

Further Education and Training Regulation 2024

Explanatory notes for SL 2024 No.168

made under the

Further Education and Training Act 2014

General Outline

Short title

Further Education and Training Regulation 2024

Authorising law

Section 197 of the *Further Education and Training Act 2014*

Policy objectives and the reasons for them

The *Further Education and Training Regulation 2024* (2024 Regulation) repeals and replaces the *Further Education and Training Regulation 2014* (2014 Regulation). Under section 54 of the *Statutory Instruments Act 1992*, the 2014 Regulation is due to automatically expire on 1 September 2024.

The *Further Education and Training Act 2014* (the Act) provides for the regulatory framework for apprenticeships and traineeships in Queensland. Apprenticeships and traineeships integrate employment and structured training, whereby an apprentice or trainee enters into a training contract with an employer for a nominal period of time, in order to gain competence in a trade (apprentice) or vocational area (trainee).

The 2014 Regulation currently prescribes necessary matters for the purpose of the Act. The Act provides for the following matters to be prescribed by regulation:

- additional matters which can be included in a declaration of an apprenticeship and traineeship;
- requirements for keeping, producing, and updating the training record for an apprenticeship or traineeship; and
- provision and costs for copies of certain apprenticeship and traineeship related documents.

A sunset review of the 2014 Regulation was undertaken to evaluate the continuing need, effectiveness, and efficiency of the regulation. The outcome of the review determined that there is an ongoing need for a regulation, and it should be remade as is, with no change to the fees.

The policy objectives for remaking the 2014 Regulation are to prescribe the following necessary matters for the purpose of the Act, ensuring a robust regulatory framework for apprenticeships and traineeships in Queensland is maintained.

Declaration of an apprenticeship or traineeship

Section 8(2) of the Act provides for the chief executive to declare employment-based training which leads to a qualification or statement of attainment to be an apprenticeship or traineeship. The declaration may include the matters stated in section 8(4), such as minimum hours of paid employment and whether the apprenticeship or traineeship may be completed by a school student.

Section 8(3)(c) of the Act permits other matters prescribed in a regulation to also be included in the declaration. It is necessary to continue to prescribe other matters such as the minimum education level for a person starting an apprenticeship or traineeship; whether prior approval of an industry body, employer group, or regulatory authority is required before a person can start an apprenticeship or traineeship; and the requirements for supervision of an apprentice or trainee and the qualifications and experience required to be held by a supervisor.

Training records required to be kept for an apprenticeship or traineeship

A failure to keep a training record as prescribed by a regulation in the way prescribed, or produce it when requested, can constitute misconduct under section 41 of the Act. The training record is essential for documenting an apprentice's or trainee's learnings and progress throughout the apprenticeship/traineeship, both workplace tasks completed under the employer and formal training delivered by the supervising registered training organisation (SRTO).

It is necessary for a regulation to continue to prescribe who is responsible for providing, keeping, maintaining, and updating the training record; the frequency for updating the training record; and the format of the training record.

Prescribed documents and fees

The chief executive keeps records of historical apprenticeship, traineeship and related documents created under the Act and preceding, repealed legislation. Section 191 of the Act provides that information about a person obtained for the purposes of the Act cannot be disclosed or communicated to another person except in the circumstances listed in section 191(3). Section 191(3)(b) permits disclosure of the information if authorised under the Act.

Section 195(1) of the Act provides that a person may apply 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. The chief executive is permitted to provide a copy of the prescribed document upon payment of the prescribed fee. Section 197 of the Act is a general head of power for making regulations under the Act and specifies the regulation may prescribe a fee.

Records kept by the chief executive relating to former apprenticeships and traineeships verify that the employment-based training component under an apprenticeship or traineeship has been undertaken by a person. This verification of the employment-based training component can only be provided by the chief executive. It is necessary for a regulation to ensure the chief executive can continue to provide certain documents relating to apprenticeships and traineeships created under the Act and preceding, repealed legislation.

It is necessary to charge a fee for providing these documents, however this fee is to continue to be subsidised by the Department of Employment, Small Business and Training (the department), and able to be waived by the chief executive if reasonably satisfied that there are exceptional circumstances to do so.

Achievement of policy objectives

The 2024 Regulation will commence on 1 September 2024. The policy objectives for remaking the 2014 Regulation to prescribe the necessary matters for the purpose of the Act are achieved through the following:

Declaration of an apprenticeship or traineeship

Part 2 provides for prescribed matters that may be included in a declaration of an apprenticeship or traineeship. The 2024 Regulation will permit the chief executive to include the following matters in a declaration: the level of education a person must have reached before starting the apprenticeship or traineeship; whether prior written approval of a nominated employer group, industry body, or regulatory authority is required before approving a person's participation in an apprenticeship or traineeship; and the supervision requirements for the apprenticeship or traineeship and the qualifications and experience the supervisor must have.

