



# Further Education and Training Act 2014

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Queensland

# Further Education and Training Act 2014

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# Further Education and Training Act 2014

**An Act to streamline the regulation of apprenticeships and traineeships and to establish a robust and modern legislative framework for training**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Further Education and Training Act 2014*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

#### 3 Act binds all persons

- (1) This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

## Part 2                      Objects of Act

### 4            Objects

The objects of this Act are—

- (a) to strengthen Queensland’s economic base by providing a skilled workforce that meets the current and future needs of industry, Government and the community; and
- (b) to facilitate the provision of vocational education and training that is linked to employment and is responsive to the future workforce development and skills requirements of industry; and
- (c) to support the continued development of high-quality training by and within industry; and
- (d) to support Queenslanders to access and complete the skills training they need to get a job and contribute to the State’s economy and their own prosperity; and
- (e) to establish a simple, streamlined apprenticeship and traineeship system featuring flexible, industry-endorsed approaches to trade training; and
- (f) to support industry and employers to take on, train and retain apprentices and trainees.

## Part 3                      Interpretation

### 5            Definitions

The dictionary in schedule 1 defines particular words used in this Act.

### 6            Who is an *apprentice*

- (1) An employee who is being trained in an apprenticeship is an *apprentice* if an apprenticeship contract for the apprenticeship

has been signed by the parties to the contract, whether or not the contract has been registered under this Act.

*Note—*

Section 15 states who are the parties to the contract.

- (2) However, an employee is not an apprentice if—
  - (a) the employee's employer is a prohibited employer; and
  - (b) the employment contravenes the declaration of the employer under section 59.

## **7 Who is a *trainee***

- (1) An employee who is being trained in a traineeship is a *trainee* if a traineeship contract for the traineeship has been signed by the parties to the contract, whether or not the contract has been registered under this Act.

*Note—*

Section 15 states who are the parties to the contract.

- (2) However, an employee is not a trainee if—
  - (a) the employee's employer is a prohibited employer; and
  - (b) the employment contravenes the declaration of the employer under section 59.

## **Chapter 2      Apprentices and trainees**

### **Part 1                      Declaring apprenticeships or traineeships**

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

- (1) This section applies if a person can obtain a qualification or statement of attainment by completing employment-based training with an employer.
- (2) The chief executive may declare the employment-based training leading to the qualification or statement of attainment to be an apprenticeship or traineeship.
- (3) A declaration under subsection (2)—
  - (a) must be in writing; and
  - (b) must be published on the department’s website; and
  - (c) may include requirements prescribed by regulation for the apprenticeship or traineeship.
- (4) Without limiting subsection (3)(c), the requirements may include the following for the apprenticeship or traineeship—
  - (a) the minimum hours of paid employment;
  - (b) whether it is to be completed on a full-time or part-time basis;
  - (c) whether it may be completed by a student at a school;
  - (d) the number of units of competency that may be completed by a student at a school.
- (5) A declaration under subsection (2) does not prevent the qualification or statement of attainment being attained in a way other than by completing an apprenticeship or traineeship.

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## Part 2 Training contracts

### Division 1 Preliminary

#### 9 Start of apprenticeship or traineeship

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

#### 10 Term of training contract

- (1) The chief executive may decide the term (the *nominal term*) of training contracts for apprenticeships and traineeships.
- (2) Different nominal terms may be decided—
  - (a) for different apprenticeships or traineeships; or
  - (b) depending on whether apprenticeships or traineeships are completed during full-time or part-time employment, or while the apprentice or trainee is at school; or
  - (c) for individual apprentices or trainees who have previous experience as an apprentice or trainee; or
  - (d) for individual apprentices or trainees who have previously obtained qualifications or gained relevant work experience.
- (3) The nominal term of a training contract must include the probationary period for the apprenticeship or traineeship.

*Note—*

Section 23 provides for an extension of the nominal term for a particular apprentice or trainee.

#### 11 Probationary period

- (1) The chief executive is to decide the probationary period for apprenticeships and traineeships.

- (2) Different probationary periods may be decided—
  - (a) for different apprenticeships or traineeships; or
  - (b) depending on whether apprenticeships or traineeships are completed during full-time or part-time employment, or while the apprentice or trainee is at school.

## **12 Application to extend probationary period**

- (1) The parties to a training contract may apply in the approved form to the chief executive to extend the probationary period for the apprentice or trainee.

*Note—*

Section 15 states who are the parties to the contract.

- (2) However, the probationary period may not be extended past the date that is 6 months from the commencement of the training contract.
- (3) The application must be received by the chief executive at least 14 days before the end of the probationary period.
- (4) However, the chief executive may consider an application received after that time if the chief executive is satisfied exceptional circumstances caused or contributed to the lateness of the application.
- (5) If the apprentice or trainee is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee.
- (6) However, subsection (5) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

*Example—*

It may be inappropriate for a parent to give signed consent if the apprentice or trainee is living independently of his or her parents.

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**13 Decision on application to extend probationary period**

- (1) The chief executive must decide an application under section 12 within 7 days after receiving the application.
- (2) If the chief executive decides to grant the application, the chief executive must give the parties to the training contract written notice of the decision.
- (3) If the chief executive decides not to grant the application, the chief executive must give the parties to the training contract written notice of the decision, including the reasons for the decision.
- (4) If the chief executive fails to decide the application within 7 days after receiving it, the failure is taken to be a decision by the chief executive not to grant the application.

**14 Ending apprenticeship or traineeship during probationary period**

- (1) An apprenticeship or traineeship may be ended during the probationary period by the giving of written notice—
  - (a) by the employer to the apprentice or trainee; or
  - (b) by the apprentice or trainee to the employer.
- (2) A notice under subsection (1) must state the date the apprenticeship or traineeship is to end.
- (3) For subsection (2), the stated date must not be later than the end of the probationary period.
- (4) The employer must notify the chief executive that the apprenticeship or traineeship has ended within 7 days after it ends.

Maximum penalty for subsection (4)—20 penalty units.

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

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

- (1) The employer of a person who is to be trained by the employer as an apprentice or trainee must ensure a training contract is signed by the parties within 14 days after the day the apprenticeship or traineeship starts.

Maximum penalty—40 penalty units.

- (2) The parties to the training contract are—
  - (a) the employer; and
  - (b) the person to be trained as an apprentice or trainee under the contract.
- (3) If the person to be trained as an apprentice or trainee is under 18 years, the training contract must also include the signed consent of a parent of the person within the time mentioned in subsection (1).
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

*Example—*

It may be inappropriate for a parent to give signed consent if the person to be trained as an apprentice or trainee is living independently of his or her parents.

### **16        Employer must ensure training contract is given to chief executive or person authorised**

- (1) An employer who is a party to a training contract must take all reasonable steps to ensure the contract is given to either of the following within 28 days after the day the apprenticeship or traineeship starts—
  - (a) the chief executive;



- 
- (b) a person authorised by the chief executive to accept training contracts.

Maximum penalty—40 penalty units.

- (2) The chief executive must publish on the department's website the names and addresses of persons authorised to accept training contracts.

## **17 Registering training contracts**

- (1) This section applies if the chief executive or a person authorised to accept training contracts receives a signed training contract from an employer under section 16.
- (2) The chief executive must decide whether to register or refuse to register the training contract.
- (3) The chief executive may, by written notice, request the employer to give, within the reasonable time of not less than 14 days stated in the notice, the additional documents or information the chief executive considers necessary to decide whether to register the training contract.
- (4) The chief executive may refuse to decide whether to register the training contract until the parties supply the requested documents or information.
- (5) The chief executive may register the training contract only if—
- (a) the contract is in the approved form; and
  - (b) if the chief executive has requested documents or information under subsection (3)—the employer has supplied the documents or information; and
  - (c) the employer is not a prohibited employer whose employment of the apprentice or trainee contravenes the declaration of the employer under section 59; and
  - (d) if the employer is actively employing 25 or more apprentices and trainees under a hosting arrangement—the employer is a group training organisation or principal employer organisation; and

- (e) the apprentice or trainee is not prohibited under an Act or law from undertaking paid employment; and  
*Example for paragraph (e)—*
    - an apprentice or trainee who holds a visa that prohibits him or her from working while in Australia.
  - (f) a registered training organisation has—
    - (i) accepted the nomination to be the supervising registered training organisation for the apprentice or trainee; and
    - (ii) undertaken to prepare a training plan, including an employer resource assessment; and
  - (g) if the apprentice or trainee is a school student—the chief executive is satisfied it is appropriate in all the circumstances for the training contract to be registered.
- (6) For subsection (5)(g), in deciding whether it is appropriate to register the training contract, the chief executive must have regard to the following—
    - (a) the age and year of schooling of the student;
    - (b) whether the student’s school supports the contract;
    - (c) other matters that may be relevant for deciding whether the training contract is suitable for the student.
  - (7) In subsection (6)(b), a reference to the student’s school is, for a student registered for home education under the *Education (General Provisions) Act 2006*, a reference to the chief executive of the department administering that Act.
  - (8) If the chief executive registers the training contract, the chief executive must give the parties to the contract written notice that the contract is registered.
  - (9) If the chief executive refuses to register the training contract, the chief executive must give each party written notice of the decision, including the reasons for the decision.
  - (10) If the chief executive refuses to register the training contract, the contract and the apprenticeship or traineeship to which it relates end on—

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- (a) the day stated in the written notice of the decision as the day the decision has effect; or
  - (b) an earlier day agreed to by the parties.
- (11) In this section—
- home education* has the meaning given in the *Education (General Provisions) Act 2006*, section 205.

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

- (1) A person must not state anything in a training contract that the person knows is false or misleading.
- Maximum penalty—50 penalty units.
- (2) A person must not induce or coerce someone else to state anything in a training contract that the person knows is false or misleading.
- Maximum penalty—50 penalty units.

## **19 Premiums prohibited**

- (1) A person must not, either directly or indirectly, demand, accept, or agree to accept, from another person a premium for—
- (a) employing a person as an apprentice or trainee; or
  - (b) inducing, or attempting to induce, another person to employ a person as an apprentice or trainee; or
  - (c) amending a registered training contract; or
  - (d) cancelling a registered training contract.
- Maximum penalty—50 penalty units.
- (2) If a person is convicted of an offence against subsection (1), the court in which the person is convicted may order the person—
- (a) to return the premium to the person who gave it; or

- (b) to reimburse the person who gave the premium an amount equal to the value of the premium.
- (3) Subsection (2) does not limit the court's power to impose a penalty on the person convicted.
- (4) An order under subsection (2)—
  - (a) may be filed in a court with jurisdiction to recover in an action for debt the amount payable under the order; and
  - (b) on being filed, is taken to be an order of that court and may be enforced accordingly.
- (5) In this section—

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

*relevant entity* means—

  - (a) the State; or
  - (b) the Commonwealth; or
  - (c) an entity that pays a grant or incentive under a written agreement with the State or the Commonwealth; or
  - (d) an employer group, union or other industry body.

## **Division 3                      Amending registered training contract**

### **20                      Amending registered training contract**

- (1) Except as provided for in sections 13, 21, 22 and 23, a registered training contract may only be amended with the approval of the chief executive obtained under this section.
- (2) The parties to the registered training contract may apply to the chief executive for approval of an amendment to the contract.
- (3) The application must be in the approved form and state—

- (a) the proposed amendment; and
  - (b) the reasons for the proposed amendment; and
  - (c) that the proposed amendment is agreed to by the parties.
- (4) If the apprentice or trainee under the registered training contract is under 18 years, the application must also be signed by a parent of the person.
- (5) However, subsection (4) does not apply if it would be inappropriate in all the circumstances for a parent to sign the application.

*Example—*

It may be inappropriate for a parent to sign the application if the apprentice or trainee is living independently of his or her parents.

- (6) The chief executive may, by written notice, request the parties to give, within the reasonable time of not less than 14 days stated in the notice, the additional documents or information the chief executive considers necessary to decide the application.
- (7) The chief executive may refuse to consider the application until the parties give the documents or information requested under subsection (6).
- (8) The chief executive—
- (a) must consider the application and any documents or information given as requested under subsection (6); and
  - (b) may approve the proposed amendment or refuse to approve the proposed amendment.
- (9) If the chief executive decides to approve the proposed amendment, the chief executive must—
- (a) update the records held by the department; and
  - (b) give the parties a signed notice of the approval.
- (10) If the chief executive refuses to approve the amendment, the chief executive must give each party written notice of the decision, including the reasons for the decision.

## 21 Minor amendment of registered training contract

- (1) A party to a registered training contract may give notice of a minor amendment of the contract to—
  - (a) the other party to the contract; and
  - (b) either—
    - (i) the chief executive; or
    - (ii) a person authorised by the chief executive to accept the notice.
- (2) The notice may be given orally or in writing.
- (3) On receiving the notice, the chief executive or authorised person may approve the amendment and update the department's records to include it if the chief executive or authorised person is satisfied the amendment is appropriate.
- (4) The chief executive or authorised person may request further information before deciding whether to approve the amendment.
- (5) The amendment takes effect when the department's records are updated.
- (6) The chief executive must publish on the department's website the names and addresses of persons authorised to accept notices under this section.
- (7) In this section—

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

*Examples of a minor amendment—*

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

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## **22 When chief executive may amend registered training contract without application by the parties**

- (1) The chief executive may amend a registered training contract without an application by the parties to the contract if the chief executive considers the amendment is necessary to update matters that are no longer correct because of changed circumstances.

*Examples of changed circumstances—*

- an apprentice who started his or her apprenticeship while at school continues the apprenticeship after leaving school
  - the name of a qualification changes because of an update to a national training package
  - the supervising registered training organisation for the apprentice or trainee changes and it is not reasonably practical for the parties to the registered training contract to give the chief executive notice of the change
  - the legal entity that is the employer changes for many registered training contracts
- (2) The chief executive must update the department's records to include the amendment.
  - (3) The amendment takes effect when the records are updated.
  - (4) The chief executive does not have to give notice of the amendment to the parties.

## **23 Application for extension of nominal term of registered training contract**

- (1) This section applies if the nominal term of a registered training contract is to end before the apprentice or trainee who is a party to the contract completes the apprenticeship or traineeship.
- (2) The parties and the supervising registered training organisation for the apprentice or trainee may apply to the chief executive to extend the nominal term.
- (3) The application must be in the approved form and state—

- (a) that each applicant agrees to an extension of the registered training contract; and
  - (b) the reasons for the requested extension.
- (4) If the apprentice or trainee is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee.
  - (5) However, subsection (4) does not apply if it would be inappropriate in all the circumstances for a parent to sign the application.
  - (6) On receiving the application, the chief executive may approve or refuse to approve the application.
  - (7) Despite subsection (6), the chief executive may approve an application made after the end of the nominal term only if the chief executive is satisfied it is appropriate to do so in all the circumstances.
  - (8) If the chief executive approves the application, the chief executive must give notice to the parties and the supervising registered training organisation that the nominal term has been extended.
  - (9) If the chief executive refuses to approve the application, the chief executive must give the parties and the supervising registered training organisation written notice of the decision, including the reasons for the decision.
  - (10) If the nominal term of a training contract is extended, the contract is taken to be similarly extended.
  - (11) If the chief executive approves an application after the end of the nominal term, the training contract and training plan are taken to have continued in force until the approval.



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## **Division 4                      Transfer of registered training contract**

### **Subdivision 1                Temporary transfer of registered training contract**

#### **24            Temporary transfer of registered training contract**

- (1) The parties to a registered training contract may agree to temporarily transfer the contract to a new employer for a period not exceeding 1 year that ends before the nominal term of the contract is to end.
- (2) The employer under the registered training contract must, within 7 days after the day the transfer takes effect, give the chief executive notice that complies with subsection (3).

Maximum penalty—40 penalty units.

- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state—
    - (i) the name of the new employer; and
    - (ii) the day the transfer took effect; and
    - (iii) the period of the transfer; and
    - (iv) that the transfer is agreed to by each of the parties to the registered training contract; and
  - (c) be signed by—
    - (i) each of the parties; and
    - (ii) the new employer; and
    - (iii) if the apprentice or trainee is under 18 years—the parent of the apprentice or trainee.
- (4) However, subsection (3)(c)(iii) does not apply if it would be inappropriate in all the circumstances for a parent to sign the notice.

*Example—*

It may be inappropriate for a parent to sign the notice if the apprentice or trainee is living independently of his or her parents.

**25 Transferring employer must notify supervising registered training organisation of temporary transfer of registered training contract**

- (1) This section applies if a registered training contract is temporarily transferred to a new employer under section 24.
- (2) The transferring employer must notify the supervising registered training organisation for the apprentice or trainee within 7 days after the day the transfer takes effect.

Maximum penalty—40 penalty units.

**Subdivision 2 Permanent transfer of registered training contract**

**26 Application for permanent transfer of registered training contract**

- (1) The following may apply to the chief executive for a registered training contract to be permanently transferred to a new employer—
  - (a) all parties to the contract and the proposed new employer;
  - (b) the apprentice or trainee under the contract and the proposed new employer.
- (2) The application must be in the approved form and state the following information—
  - (a) the name of the proposed new employer;
  - (b) the proposed day for the transfer;
  - (c) that the proposed transfer is agreed to by each of the applicants;

- 
- (d) the reasons for the proposed transfer.
- (3) If the apprentice or trainee is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee.
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

*Example—*

It may be inappropriate for a parent to give signed consent if the apprentice or trainee is living independently of his or her parents.

