems.

The guidelines are to assist in recognising the value and transferability of skills and knowledge that a young person gains through participation in both the education and training systems.

The clause also inserts a further amendment giving the Training and Employment Board new functions to recommend to the Minister guidelines for the board and council in regard to the decisions about employment exemptions; and guidelines for the recognition of non-departmental employment skills programs detailed in section 183D.

Amendment of s149 (Board membership)

Clause 32 provides for two new categories of membership on the Training and Employment Board. One member must be a young adult with current or recent student experience in vocational education and training and one member is to be nominated by the Minister responsible for administering the *Youth Participation in Education and Training Act 2003*.

The new categories of membership are designed to strengthen the relationship between the schooling and vocational education and training systems, providing for greater understanding, innovation and recognition between the systems.

Amendment of s165 (Report on board's operations)

Clause 33 amends s165 (1) so that the Training and Employment Board must prepare and give to the Minister within 4 months after the end of the financial year, a report on its operations. Changing the timeframe from 3 months to within 4 months is in keeping with the *Financial Administration and Audit Act 1977*.

Amendment of Chapter 5, Part 3, heading (Training recognition council)

Clause 34 amends the heading of Chapter 5, Part 3 from “Training Recognition Council” to “Training and Employment Recognition Council”. This reflects the change in the council’s name.

Amendment of s167 (Establishment of council)

Clause 35 amends the name of the council to “Training and Employment Recognition Council”. This change in name reflects the council’s new function of hearing applications for employment exemptions.

Replacement of s168 (Council's functions)

Clause 36 replaces the existing s168 to include that the council is to advise the Training and Employment Board on policy and guidelines for the making of decisions about employment exemptions and the recognition of learning and qualifications within the education and training system.

This clause provides for a new s168(4) requiring the council to have regard to industry when fulfilling its functions. Industry is integral to the success of the vocational education and training system and to ensure the relevance of the system, the council must be cognisant of the needs and views of industry.

Amendment of s168 (Council's functions)

Clause 37 amends s168 to include additional functions of the council. These amendments will authorise the council to advise the board on policy and guidelines for making decisions about employment exemptions and recognising non-departmental employment skills development programs for the purposes of the *Youth Participation in Education and Training Act 2003*.

The clause also authorises the council to grant employment exemptions, and recognise non-departmental employment skills development programs for the purposes of the *Youth Participation in Education and Training Act 2003*.

When granting employment exemptions, and recognising non-departmental employment skills development programs, the council must adhere to guidelines approved by the Minister pursuant to s189.

The council is required to maintain a register of recognised non-departmental employment skills development program. The register will be physically held at the offices of the Department of Employment and Training, level 4, 30 Mary Street, Brisbane.

Amendment of s169 (Council subject to Minister and board)

Clause 38 provides for renumbering of s169(2).

Amendment of s170 (Council membership)

Clause 39 provides for a new category of membership of the Training and Employment Recognition Council. A member of the council is to be nominated by the Minister administering the *Youth Participation in Education and Training Act 2003*.

The new category of membership is designed to strengthen the relationship between the schooling and vocational education and training systems, providing for greater understanding, innovation and recognition between the systems.

The clause also provides for renumbering.

Insertion of new Chapter 5, Part 3, Divisions 5A and 5B

Clause 40 provides for the insertion of a new division regarding the council's function to decide applications for employment exemptions.

Division 5A—Deciding employment exemptions

Application for employment exemptions

Section 183A prescribes that a young person in the compulsory participation phase or their parent may apply to the council for an employment exemption. The application must be in the approved form and the applicant must give the council any information required by it to make a decision. “Employment exemption” means an exemption from the compulsory participation phase for a young person who is employed for less than 25 hours each week in paid employment, or in unpaid employment.

In granting an employment exemption the Council must have regard to any approved guideline pursuant to s189, for making decisions about employment exemptions.

Employment exemption is defined to mean an exemption from the compulsory participation phase for a young person who is in paid employment for less than 25 hours each week; or in unpaid employment.

Decision about employment exemption

Section 183B gives the council the power to either grant or refuse to grant the employment exemption. If the council grants the application, it must immediately give the applicant a notice of the decision called an “exemption notice”.

