



Queensland

Further Education and Training (Training Ombudsman) and Another Act Amendment Act 2016

Act No. 7 of 2016



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Act No. 7 of 2016

An Act to amend the Further Education and Training Act 2014 to establish the office of the training ombudsman and for related purposes, and to amend the Public Service Act 2008 for a particular purpose

[Assented to 4 March 2016]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Further Education and Training (Training Ombudsman) and Another Act Amendment Act 2016*.

2 Commencement

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

Part 2 Amendment of Further Education and Training Act 2014

3 Act amended

This Act amends the *Further Education and Training Act 2014*.

4 Amendment of s 64 (Declaration of restricted calling)

Section 64(3)—
omit.

5 Insertion of new ch 4A

After section 112—
insert—

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(4);
- (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.
- (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;
 - (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 2 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
 - (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—
 - (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—
 - (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.
- (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) a public service employee—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; or
 - (b) a member of the State Public Sector Superannuation Scheme under the

Superannuation (State Public Sector) Act 1990—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.
- (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.

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.

6 Amendment of s 173 (Appeal to Industrial Court on question of law)

Section 173, 'Industrial Court'—

omit, insert—

industrial court

7 Amendment of s 188 (False or misleading statements to official)

Section 188(2), definition *official*—

insert—

- (c) the training ombudsman; or
- (d) a staff member of the office of the training ombudsman.

8 Amendment of s 194 (Protection from liability)

(1) Section 194(4), definition *prescribed person*—

insert—

- (ba) the training ombudsman;

- (2) Section 194(4), definition *prescribed person*, paragraph (c)—
insert—
- (v) the training ombudsman;
 - (vi) a staff member of the office of the training ombudsman;
- (3) Section 194(4), definition *prescribed person*, paragraphs (ba) to (d)—
renumber as paragraphs (c) to (e).

9 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definition *notice*—
omit.

- (2) Schedule 1—
insert—

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

compliance matter, for chapter 4A, see section 112A.

government entity means a government entity under the *Public Service Act 2008*.

notice—

(a) for chapter 4A, see section 112A; or

(b) for chapter 5, see section 113.

office, for chapter 4A, see section 112A.

pre-qualified supplier, for chapter 4A, see section 112A.

prescribed decision, for chapter 4A, see section 112A.

referable matter, for chapter 4A, see section 112A.

referral entity, for chapter 4A, see section 112A.
young person means a person under 18 years.

Part 3 **Amendment of Public Service Act 2008**

10 **Act amended**

This Act amends the *Public Service Act 2008*.

11 **Amendment of sch 1 (Public service offices and their heads)**

Schedule 1—

insert—

office of the training ombudsman under
the *Further Education and Training Act
2014*

training ombudsman