**27 Procedure for deciding application if application by all parties to registered training contract and proposed new employer**

- (1) This section applies if an application for the permanent transfer of a registered training contract is made under section 26 by all parties to the contract and the proposed new employer.
- (2) The chief executive must decide the application within 28 days of receiving it.
- (3) The chief executive may grant the application only if satisfied the criteria mentioned in section 17(5)(c) to (g) are satisfied.
- (4) For subsection (3), section 17(5)(c) to (g) applies with any necessary modifications and as if a reference to registration of the contract were a reference to approval of the application.
- (5) If the chief executive approves the application, the chief executive must advise the applicants—
- (a) that the transfer has been approved; and
- (b) of the date from which the transfer takes effect.
- (6) If the chief executive refuses the application, the chief executive must give each of the applicants written notice of the decision, including the reasons for the decision.

## **28 Procedure for deciding application if application only by apprentice or trainee and proposed new employer**

- (1) This section applies if an application for the permanent transfer of a registered training contract is made under section 26 only by the apprentice or trainee and the proposed new employer.
- (2) The chief executive must give the current employer notice of the application stating that the employer may object in writing to the transfer within 14 days of receiving the notice.
- (3) The chief executive must decide the application within 28 days of receiving it.
- (4) In deciding the application the chief executive—
  - (a) must have regard to any objection received from the current employer; and
  - (b) may grant the application only if satisfied the criteria mentioned in section 17(5)(c) to (g) are satisfied.
- (5) For subsection (4)(b), section 17(5)(c) to (g) applies with any necessary modifications and as if a reference to registration of the contract were a reference to approval of the application.
- (6) If the chief executive approves the application, the chief executive must advise each of the applicants and the current employer—
  - (a) that the transfer has been approved; and
  - (b) of the date on which the transfer takes effect.
- (7) If the chief executive refuses the application, the chief executive must—
  - (a) advise the current employer of the decision; and
  - (b) give each of the applicants written notice of the decision, including the reasons for the decision.
- (8) In this section—

***current employer*** means the employer who is a party to the registered training contract.

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## **Subdivision 3      Statutory transfer or cancellation of registered training contract**

### **29      Statutory transfer or cancellation of registered training contract**

- (1) This section applies if an event mentioned in section 58(1)(a) happens.
- (2) The registered training contract is taken to have been transferred by the employer who is a party to the contract to the purchaser of the employer's business on the day agreed between the employer and the purchaser.
- (3) However, subsection (2) does not apply if the purchaser gives the chief executive written notice, before the sale or disposal of the business takes effect, that the purchaser does not want the registered training contract to be transferred under subsection (2).
- (4) Notice under subsection (3) relates only to the registered training contract and not to the employment by the purchaser of the apprentice or trainee under the contract.
- (5) If the purchaser gives the chief executive notice under subsection (3), the registered training contract is cancelled and the chief executive must give the apprentice or trainee written notice of the cancellation.
- (6) If an event mentioned in section 58(1)(b) happens—
  - (a) if the business of the dissolved partnership is continued by 1 person who was a partner of the dissolved partnership—the registered training contract is taken to be assigned to the person when the winding-up of the affairs of the dissolved partnership is complete; or
  - (b) if the business of the dissolved partnership is continued by 2 or more persons who were partners of the dissolved partnership under a new partnership—the registered training contract is taken to be assigned to the persons when the new partnership begins; or

- (c) if neither paragraph (a) nor (b) applies—the registered training contract is cancelled.

## **Division 5                      Suspension of registered training contracts**

### **Subdivision 1                Application for suspension by both parties**

#### **30            Application for suspension of registered training contract by the parties to the contract**

- (1) The parties to a registered training contract may apply to the chief executive to suspend the contract for a period not exceeding 1 year.
- (2) The application must be in the approved form and must state the following—
  - (a) the reasons for the proposed suspension;
  - (b) the period of the proposed suspension;
  - (c) the day the proposed suspension is to take effect, being not less than 7 days after the application is given to the chief executive;
  - (d) that the proposed suspension is agreed to by each of the parties to the registered training contract.
- (3) If the apprentice or trainee under the registered training contract is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee.
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

*Example—*

It may be inappropriate for a parent to give signed consent if the apprentice or trainee is living independently of his or her parents.

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**31 Applicant may withdraw consent to the application to suspend**

- (1) A party to a registered training contract may, by written notice, withdraw the party's consent to an application under section 30 within 7 days after the application is given to the chief executive.
- (2) If the party is the apprentice or trainee under the registered training contract and is under 18 years, the notice must also be signed by a parent of the apprentice or trainee.
- (3) However, subsection (2) does not apply if it would be inappropriate in all the circumstances for a parent to sign the notice.

*Example—*

It may be inappropriate for a parent to sign the notice if the apprentice or trainee is living independently of his or her parents.

- (4) If a party to a registered training contract withdraws the party's consent under subsection (1)—
  - (a) the application is taken to have been withdrawn; and
  - (b) the chief executive must give all parties to the contract written notice stating—
    - (i) the application has been withdrawn; and
    - (ii) the contract continues in force.

**32 Suspension if consent not withdrawn**

- (1) This section applies if—
  - (a) an application is made under section 30 to suspend a registered training contract; and
  - (b) section 31 does not apply.
- (2) The registered training contract is suspended—
  - (a) from the day stated in the application; and
  - (b) for the period stated in the application.

- (3) The chief executive must give the parties to the registered training contract written notice of the suspension.

## **Subdivision 2      Application for suspension by one party**

### **32A      Application for suspension of registered training contract by one party to the contract**

- (1) A party to a registered training contract may apply to the chief executive to suspend the contract for a period not exceeding 1 year if the party reasonably believes that the other party to the contract can not, under section 30, agree to a proposed suspension.
- (2) The application must be in the approved form and state the following—
  - (a) the reasons for the proposed suspension, including why the applicant believes the other party can not agree to the suspension;
  - (b) the period of the proposed suspension;
  - (c) the day the proposed suspension is to take effect, being not less than 7 days after the application is given to the chief executive.
- (3) If the apprentice or trainee is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee.
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

### **32B      Chief executive may request further information**

- (1) Within 21 days after receiving the application, the chief executive may give the applicant a written notice asking for



further information the chief executive reasonably requires to decide the application.

- (2) The notice must state a reasonable period, of at least 14 days after the day the notice is given, for the applicant to comply with the notice.
- (3) The chief executive must consider any information given by the applicant within the period stated in the notice.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the notice.

### **32C Show cause notice before suspension of registered training contract**

- (1) The chief executive must give each party to the registered training contract a notice (a *show cause notice*) stating the following—
  - (a) that an application has been made under section 32A;
  - (b) the reasons stated in the application for the proposed suspension;
  - (c) if the chief executive proposes to suspend the contract—
    - (i) the period of the proposed suspension; and
    - (ii) the day the proposed suspension is to take effect;
  - (d) if the chief executive proposes not to suspend the contract—the reasons for the decision;
  - (e) that the party may, within 14 days after the show cause notice is given, give the chief executive a written response to the proposed suspension.
- (2) Also, if the apprentice or trainee is under 18 years, the chief executive must give the show cause notice to the parent of the apprentice or trainee.
- (3) However, subsection (1) does not apply if the chief executive reasonably considers it is not practicable to give a show cause notice to the party.

[s 32D]

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- (4) Also, subsection (2) does not apply if it would be inappropriate in all the circumstances for the chief executive to give the show cause notice to the parent of the apprentice or trainee.

### **32D Decision about suspension**

- (1) After having regard to the reasons stated in the application and, if a show cause notice was given, any written responses to the notice made under section 32C(1)(e), the chief executive must decide—
- (a) if satisfied that a party can not perform the party's obligations under the training contract—to suspend the contract; or
  - (b) otherwise—not to suspend the contract.
- (2) The chief executive must give each party an information notice about the decision.
- (3) If the chief executive decides to suspend the training contract the information notice must state—
- (a) the period of the suspension; and
  - (b) the day the suspension takes effect.

## **Division 5A Application for temporary suspension by employer and stand down of employment**

### **32E Application for temporary suspension of registered training contract**

- (1) This section applies if an employer of an apprentice or trainee temporarily can not provide the training stated in the training plan for the apprentice or trainee.
- (2) The employer may apply to the chief executive for approval to temporarily suspend the registered training contract for a period of no more than 30 days.

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- (3) The application must be in the approved form and state—
    - (a) the reasons for the proposed temporary suspension; and
    - (b) the period of the proposed temporary suspension.
  - (4) The employer must give a copy of the application to the employer's apprentice or trainee inviting the apprentice or trainee to make a submission to the chief executive, within 5 days, in relation to the proposed temporary suspension.

### **32F Decision about temporary suspension**

- (1) Within 7 days after receiving the application, the chief executive must decide the application.
- (2) After having regard to the reasons stated in the application and any submissions made under section 32E(4), the chief executive must decide—
  - (a) if satisfied the employer can not provide the training to the apprentice or trainee under the training contract—to approve the application; or
  - (b) otherwise—not to approve the application.
- (3) The chief executive must give each party an information notice about the decision.
- (4) If the chief executive approves the application, the information notice must state the following—
  - (a) the maximum period, of not more than 30 days, over which the training contract may be suspended;
  - (b) the time during the maximum period, or a part of the period, the employer may stand down the apprentice or trainee;
  - (c) the day the period starts.
- (5) If the training contract is temporarily suspended, the employer may stand down the apprentice or trainee unless the employer and the apprentice or trainee otherwise agree.

- (6) The employer may stand down the apprentice or trainee without pay under this section only in accordance with the information notice from the chief executive.

## **Division 6                      Cancellation of registered training contracts**

### **Subdivision 1                Cancellation on application by all parties**

#### **33            Application to cancel registered training contract by all parties**

- (1) The parties to a registered training contract may apply to the chief executive to cancel the contract.
- (2) The application must be in the approved form.
- (3) If the apprentice or trainee is under 18 years, the application must be signed by a parent of the apprentice or trainee.
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to sign the application.

*Example—*

It may be inappropriate for a parent to sign the application if the apprentice or trainee is living independently of his or her parents.

#### **34            Applicant may withdraw consent to the application to cancel**

- (1) A party to a registered training contract may, by written notice, withdraw the party's consent to an application to cancel the contract within 7 days after the application is given to the chief executive.
- (2) If the party is the apprentice or trainee under the registered training contract and is under 18 years, the notice must also be signed by a parent of the apprentice or trainee.

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- (3) However, subsection (2) does not apply if it would be inappropriate in all the circumstances for a parent to sign the notice.

*Example—*

It may be inappropriate for a parent to sign the notice if the apprentice or trainee is living independently of his or her parents.

- (4) If a party to a registered training contract withdraws the party's consent under subsection (1)—
- (a) the application is taken to have been withdrawn; and
  - (b) the chief executive must give all parties to the contract written notice stating—
    - (i) the application has been withdrawn; and
    - (ii) the contract continues in force.

### **35 Cancellation if consent not withdrawn**

- (1) This section applies if—
- (a) an application is made under section 33 to cancel a registered training contract; and
  - (b) section 34 does not apply.
- (2) The registered training contract is cancelled on the day stated in the application.
- (3) The chief executive must give the parties to the registered training contract written notice of the cancellation.

## **Subdivision 1A Cancellation on application by one party**

### **35A Application to cancel registered training contract by one party**

- (1) A party to a registered training contract may apply to the chief executive to cancel the contract if the party believes—

[s 35B]

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- (a) the party can not successfully complete the party's obligations under the contract; or
  - (b) the other party can not successfully complete the other party's obligations under the contract.
- (2) The application must be in writing and—
- (a) must state the following—
    - (i) the reasons for the proposed cancellation;
    - (ii) the day the proposed cancellation is to take effect, being not less than 7 days after the application is given to the chief executive; and
  - (b) may include material in support of the application.

### **35B Chief executive may request further information**

- (1) Within 21 days after receiving the application, the chief executive may give an applicant a written notice asking for further information the chief executive reasonably requires to decide the application.
- (2) The notice must state a reasonable period of at least 14 days after the day the notice is given for the applicant to comply with the notice.
- (3) The chief executive must consider any information given by the applicant within the period stated in the notice.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the notice.

### **35C Show cause notice before deciding to cancel**

- (1) The chief executive must give each party to the registered training contract a notice (a *show cause notice*) stating the following—
  - (a) that an application has been made under section 35A;
  - (b) the reasons, as stated in the application, for the proposed cancellation;

- (c) if the chief executive proposes to cancel the contract—
    - (i) the reasons for the decision; and
    - (ii) the day the cancellation takes effect;
  - (d) if the chief executive proposes not to cancel the contract—the reasons for the decision;
  - (e) that the party may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.
- (2) Also, if the apprentice or trainee is under 18 years, the chief executive must give the show cause notice to the parent of the apprentice or trainee.
- (3) However, subsection (2) does not apply if it would be inappropriate in all the circumstances for the chief executive to give the show cause notice to the parent of the apprentice or trainee.

### **35D Decision about cancellation**

- (1) After having regard to the reasons stated in the application and any written responses made under section 35C(1)(e), the chief executive must decide—
- (a) if satisfied that a party to the training contract can not successfully complete the party's obligations under the contract—to cancel the contract; or
  - (b) otherwise—not to cancel the contract.
- (2) The chief executive must give each party an information notice about the decision.
- (3) If the chief executive decides to cancel the training contract the information notice must state the day the cancellation takes effect.

### **35E Cancellation in response to application**

If a registered training contract is cancelled under section 35D, the apprenticeship or traineeship of the person

who was the apprentice or trainee ends on the day the contract is cancelled.

## **Subdivision 2      Cancellation without application**

### **36      Grounds for cancellation of registered training contract by chief executive**

- (1) The chief executive may cancel a registered training contract if reasonably satisfied that 1 or more of the following grounds applies—
  - (a) the employer has ceased business;
  - (b) the employer has ceased operating the business in which the apprentice or trainee under the contract was employed;
  - (c) there has been a substantial change in a party's circumstances and the change has affected the party's capacity to perform the party's obligations under the contract;
  - (d) the employer has moved the employer's business to a place to which it is impractical or unreasonable for the apprentice or trainee to travel;
  - (e) the contract contains false or misleading information;
  - (f) the supervising registered training organisation withdraws from the training plan for the contract and no replacement supervising registered training organisation has been nominated;
  - (g) the employer has been declared a prohibited employer;
  - (h) the employer is failing, or has failed, to comply with the employer's obligations under this Act or the contract;
  - (i) the apprentice or trainee is no longer employed by the employer and it is at least 21 days since the employment ceased;



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- (j) if the apprentice or trainee is a school student—the school withdraws support for the student’s participation under the contract;
  - (k) the contract was registered in error.
- (2) The chief executive must not cancel a registered training contract under subsection (1)(i) if—
- (a) the chief executive has received notice of a contested event under section 58A; and
  - (b) the contested event has not been finalised.

### **37 Show cause notice before cancellation of registered training contract**

- (1) This section applies if the chief executive is proposing to cancel a registered training contract under this subdivision.
- (2) The chief executive must first give each party to the registered training contract a notice (a *show cause notice*) stating—
  - (a) that the chief executive proposes to cancel the contract; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the party may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.
- (3) However, subsection (2) does not apply if the chief executive reasonably considers it is not practicable to give the parties a show cause notice.

*Example of circumstances in which it may not be practicable to give a show cause notice—*

The employer who is a party to the registered training contract has ceased trading.

### **38 Decision about cancellation after show cause notice**

- (1) After considering any written response received from a party within the time stated in the show cause notice under section 37(2)(c), the chief executive must—
  - (a) decide whether to cancel the registered training contract; and
  - (b) give the parties—
    - (i) if the chief executive decides to cancel the contract under section 36(1)(c), (e) or (h)—an information notice for the decision; or
    - (ii) if the chief executive decides to cancel the contract other than under section 36(1)(c), (e) or (h)—written notice of the decision, including the reasons for the decision; or
    - (iii) if the chief executive decides not to cancel the contract—written notice of the decision.
- (2) The decision to cancel the registered training contract takes effect on the day stated in the notice given under subsection (1)(b).

### **39 Decision about cancellation if show cause notice not given**

- (1) This section applies if the chief executive does not give the parties a show cause notice under section 37(3).
- (2) The chief executive may cancel the registered training contract under section 36 and give the parties written notice of the date of the cancellation.
- (3) The cancellation takes effect on the date stated in the notice.

### **40 Registered training contract ends if cancelled**

If a registered training contract is cancelled before it is completed, the apprenticeship or traineeship of the person

who was the apprentice or trainee ends on the day the contract is cancelled.

## **Division 6A                    Re-registration of cancelled contract in particular circumstances**

### **40A    Definitions for division**

In this division—

*cancelled contract* means a registered training contract that was cancelled under division 6.