If the council decides to refuse to grant the application, the council must immediately give the applicant a notice of the decision called an “information notice”. The information notice must state the decision, the reasons for the decision, the day the decision is to take effect, and inform the young person or the parent of the young person, that within 30 days of receiving the notice, they can apply to have the decision reviewed by the ombudsman or appeal the decision. The information notice must also provide information on how to apply for a review and how to appeal.

Amending or cancelling employment exemption

Section 183C gives the council the power to amend or cancel an employment exemption.

The council can amend or cancel the employment exemption on application by the young person or the young person's parent, or on its own initiative.

An application to amend or cancel the exemption must be in the approved form.

If the council decides to amend the exemption, it must immediately give notice (also an "exemption notice") of the decision to the applicant and an interested person; or otherwise to the young person and a parent of the young person. An amended employment exemption replaces any earlier employment exemption for the young person.

If the council decides to cancel the employment exemption, it must immediately give notice (also an "information notice") of the decision to the applicant and an interested person; or otherwise to the young person and a parent of the young person.

A notice issued under s183C must include the decision, the reasons for the decision and the day the decision has effect. The notice must also include information that the young person or their parent may, within 30 days after receiving the notice, apply to have the council's decision reviewed by the ombudsman or appeal to the Magistrates Court. The notice must include information about how to apply for a review and appeal the decision.

Section 183C (6) defines "interested person" for the purpose of this section.

Division 5B—Recognising non-departmental employment skills development programs

Council may recognise program

Section 183D authorises the council to recognise a non-departmental employment skills development program for the purposes of the *Youth Participation in Education and Training Act 2003*.

Non-departmental employment skills development programs are defined within the section to mean an employment skills development program other than a departmental employment skills development program as defined under section 106C(2).

The clause also provides that the council may withdraw its recognition by fair procedures under a regulation.

Council must maintain register

Section 183E requires the council to maintain a register of non-departmental employment skills development programs recognised under section 183D. The register will be physically held at the offices of the Department of Employment and Training, 4th Floor, 30 Mary Street, Brisbane.

Amendment of s187 (Establishing committees)

Clause 41 amends s187 to give the council broader power to establish committees to help it perform its functions under this Act.

Amendment of s196 (Composition of TAFE institute council)

Clause 42 amends s196 so that other appointed members to the council must be two young adults having current or recent student experience in vocational education and training, and a person nominated by the Minister administering the *Youth Participation in Education and Training Act 2003*.

The new categories of membership are designed to strengthen the relationship between the schooling and vocational education and training systems, providing for greater understanding, innovation and recognition between the systems.

Amendment of s211 (Report on TAFE institute council's operations)

Clause 43 amends s211 (1) so TAFE institute councils must give their annual report to the Minister within 4 months after the end of the financial year. Changing the timeframe from 3 months to within 4 months is in keeping with the *Financial Administration and Audit Act 1977*.

Amendment of s217 (Chief Executive's functions for TAFE institutes)

Clause 44 gives the Chief Executive new functions in relation to TAFE institutes.

A new s217(1)(f) has been inserted to give the Chief Executive the function of improving the participation of young people in education and training by attracting them and supporting them in vocational education and training resulting in a qualification or statement of attainment.

A new s217(1)(g) has also been inserted to ensure rural, remote and indigenous communities are given support, advice or other help in developing services in their communities to better facilitate access to education and training for young people in those communities.

In addition, a new s217(1)(h) has been inserted requiring the chief executive, through the TAFE institutes, to participate in the development of whole of community planning in relation to young people in the compulsory participation phase.

A new s217(2) has also been inserted to ensure that the provision of vocational education and training services under s271(1)(a) includes the provision of vocational education and training services to young people participating in the compulsory participation phase.

Amendment of Chapter 8, Part 1, heading (Training recognition decisions)

Clause 45 amends the heading of Chapter 8, Part 1 to “Training recognition decisions and employment exemption decisions”.

Amendment of s224 (Appeal to Magistrates Court)

Clause 46 amends s224 to provide that a person aggrieved by a decision about an employment exemption can appeal to the Magistrates Court.

Amendment of s230 (Appeal to industrial commission against council or other decisions)

Clause 47 amends section 230 to extend the right of appeal to the Queensland Industrial Relations Commission against a decision of the Training Recognition Council’s refusal to exercise a power.

