Queensland

VOCATIONAL EDUCATION AND TRAINING BILL 1998

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1998

A BILL

FOR

An Act to provide for vocational education and training and for other purposes

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Division 1—Introduction

Short title

1. This Act may be cited as the *Vocational Education and Training Act 1998*.

Commencement

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

Division 2—Objectives of Act

Objectives

3. The objectives of this Act are—

(a) to establish a State training system for the effective and efficient provision of vocational education and training to meet the immediate and future needs of industry and the community; and

(b) to provide ways in which industry, employers, employees and the community can advise government on vocational education and training needs and priorities to meet the needs; and

(c) to encourage the development of training by, and within, industry; and

(d) to encourage people to enter learning and continue learning throughout their lives; and

(e) to facilitate the provision of quality vocational education and training that—

(i) is relevant to employment; and

(ii) is industry and user driven; and

(iii) encourages—

(A) the generation of employment opportunities; and

(B) enterprise development; and

(f) to regulate—

(i) the training of apprentices under registered training agreements; and

(ii) the registration of training organisations and training agreements within the State; and

(g) to promote the development of a national vocational education and training framework, including the implementation of national principles, standards and protocols.

How objectives to be achieved

4. This Act establishes a scheme for—

(a) registering training organisations; and

(b) accrediting courses as vocational education and training courses; and

(c) approving persons as administering bodies to administer, in conjunction with the chief executive, certain provisions of this Act; and

(d) training of apprentices; and

(e) administering training agreements and vocational placements; and

(f) monitoring and auditing mechanisms to safeguard the quality and integrity of vocational education and training qualifications; and

(g) planning for vocational education and training in Queensland.

Division 3—Operation of Act

Act binds all persons

5.(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) However, nothing in the Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

Division 4—ANTA

ANTA's State functions

6. ANTA has the functions, for the State, that are conferred on it by the ANTA Act.

ANTA's State powers

7. In performing the functions, ANTA may exercise the powers conferred on it by the ANTA Act.

Division 5—Definitions

Definitions—the dictionary

8. The dictionary in schedule 5 defines particular words used in this Act.

PART 2—REGISTRATION OF TRAINING ORGANISATIONS

Division 1—Applying for registration

Applying for registration

9.(1) A training organisation may apply to the chief executive or an appropriately approved administering body to register the organisation as a training organisation.

(2) The chief executive or the administering body may register the organisation only if the chief executive or body is satisfied—

(a) the organisation meets the criteria for registration as a training organisation published by the QTA by gazette notice; and

(b) the organisation is a suitable organisation for registration.

(3) However, only the chief executive may register the training organisation if it is registered as a training organisation under a corresponding law.

(4) The chief executive may refuse to register an organisation that is registered as a training organisation under a corresponding law and has applied for the same or similar registration under this Act only if—

(a) the organisation's registration as a training organisation under a corresponding law has been suspended; or

(b) the organisation has previously been refused registration under this Act; or

(c) the organisation has been previously registered under this Act as a training organisation and the registration has been suspended or cancelled; or

(d) the chief executive decides there is another reasonable ground for refusing the registration.

Suitability of applicant for registration as training organisation

10. In deciding whether an applicant for registration as a training organisation is suitable for registration, the chief executive or administering body—

(a) may have regard to the following—

(i) the applicant's business reputation;

(ii) the applicant's current financial position and financial background; and

(b) must have regard to anything stated under a regulation.

Type of registration

11. The chief executive or the administering body may register the organisation as providing one or both of the following—

(a) stated training services;

(b) stated assessment services.

Registration conditions

12.(1) A registered training organisation may only issue a qualification or statement of attainment for the training or assessment services for which it is registered.

(2) The chief executive or the administering body may register the organisation on reasonable conditions.

Conditions for registering organisations registered under corresponding law

13.(1) This section applies if a training organisation—

(a) is registered as a training organisation under a corresponding law; and

(b) applies for the same or similar registration as a training organisation under this Act; and

(c) the chief executive has no ground to refuse the registration under section 9(4).

(2) The chief executive must register the organisation as a training organisation under this Act.

(3) The registration must be, to the greatest possible extent—

(a) for the same registration as the organisation has in the other State unless the organisation asks for a different registration under this Act; and

(b) subject to a condition imposed by the chief executive under section 12(2)—on the same conditions as apply under the corresponding law.

(4) However, the registration does not authorise anything that can not be authorised by a registration under this Act.

Term of registration

14.(1) The term of a registration is the term stated under a regulation not longer than 5 years.

(2) A registration is not renewable but a new registration may be applied for.

Amending or cancelling registration on application

15. The chief executive or an administering body may, on the application of a registered training organisation, amend or cancel the organisation's registration.

Registration and amendment procedure

16. Registration or amendment of registration may be applied for and granted or refused as stated under a regulation.

Cancellation etc. of registration without application

17. The chief executive may cancel, suspend or amend the registration of a training organisation without application by the organisation by fair procedures stated under a regulation.

Authority given by registration

18. A registered training organisation may issue a qualification or statement of attainment stated in its registration document.