*reinstatement decision* means a decision of the industrial relations commission or fair work commission to reinstate the employment of the apprentice or trainee who was a party to a cancelled contract.

*relevant entity* means—

- (a) each person that was a party to a cancelled contract; and
- (b) the supervising registered training organisation for the apprentice or trainee who was a party to the cancelled contract.

### **40B    Application of division**

This division applies if the industrial relations commission or fair work commission makes a reinstatement decision.

### **40C    Obligation to notify chief executive of relevant decision**

Each person that was a party to a cancelled contract must, as soon as possible after becoming aware of the reinstatement decision, notify the chief executive of the decision.

#### **40D Notice of re-registration of training contract after relevant decision**

The chief executive must, as soon as practicable after receiving a notice under section 40C—

- (a) re-register the training contract; and
- (b) provide each relevant entity with a written notice stating the following—
  - (i) that the chief executive has re-registered the cancelled contract as a registered training contract;
  - (ii) that the nominal term of the re-registered training contract is extended by the period the contract was cancelled before being re-registered under paragraph (a);
  - (iii) the date the nominal term ends taking into account the period of extension under subparagraph (ii);
  - (iv) that the training plan for the apprentice or trainee under the cancelled contract continues in force unless the parties enter into a new training plan.

## **Division 7                      Discipline**

### **41 Definition for div 7**

In this division—

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

- (a) the party fails to carry out a reasonable and lawful instruction that is consistent with the party's obligations under the contract given by—
  - (i) if the party is the employer—the chief executive;  
or
  - (ii) if the party is the apprentice or trainee, any of the following—

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- (A) the chief executive;
  - (B) the employer;
  - (C) the employer's agent or employee;
  - (D) the supervising registered training organisation for the apprentice or trainee; or
- (b) the party does not—
- (i) keep a training record prescribed by regulation in the way prescribed by regulation; or
  - (ii) when requested by any of the following persons, produce the record for the person's inspection—
    - (A) another party to the contract;
    - (B) the chief executive;
    - (C) the supervising registered training organisation for the apprentice or trainee under the registered training contract; or
- (c) if the party is the employer—the party does not comply with section 56, 57 or 58; or
- (d) if the party is the apprentice or trainee—the party does not comply with section 55.

## 42 Discipline

- (1) This section applies if the chief executive reasonably believes a party to a registered training contract—
  - (a) has contravened this Act or the contract; or
  - (b) has engaged in misconduct.
- (2) The chief executive may make an order—
  - (a) reprimanding the party; or
  - (b) directing the party to pay the chief executive an amount of not more than 4 penalty units.
- (3) A order under subsection (2)(b) may direct—

- (a) the party to pay the amount directly or by instalments over a stated period; or
  - (b) if the party is the apprentice or trainee—despite the *Industrial Relations Act 2016*, section 371, the apprentice’s or trainee’s employer to deduct the amount directly or by instalments over a stated period from the apprentice’s or trainee’s wages and pay it to the chief executive.
- (4) A person must not contravene an order made under subsection (2)(b).

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

#### **43 Chief executive must give show cause notice before making an order**

- (1) This section applies if the chief executive is proposing to make an order under section 42(2).
- (2) The chief executive must first give each party to the registered training contract a notice (a *show cause notice*) stating—
  - (a) the order the chief executive proposes to make; and
  - (b) the reasons for the proposed order; and
  - (c) that the party may, within 14 days after the notice is given, give the chief executive a written response to the proposed order.

#### **44 Decision about order after show cause notice**

- (1) After considering any written response received from a party to the registered training contract within the time stated in the show cause notice under section 43(2)(c), the chief executive must decide whether to make an order under section 42(2).
- (2) If the chief executive decides to make an order under section 42(2), the chief executive must give the parties an information notice for the decision.

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## Division 8                      Completion of registered training contract

### Subdivision 1                  Issue of completion certificate

#### 45                      Issue of completion certificate if all parties agree

- (1) This section applies if—
- (a) the parties to a registered training contract are satisfied the apprentice or trainee under the contract has completed all training and assessment required under the training plan for the apprentice or trainee; and
  - (b) the supervising registered training organisation for the apprentice or trainee has issued the qualification or statement of attainment stated in the plan.

*Note—*

See part 4 for provisions about training plans.

- (2) The parties to the registered training contract and the supervising registered training organisation must sign an agreement in the approved form (the ***completion agreement***) stating that all training and assessment required under the training plan has been completed by the apprentice or trainee.
- (3) If the apprentice or trainee is under 18 years, the completion agreement must also include the signed consent of a parent of the apprentice or trainee.
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

*Example—*

It may be inappropriate for a parent to give signed consent if the apprentice or trainee is living independently of his or her parents.

- (5) A person must not state anything in the completion agreement that is false or misleading.

Maximum penalty for subsection (5)—50 penalty units.

**46 Supervising registered training organisation must give completion agreement to chief executive**

The supervising registered training organisation for the apprentice or trainee must give the completion agreement to the chief executive within 10 days after the agreement is signed.

**47 Decision by chief executive about issue of completion certificate if all parties agree**

- (1) On receiving the completion agreement, the chief executive must decide whether or not to issue a completion certificate for the apprenticeship or traineeship.
- (2) The chief executive may issue the completion certificate only if satisfied that the apprentice or trainee has completed the apprenticeship or traineeship in accordance with this Act.
- (3) The chief executive may request further information before deciding whether to issue a completion certificate.
- (4) If the chief executive decides to issue the completion certificate, the chief executive must immediately—
  - (a) give written notice of the decision to the parties to the registered training contract and the supervising registered training organisation; and
  - (b) give the apprentice or trainee the completion certificate.
- (5) If the chief executive decides not to issue the completion certificate, the chief executive must immediately give the parties to the contract and the supervising registered training organisation written notice of the decision, including the reasons for the decision.

**48 Notification of failure to sign completion agreement**

- (1) This section applies if—
  - (a) the apprentice's or trainee's supervising registered training organisation is reasonably satisfied—



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- (i) all training and assessment under the training plan for the apprentice or trainee has been completed by the apprentice or trainee; and
  - (ii) the apprentice or trainee has been, or is entitled to be, issued with the qualification or statement of attainment for the apprenticeship or traineeship; and
- (b) the employer or apprentice or trainee—
- (i) has refused or neglected to sign a completion agreement after being requested to do so; or
  - (ii) has not signed a completion agreement because they can not be contacted.
- (2) The supervising registered training organisation must advise the chief executive in writing—
- (a) that the organisation is reasonably satisfied of the matters mentioned in subsection (1)(a) and the reasons it is reasonably satisfied; and
  - (b) of the party to the registered training contract that has not signed the completion agreement.

#### **49 Chief executive must give notice to the parties to the registered training contract**

On receiving notice from the apprentice's or trainee's supervising registered training organisation under section 48, the chief executive must give each party to the registered training contract written notice stating that—

- (a) the supervising registered training organisation has advised the chief executive of the matters mentioned in section 48(1)(a); and
- (b) the chief executive is considering whether to issue a completion certificate to the apprentice or trainee; and
- (c) the party may, within 21 days after the notice is given, advise the chief executive whether the party considers

the completion certificate should be given, including the reasons for the party's view.

## **50 Decision by chief executive about issue of completion certificate if all parties do not agree**

- (1) This section applies if—
  - (a) the chief executive has given notice to the parties to the registered training contract under section 49; and
  - (b) 21 days have elapsed since the notice was given.
- (2) The chief executive must decide whether or not to issue a completion certificate for the apprenticeship or traineeship.
- (3) The chief executive may issue the completion certificate only if satisfied that the apprentice or trainee has completed the apprenticeship or traineeship in accordance with this Act.
- (4) If the chief executive decides to issue the completion certificate, the chief executive must immediately—
  - (a) give written notice of the decision to the parties to the registered training contract and the supervising registered training organisation; and
  - (b) give the apprentice or trainee the completion certificate.
- (5) If the chief executive decides not to issue the completion certificate, the chief executive must immediately give the parties to the contract and the supervising registered training organisation written notice of the decision, including the reasons for the decision.

## **50A Application for completion certificate**

- (1) This section applies if a supervising registered training organisation has stopped operating as a registered training organisation before a completion agreement is signed by the parties to a registered training contract.
- (2) The parties may apply to the chief executive for the issue of a completion certificate.

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- (3) The application must be in the approved form and include—
    - (a) evidence that the apprentice or trainee has completed all training and assessment required under the training plan for the apprentice or trainee; and
    - (b) if the apprentice or trainee is under 18 years—the signed consent of a parent of the apprentice or trainee.
  - (4) However, subsection (3)(b) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.
  - (5) The chief executive may issue the completion certificate only if satisfied the apprentice or trainee has completed the apprenticeship or traineeship in accordance with this Act.

## **51 Issue of completion certificate ends registered training contract**

- (1) The registered training contract for an apprentice or trainee ends when the chief executive issues a completion certificate for the apprenticeship or traineeship.
- (2) This section applies despite the nominal term of the contract.

## **Subdivision 2 Cancellation of completion certificate**

### **52 Chief executive must give show cause notice before cancelling completion certificate**

- (1) The chief executive may cancel a completion certificate if the chief executive reasonably believes the certificate was issued—
  - (a) in error; or
  - (b) because of a materially false or misleading representation or declaration.

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- (2) The chief executive must first give the holder of the completion certificate a notice (a *show cause notice*) stating—
  - (a) that the chief executive is considering cancelling the completion certificate; and
  - (b) the reason for the proposed cancellation; and
  - (c) that the holder may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.

### **53 Decision about cancellation after show cause notice**

- (1) After considering any written response from the holder of the completion certificate received within the time stated in the show cause notice under section 52(2)(c), the chief executive—
  - (a) may decide to cancel, or not to cancel, the certificate; and
  - (b) must give the holder an information notice for the decision.
- (2) If the chief executive cancels the completion certificate, the cancellation takes effect from the day the information notice is given.
- (3) Also, if the chief executive cancels the completion certificate, the chief executive—
  - (a) must notify the cancellation on the department's website; and
  - (b) may, by signed notice to the person to whom the certificate was issued, require the person to return it to the chief executive within the time stated in the notice.
- (4) The person must comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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- (5) The cancellation of the completion certificate does not reinstate the training contract that ended when the completion certificate for the apprenticeship or traineeship was issued.

### **Subdivision 3      Ending of apprenticeship or traineeship at end of nominal term**

#### **54      Apprenticeship or traineeship ends when nominal term ends**

- (1) This section applies if the nominal term of a registered training contract ends and the apprentice or trainee has not completed all training and assessment required under the apprentice's or trainee's training plan.
- (2) To remove any doubt, it is declared that the apprenticeship or traineeship ends when the nominal term ends.

*Note—*

Section 23 provides for an application to extend the nominal term of a registered training contract.

### **Division 9              Obligations of apprentice or trainee and employer**

#### **55      Apprentice's or trainee's obligations under registered training contract**

The obligations of an apprentice or trainee under a registered training contract are to—

- (a) attend work, do his or her job and follow the employer's lawful instructions; and
- (b) work towards achieving the qualification or statement of attainment stated in the contract; and
- (c) undertake the training and assessment required under the apprentice's or trainee's training plan.

## **56 Employer to provide supervision, facilities and training**

The employer of an apprentice or trainee must provide, or arrange to provide, the apprentice or trainee with the facilities, range of work, supervision and training—

- (a) the employer is required to provide under the apprentice's or trainee's training plan; or
- (b) prescribed by regulation.

Maximum penalty—60 penalty units.

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

The employer of an apprentice or trainee must not directly or indirectly—

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

Maximum penalty—60 penalty units.

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

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

- (a) the employer sells or disposes of the employer's business to someone else (the *purchaser*);

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- (b) the employer is a partnership and the partnership is dissolved;
  - (c) the employer decides—
    - (i) the apprentice or trainee is unlikely to meet the requirements of his or her training plan; or
    - (ii) the training required under the apprentice's or trainee's training plan can not be completed within the nominal term of the contract;
  - (d) the employment of the apprentice or trainee has ceased;
  - (e) the apprentice or trainee has—
    - (i) made an application for unfair dismissal under the *Fair Work Act 2009* (Cwlth), section 394; or
    - (ii) made an application for reinstatement under the *Industrial Relations Act 2016*, section 317; or
    - (iii) commenced another proceeding contesting the cessation of employment.
- (2) The employer must give the chief executive signed notice of the notifiable event within 14 days after the notifiable event happens.
- Maximum penalty—50 penalty units.
- (3) Subsection (4) applies if—
- (a) the notifiable event is an event mentioned in subsection (1)(a); and
  - (b) the purchaser agrees to continue training the apprentice or trainee under the registered training contract.
- (4) The purchaser must give the chief executive signed notice of the purchaser's agreement to continue training the apprentice or trainee under the registered training contract within 14 days after the notifiable event happens.
- Maximum penalty—50 penalty units.

## **58A Apprentice or trainee must report contested event**

- (1) This section applies if the employment of an apprentice or trainee has ceased and any of the following events (each a *contested event*) happens—
  - (a) the apprentice or trainee makes an application for unfair dismissal under the *Fair Work Act 2009* (Cwlth), section 394;
  - (b) the apprentice or trainee makes an application for reinstatement under the *Industrial Relations Act 2016*, section 317;
  - (c) the apprentice or trainee commences another proceeding contesting the cessation of employment.
- (2) The apprentice or trainee must give the chief executive notice of the contested event within 21 days after the employment of the apprentice or trainee ceased.

## **Division 10 Prohibited employers**

### **59 Prohibited employers**

- (1) The chief executive may declare an employer to be a prohibited employer if the chief executive reasonably believes the employer is not a suitable person to employ an apprentice or trainee.
- (2) The declaration may be for a stated or indefinite period.
- (3) The declaration must state that the employer must not, while the declaration is in force, employ—
  - (a) any apprentice or trainee; or
  - (b) an apprentice or trainee in 1 or more stated apprenticeships or traineeships.
- (4) In deciding whether or not the employer is suitable to employ an apprentice or trainee, the chief executive must have regard to the following—



- 
- (a) the employer's ability to provide, or arrange to provide, an apprentice or trainee with the facilities, range of work, supervision and training required under a training plan for the apprentice or trainee;
  - (b) the employer's record in delivering training to apprentices or trainees;
  - (c) whether the employer behaves, or permits his or her employees to behave, in an objectionable way towards an apprentice or trainee;
  - (d) whether the employer has contravened an Act of the State, another State or the Commonwealth relating to employment, including, for example, this Act, the *Fair Work Act 2009* (Cwlth), the repealed Act, the *Industrial Relations Act 2016* and the *Work Health and Safety Act 2011*;
  - (e) whether the employer has been convicted of an indictable offence;
  - (f) any other matter the chief executive considers relevant to the decision whether or not to declare the employer to be a prohibited employer.

## 60 Chief executive must give show cause notice before making a declaration

- (1) This section applies if the chief executive is proposing to make a declaration under section 59.
- (2) The chief executive must first give the employer a notice (*show cause notice*) stating—
  - (a) that the chief executive proposes to declare the employer to be a prohibited employer; and
  - (b) the reasons for the proposed declaration; and
  - (c) whether the proposed declaration is to apply—
    - (i) indefinitely; or
    - (ii) for the period stated in the show cause notice; and

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- (d) whether the proposed declaration is to apply either to—
  - (i) all apprenticeships and traineeships; or
  - (ii) only the apprenticeships and traineeships stated in the show cause notice; and
- (e) that the employer may, within 14 days after the notice is given, give the chief executive a written response to the proposed declaration.

## **61 Notice of decision about declaration after show cause notice**

- (1) The chief executive must consider any written response received from the employer within the time stated in the show cause notice under section 60(2)(e).
- (2) If the chief executive decides not to declare the employer to be a prohibited employer, the chief executive must immediately give the employer written notice of the decision.
- (3) If the chief executive decides to declare the employer to be a prohibited employer, the chief executive must give the employer an information notice for the decision.
- (4) The information notice must also state—
  - (a) that the employer may apply for revocation of the declaration; and
  - (b) how the employer may apply.

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

- (1) A prohibited employer may apply to the chief executive in the approved form requesting the chief executive to revoke the declaration.
- (2) The chief executive may completely revoke the declaration if the chief executive is satisfied the employer is no longer an unsuitable person to employ an apprentice or trainee.
- (3) The chief executive may partly revoke the declaration only if the chief executive is satisfied—

- (a) if the declaration stated the employer must not employ any apprentice or trainee—the employer is no longer an unsuitable person to employ an apprentice or trainee in a particular apprenticeship or traineeship; or
  - (b) if the declaration stated the employer must not employ an apprentice or trainee in more than 1 stated apprenticeships or traineeships—the employer is no longer an unsuitable employer to employ an apprentice or trainee in 1 or more of the stated apprenticeships or traineeships.
- (4) If the chief executive decides to completely revoke the declaration, the chief executive must immediately give the employer written notice of the decision.
- (5) If the chief executive decides to partly revoke the declaration or not to revoke the declaration, the chief executive must immediately give the employer written notice of the decision, including the reasons for the decision.

### **63 Prohibited employer not to contravene declaration**

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

Maximum penalty—80 penalty units.