Appeal provisions for *section 64* (Suspension and cancellation for serious misconduct) are included in *section 230 (Appeal to industrial commission against council or other decisions)* of the Act.

Amendment of s291 (Regulation-making power)

Clause 48 amends s291 to provide that without limiting the regulations the Governor in Council can make under this Act, the Governor in Council can make regulations for the registration of training organisations as

outlined in s21 of the Act and not otherwise provided for by Chapter 2, and for the prescription of a law from another jurisdiction as a corresponding law for Chapter 2 or a provision of Chapter 2.

Amendment of Chapter 10 heading (Amendments, repeals and transitional provisions)

Clause 49 removes “Amendments” from Chapter 10’s heading.

Renumbering of Chapter 10, Part 2 (Repeals)

Clause 50 provides for the renumbering of Chapter 10, Part 1.

Amendment of Chapter 10, Part 3, heading (Transitional provisions)

Clause 51 amends the heading of Chapter 10, Part 3 stating that the transitional provisions are specific to Act No.23 of 2000.

Insertion of new Chapter 10, PART 3

**PART 3—TRANSITIONAL PROVISIONS FOR
TRAINING REFORM ACT 2003**

Clause 52 inserts a new Chapter 10, Part 3 heading: “Transitional Provisions for Training Reform Amendment Act 2003”.

Clause 52 also inserts a new Division 1 - General Transitional Provisions.

References to *Training and Employment Act 2000*

Section 317 provides that a reference to the *Training and Employment Act 2000* may be taken, if the context permits, as a reference to this Act.

Apprenticeship and traineeship ombudsman

Section 318 provides that in an Act or document, a reference to the Apprenticeship or Traineeship Ombudsman may, if the context permits, be taken as a reference to the Training Ombudsman.

Section 318 also provides that the person who was the Apprenticeship and Traineeship Ombudsman immediately before the commencement of this section, is taken to be “Training Ombudsman”, until the end of the term of their current appointment.

Section 318 also provides that the Act does not affect anything done or existing in relation to the ombudsman before the commencement of this section.

Training Recognition Council

Section 319 provides that the Training Recognition Council will continue in existence as the Training and Employment Recognition Council.

Section 319 also provides that a reference to the Training Recognition Council may, if the context permits, be taken as a reference to the Training and Employment Recognition Council.

The section also provides that a person who was a member of the Training Recognition Council immediately before the commencement of this section, is taken, for the remaining term of the person’s appointment, to be a member of the Training and Employment Recognition Council.

Section 319 also provides that the Act does not affect anything done or existing in relation to the council before the commencement of this section.

Amending or assigning registered training contract

Section 320 provides that the old section 57 (Amending or assigning registered training contract), continues to apply to a training contract registered before the commencement as if the new section 12 (Amendment of s57) had not been enacted.

Appeal to the industrial relations commission against council or other decision

Section 321 provides that the old section 230 (Appeal to industrial commission against council or other decisions) continues to apply in relation to a decision mentioned in the old section 230 that was made before the commencement as if the new section 47 (Amendment of s230 Appeal to industrial commission against council or other decisions) had not been enacted.

Amendment of subordinate by Act does not affect power of Governor in Council's

Section 322 provides that the amendment of subordinate legislation by this Act does not affect the Governor in Council's power to further amend the subordinate legislation or repeal it.

Division 2—Transitional provisions for training organisations**Definitions for div 2**

Section 323 details the definitions for Division 2 – Transitional Provisions for training organisations.

This section sets out definitions for “commencement” which means the commencement of this section, and “old” which means in relation to a provision, the provision as in force immediately before the commencement.

Details on register on commencement

Section 324 provides that the following details recorded on the National Training Information Service at the time of commencement, are taken to be registered under chapter 2 or a corresponding law by the entity that recorded:

- the training organisation's registration;
- the training organisation's scope and terms of registration;
- any registered conditions;
- the registration of an accredited course;

- an accredited course's term of registration; and
- a qualification registered for a nationally endorsed training package.

Similarly, the new section 324 provides that a condition of a registered training organisation in force at commencement, is taken to be a condition imposed under chapter 2 or a corresponding law under which a similar condition may be imposed in similar circumstances to those applying when the condition was imposed.