Transitional provisions have been included in the 2024 Regulation to ensure the continuation of requirements included in a declaration of an apprenticeship or traineeship under the 2014 Regulation.

Training records required to be kept for an apprenticeship or traineeship

Part 3 prescribes how a training record must be kept, including the commencement, possession, inspection, and updating of the training record. The SRTO for the apprentice or trainee will decide the format of the training record and give it to the apprentice or trainee within the required timeframe.

The training record must be kept by the apprentice or trainee for the duration of the apprenticeship or traineeship, and in their possession unless the apprentice or trainee has produced it to a person under the Act, including the 2024 Regulation.

The employer, apprentice or trainee, and the SRTO must keep the training record complete and accurate with the particulars of training completed by the apprentice or trainee. The employer or SRTO must at reasonable intervals not exceeding 3 months require the apprentice or trainee to produce the training record for updating with the particulars of training completed by the apprentice or trainee during the interval. The SRTO is required to update the training record with the particulars if the training record is produced.

Transitional provisions have been included in the 2024 Regulation to ensure the continuation of the provisions for the training record under the 2014 Regulation.

Apart from non-compliance with section 6 being a possible ground for discipline under the Act, failure to comply with sub-sections 4(5) or (7) constitutes an offence with a maximum penalty of 20 penalty units.

Prescribed documents and fees

Part 4 and Schedule 1 prescribes certain documents the chief executive can provide relating to a person and the fee for provision of those documents. Documents prescribed in Schedule 1 include a same or similar document that was issued under any repealed Act that relates to apprenticeships or traineeships, including completion certificates, training contracts, certificates certifying a matter relating to the applicant's apprenticeship or traineeship, certificates of achievement and recognition certificates.

The fees continue to be subsidised, remaining the same as the fees charged under the 2014 Regulation. The chief executive may waive payment of a fee for providing a document if the chief executive considers that there are exceptional circumstances to do so.

Consistency with policy objectives of authorising law

The 2024 Regulation is consistent with the main objectives of the Act, ensuring a robust regulatory framework for apprenticeships and traineeships in Queensland is maintained.

Inconsistency with policy objectives of other legislation

The 2024 Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

During the sunset review, the department considered alternative ways of achieving the policy objectives. This included:

- allowing the 2014 Regulation to expire without replacement;
- remaking the 2014 Regulation as is, however, increasing the fees to reflect cost recovery; and
- remaking the 2014 Regulation as is, with no change to the fees.

It was determined that there were no alternative and reasonable ways to achieve the policy objectives other than remaking the 2014 Regulation as is, with no change to the fees.

Allowing the 2014 Regulation to expire without replacement was not considered a reasonable alternative because the Regulation provides a framework for prescribing necessary matters for the purpose of the Act. The additional matters which can be included in a declaration of an apprenticeship and traineeship, and the enforceable requirements for the training record ensure a robust regulatory framework for apprenticeships and traineeships in Queensland is maintained.

Further, if there was no regulation to prescribe documents that a person may apply for relating to the former apprenticeship or traineeship for the person, this would significantly impact individuals who find it necessary to make such an application, often for employment related reasons, to verify the apprenticeship or traineeship has been completed in the past, or otherwise undertaken.

Remaking the 2014 Regulation as is, however, increasing the fees to reflect cost recovery was not considered a reasonable alternative because individuals seeking to obtain copies of documents relating to their apprenticeship or traineeship undertaken in Queensland, often require these documents for employment related reasons. There are circumstances where documents obtained from other sources may suffice, however, evidence that the employment-based training component under an apprenticeship or traineeship can only be verified by records held by the department. The need to maintain a level of affordability for providing these documents during times of skills shortages and high cost of living far outweigh the potential increase in revenue the department may receive by increasing fees to reflect cost recovery.

Benefits and costs of implementation

The 2024 Regulation will not result in any additional costs to Government.

Consistency with fundamental legislative principles

The 2024 Regulation is consistent with fundamental legislative principles.

Consultation

In May 2024, the department developed and circulated a consultation paper to various stakeholders, including apprentices, the Queensland Training Ombudsman, employer and union representative groups, and registered training organisation bodies, as part of the department's sunset review of the 2014 Regulation. Feedback received from stakeholders was in support of remaking the regulation as is, with no change to the fees.

The Department of the Premier and Cabinet, Queensland Treasury, and the Office of Best Practice Regulation were consulted. None of these agencies raised concerns with proceeding with the process to remake the regulation.