- (2) In this section—

*declaration* means—

- (a) a declaration made under section 59; or
- (b) if the declaration has been partly revoked under section 62—the declaration as partly revoked.

## **Division 11                  Restricted callings**

### **64                  Declaration of restricted calling**

- (1) The chief executive may, by notice published on the department's website, declare a calling to be a restricted calling.
- (2) An employer must not employ a young person in a restricted calling unless the young person—
  - (a) has completed a qualification or statement of attainment relevant to the calling; or
  - (b) is employed by the employer as an apprentice or trainee in the calling under a registered training contract.

Maximum penalty—50 penalty units.

## **Part 3                                  Supervising registered training organisations**

### **65                  Requirement for supervising registered training organisation**

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

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

- (1) The parties to a training contract must agree on the registered training organisation that is to become the supervising registered training organisation for the apprentice or trainee.
- (2) There can not be more than 1 supervising registered training organisation for each apprentice's apprenticeship or trainee's traineeship at a time.

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

### **66A Supervising registered training organisation must complete employer resource assessment**

- (1) This section applies to the supervising registered training organisation for an apprentice or trainee in relation to the apprentice's or trainee's training plan.
- (2) The organisation must—
- (a) complete an employer resource assessment in the approved form for the apprentice's or trainee's training plan; and
  - (b) regularly review and, if necessary, revise the employer resource assessment during the period of the training plan; and
  - (c) on request, give the chief executive a copy of the most recent employer resource assessment completed for the training plan.

Maximum penalty—80 penalty units

### **67 Availability of facilities**

The supervising registered training organisation for an apprentice or trainee must provide, or arrange to provide, the apprentice or trainee with the facilities, services, supervision and training required under the training plan for the apprentice or trainee.

Maximum penalty—80 penalty units.

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

The supervising registered training organisation for an apprentice or trainee must ensure the training and assessment

required to be delivered under the apprentice's or trainee's training plan is delivered to the apprentice or trainee.

Maximum penalty—60 penalty units.

## **69 Supervising registered training organisation to notify chief executive if progress not made under training plan**

- (1) This section applies if the supervising registered training organisation for an apprentice or trainee considers the apprentice or trainee is not making the progress required under his or her training plan.
- (2) The supervising registered training organisation must give the chief executive written notice stating that it considers the apprentice or trainee is not making the progress required under the apprentice's or trainee's training plan.

Maximum penalty—60 penalty units.

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

- (1) If the parties to a registered training contract agree, they may replace the supervising registered training organisation for the apprentice or trainee with another registered training organisation.

*Note—*

See also section 77 in relation to the effect on the apprentice's or trainee's training plan.

- (2) If the supervising registered training organisation is to be replaced, the employer must—
  - (a) give the organisation a signed notice stating the day, no sooner than 14 days after the day the notice is given, when the replacement becomes effective; and
  - (b) at least 14 days before the replacement becomes effective, give the chief executive a signed notice stating the name of the new supervising registered training organisation for the apprentice or trainee.

Maximum penalty—40 penalty units.



## **74 Signing of training plan**

- (1) When the parties have agreed to a training plan for an apprentice or trainee, they must sign it.
- (2) The supervising registered training organisation for the apprentice or trainee must take all reasonable steps to ensure the apprentice's or trainee's training plan is signed—
  - (a) if the training plan is the initial training plan for the apprentice or trainee—within 3 months of the start of the apprenticeship or traineeship; or
  - (b) if a training plan for the apprentice or trainee has ended because the supervising registered training organisation has been replaced—within 28 days after the replacement of the supervising registered training organisation; or
  - (c) if a training plan for the apprentice or trainee has ended because of the permanent, temporary or statutory transfer of a registered training contract—within 28 days after the transfer of the contract.

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

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

The supervising registered training organisation for an apprentice or trainee must ensure a copy of the signed training plan is given to the apprentice or trainee, and the employer, within 14 days after the parties sign it.

Maximum penalty—20 penalty units.

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

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

Maximum penalty—50 penalty units.



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

Maximum penalty—50 penalty units.

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

### **Subdivision 1            Ending a training plan**

#### **77            Training plan ends on replacement of supervising registered training organisation**

If the supervising registered training organisation for an apprentice or trainee is replaced—

- (a) the training plan for the apprentice or trainee ends on the replacement of the supervising registered training organisation; and
- (b) a new training plan must be entered into.

#### **78            Training plan ends when apprenticeship or traineeship ends**

The training plan for an apprentice or trainee ends on the day the apprenticeship or traineeship ends.

#### **79            Training plan ends if registered training contract transferred**

If a registered training contract for an apprentice or trainee is transferred to a new employer under part 2, division 4—

- (a) the training plan for the apprentice or trainee ends on the day the contract is transferred; and
- (b) a new training plan must be entered into.

*Note—*

See section 74 for the supervising registered training organisation's obligations in relation to the signing of the plan.

## **Subdivision 2      Changing a training plan—all parties agree**

### **80      Changing training plan for an apprentice or trainee**

The parties to a training plan for an apprentice or trainee may change the plan if all the parties agree to the change.

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

- (1) If the parties agree to change a training plan for an apprentice or trainee, they must sign the changed training plan within 14 days after the change is agreed to.
- (2) The supervising registered training organisation for the apprentice or trainee must take all reasonable steps to ensure subsection (1) is complied with.

Maximum penalty for subsection (2)—20 penalty units.

## **Subdivision 3      Changing a training plan—supervising registered training organisation**

### **82      Supervising registered training organisation may make minor change to training plan**

- (1) A supervising registered training organisation for an apprentice or trainee may change the training plan for the apprentice or trainee if the change is minor.

*Example of a minor amendment—*

an amendment to reflect the changed title of a qualification

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- (2) The supervising registered training organisation must send a changed training plan to the parties to the plan within 14 days after making the change.

Maximum penalty—20 penalty units.

- (3) The change takes effect when the parties receive the changed training plan.

## **Subdivision 4      Changing a training plan—on application by one party**

### **82A      Application by one party to change a training plan**

- (1) If a party to a training plan considers an apprentice or trainee has not made sufficient progress to achieve the qualification or statement of attainment under the training plan, the party may apply to the chief executive to change the mode of delivery of the training plan.
- (2) The application must be in the approved form and state the following—
  - (a) the proposed change to the mode of delivery of the training plan;
  - (b) the reasons for the proposed change.
- (3) If the apprentice or trainee makes the application and is under 18 years, the application must include the signed consent of a parent of the apprentice or trainee.
- (4) However, subsection (3) does not apply if it would be inappropriate in all the circumstances for a parent to give signed consent.

### **82B      Chief executive may request further information**

- (1) Within 21 days after receiving the application, the chief executive may give the applicant a written notice asking for further information the chief executive reasonably requires to decide the application.

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- (2) The notice must state a reasonable period of at least 14 days after the day the notice is given for the applicant to comply with the notice.
- (3) The chief executive must consider any information given by the applicant within the period stated in the notice.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the notice.

### **82C Show cause notice before changing a training plan**

If the chief executive proposes to change the mode of delivery of the training plan the chief executive must give each party to the registered training contract a notice (*a show cause notice*) stating the following—

- (a) that an application has been made under section 82A;
- (b) the reasons, as stated in the application, for the proposed change;
- (c) the reasons the chief executive proposes to change the training plan;
- (d) the proposed change to the mode of delivery of the training plan;
- (e) the day the proposed change is to take effect;
- (f) that the party may, within 14 days after the notice is given, give the chief executive a written response to the proposed change.

### **82D Decision about changing a training plan**

- (1) After having regard to the reasons stated in the application and, if a show cause notice was given under section 82C, any written responses made under section 82C(f), the chief executive must decide—
  - (a) if satisfied the change to the mode of delivery of the training plan is necessary to assist the apprentice or trainee make the required progress to achieve the

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- qualification or statement of attainment under the training plan—to change the mode of delivery of the training plan; or
- (b) otherwise—not to change the mode of delivery of the training plan.
- (2) The chief executive must give each party a written notice about the decision.
  - (3) If the chief executive decides to change the mode of delivery of the training plan, the written notice must state—
    - (a) the change; and
    - (b) the date the change takes effect, being not less than 14 days after the day the notice is given to the parties.

## **Subdivision 5      Changing a training plan—chief executive**

### **82E      Chief executive may change training plan without application by the parties**

The chief executive may decide to change the mode of delivery of the training plan if the chief executive is satisfied the change is necessary to assist an apprentice or trainee to achieve the qualification or statement of attainment under the apprentice's or trainee's training plan.

### **82F      Show cause notice before changing a training plan**

If the chief executive proposes to change the mode of delivery of the training plan, the chief executive must give each party to the registered training contract a notice (a *show cause notice*) stating the following—

- (a) that the chief executive proposes to change the training plan;
- (b) the reasons the chief executive proposes to change the training plan;

- (c) the proposed change to the mode of delivery of the training plan;
- (d) the day the proposed change is to take effect;
- (e) that the party may, within 14 days after the notice is given, give the chief executive a written response to the proposed change.

### **82G Decision about changing a training plan**

- (1) After having regard to any written responses made under section 82F(e), the chief executive must decide—
  - (a) if satisfied the change to the mode of delivery of the training plan is necessary to assist the apprentice or trainee make the required progress to achieve the qualification or statement of attainment under the training plan—to change the mode of delivery of the training plan; or
  - (b) otherwise—not to change the mode of delivery of the training plan.
- (2) The chief executive must give each party a written notice about the decision.
- (3) If the chief executive decides to change the mode of delivery of the training plan, the written notice must state—
  - (a) the change; and
  - (b) the date the change takes effect, being not less than 14 days after the day the notice is given to the parties.

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## **Subdivision 6      Supervising registered training organisation's obligations in relation to a change**

### **82H      Supervising registered training organisation's obligation**

If a training plan is changed under subdivision 4 or 5 the supervising registered training organisation must take all reasonable steps to ensure the change is complied with by the parties to the plan.

## **Chapter 3      Group training organisations and principal employer organisations**

### **Part 1      Group training organisations**

#### **83      Function of group training organisation**

The main function of a group training organisation is, by agreement between the organisation and an entity, to arrange for the entity to train, under a training plan, an apprentice or trainee employed by the organisation.

#### **84      Application for recognition as group training organisation**

- (1) A corporation may apply in the approved form to the chief executive to be recognised as a group training organisation.
- (2) The application must be accompanied by a report from an approved auditor that assesses the applicant's compliance with the GTO Standards.

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- (3) The chief executive must publish a list of approved auditors on the department's website.
- (4) In this section—  
*approved auditor* means an auditor, or a person who is a type of auditor, approved by the chief executive.

## **85 Decision on application for recognition as group training organisation**

- (1) The chief executive must make a decision on an application made under section 84.
- (2) The chief executive may grant the application only if the chief executive is reasonably satisfied the applicant complies with the GTO Standards.
- (3) If the chief executive decides to grant the application, the chief executive must immediately give the applicant—
  - (a) written notice of the decision; and
  - (b) a certificate (a *certificate of recognition*) stating that the applicant is recognised as a group training organisation.
- (4) If the chief executive decides not to grant the application, the chief executive must immediately give the applicant an information notice for the decision.
- (5) If the chief executive fails to decide the application within 6 months after receiving it, the failure is taken to be a decision by the chief executive not to grant the application.

## **86 Requirements for certificate of recognition as group training organisation**

A group training organisation's certificate of recognition must—

- (a) be in the approved form; and
- (b) include the following—
  - (i) the name of the group training organisation;



- (ii) the standard conditions applying to the certificate, and any further conditions imposed by the chief executive, under section 87.

## **87 Conditions applying to certificate of recognition as group training organisation**

- (1) A group training organisation's certificate of recognition is subject to the following standard conditions—
  - (a) the organisation must comply with the GTO Standards;
  - (b) the organisation must undergo compliance audits at the times and in the way directed by the chief executive;
  - (c) the organisation must comply with its obligations under a registered training contract for an apprentice or trainee employed by the organisation.
- (2) The chief executive—
  - (a) may, when the certificate of recognition is issued to the group training organisation or at any other time, impose further conditions the chief executive considers reasonably necessary to ensure the organisation complies with the GTO Standards; and
  - (b) may remove or change the further conditions imposed for the purpose mentioned in paragraph (a).
- (3) If the chief executive changes the conditions for a certificate of recognition after its issue, the chief executive must give the group training organisation a new certificate containing the changed conditions.

## **88 Grounds for cancellation of certificate of recognition**

The chief executive may cancel a group training organisation's certificate of recognition if reasonably satisfied 1 or more of the following grounds applies—

- (a) the organisation has not complied with a condition applying to its certificate of recognition;

- (b) the organisation has stopped operating as a group training organisation;
- (c) the organisation provided false or misleading information—
  - (i) when applying to be recognised as a group training organisation; or
  - (ii) after the issue of its certificate of recognition.

## **89 Show cause notice before cancellation of certificate of recognition**

- (1) This section applies if the chief executive is proposing to cancel a certificate of recognition under section 88.
- (2) The chief executive must first give the group training organisation a notice (a *show cause notice*) stating—
  - (a) that the chief executive proposes to cancel the organisation's certificate of recognition; and
  - (b) the reason for the proposed cancellation; and
  - (c) that the organisation may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.

## **90 Decision about cancellation after show cause notice**

- (1) After considering any written response from the group training organisation received within the time stated in the show cause notice under section 89(2)(c), the chief executive must—
  - (a) decide whether to cancel the organisation's certificate of recognition; and
  - (b) give the organisation—
    - (i) if the chief executive decides not to cancel the certificate—written notice of the decision; or

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- (ii) if the chief executive decides to cancel the certificate—an information notice for the decision.
- (2) If the chief executive cancels the group training organisation's certificate of recognition, the cancellation takes effect 14 days from—
- (a) the day the information notice is given; or
  - (b) if a later day is stated in the information notice, the later day.

## Part 2                      **Principal employer organisations**

### **91            Function of principal employer organisation**

The main function of a principal employer organisation is, by agreement between the organisation and an entity, to arrange for the entity to train, under a training plan, an apprentice or trainee employed by the organisation.

### **92            Application for recognition as principal employer organisation**

- (1) A corporation may apply in the approved form to the chief executive to be recognised as a principal employer organisation.
- (2) The application must be accompanied by a report from an approved auditor that assesses the applicant's compliance with the PEO Standards.
- (3) The chief executive must publish a list of approved auditors on the department's website.
- (4) In this section—  
*approved auditor* means an auditor, or a person who is a type of auditor, approved by the chief executive.

**93 Decision on application for recognition as principal employer organisation**

- (1) The chief executive must make a decision on an application made under section 92.
- (2) The chief executive may grant the application only if the chief executive is reasonably satisfied the applicant complies with the PEO Standards.
- (3) If the chief executive decides to grant the application, the chief executive must immediately give the applicant—
  - (a) written notice of the decision; and
  - (b) a certificate (also a *certificate of recognition*) stating that the applicant is recognised as a principal employer organisation.
- (4) If the chief executive decides not to grant the application, the chief executive must immediately give the applicant an information notice for the decision.
- (5) If the chief executive fails to decide the application within 6 months after receiving it, the failure is taken to be a decision by the chief executive not to grant the application.

**94 Requirements for certificate of recognition as principal employer organisation**

A principal employer organisation's certificate of recognition must—

- (a) be in the approved form; and
- (b) include the following—
  - (i) the name of the principal employer organisation;
  - (ii) the standard conditions applying to the certificate, and any further conditions imposed by the chief executive, under section 95.

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**95 Conditions applying to certificate of recognition as principal employer organisation**

- (1) A principal employer organisation's certificate of recognition is subject to the following standard conditions—
  - (a) the organisation must comply with the PEO Standards;
  - (b) the organisation must undergo compliance audits at the times and in the way directed by the chief executive;
  - (c) the organisation must comply with its obligations under a registered training contract for an apprentice or trainee employed by the organisation.
- (2) The chief executive—
  - (a) may, when the certificate of recognition is issued to the principal employer organisation or at any other time, impose further conditions the chief executive considers reasonably necessary to ensure the organisation complies with the PEO Standards; and
  - (b) may remove or change the further conditions imposed for the purpose mentioned in paragraph (a).
- (3) If the chief executive changes the conditions for a certificate of recognition after its issue, the chief executive must give the principal employer organisation a new certificate containing the changed conditions.

**96 Grounds for cancellation of certificate of recognition**

The chief executive may cancel a principal employer organisation's certificate of recognition if reasonably satisfied 1 or more of the following grounds applies—

- (a) the organisation has not complied with a condition applying to its certificate of recognition;
- (b) the organisation has stopped operating as a principal employer organisation;
- (c) the organisation provided false or misleading information—

- (i) when applying to be recognised as a principal employer organisation; or
- (ii) after the issue of its certificate of recognition.

**97 Show cause notice before cancellation of certificate of recognition**

- (1) This section applies if the chief executive is proposing to cancel a certificate of recognition under section 96.
- (2) The chief executive must first give the principal employer organisation a notice (a *show cause notice*) stating—
  - (a) that the chief executive proposes to cancel the organisation's certificate of recognition; and
  - (b) the reason for the proposed cancellation; and
  - (c) that the principal employer organisation may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.