Application for registration

Section 325 provides that an application for registration of a training organisation made under the old section 18 (Applying for registration) and not decided by the council before commencement is, after commencement, taken to have been made under the new section 23 (Applying in this jurisdiction for registration) and to have been accompanied by the prescribed fee.

Contravention of registration condition

Section 326 provides that if, before commencement, a registered training organisation contravenes a condition stated in its certificate of registration, the old chapter 2, in particular the old section 23(2) (Registration conditions) and the old section 28(b) (Grounds for amending, suspending or cancelling registration without application) continue to apply after commencement in relation to the contravention as if those provisions had not been repealed.

Return of registration certificate

Section 327 provides that if, before commencement, the council cancelled the registration of a training organisation under the old section 27 (Amending or cancelling registration on application by registered training organisation), the old section 27(2) continues to apply in relation to the organisation as if the old section 27 had not been repealed. The new section 327 also provides that if, before commencement, the council amended, suspended or cancelled the registration of a training organisation under the old section 29 (Procedure for amending, suspending or cancelling registration), the old section 30 (Return of registration certificate)

continues to apply after commencement in relation to the organisation as if the old section 30 had not been repealed.

Show cause notice issued

Section 328 applies if, before commencement a show cause notice was issued under the old section 29 (Procedure for amending, suspending or cancelling registration) and the council has not made a decision or if the council has made a decision but the decision has not taken effect. If the new section 328 applies, it provides that the old Chapter 2, Part 1, Division 2 (Training organisations – Provisions about amending, suspending and cancelling registration) continues to apply after commencement in relation to the show cause notice and the council's decision as if it had not been repealed.

Issuing qualifications and statement of attainment

Section 329 applies if, before commencement a student has complied with the old section 34(Issuing qualifications and statements of attainment) (1)(a) or has been recognised under the old section 34(1)(b) and the registered training organisation has not issued the appropriate qualification or statement of attainment. If the new section 329 applies, the old section 34 (2) continues to apply after commencement as if it had not been repealed.

Assessment of skills or knowledge

Section 330 applies if before commencement a registered training organisation has assessed a person's skills or knowledge for the purposes of the old section 35 (Assessment of skills or knowledge by registered training organisation) and the organisation has not issued the appropriate qualification or statement of attainment. If the new section 330 applies, the old section 35(3) continues to apply after commencement as if it had not been repealed.

Return of qualification or statement of attainment

Section 331 applies if before commencement a registered training organisation cancels a qualification or statement of attainment under the old section 36 (Cancellation of qualification or statement of attainment), and the person to whom the qualification or statement of attainment was

issued has not returned it to the organisation. If the new section 331 applies, the old section 36(2) continues to apply after commencement as if it had not been repealed.

Application for course accreditation

Section 332 applies if, before commencement an entity applies for the grant of an accreditation for a course under the old section 38 and the council has granted or refused to grant the accreditation. If the new section 332 applies, the old sections 38 (Council may accredit courses), 40 (How council may deal with application), 41 (Accreditation conditions) and 44 (Procedure for granting and amending accreditation) continue to apply after commencement as if the provisions had not been repealed. In addition, section 47C (Term of accreditation) applies in relation to the term of accreditation.

Amendment or cancellation of accreditation without application

Section 333 applies if, before commencement the council begins the process to amend or cancel an accreditation under the old section 45 (Amendment or cancellation of accreditation without application) without application by the entity to whom it was granted and the council has not made a decision, or if the council has made a decision, the decision has not taken effect. If section 333 applies, then section 47F (Amendment or cancellation of accreditation without application) applies in relation to the process and decision.

Amendment of schedule 3 (Dictionary)

Clause 53 provides the meaning of terms used in this Act, not previously defined.

Insertion of new attachment**ATTACHMENT—MINISTERIAL DECLARATION
‘STEPPING FORWARD: IMPROVING THE
PATHWAYS FOR ALL YOUNG PEOPLE’**

Clause 54 inserts the Ministerial Declaration ‘Stepping Forward: improving the pathways for all young people’ as an attachment to this Act. The declaration sets out the commitment by Ministers for Education, Employment, Training, Youth Affairs and Community Services to developing practical ways to increase the social, educational and employment outcomes of Australia’s young people, including those who are at risk, disconnected or in vulnerable circumstances.