**98 Decision about cancellation after show cause notice**

- (1) After considering any written response from the principal employer organisation received within the time stated in the show cause notice under section 97(2)(c), the chief executive must—
  - (a) decide whether to cancel the organisation's certificate of recognition; and
  - (b) give the organisation—
    - (i) if the chief executive decides not to cancel the certificate—written notice of the decision; or
    - (ii) if the chief executive decides to cancel the certificate—an information notice for the decision.
- (2) If the chief executive cancels the principal employer organisation's certificate of recognition, the cancellation takes effect 14 days from—

- (a) the day the information notice is given; or
- (b) if a later day is stated in the information notice, the later day.

## **Part 3                      Offences**

### **99      Limit on the number of apprentices or trainees that may be employed for placing under hosting agreement**

An employer must not employ more than 24 apprentices or trainees that the employer is actively attempting to place under a hosting arrangement unless the employer is a group training organisation or a principal employer organisation.

Maximum penalty— 50 penalty units.

## **Chapter 4                  Other training-related matters**

### **Part 1                      Certificates of achievement**

#### **100    Application for certificate of achievement**

- (1) A person may apply to the chief executive in the approved form for a certificate of achievement in a calling that is declared to be an apprenticeship or traineeship.
- (2) The application must be accompanied by—
  - (a) a qualification or statement of attainment issued by a registered training organisation; and
  - (b) evidence of the employment the person has undertaken in the relevant calling; and

- (c) evidence the person has completed the program for the certificate of achievement in the relevant calling approved by the chief executive and published on the department's website.

## **101 Decision on application for certificate of achievement**

- (1) The chief executive must make a decision on an application for a certificate of achievement in a calling.
- (2) The chief executive may grant the application only if the chief executive is satisfied the applicant—
  - (a) has a qualification or statement of attainment issued by a registered training organisation; and
  - (b) has completed the program for the certificate of achievement approved by the chief executive and published on the department's website; and
  - (c) has acquired the necessary skills and knowledge in the calling as stated in the program for the certificate of achievement.
- (3) If the chief executive decides to grant the application, the chief executive must immediately give the applicant—
  - (a) written notice of the decision; and
  - (b) a certificate of achievement for the relevant calling.
- (4) If the chief executive decides not to grant the application, the chief executive must immediately give the applicant written notice of the decision, including the reasons for the decision.
- (5) If the chief executive fails to decide the application within 90 days after receiving it, the failure is taken to be a decision by the chief executive not to grant the application.

## **102 Certificate of achievement**

A certificate of achievement must—

- (a) be in the approved form; and



- (b) include the following—
  - (i) the name of the person holding the certificate;
  - (ii) the calling to which the certificate applies.

### **103 Grounds for cancellation of certificate of achievement**

The chief executive may cancel a person's certificate of achievement if reasonably satisfied the certificate was issued—

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

### **104 Show cause notice before cancellation of certificate of achievement**

- (1) This section applies if the chief executive is proposing to cancel a certificate of achievement under section 103.
- (2) The chief executive must first give the holder of the certificate of achievement a notice (a *show cause notice*) stating—
  - (a) that the chief executive proposes to cancel the certificate of achievement; and
  - (b) the reason for the proposed cancellation; and
  - (c) that the holder may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.

### **105 Decision about cancellation after show cause notice**

- (1) After considering any written response from the holder of the certificate of achievement received within the time stated in the show cause notice under section 104(2)(c), the chief executive must—

- (a) decide whether to cancel the certificate; and
  - (b) give the holder—
    - (i) if the chief executive decides not to cancel the certificate—written notice of the decision; or
    - (ii) if the chief executive decides to cancel the certificate—written notice of the decision, including the reasons for the decision.
  - (2) If the chief executive cancels the certificate of achievement, the cancellation takes effect from the day written notice of the decision is given to the holder of the certificate.
  - (3) Also, if the chief executive cancels the certificate, the chief executive—
    - (a) must notify the cancellation on the department’s website; and
    - (b) may, by signed notice to the person to whom the certificate was issued, require the person to return it to the chief executive within the time stated in the notice.
  - (4) The person must comply with a requirement under subsection (3)(b), unless the person has a reasonable excuse.
- Maximum penalty for subsection (4)—40 penalty units.

## **Part 2**

### **Provision of departmental employment skills development programs**

#### **106 Chief executive may provide employment skills development programs**

The chief executive may provide departmental employment skills development programs to meet the needs of young people in the compulsory participation phase.

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## **Part 3                      Recognising non-departmental    employment skills    development programs**

### **107      Application for recognition of non-departmental                  employment skills development program**

- (1) A person may apply in the approved form to the chief executive for recognition of a non-departmental employment skills development program delivered by the person.
- (2) The application must be accompanied by evidence that the program meets the requirements stated in the Principles for Employment Skills Development Programs issued by the chief executive and published on the department's website.

*Note—*

A young person may participate in a non-departmental employment skills development program to fulfil the obligations under sections 239 and 240 of the *Education (General Provisions) Act 2006*.

### **108      Decision on application for recognition of                  non-departmental employment skills development                  program**

- (1) The chief executive must decide an application made under section 107.
- (2) The chief executive may recognise the non-departmental employment skills development program only if the chief executive is reasonably satisfied the program meets the requirements stated in the Principles for Employment Skills Development Programs issued by the chief executive and published on the department's website.
- (3) If the chief executive decides to grant the application, the chief executive must immediately give the applicant written notice of the decision.
- (4) If the chief executive decides not to grant the application, the chief executive must immediately give the applicant an information notice for the decision.

- (5) If the chief executive fails to decide the application within 6 months after receiving it, the failure is taken to be a decision by the chief executive not to grant the application.

### **109 Chief executive must maintain register**

The chief executive must maintain a register of non-departmental employment skills development programs recognised under section 108.

### **110 Withdrawal of recognition of non-departmental employment skills development program**

The chief executive may withdraw recognition of a non-departmental employment skills development program—

- (a) at the request of the person who delivers the program; or  
(b) on the chief executive's own initiative.

### **111 Show cause notice before cancellation of recognition**

- (1) This section applies if the chief executive is proposing to withdraw recognition of a non-departmental employment skills development program on the chief executive's own initiative under section 110.
- (2) The chief executive must first give the person who delivers the program a notice (a *show cause notice*) stating—
- (a) that the chief executive proposes to withdraw recognition for the program; and  
(b) the reason for the proposed withdrawal of recognition; and  
(c) that the person may, within 14 days after the notice is given, give the chief executive a written response to the proposed withdrawal.

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## 112 Decision about cancellation after show cause notice

- (1) After considering any written response from the person who delivers the non-departmental employment skills development program received within the time stated in the show cause notice under section 111(2)(c), the chief executive must—
  - (a) decide whether to withdraw recognition of the program; and
  - (b) give the person who delivers the program—
    - (i) if the chief executive decides not to withdraw recognition—written notice of the decision; or
    - (ii) if the chief executive decides to withdraw recognition—an information notice for the decision.
- (2) If the chief executive withdraws recognition, the withdrawal of recognition takes effect from the day the information notice is given.
- (3) Also, if the chief executive withdraws recognition, the chief executive must remove the program from the register of non-departmental employment skills development programs kept under section 109.

# Chapter 4A Training Ombudsman

## Part 1 Preliminary

### 112A Definitions for ch 4A

In this chapter—

*complainant* means a person who gives the training ombudsman a complaint about a referable matter.

***compliance matter*** means a matter about compliance with this Act by an apprentice, trainee, employer or supervising registered training organisation.

***notice*** means a written notice.

***office*** means the office of the training ombudsman established under section 112B(2).

***pre-qualified supplier*** means a registered training organisation that has entered into a current Vocational Education and Training Pre-Qualified Supplier Agreement with the department.

***prescribed decision*** means a decision of the chief executive under any of the following sections—

- (a) section 17(2);
- (b) section 20(8);
- (c) section 23(6);
- (d) section 47(1);
- (e) section 50(2);
- (f) section 101(1).

***referable matter***, for a complaint, see section 112D(1)(a).

***referral entity***, for a complaint, means an entity other than the chief executive, whose functions include dealing with a matter the subject of the complaint.

## **Part 2                                  Training ombudsman and office of the training ombudsman**

### **Division 1                              General**

#### **112B Training ombudsman and office**

- (1) There must be a training ombudsman.

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- (2) An office called the office of the training ombudsman is established.
  - (3) The office consists of the training ombudsman and the staff of the office.

### **112C Control of the office**

- (1) The training ombudsman controls the office.
- (2) Subsection (1) does not prevent the office being attached to the department to ensure the office has the administrative support services it requires to carry out the training ombudsman's functions.

## **Division 2                      Functions and powers of training ombudsman**

### **112D Functions of training ombudsman**

- (1) The training ombudsman has the following functions—
  - (a) to receive complaints about any of the following matters (each a *referable matter*)—
    - (i) the provision of vocational education and training by a relevant training entity in Queensland;
    - (ii) the quality of vocational education and training provided by a relevant training entity in Queensland;
    - (iii) a matter relating to an apprenticeship or traineeship in Queensland, including a decision by the chief executive about a training contract or the declaration of, or nominal term for, an apprenticeship or traineeship;
    - (iv) a compliance matter or a prescribed decision;
    - (v) a matter involving a pre-qualified supplier;
  - (b) to help people in making complaints to a referral entity;

[s 112D]

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- (c) to refer complaints to a referral entity or otherwise deal with complaints under this Act;
  - (d) to give information or advice to a complainant about the complainant's complaint;
  - (e) to monitor the outcome of complaints;
  - (f) to make recommendations to the chief executive about apprenticeships and traineeships, including the declaration of, or nominal term for, an apprenticeship or traineeship;
  - (g) to identify, and report to the Minister about, issues relating to the provision of vocational education and training in Queensland and its quality;
  - (h) to make recommendations to the Minister about—
    - (i) ways to improve the department's systems, policies and processes relating to pre-qualified suppliers and supervising registered training organisations; and
    - (ii) matters relating to apprenticeships and traineeships in Queensland; and
    - (iii) strategies to improve the quality of vocational education and training in Queensland;
  - (i) to carry out promotional and educational activities relating to the role of the training ombudsman, particularly in relation to the provision and quality of vocational education and training in Queensland;
  - (j) to undertake or promote reviews of, or research into, matters relating to the training ombudsman's functions, including reviews or research requested by the Minister;
  - (k) other functions conferred on the training ombudsman under this Act or another Act.
- (2) In this section—
- relevant training entity*** means—
- (a) a registered training organisation; or



- (b) a supervising registered training organisation; or
- (c) an employer employing an apprentice or trainee.

### **112E Powers of training ombudsman**

The training ombudsman has power to do all things necessary or convenient to be done for, or in connection with, the performance of the training ombudsman's functions.

## **Division 3 Dealing with complaints**

### **112F Training ombudsman may refuse to deal with particular complaint**

- (1) The training ombudsman may refuse to deal, or to continue to deal, with a complaint if—
  - (a) the circumstances giving rise to the referable matter for the complaint happened more than 12 months before the complaint was made; or
  - (b) the training ombudsman reasonably believes—
    - (i) the complaint is frivolous or vexatious; or
    - (ii) the complaint lacks substance; or
    - (iii) the complainant does not have a sufficient interest in the matter raised in the complaint; or
    - (iv) that, having regard to all the circumstances of the case, dealing with, or continuing to deal with, the matter raised in the complaint is unnecessary or unjustifiable.
- (2) However, if the training ombudsman refuses to deal, or to continue to deal, with a complaint under subsection (1), the training ombudsman is not prevented from—
  - (a) identifying issues relating to the referable matter for the complaint; and

[s 112G]

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- (b) making a recommendation to the Minister about the identified issues.
- (3) If the training ombudsman decides to refuse to deal, or to continue to deal, with a complaint, the training ombudsman must, as soon as practicable after making the decision, give the complainant notice of—
  - (a) the decision; and
  - (b) the reasons for the decision.

### **112G Training ombudsman to refuse to deal with complaint subject of review or appeal**

The training ombudsman must refuse to deal, or to continue to deal, with a complaint if—

- (a) the referable matter for the complaint is a decision that—
  - (i) is the subject of an application for review under the QCAT Act; or
  - (ii) has been reviewed by QCAT; or
- (b) an appeal is started in the industrial relations commission or the industrial court about the referable matter for the complaint; or
- (c) the industrial relations commission or industrial court makes a decision on an appeal about the referable matter for the complaint.

### **112H Referral of complaint to chief executive**

- (1) This section applies to a complaint about—
  - (a) a compliance matter; or
  - (b) a matter involving a pre-qualified supplier.
- (2) The training ombudsman must refer the complaint to the chief executive to investigate unless—

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- (a) the training ombudsman refuses to deal with the complaint under section 112F or 112G; or
  - (b) both of the following apply—
    - (i) the complainant has previously made the complaint, or a substantially similar complaint, to the chief executive;
    - (ii) the chief executive has investigated the complaint.
  - (3) On referral of the complaint, the chief executive must investigate the complaint.
  - (4) As soon as practicable after ceasing to deal with the complaint, the chief executive must give the complainant and the training ombudsman a written report about the findings of the investigation.
  - (5) The report must include details of action taken, or proposed to be taken, in relation to the complaint.

### **112I Complainant may ask training ombudsman to further deal with complaint**

- (1) This section applies if—
  - (a) the chief executive investigates a complaint about a compliance matter or a matter involving a pre-qualified supplier; and
  - (b) the person who made the complaint is not satisfied with the outcome of the chief executive's investigation.
- (2) The person may ask the training ombudsman to further deal with the complaint.

### **112J Assessment of, and recommendations about, particular complaints**

- (1) This section applies if, under section 112I, a complainant asks the training ombudsman to further deal with a complaint.
- (2) The training ombudsman must—

[s 112K]

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- (a) give the chief executive notice of the request; and
  - (b) assess the complaint and the chief executive's investigation of the complaint unless the training ombudsman refuses to further deal with the complaint under section 112F or 112G.
- (3) As soon as practicable after completing an assessment, the training ombudsman must give the complainant and the chief executive a written report about the assessment.
- (4) The report—
- (a) must include the training ombudsman's findings of the assessment; and
  - (b) may include any recommendations about the complaint the training ombudsman considers appropriate.
- (5) If the report includes a recommendation, the training ombudsman may ask the chief executive to notify the training ombudsman, within a stated period, of—
- (a) the steps that have been or are proposed to be taken to give effect to the recommendation; or
  - (b) if no steps have been, or are proposed to be, taken to give effect to the recommendation, the reasons for not taking the steps.

### **112K Assessment of, and recommendations about, prescribed decisions**

- (1) This section applies if the training ombudsman receives a complaint about a prescribed decision.
- (2) The training ombudsman must—
  - (a) give the chief executive notice of the complaint; and
  - (b) assess the complaint unless the training ombudsman refuses to deal with the complaint under section 112F or 112G.

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- (3) As soon as practicable after completing an assessment, the training ombudsman must give the complainant and the chief executive a written report about the assessment.
  - (4) The report—
    - (a) must include the training ombudsman’s findings of the assessment; and
    - (b) may include any recommendations about the complaint the training ombudsman considers appropriate.
  - (5) If the report includes a recommendation, the training ombudsman may ask the chief executive to notify the training ombudsman, within a stated period, of—
    - (a) the steps that have been or are proposed to be taken in relation to the recommendation; or
    - (b) if no steps have been, or are proposed to be, taken to give effect to the recommendation, the reasons for not taking the steps.

## **112L Giving information or notice about particular complaints**

- (1) This section applies if the training ombudsman gives the chief executive a notice under section 112J(2)(a) or 112K(2)(a).
- (2) The chief executive must give the training ombudsman—
  - (a) if the notice relates to a request to further deal with a complaint—a copy of the information before the chief executive in investigating the complaint; or
  - (b) if the notice relates to a complaint about a prescribed decision—a copy of the information before the chief executive in making the decision.
- (3) If the training ombudsman decides to refuse to deal, or further deal, with the complaint, the training ombudsman must give the chief executive notice of the decision and the reasons for the decision.

### **112M Training ombudsman may enter into information sharing arrangements**

- (1) The training ombudsman may enter into an arrangement with a government entity for the purpose of sharing or exchanging any information held by the training ombudsman or the government entity.
- (2) The information to which the arrangement may relate is limited to information that relates to a complaint about—
  - (a) a compliance matter; or
  - (b) a matter involving a pre-qualified supplier; or
  - (c) a prescribed decision.
- (3) Under the arrangement, the training ombudsman and government entity are, despite any other Act or law of the State, authorised to—
  - (a) request and receive information held by the other party to the arrangement; and
  - (b) disclose the information to the other party.

### **112N Power to require information or attendance**

- (1) This section applies if the training ombudsman assesses a complaint under section 112J or 112K.
- (2) The training ombudsman may, by notice given to a person, require the person to—
  - (a) give the training ombudsman stated information reasonably required for the assessment, at a stated reasonable time and place; or
  - (b) create, and give the training ombudsman, a document containing information reasonably required for the assessment; or
  - (c) attend before the training ombudsman at a stated reasonable time and place to answer questions, or produce documents, reasonably required for the assessment.

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

Maximum penalty—100 penalty units.

- (4) It is a reasonable excuse for an individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

- (5) In this section—

*information* includes a document or a copy of a document.

*person* does not include a government entity.

### **112O Custody of document given to training ombudsman**

- (1) If a document or other thing is given to the training ombudsman under this division, the training ombudsman may—
  - (a) keep the document or thing for a reasonable period for assessing the complaint to which the document or thing relates; and
  - (b) if it is a document, take extracts from it and make copies of it.
- (2) While the training ombudsman has possession of the document or other thing, the training ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the training ombudsman's possession.

### **112P Report containing adverse comment**

- (1) This section applies if the training ombudsman proposes to make an adverse comment about a person in a report under this division.
- (2) The training ombudsman must not make the proposed adverse comment unless—
  - (a) the training ombudsman gives the person an opportunity to respond to the proposed comment; and

- (b) the person's response is fairly stated in the report.

## Part 3 Minister's powers

### 112Q Minister may refer matters to training ombudsman

- (1) The Minister may refer a matter relevant to the training ombudsman's functions to the training ombudsman and ask the training ombudsman to—
  - (a) review or research the matter; and
  - (b) give the Minister a written report about the review or research, including advice or recommendations about the matter.
- (2) The training ombudsman must comply with the request.
- (3) The training ombudsman's report may include a recommendation about the training ombudsman's functions.

### 112R Minister may give statement of expectations

- (1) The Minister may give the training ombudsman a written statement (a *statement of expectations*) stating the Minister's expectations for the performance of the training ombudsman's functions.
- (2) A statement of expectations may—
  - (a) apply for a period stated in the statement; and
  - (b) include provisions about any of the following—
    - (i) the training ombudsman's strategic or operational activities;
    - (ii) reporting to the Minister about the strategic or operational activities;
    - (iii) the key priorities, other than the priority to be given to complaints, for the training ombudsman.



- (3) The training ombudsman must have regard to a statement of expectations in performing the training ombudsman's functions or exercising the training ombudsman's powers.

### **112S Minister may request information from training ombudsman**

- (1) The Minister may, by notice, ask the training ombudsman for information or documents about a matter relevant to the training ombudsman's functions.
- (2) The training ombudsman must comply with the request.

## **Part 4 Administration matters**

### **Division 1 Provisions relating to the training ombudsman**

#### **112T Appointment**

The training ombudsman is appointed—

- (a) by the Governor in Council; and
- (b) under this Act and not under the *Public Service Act 2008*.

#### **112U Term of appointment**

- (1) The training ombudsman holds office for the term, not more than 4 years, stated in the training ombudsman's instrument of appointment.
- (2) The training ombudsman stops holding office before the end of the term of appointment if the training ombudsman—
  - (a) is disqualified under section 112W from continuing as the training ombudsman; or
  - (b) resigns under section 112Y; or

(c) is removed from office under section 112Z.

### **112V Conditions of appointment**

- (1) The training ombudsman is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The training ombudsman holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

### **112W Disqualification as training ombudsman**

- (1) A person is disqualified from becoming, or continuing as, the training ombudsman if the person—
  - (a) is a member of the Legislative Assembly; or
  - (b) is a councillor of a local government; or
  - (c) has a conviction, other than a spent conviction, for an indictable offence; or
  - (d) is an insolvent under administration; or
  - (e) is disqualified from managing corporations because of the Corporations Act, part 2D.6.
- (2) In this section—

*insolvent under administration* see the Corporations Act, section 9.

### **112X Leave of absence**

- (1) The Minister may approve a leave of absence for the training ombudsman.
- (2) The Minister may appoint another person to act in the office of the training ombudsman during the leave of absence.
- (3) Subsection (2) does not limit the Governor in Council's powers, under the *Acts Interpretation Act 1954*, section 25(1)(b)(v).

### **112Y Resignation**

- (1) The training ombudsman may resign by signed notice given to the Minister.
- (2) The resignation takes effect on—
  - (a) the day the notice is given; or
  - (b) if a later day is stated in the notice—the later day.

### **112Z Removal from office**

The Governor in Council may, on the Minister's recommendation, remove the training ombudsman from office if the Minister is satisfied the training ombudsman—

- (a) has engaged in—
  - (i) inappropriate or improper conduct in an official capacity; or
  - (ii) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or
- (b) can not perform the training ombudsman's functions; or
- (c) has neglected the training ombudsman's duties or performed the training ombudsman's functions incompetently.

### **112ZA Delegations**

- (1) The training ombudsman may delegate the training ombudsman's functions to an appropriately qualified staff member of the office.
- (2) In this section—

*function* includes power.

## **Division 2                    Other matters**

### **112ZB Preservation of existing rights and entitlement**

- (1) If a person appointed as the training ombudsman was, immediately before taking up the appointment, a public service employee—
  - (a) the person is entitled to retain all accrued and accruing rights as if service as the training ombudsman were a continuation of service as a public service employee; and
  - (b) the person keeps all the person's existing and accruing rights relating to superannuation.
- (2) If a person is appointed as a public service employee and was, immediately before taking up the appointment, the training ombudsman, the person's service as training ombudsman is taken to be service as a public service employee.

### **112ZC Criminal history report**

- (1) To decide if a person is disqualified from becoming or continuing as the training ombudsman, the Minister may ask the commissioner of the police service for—
  - (a) a written report about the criminal history of the person; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.

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- (5) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
- (6) In this section—
- criminal history*, for a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

### **112ZD Criminal history reports confidential**

- (1) This section applies to a person who possesses a report, or information contained in a report, given under section 112ZC, because the person is or was an officer, employee or agent of the department or the office.
- (2) The person must not, directly or indirectly, disclose the report or information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person is permitted to disclose the report or information to another person—
- (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the disclosure relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or
  - (f) if the information is, or has been, lawfully accessible to the public.

### **112ZE New convictions must be disclosed**

- (1) This section applies if a person who is the training ombudsman is convicted of an indictable offence during the term of the training ombudsman's appointment.
- (2) The person must, unless the person has a reasonable excuse, immediately give notice of the conviction to the Minister.

Maximum penalty—100 penalty units.

- (3) The notice must include all of the following—
  - (a) the existence of the conviction;
  - (b) when the offence was committed;
  - (c) details adequate to identify the offence;
  - (d) the sentence imposed on the person.

### **112ZF Office not a statutory body for particular Acts**

To remove any doubt, it is declared that the office is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

### **112ZG Staff**

The staff of the office are employed under the *Public Service Act 2008*.

### **112ZH Training ombudsman and staff not subject to direction**

- (1) Subject to this Act and any other Act or law, the training ombudsman is not subject to direction by any person about the way the training ombudsman performs the training ombudsman's functions.
- (2) Staff of the office are not subject to direction by any person, other than from within the office, about the way complaints are dealt with.

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## 112ZI Annual report

- (1) The training ombudsman must prepare and give to the Minister, within 3 months after the end of each financial year, a report on the discharge of the training ombudsman's functions during the financial year.
- (2) The report must include copies of any notices given to the training ombudsman under section 112S during the financial year to which the report relates.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

# Chapter 5      Monitoring and enforcement

## Part 1            Interpretation

### 113      Definitions for ch 5

In this chapter—

*court* means a Magistrates Court.

*disposal order* see section 156(2).

*electronic document* means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

*former owner* see section 151(1).

*general power* see section 136(1).

*help requirement* see section 137(1).

*identity card*, for a provision about inspectors, means an identity card issued under section 119(1).

**inspector** means a person who holds office under this chapter as an inspector.

**notice** means a written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**offence warning**, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given or of whom the requirement is made not to comply with it.

**owner**, for a thing that has been seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

**personal details requirement** see section 157(5).

**person in control**—

- (a) of a vehicle, includes—
  - (i) the vehicle's driver or rider; and
  - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle; or
- (b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

**place** includes the following—

- (a) premises;
- (b) vacant land;



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- (c) a place in Queensland waters;
  - (d) a place held under more than 1 title or by more than 1 owner;
  - (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

**premises** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

**public place** means—

- (a) a place, or part of the place—
  - (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

*Examples of a place that may be a public place under subparagraph (ii)—*

a saleyard, a showground

- (b) a place that is a public place under another Act.

**reasonably suspects** means suspects on grounds that are reasonable in the circumstances.

**vehicle**—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and

- (b) includes a vessel under that Act.

## **Part 2                      General provisions about inspectors**

### **Division 1                Functions and appointment**

#### **114      Functions of inspectors**

An inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

#### **115      Appointment and qualifications**

- (1) The chief executive may, by instrument in writing, appoint any of the following persons as an inspector—
  - (a) a public service officer of the department;
  - (b) a person prescribed by regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **116      Appointment conditions and limit on powers**

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a signed notice given to the inspector; or

- (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

### **117 When office ends**

- (1) The office of a person as an inspector ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the inspector's resignation under section 118 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an inspector ends.
- (3) In this section—  
*condition of office* means a condition under which the inspector holds office.

### **118 Resignation**

- (1) An inspector may resign by signed notice given to the chief executive.
- (2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

## **Division 2                      Identity cards**

### **119      Issue of identity card**

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector's signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **120      Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an inspector must—
  - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 124(1)(b).

### **121      Return of identity card**

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within

21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 3                      Miscellaneous provisions**

### **122      References to exercise of powers**

If—

- (a) a provision of this chapter refers to the exercise of a power by an inspector; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any inspectors' powers under this chapter or a warrant, to the extent the powers are relevant.

### **123      Reference to document includes reference to reproductions from electronic document**

A reference in this chapter to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Part 3                              Entry of places by inspectors**

### **Division 1                      Power to enter**

#### **124      General power to enter places**

- (1) An inspector may enter a place if—

- (a) an occupier at the place consents under division 2 to the entry and section 127 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 134 has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

## **Division 2                    Entry by consent**

### **125    Application of div 2**

This division applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 124(1)(a).

### **126    Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

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## **127 Matters inspector must tell occupier**

Before asking for the consent, the inspector must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

## **128 Consent acknowledgement**

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and

- (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Division 3                      Entry under warrant**

### **129      Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

### **130      Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—



- (i) enter the place and any other place necessary for entry to the place; and
- (ii) exercise the inspector's powers; and
- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

### **131 Electronic application**

- (1) An application under section 129 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
  - (a) may not be made before the inspector prepares the written application under section 129(2); but
  - (b) may be made before the written application is sworn.

### **132 Additional procedure if electronic application**

- (1) For an application made under section 131, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 131; and
  - (b) the way the application was made under section 131 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
  - (b) otherwise—
    - (i) the magistrate must tell the inspector the information mentioned in section 130(2); and
    - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 130(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 129(2) and (3); and
  - (b) if the inspector completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant Magistrates Court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 129.
- (8) In this section—
- relevant Magistrates Court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### **133 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
  - (b) compliance with this division;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 132(3).

### **134 Entry procedure**

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this division.

- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 132(3).

## **Part 4                      Other inspector's powers and related matters**

### **Division 1                General powers of inspectors after entering places**

#### **135      Application of div 1**

- (1) The powers under this division may be exercised if an inspector enters a place under section 124(1)(a) or (c).
- (2) However, if the inspector enters under section 124(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

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## 136 General powers

- (1) The inspector may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this division;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a general power.
- (3) If the inspector takes a document from the place to copy it, the inspector must copy and return the document to the place as soon as practicable.
- (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—

*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

### **137 Power to require reasonable help**

- (1) The inspector may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

### **138 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this Act.

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## **Division 2                    Seizure and forfeiture**

### **Subdivision 1            Power to seize**

#### **139    Seizing evidence at a place that may be entered without consent or warrant**

An inspector who enters a place the inspector may enter under this chapter without the consent of an occupier of the place and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

#### **140    Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the inspector enters the place after obtaining the consent or under a warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—
  - (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place under a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector may also seize anything else at the place if the inspector reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—

- (i) hidden, lost or destroyed; or
  - (ii) used to continue, or repeat, the offence.
- (5) The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

#### **141 Seizure of property subject to security**

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting for the inspector.

### **Subdivision 2 Powers to support seizure**

#### **142 Requirement of person in control of thing to be seized**

- (1) To enable a thing to be seized, an inspector may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.
- (2) The requirement—
  - (a) must be made by notice; or
  - (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.



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### 143 Offence to contravene seizure requirement

A person of whom a requirement is made under section 142 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### 144 Power to secure seized thing

- (1) Having seized a thing under this division, an inspector may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
  - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or  
*Example—*  
make it inoperable by dismantling it or removing a component without which the equipment can not be used
  - (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

### 145 Offence to contravene other seizure requirement

A person must comply with a requirement made of the person under section 144(2)(c) unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **146 Offence to interfere**

(1) If access to a seized thing is restricted under section 144, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If access to a place is restricted under section 144, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

## **Subdivision 3 Safeguards for seized things**

### **147 Receipt and information notice for seized thing**

(1) This section applies if an inspector seizes anything under this division unless—

- (a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.

(2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) an information notice about the decision to seize it.

- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this Act.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

#### **148 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

#### **149 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not—
  - (a) forfeited or transferred under subdivision 4 or 5; or
  - (b) subject to a disposal order under division 3.

- (2) The inspector must return the seized thing to an owner—
  - (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the inspector must return the thing seized to an owner as soon as practicable after the inspector is satisfied—
  - (a) its continued retention as evidence is no longer necessary; and
  - (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against this Act; and
  - (c) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4      Forfeiture**

### **150      Forfeiture by chief executive decision**

- (1) The chief executive may decide a seized thing is forfeited to the State if an inspector—
  - (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the inspector is not required to—
  - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

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*Example for paragraph (b)—*

the owner of the thing has migrated to another country

- (3) Regard must be had to the thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## **151 Information notice about forfeiture decision**

- (1) If the chief executive decides under section 150(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice for the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
  - (a) a public place; or
  - (b) a place where the notice is unlikely to be read by the former owner.

## **152 Forfeiture on conviction**

- (1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—

- (a) whether or not the thing has been seized; or
  - (b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court’s powers under another law.

### **153 Procedure and powers for making forfeiture order**

- (1) A forfeiture order may be made on a conviction on the court’s initiative or on an application by the prosecution.
- (2) In deciding whether to make a forfeiture order for a thing, the court—
- (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
  - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

## **Subdivision 5 Dealing with property forfeited or transferred to State**

### **154 When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 150(1) or 152; or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

## 155 How property may be dealt with

- (1) This section applies if, under section 154, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

## Division 3 Disposal orders

### 156 Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not it has been seized under this Act; and
  - (b) if the thing has been seized—whether or not it has been returned to the former owner.

- (4) In deciding whether to make a disposal order for a thing, the court—
  - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
  - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
- (5) The court may make any order to enforce the disposal order that it considers appropriate.
- (6) This section does not limit the court's powers under another law.

## **Division 4                      Other information-obtaining powers of inspectors**

### **157      Power to require name and address**

- (1) This section applies if an inspector—
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or



- (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

### **158 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

### **159 Power to require information**

- (1) This section applies if an inspector reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to give the inspector information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

## **160 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

# **Part 5**

## **Miscellaneous provisions relating to inspectors**

### **Division 1**

#### **Damage**

#### **161 Duty to avoid inconvenience and minimise damage**

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 163.

#### **162 Notice of damage**

- (1) This section applies if—
  - (a) an inspector damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
- (2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—

- (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The inspector must give notice of the damage to the person who appears to the inspector to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
- (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of an inspector's functions.
- (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
- (8) The notice must state—
- (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 163.

## **Division 2                      Compensation**

### **163      Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a

power by or for an inspector including a loss arising from compliance with a requirement made of the person under this chapter.

- (2) However, subsection (1) does not include loss arising from a lawful seizure or lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 161 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—

*loss* includes costs and damage.

## **Division 3                      Other offences relating to inspectors**

### **164      Giving inspector false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an inspector information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

## 165 Obstructing inspector

- (1) A person must not obstruct an inspector, or someone helping an inspector, exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
  - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the inspector considers the person's conduct an obstruction.
- (3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

## 166 Impersonating inspector

A person must not impersonate an inspector.

Maximum penalty—100 penalty units.

## **Chapter 6      Reviews and appeals**

### **Part 1            Decisions reviewable by QCAT**

#### **167      Review by QCAT**

- (1) A person aggrieved by any of the following decisions may apply to QCAT for a review of the decision—
  - (a) a decision by the chief executive not to recognise a corporation as a group training organisation;
  - (b) a decision by the chief executive to cancel a group training organisation's certificate of recognition;
  - (c) a decision by the chief executive not to recognise a corporation as a principal employer organisation;
  - (d) a decision by the chief executive to cancel a principal employer organisation's certificate of recognition;
  - (e) a decision by the chief executive not to recognise a non-departmental employment skills development program;
  - (f) a decision by the chief executive to withdraw recognition of a non-departmental employment skills development program on the chief executive's own initiative;
  - (g) a decision by the chief executive under chapter 5, part 4, division 2 to seize a thing;
  - (h) a decision by the chief executive under section 150 to forfeit a thing.
- (2) The application must be made as provided under the QCAT Act.