**PART 3—AMENDMENTS OF AGRICULTURAL
COLLEGES ACT 1994****Act amended in Part 3**

Clause 55 provides that this part amends the *Agricultural Colleges Act 1994*.

Insertion of new s4A

Clause 56 inserts a new section 4A, referring to the ministerial declaration “Stepping Forward: improving pathways for all young people”. It provides that an objective of the *Agricultural Colleges Act 1994* is to implement initiatives consistent with the declaration and that the declaration is an attachment to the Act.

Amendment of s7 (Functions of college board)

Clause 57 provides for s7(3) to be renumbered to provide for new provisions outlining the functions of the board.

The clause also inserts a new s7(3)(h) to provide that the board is to improve the participation of young people in training by attracting them

and supporting them in training resulting in a qualification or statement of attainment.

The clause also inserts a new s7(3)(ha) to provide that without limiting the training the college may provide, the college is to ensure it provides training for young people participating in the compulsory participation phase.

The clause also inserts a new s7(3)(hb) requiring the board to ensure the community the college serves is given support, advice or other help in developing services in the community that facilitates better access to education and training for young people in the community.

A new s7(4) provides definitions specific to this section. S7(4) defines “qualification” and “statement of attainment” as defined in schedule 3 of the *Vocational Education Training and Employment Act 2003* and “compulsory participation phase” as defined in the *Youth Participation in Education and Training Act 2003*.

Amendment of s13 (Official members)

Clause 58 renumbers s13 subsection (2)(e) to s13(2)(f).

Insertion of new attachment

ATTACHMENT—MINISTERIAL DECLARATION ‘STEPPING FORWARD: IMPROVING THE PATHWAYS FOR ALL YOUNG PEOPLE’

Clause 59 inserts the Ministerial Declaration ‘Stepping Forward: improving the pathways for all young people’ as an attachment to this Act. The declaration sets out the commitment by Ministers for Education, Employment, Training, Youth Affairs and Community Services to developing practical ways to increase the social, educational and employment outcomes of Australia’s young people, including those who are at risk, disconnected or in vulnerable circumstances.

PART 4—CONSEQUENTIAL AMENDMENTS

Amended legislation schedule

Clause 60 provides that the schedule amends the legislation mentioned in it to reflect the new title of the Act as *Vocational Education Training and Employment Act 2000* and the new title of the council as the Training and Employment Recognition Council.

This clause also provides for specific amendments to the *Industrial Relations Act 1999*—

INDUSTRIAL RELATIONS ACT 1999

Amendment of section 138A(4) Termination of employment during probationary period) and footnote, “the *Training and Employment Act 2000*, section 60”

This provision is amended to provide for the omission of *section 60 (Reinstatement to previous position)* of the Act and its replacement with *section 139A (Reinstatement to previous position)* of the *Industrial Relations Act 1999*. *Section 138A(4)* provides for the termination of an apprentice or trainee during the probationary period, however this does not apply if *section 139A (Reinstatement to previous position)* is applicable.

Insertion of section 139A (Reinstatement to previous position)

A new *section 139A* is inserted into the *Industrial Relations Act 1999* and replaces the omitted *section 60 (Reinstatement to previous position)* of the *Training and Employment Act 2000*. Increasingly people who have experience in the workplace and are already employed are being offered apprenticeships or traineeships. This provision provides for the maintenance of entitlements of existing workers who become apprentices and trainees and assures continuity of employment on completion or cancellation of their training contract under the *Training and Employment Act 2000*, regardless of the circumstances. Existing workers are deemed to be reinstated in their previous position, whether that position is available or not, on at least the same pay and conditions as applied to the previous

position immediately before the apprenticeship or traineeship if any of the following events happen—

- (a) the Training Recognition Council refuses to register the person's training contract;
- (b) the training contract is cancelled;
- (c) the apprenticeship or traineeship ends before the probationary period; and
- (d) the person completes the apprenticeship or traineeship.

Chapter 3 (Dismissals) *Industrial Relations Act 1999* applies if the person is subsequently dismissed. The person retains all rights and entitlements accrued in the previous position under this Act or an industrial instrument, and is not specifically excluded from Chapter 3 by virtue of having undertaken the apprenticeship or traineeship.