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## Part 2                                      **Decisions appealable to industrial relations commission**

### **168    Appeal to industrial relations commission**

- (1) A person aggrieved by any of the following decisions may appeal to the industrial relations commission—
  - (a) a decision by the chief executive under section 32D;
  - (b) a decision by the chief executive under section 32F;
  - (c) a decision by the chief executive to cancel a registered training contract under section 35D;
  - (d) a decision by the chief executive to cancel a registered training contract under section 36(1)(c), (e) or (h);
  - (e) a decision by the chief executive to cancel a completion certificate under section 53;
  - (f) a declaration by the chief executive that an employer is a prohibited employer under section 59;
  - (g) an order by the chief executive under section 42(2).
- (2) A parent of an apprentice or trainee can not be a person aggrieved for any of the decisions mentioned in subsection (1).
- (3) The appeal must be started, as required under the rules made under the *Industrial Relations Act 2016*, within 21 days after the aggrieved person is given an information notice for the decision being appealed.
- (4) However, the industrial relations commission may extend the time for starting an appeal.

### **169    Stay of decision being appealed**

The industrial relations commission may order that the decision being appealed be wholly or partly stayed pending—

- (a) the determination of the appeal; or

- (b) a further order of the commission.

### **170 Nature of appeal**

- (1) An appeal to the industrial relations commission is by way of rehearing on the record.
- (2) However, the commission may hear fresh or additional evidence, if the commission considers it appropriate to effectively dispose of the appeal.

### **171 Decision on appeal**

- (1) The industrial relations commission must deal with an appeal as quickly as possible.
- (2) The commission may—
  - (a) dismiss the appeal; or
  - (b) allow the appeal, set aside the decision being appealed and substitute another decision; or
  - (c) allow the appeal and amend the decision; or
  - (d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the chief executive to act according to law.
- (3) Subject to section 173, the commission's decision—
  - (a) is final and conclusive; and
  - (b) can not be impeached for informality or want of form.

### **172 Exclusive jurisdiction**

- (1) The industrial relations commission's jurisdiction is exclusive of any court's jurisdiction and an injunction or prerogative order can not be issued, granted or made in relation to proceedings in the commission that are within the commission's jurisdiction.
- (2) Subsection (1) is subject to section 173.



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### **173 Appeal to industrial court on question of law**

- (1) A party to an appeal to the industrial relations commission may appeal against the commission's decision to the industrial court on a question of law only.
- (2) The *Industrial Relations Act 2016* applies, with any necessary changes, to a proceeding on appeal before the industrial court brought under subsection (1).

## **Chapter 7 Legal proceedings**

### **Part 1 Application**

#### **174 Application of ch 7**

This chapter applies to a legal proceeding under this Act.

### **Part 2 Evidentiary aids**

#### **175 Appointments and authority**

For a proceeding under this Act, the following must be presumed unless a party to the proceeding, by reasonable notice of at least 7 days, requires proof of it—

- (a) the chief executive's appointment;
- (b) an inspector's appointment;
- (c) the authority of any of the following persons to do anything under this Act—
  - (i) the Minister;
  - (ii) the chief executive;
  - (iii) an inspector.

## **176 Proof of signatures unnecessary**

A signature purporting to be the signature of any of the following is evidence of the signature it purports to be—

- (a) the Minister;
- (b) the chief executive;
- (c) an inspector.

## **177 Evidentiary provisions**

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
  - (i) an appointment or decision;
  - (ii) a notice or requirement;
  - (iii) a record or report, or an extract from a record or report;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, an appointment as an inspector was, or was not, in force for a stated person;
- (e) on a stated day, a stated person was given a stated notice under this Act;
- (f) on a stated day, a stated requirement was made of a stated person;
- (g) a stated amount is payable under this Act by a stated person and has not been paid.

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## Part 3 Proceedings for offences

### 178 Summary offences

A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

### 179 Limitation on time for starting proceedings

A proceeding for an offence against this Act must start within the later of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the knowledge of the complainant, but within 2 years after the commission of the offence.

### 180 Statement of complainant's knowledge

A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter stated.

### 181 Responsibility for acts or omissions of representatives

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the

person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

*representative* means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## Chapter 8      Miscellaneous

### Part 1            Trusts

#### 182      Definitions for pt 1

In this part—

*approved arrangement* means an arrangement—

- (a) approved by the Minister under section 183(4); and
- (b) notified by gazette notice under section 183(5).

*trust property* see section 183(1).

#### 183      Variation of trust purposes

(1) This section applies if—

- 
- (a) property (*trust property*) is held by or for the State, on the commencement of this section or at a later time, on terms requiring the property or income from the property to be applied to a purpose (the *original purpose*) intended to further in any way the objects of this Act or the repealed Act; and
- (b) 1 or more of the following happens—
- (i) the original purpose is carried out;
  - (ii) the original purpose ceases to exist;
  - (iii) the original purpose is adequately provided for otherwise;
  - (iv) the original purpose is uncertain, insufficiently defined or can not be identified;
  - (v) it is or becomes impossible, impracticable or inexpedient to carry out the original purpose;
  - (vi) the trust property or income from the trust property is not enough to carry out the original purpose.
- (2) The chief executive may propose an arrangement to apply the trust property or a part of it, or the income from the trust property, to a purpose stated in the proposal.
- (3) The chief executive must submit the proposed arrangement in writing to the Minister.
- (4) The proposed arrangement has no effect unless it is approved by the Minister.
- (5) If the Minister approves the proposed arrangement, the approval must be notified by gazette notice.
- (6) The approval takes effect from the publication of the gazette notice or, if a later day is stated in the gazette notice, from the later day.
- (7) Despite the original purpose for which the trust property was held immediately before the approved arrangement becomes effective, when the approved arrangement becomes effective the trust property or income from it is to be applied to the purpose stated in the approved arrangement.

- (8) However, the chief executive may not propose an arrangement under subsection (2) for trust property if the trust instrument under which the property is held on trust states the way the property is to be dealt with if something mentioned in subsection (1)(b) happens.

### **184 Variation of approved arrangement**

- (1) The chief executive may propose a variation of an approved arrangement.
- (2) The chief executive must submit the proposed variation in writing to the Minister.
- (3) The proposed variation has no effect unless it is approved by the Minister.
- (4) If the Minister approves the proposed variation—
- (a) the variation must be notified by gazette notice; and
  - (b) the approved arrangement, as varied, is taken to be the approved arrangement for the trust property, or the part of the property to which it relates, on publication of the gazette notice or a later day stated in the notice.

### **185 Requirements about purposes for arrangements**

- (1) This section applies if the chief executive proposes—
- (a) an arrangement under section 183(2); or
  - (b) a variation of an approved arrangement under section 184(1) and the proposal is to change the purpose of the approved arrangement.
- (2) The chief executive must—
- (a) propose a purpose that, in the chief executive's opinion, is as similar as possible to the purpose for which the trust property is held by or for the State immediately before the arrangement or variation is proposed; and
  - (b) in choosing the purpose, have regard to—

- (i) its usefulness; and
  - (ii) how easily it can be achieved.
- (3) The fact that the chief executive might have chosen another purpose for the arrangement or variation, other than the chosen purpose, is not itself a sufficient ground for a court—
  - (a) to declare the chief executive’s chosen purpose invalid or defective; or
  - (b) to stop the chief executive’s chosen purpose being carried out.

### **186 Recording arrangements and variations in land register**

- (1) This section applies if all or part of the trust property to which an approved arrangement, or a variation of an approved arrangement, relates is land.
- (2) The chief executive must notify the registrar of titles or other person (each a *recorder*) charged by law with recording dealings for the land of the approved arrangement or variation of an approved arrangement within 1 month after the approval of the arrangement or variation takes effect.
- (3) On receiving the notification and any other particulars about the land, arrangement or variation the recorder requires, the recorder must make, in the appropriate register, the entries necessary to record the existence of the approved arrangement or variation.

### **187 Rights and jurisdiction in equity not affected**

Other than as provided in this part, this part does not affect—

- (a) rights, entitlements and obligations conferred or imposed by law for property held on trust; or
- (b) the jurisdiction of a court to enforce, or make a declaration about, trusts.

## Part 2                      Other matters

### 188      **False or misleading statements to official**

- (1) A person must not state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) In this section—

*official* means—

- (a) the chief executive or the chief executive's delegate; or
- (b) an inspector; or
- (c) the training ombudsman; or
- (d) a staff member of the office of the training ombudsman.

### 189      **False or misleading documents to official**

- (1) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—

- (a) tells the official, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can get, the correct information—gives the official the correct information.

- (3) In this section—

*official* has the meaning given by section 188.

### 190      **Duty to act honestly**

- (1) This section applies if a person exercises a power or performs a function under this Act.



- (2) In exercising the power or performing the function, the person must act honestly.

Maximum penalty—50 penalty units.

- (3) The person must not use any information acquired in exercising the power or performing the function to, directly or indirectly—
- (a) gain a benefit for the person or someone else; or
  - (b) cause a detriment to someone else.

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

## 191 Protection of confidentiality

- (1) This section applies if a person (the *first person*) obtains information about another person—
- (a) in exercising a power or performing a function under this Act; or
  - (b) because of an opportunity provided by the exercise of the power or performance of the function.

- (2) The first person must not do any of the following—
- (a) make a record of the information;
  - (b) disclose or communicate the information, whether directly or indirectly;
  - (c) use the information to benefit any person.

Maximum penalty—50 penalty units.

- (3) However, the first person does not contravene subsection (2) if the disclosure, communication, making of a record, or use, of the information—
- (a) is necessary to perform the first person's functions under this Act; or
  - (b) is authorised under this or another Act; or
  - (c) is necessary to perform official duties under the *Public Records Act 2002*; or

- (d) is otherwise required or permitted by law; or
- (e) is ordered by a court, commission or tribunal constituted by law in proceedings before it; or
- (f) is in a form that does not disclose the identity of the other person; or
- (g) relates to another person who is an adult and the other person consents to the disclosure; or
- (h) relates to another person who is a child and the child's parent consents to the disclosure; or
- (i) is in a form that does not disclose the identity of the person to whom the information relates; or
- (j) is made with the written consent of the chief executive who may give the consent if reasonably satisfied the disclosure is in the public interest.

## **192 Representation of parties**

- (1) A party to a proceeding for an offence against this Act may be represented in the proceedings by an agent appointed in writing or a lawyer.
- (2) However, a party who is represented by an agent or lawyer can not be awarded costs of the representation.

## **Part 3 Other provisions**

### **193 Delegations**

- (1) The chief executive may delegate the chief executive's functions and powers to an appropriately qualified person.
- (2) A person delegated a function or power may subdelegate it only—
  - (a) if the delegation permits the subdelegation; and
  - (b) to an appropriately qualified person.

(3) In this section—

*appropriately qualified*, for an individual, means having the qualifications, experience or standing appropriate to perform the function or exercise the power.

*Example of standing—*

a person's classification level in the public service

## 194 Protection from liability

- (1) A prescribed person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the prescribed person, the liability attaches instead to the State.
- (3) This section does not apply to a prescribed person if the person is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

*Note—*

For protection from civil liability in relation to State employees—see the *Public Service Act 2008*, section 26C.

(4) In this section—

*prescribed person* means any of the following—

- (a) the Minister;
- (b) an inspector;
- (c) the training ombudsman;
- (d) a person acting under the direction of any of the following—
  - (i) the Minister;
  - (ii) the chief executive;
  - (iii) a public service employee employed in the department;
  - (iv) an inspector;

- (v) the training ombudsman;
- (vi) a staff member of the office of the training ombudsman;
- (e) a person authorised by the chief executive under section 16 or 21.

**195 Person may apply for copy of document held by chief executive**

- (1) A person may apply to the chief executive for a copy of a document held by the chief executive and prescribed by regulation that relates to an apprenticeship or traineeship for the person.
- (2) A regulation may prescribe the fee payable for providing a copy of the document.

**196 Approved forms**

The chief executive may approve forms for use under this Act.

**197 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
  - (a) provide for the fees payable under this Act; or
  - (b) create offences and impose penalties (including different penalties for successive offences) of not more than 20 penalty units.

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## Chapter 9      **Repeal, savings and transitional provisions**

### Part 1              **Repeal**

#### 198      **Repeal**

The following Acts are repealed—

- Higher Education (General Provisions) Act 2008, No. 25
- Vocational Education, Training and Employment Act 2000, No. 23.

### Part 2              **Savings and transitional provisions for the Further Education and Training Act 2014**

#### Division 1              **Preliminary**

#### 199      **Definition for pt 2**

In this part—

*commencement* means the commencement of the provision in which the term is used.

#### Division 2              **Apprentices and trainees**

#### 200      **Declaration of apprenticeship or traineeship continues in force**

(1) This section applies if—

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- (a) a declaration is made by the chief executive under the repealed Act, section 47 that employment-based training is an apprenticeship or traineeship; and
  - (b) the declaration is in force immediately before the commencement.
- (2) The declaration continues in force under this Act as if it were made by the chief executive under this Act.

### **201 Continuation of registered training contracts**

- (1) This section applies to a registered training contract under the repealed Act in force immediately before the commencement.
- (2) The contract continues in force after the commencement and is taken to be a registered training contract under this Act.

### **202 Continuation of statutory assignment of registered training contract**

- (1) This section applies if—
- (a) immediately before the commencement, a registered training contract was taken to have been assigned under the repealed Act, section 59; and
  - (b) the agreed day is on or after the commencement.
- (2) The assignment takes effect under this Act on the agreed day.

### **203 Agreement to cancel registered training contract continues in force**

- (1) This section applies if, within 7 days before the commencement, a registered training contract under the repealed Act was cancelled by agreement between the parties.
- (2) To remove any doubt, it is declared that a party may not withdraw the party's consent to the application to cancel under section 34 of this Act.

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**204 Continuation of training plan**

- (1) This section applies to a training plan under the repealed Act in force immediately before the commencement.
- (2) The training plan continues in force after the commencement and is taken to be a training plan under this Act.

**205 Continuation of supervising registered training organisation**

- (1) This section applies if, immediately before the commencement, a registered training organisation is the supervising registered training organisation for an apprentice or trainee under the repealed Act.
- (2) The registered training organisation continues as the supervising registered training organisation for the apprentice or trainee under this Act after the commencement.

**206 Continuation of process for issue of completion certificate**

- (1) This section applies if—
  - (a) before the commencement, the chief executive received a signed notice under the repealed Act, section 73(4) about the issue of the qualification or statement of attainment for an apprenticeship or traineeship; and
  - (b) immediately before the commencement, the chief executive had not issued a completion certificate for the apprenticeship or traineeship.
- (2) The chief executive must continue to deal with the matter under this Act after the commencement as if the notice mentioned in subsection (1)(a) had been given under section 48(2).

**207 Cancellation of completion certificates issued under the repealed Act**

- (1) This section applies if a completion certificate was issued under the repealed Act before the commencement.
- (2) The provisions of this Act relating to the cancellation of the certificate apply as if it were issued under this Act.

**208 Declaration of restricted calling continues in force**

- (1) This section applies if, immediately before the commencement, a declaration made by the chief executive under the repealed Act, section 89 that a calling is a restricted calling is in force.
- (2) The declaration continues in force under this Act as if it had been made by the chief executive under this Act.
- (3) A declaration continued in force under subsection (2) expires on 1 July 2020.

**209 Balance of period of stand down of registered training contract**

- (1) This section applies if—
  - (a) before the commencement, the chief executive approved an application for a stand down under the repealed Act, section 86; and
  - (b) immediately before the commencement, the period of the stand down had not expired.
- (2) The stand down continues to apply after the commencement despite the repeal of the repealed Act.



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## **Division 3                      Provisions for group training organisations and principal employer organisations**

### **210      Continued recognition of group training organisations and principal employer organisations**

- (1) This section applies to an entity that, immediately before the commencement, was recognised as a group training organisation or principal employer organisation under the repealed Act.
- (2) If the entity was not, immediately before the commencement, subject to a process to withdraw recognition under the repealed Act—
  - (a) the entity continues as a group training organisation or principal employer organisation under this Act; and
  - (b) the chief executive must issue the entity with a certificate of recognition under this Act within 3 months after the commencement.
- (3) If, immediately before the commencement, the entity was the subject of a process to withdraw recognition under the repealed Act—
  - (a) the entity continues as a group training organisation or principal employer organisation recognised under this Act; and
  - (b) the process to withdraw recognition continues under this Act; and
  - (c) if the chief executive decides not to withdraw recognition—the chief executive must give the entity a certificate of recognition under this Act within 3 months after the making of the decision.

## **Division 4                      Reviews and appeals**

### **211      Right to apply to QCAT for review under repealed Act**

- (1) This section applies if, immediately before the commencement—
  - (a) a person had a right to apply to QCAT for review of a decision made by the chief executive under the repealed Act; and
  - (b) the person had not yet applied to QCAT for the review; and
  - (c) the period for applying for the review under the repealed Act had not expired.
- (2) The person may apply to QCAT for the review, and QCAT must decide the review, under the repealed Act after the commencement as if the repealed Act had not been repealed.

### **212      Review to QCAT started before commencement**

- (1) This section applies if, immediately before the commencement—
  - (a) a person had applied to QCAT for review of a decision made by the chief executive under the repealed Act; but
  - (b) the review had not been finally decided.
- (2) QCAT must continue to decide the review under the repealed Act after the commencement as if the repealed Act had not been repealed.
- (3) A decision by QCAT on the review is taken to be a decision made under this Act.

### **213      Right to appeal to industrial relations commission under repealed Act**

- (1) This section applies if, immediately before the commencement—

- (a) a person had a right to appeal to the industrial relations commission against a decision made by the chief executive under the repealed Act; and
  - (b) the person had not yet started the appeal; and
  - (c) the period for starting the appeal under the repealed Act had not ended.
- (2) The person may appeal to the industrial relations commission, and the commission must decide the appeal, under the repealed Act after the commencement as if the repealed Act had not been repealed.

#### **214 Appeal to industrial relations commission started before commencement**

- (1) This section applies if, immediately before the commencement—
- (a) a person had appealed to the industrial relations commission against a decision made by the chief executive under the repealed Act; but
  - (b) the appeal had not been finally decided.
- (2) The industrial relations commission must continue to hear the appeal under the repealed Act after the commencement as if the repealed Act had not been repealed.

### **Division 5 Other provisions**

#### **215 Show cause process started before commencement**

- (1) This section applies if a show cause process for a matter was started under the repealed Act before the commencement but is not completed immediately before the commencement.
- (2) The show cause process must be completed under the repealed Act after the commencement as if the repealed Act had not been repealed.

## **216 Applications made but not decided before commencement**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had received an application under the repealed Act; and
  - (b) the chief executive had not decided the application.
- (2) If this Act does not provide for an equivalent application, the chief executive must decide the application under the repealed Act after the commencement as if the repealed Act had not been repealed.
- (3) If this Act provides for an equivalent application, the application is taken to have been made under this Act.

*Example—*

an application to register a training contract

- (4) In this section—

***application*** includes a request, a submission for a decision by the chief executive.

## **217 Requirements that must be completed within a stated time**

- (1) This section applies if—
  - (a) the repealed Act required a matter to be completed within a stated period or by a stated time; and
  - (b) immediately before the commencement—
    - (i) the stated period or time had not expired or elapsed; and
    - (ii) the matter had not been completed.
- (2) The matter must be completed under this Act after the commencement.
- (3) However, the period or time provided for under the repealed Act for completion of the matter continues to apply instead of

the period or time provided for under this Act to the extent of any inconsistency.

*Example—*

Under the repealed Act, a training contract must be signed before the end of the probationary period which may be up to 90 days. Under this Act, the training contract must be signed within 14 days after the day the apprenticeship or traineeship starts. The period for signature of the contract provided for under the repealed Act continues to apply.

## **218 Continued appointment of inspectors**

- (1) This section applies to a person who, immediately before the commencement, was appointed as an inspector under the repealed Act.
- (2) The person continues as an inspector under this Act on the same terms of appointment that applied to the person immediately before the commencement.
- (3) An identity card issued to an inspector under the repealed Act is taken to be an identity card issued under this Act until the earlier of—
  - (a) the issue of an identity card to the inspector under this Act; or
  - (b) 3 months after the commencement.

## **219 Variation of trust continues in force**

- (1) This section applies if a variation of a trust under the repealed Act, section 252 was in force immediately before the commencement.
- (2) The variation continues in force under this Act after the commencement.

## **220 Savings provision for TAFE institutes**

- (1) This section applies if, on the commencement, a transfer regulation has not come into effect under the *TAFE Queensland Act 2013*, section 50 transferring the business,

[s 221]

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assets and liabilities of a TAFE institute to another relevant TAFE entity within the meaning of section 49 of that Act.

- (2) Chapter 6 of the repealed Act continues to apply in relation to the TAFE institute as if the chapter had not been repealed.
- (3) This section stops applying on the day a transfer regulation mentioned in subsection (1) comes into effect.
- (4) In this section—

*TAFE institute* has the meaning given under the repealed Act as in force immediately before the commencement.

## **221 Relationship with other divs**

To the extent of any inconsistency, this division applies subject to divisions 2 to 4.

# **Part 3 Repeal, savings and transitional provisions for Queensland Training Assets Management Authority Repeal Act 2015**

## **Division 1 Repeal**

### **223 Repeal**

The Queensland Training Assets Management Authority Act 2014, No. 23 is repealed.

## **Division 2 Savings and transitional provisions**

### **224 Definitions for div 2**

In this division—

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**QTAMA** means QTAMA in existence under the repealed Act before the commencement.

**repealed Act** means the repealed *Queensland Training Assets Management Authority Act 2014*.

## **225 QTAMA, CEO and board**

- (1) On the commencement—
  - (a) QTAMA and its board are dissolved; and
  - (b) QTAMA's chief executive officer and each member of its board go out of office.
- (2) No compensation is payable to a person because of subsection (1)(b).
- (3) To remove any doubt, it is declared that subsection (2) does not limit or otherwise affect a person's right to a benefit or entitlement that had accrued before the commencement.

## **226 State is successor in law of QTAMA**

- (1) The State is the successor in law of QTAMA.
- (2) Subsection (1) is not limited by another provision of this division.

## **227 Assets and liabilities**

On the commencement, the assets and liabilities of QTAMA immediately before the commencement become assets and liabilities of the State held in the department.

## **228 Records and other documents**

On the commencement, QTAMA's records and other documents held by QTAMA immediately before the commencement become records and other documents of the State held in the department.

## **229 Current instruments**

- (1) This section applies to a contract or other instrument to which QTAMA was a party, or that otherwise applied to QTAMA, immediately before the commencement (a *current instrument*).
- (2) The State is a party to the current instrument, or the current instrument otherwise applies to the State, in place of QTAMA.
- (3) Without limiting subsection (2)—
  - (a) any right, title, interest or liability of QTAMA arising under or relating to a current instrument is a right, title, interest or liability of the State; and
  - (b) a current instrument, including a benefit or right provided by a current instrument, given to, by or in favour of QTAMA before the commencement is taken to have been given to, by or in favour of the State; and
  - (c) an application relating to a current instrument made in the name of QTAMA before the commencement is taken to have been made in the name of the State; and
  - (d) a current instrument under which an amount is, or may become, payable to or by QTAMA is taken to be an instrument under which the amount is, or may become, payable to or by the State in the way the amount was, or might have become, payable to or by QTAMA; and
  - (e) a current instrument under which property, other than money, is or may become liable to be transferred, conveyed or assigned to or by QTAMA is taken to be an instrument under which property is, or may become liable to be, transferred, conveyed or assigned to or by the State in the way the property was, or might have become, liable to be transferred, conveyed or assigned to or by QTAMA.



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## 230 References to QTAMA

In an Act or document, a reference to QTAMA is, if the context permits, taken to be a reference to the State.

## 231 Current proceedings

- (1) This section applies to a proceeding that, immediately before the commencement, had not ended and to which QTAMA was a party.
- (2) On the commencement, the State becomes a party to the proceeding in place of QTAMA.

## 232 Proceedings not yet started

- (1) This section applies if, immediately before the commencement, a proceeding could have been started by or against QTAMA within a particular period.
- (2) The proceeding may be started by or against the State within the period.

## 233 Registering authority to note transfer or other dealing

- (1) A registering authority must, on written application by the chief executive and without charge, register or record in the appropriate way a transfer of, or other dealing affecting, an asset, liability or instrument under this division.
- (2) The chief executive must comply with any relevant procedures required by the registering authority for the purpose of registering or recording the transfer or other dealing.
- (3) In this section—

*registering authority* means the registrar of titles or another entity required or authorised by law to register or record transactions affecting assets, liabilities or instruments.

## **234 Staff**

- (1) Section 229 applies to a contract of employment that was in force under section 33 of the repealed Act immediately before the commencement.
- (2) Staff employed by the State under a contract mentioned in subsection (1) are not employed under the *Public Service Act 2008*.
- (3) Despite its repeal, section 37 of the repealed Act applies to a person employed under a contract mentioned in subsection (1) who is appointed as a public service employee after the commencement as if—
  - (a) a reference in the section to a staff member included a person employed under the contract; and
  - (b) a reference in the section to service as a staff member included service under the contract.
- (4) On the commencement, each of the following ends—
  - (a) a work performance arrangement under section 34 of the repealed Act;
  - (b) an interchange arrangement under section 35 of the repealed Act.

## **235 Effect on legal relationships**

- (1) A thing done under this division—
  - (a) does not make the State liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; and
  - (b) does not make the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; and
  - (c) does not fulfil a condition that—
    - (i) terminates, or allows a person to terminate, an instrument or obligation; or

- (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
  - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
  - (iv) requires any money to be paid before its stated maturity; and
- (d) does not release a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this division, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If giving notice to a person would be necessary to do something under this division, the notice is taken to have been given.
- (4) A reference in this section to the State includes an employee or agent of the State.

## **236 Annual report**

Despite its repeal, section 73 of the repealed Act applies in relation to an annual report of QTAMA under the *Financial Accountability Act 2009* prepared after the commencement.

## **237 Confidentiality of criminal history information**

Despite its repeal, section 76 of the repealed Act continues to apply in relation to a report or information to which that section applied immediately before the commencement.

## **Part 4**

# **Transitional provisions for Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019**

### **238 Application for extension of nominal term made but not decided before commencement**

- (1) This section applies if —
  - (a) before the commencement, an application to extend the nominal term of a registered training contract was made under section 23; and
  - (b) immediately before the commencement, the chief executive had not decided the application.
- (2) The chief executive must decide the application under this Act as in force immediately before the commencement.

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# Schedule 1      Dictionary

## section 5

*apprentice* see section 6.

*apprenticeship* means employment-based training declared by the chief executive under section 8 to be an apprenticeship.

*apprenticeship contract* means a contract in the approved form for the training and employment of a person in an apprenticeship.

*approved arrangement*, for chapter 8, part 1, see section 182.

*approved form* means a form approved by the chief executive under section 196.

*AQF* means the Australian Qualifications Framework within the meaning of the Commonwealth Act, section 3.

*calling* means—

- (a) a craft, manufacture, occupation, trade, undertaking or vocation; or
- (b) a section of something mentioned in paragraph (a).

*cancelled contract* see section 40A.

*certificate of achievement*, in a calling, means a certificate issued to a person by the chief executive on being satisfied the person meets the requirements mentioned in section 101(2).

*certificate of recognition* means—

- (a) for a group training organisation—see section 85; or
- (b) for a principal employer organisation—see section 93.

*Commonwealth Act* means the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

*complainant*, for chapter 4A, see section 112A.

*completion agreement* see section 45(2).

**completion certificate** means a certificate issued by the chief executive stating that the person named in the certificate has successfully completed the apprenticeship or traineeship stated in the certificate.

**compliance matter**, for chapter 4A, see section 112A.

**compulsory participation phase** see the *Education (General Provisions) Act 2006*, section 231.

**contested event** see section 58A(1).

**convicted** means a finding of guilt, or the acceptance of a plea of guilt, by a court, whether or not a conviction is recorded.

**court**, for chapter 5, see section 113.

**deliver** includes arrange to deliver.

**departmental employment skills development program** means an employment skills development program provided by the chief executive.

**disposal order**, for chapter 5, see section 113.

**electronic document**, for chapter 5, see section 113.

**employee** see the *Industrial Relations Act 2016*, section 8.

**employer** see the *Industrial Relations Act 2016*, section 7.

**employer organisation** means an organisation of employers.

**employer resource assessment**, for an apprentice or trainee, means a report about the capacity of the apprentice's or trainee's employer to provide or arrange to provide the range of work, facilities and supervision required under a training plan.

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

**fair work commission** means the Fair Work Commission under the *Fair Work Act 2009* (Cwlth).

**former owner**, for chapter 5, see section 113.

**general power**, for chapter 5, see section 113.

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**government entity** means a government entity under the *Public Service Act 2008*.

**group training organisation** means a corporation recognised by the chief executive under section 85 as a group training organisation.

**GTO Standards** means the standards—

- (a) stating the matters required for a group training organisation to effectively perform its main function under section 83; and
- (b) approved by the chief executive and published on the department's website.

**help requirement**, for chapter 5, see section 113.

**hosting arrangement** means an arrangement under which a group training organisation or a principal employer organisation (each an **organisation**) agrees in writing with another entity for—

- (a) the organisation, for a fee, to hire out an apprentice or trainee employed by the organisation to perform work for the other entity; and
- (b) the other entity to train the apprentice or trainee under a training plan.

**identity card**, for chapter 5, see section 113.

**information notice**, about a decision, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may—
  - (i) for a decision mentioned in section 167—apply to QCAT for a review of the decision within 20 business days after the person receives the notice; or
  - (ii) for a decision mentioned in section 168—appeal the decision to the industrial relations commission;

(d) how to apply for review of, or appeal, the decision.

**inspector** see section 113.

**misconduct**, for chapter 2, part 2, division 7, see section 41.

**nominal term** see section 10.

**non-departmental employment skills development program**

means an employment skills development program delivered by a person other than the chief executive.

**notice**—

(a) for chapter 4A, see section 112A; or

(b) for chapter 5, see section 113.

**obstruct** includes hinder, interfere with, resist and attempt to obstruct.

**occupier**, of a place, for chapter 5, see section 113.

**of**, a place, for chapter 5, see section 113.

**offence warning**, for chapter 5, see section 113.

**office**, for chapter 4A, see section 112A.

**owner**, for chapter 5, see section 113.

**parent** includes a guardian and a person who has parental responsibility for a child.

**PEO Standards** means the standards—

(a) stating the matters required for a principal employer organisation to effectively perform its main function under section 91; and

(b) approved by the chief executive and published on the department's website.

**personal details requirement**, for chapter 5, see section 113.

**person in control**, for chapter 5, see section 113.

**place**, for chapter 5, see section 113.

**premises**, for chapter 5, see section 113.

**pre-qualified supplier**, for chapter 4A, see section 112A.



***prescribed decision***, for chapter 4A, see section 112A.

***principal employer organisation*** means a corporation recognised by the chief executive as a principal employer organisation.

***probationary period***, for an apprenticeship or traineeship, means the period decided by the chief executive under section 11 as the probationary period for the apprenticeship or traineeship.

***prohibited employer*** means an employer declared to be a prohibited employer under section 59.

***public place***, for chapter 5, see section 113.

***purchaser*** see section 58(1)(a).

***qualification*** means a VET qualification under the Commonwealth Act.

***reasonably believes*** means believes on grounds that are reasonable in all the circumstances.

***reasonably suspects***, for chapter 5, see section 113.

***referable matter***, for chapter 4A, see section 112A.

***referral entity***, for chapter 4A, see section 112A.

***registered training contract*** means a training contract registered under section 17.

***registered training organisation*** see the Commonwealth Act, section 3.

***reinstatement decision*** see section 40A.

***relevant entity*** see section 40A.

***repealed Act*** means the *Vocational Education, Training and Employment Act 2000*.

***restricted calling*** means a calling declared by the chief executive to be a restricted calling under section 64.

***show cause notice***—

- (a) for chapter 2, part 2, division 5, subdivision 2—see section 32C(1); or

- (b) for chapter 2, part 2, division 6, subdivision 1A—see section 35C(1); or
- (c) for chapter 2, part 2, division 6, subdivision 2—see section 37(2); or
- (d) for chapter 2, part 2, division 7—see section 43(2); or
- (e) for chapter 2, part 2, division 8, subdivision 2—see section 52(2); or
- (f) for chapter 2, part 2, division 10—see section 60(2); or
- (g) for chapter 2, part 4, division 2, subdivision 4—see section 82C; or
- (h) for chapter 2, part 4, division 2, subdivision 5—see section 82F; or
- (i) for chapter 3, part 1—see section 89(2); or
- (j) for chapter 3, part 2—see section 97(2); or
- (k) for chapter 4, part 1—see section 104(2); or
- (l) for chapter 4, part 3—see section 111(2).

***statement of attainment*** means a VET statement of attainment under the Commonwealth Act.

***supervising registered training organisation***, for an apprentice or trainee, means a registered training organisation that—

- (a) delivers training to the apprentice or trainee under a training plan that requires the training to be delivered by a registered training organisation; and
- (b) assesses an employer's capacity to provide the supervision, facilities and training required under the training plan for an apprentice or trainee; and
- (c) assesses whether the apprentice or trainee has completed the training required to be completed under the plan; and
- (d) when satisfied the apprentice or trainee has completed the training required, issues the qualification or statement of attainment stated in the plan.

**trainee** see section 7.

**traineeship** means employment-based training declared by the chief executive under section 8 to be a traineeship.

**traineeship contract** means a contract in the approved form for the training and employment of a person in a traineeship.

**training contract** means—

- (a) for an apprentice—an apprenticeship contract; or
- (b) for a trainee—a traineeship contract.

**training organisation** means a person or an organisation providing, or offering to provide, training or assessment of skills and knowledge.

**training plan**, for an apprentice or trainee, means a document stating—

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

**trust property**, for chapter 8, part 1, see section 182.

**vehicle**, for chapter 5, see section 113.

**vocational education and training** means the education and training and qualifications and statements of attainment under the vocational education and training provisions of the AQF.

**young person** means a person under 18 years.