Contravening registration conditions

19. A registered training organisation must not contravene a condition stated in its registration document.

Maximum penalty—40 penalty units.

Division 2—Unlawful conduct about issuing qualifications or statements of attainment

False advertising etc. by training organisation

20. A training organisation, must not—

(a) send, exhibit, print or advertise a document that is likely, or is intended by the organisation, to induce the belief; or

(b) otherwise represent or state to a person;

that the organisation is authorised to issue a qualification or statement of attainment unless the organisation—

(c) is a registered training organisation; or

(d) is authorised by its registration to issue the qualification or statement of attainment.

Maximum penalty—40 penalty units.

Other advertising etc. by unregistered training organisation

21. A training organisation that is not registered must not—

(a) send, exhibit, print or advertise a document that is likely, or is intended by the organisation, to induce the belief; or

(b) otherwise represent or state to a person;

that—

(c) it is registered; or

(d) it may issue a qualification or statement of attainment; or

(e) courses it conducts are accredited.

Maximum penalty—40 penalty units.

Action by chief executive

22.(1) This section applies if the chief executive reasonably believes a training organisation is contravening section 20 or 21.

(2) The chief executive may, by written notice given to the organisation, direct it to stop the conduct that is the contravention.

(3) The training organisation must comply with the direction.

Maximum penalty—40 penalty units.

(4) A person who is convicted of an offence against subsection (3)—

(a) commits a continuing offence for each day after the day of conviction while the person carries on the conduct to which the direction related; and

(b) is liable to a penalty of 40 penalty units for each day after conviction while the offence continues; and

(c) may be charged in 1 complaint for the offence for a period.

Division 3—Other provisions

Board may issue qualifications etc.

23.(1) This section applies to a student—

(a) at a school that—

(i) is a registered training organisation; or

(ii) has an arrangement for training with a registered training organisation; and

(b) who achieves the competencies required for the issue of a qualification or statement of attainment.

(2) The board may—

(a) issue the qualification or statement of attainment to the student; and

(b) include the qualification or statement of attainment in a senior or other certificate issued to the student by the board under the *Education (Senior Secondary School Studies) Act 1988*.

(3) In this section—

"board" means the board of senior secondary school studies under the *Education (Senior Secondary School Studies) Act 1988*.

"student" means a student in year 11 or 12.

Fees for publicly funded courses

24.(1) This section applies if a registered training organisation is receiving government funding to provide a vocational education and training course.

(2) A regulation may prescribe—

(a) fees the registered training organisation may charge a person for the course; or

(b) exemptions, completely or partly, from payment of the fees.

Assessment of work or training

25.(1) A person who has worked, or undertaken training, in an occupation may apply to an appropriately registered training organisation to have the person's competence in the occupation assessed to determine if the person may be issued a qualification or statement of attainment for the occupation.

(2) The registered training organisation may assess the person's competence in the occupation and issue the person with the appropriate qualification or statement of attainment for the occupation and the person's competence in it.

(3) The registered training organisation must have regard to the guidelines about competency assessment published by the QTA.[1]

(4) The registered training organisation may cancel the qualification or statement of attainment by fair procedures stated under a regulation if the qualification or statement of attainment 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.

(5) If the qualification or statement of attainment is cancelled, the person to whom it was issued must return it to the registered training organisation within 7 days after the registered training organisation gives notice of the cancellation to the person unless the person has a reasonable excuse.

Maximum penalty for subsection (5)—40 penalty units.

PART 3—COURSE ACCREDITATION

Accrediting courses

26.(1) This section applies to a course if there is no equivalent qualification to that attained under the course—

(a) recorded on ANTA's national training information service; and

(b) based on nationally endorsed industry competency standards.

(2) A person may apply to the chief executive or an appropriately approved administering body for the grant of an accreditation of the course.

(3) The chief executive or administering body may grant the accreditation only if the chief executive or administering body is satisfied the course

1 The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

meets the criteria for the accreditation (the **“accreditation criteria”**) published by the QTA by gazette notice.

Accreditation conditions

27.(1) The chief executive or administering body may grant an accreditation on reasonable conditions.

(2) Without limiting subsection (1), a condition under subsection (1) may be about—

(a) restrictions on using the course; or

(b) anything stated under a regulation.

Term of accreditation

28.(1) The term of an accreditation is the term stated under a regulation not longer than 5 years.

(2) An accreditation is not renewable but a new accreditation may be applied for.

Amending or cancelling accreditation on application

29. The chief executive or an administering body may, on the application of a person who has obtained an accreditation, amend or cancel the accreditation.

Procedure for granting and amending accreditation

30. The grant or amendment of an accreditation may be applied for and granted or refused as stated under a regulation.

Cancellation etc. of accreditation without application

31. The chief executive may cancel, suspend or amend an accreditation without application by the person who obtained the accreditation, by fair procedures stated under a regulation.

Recognition of courses accredited under corresponding laws

32.(1) This section applies if a course has been granted an accreditation (an **"interstate accreditation"**) under a corresponding law.

(2) The course is taken to be accredited under this Act, to the greatest possible extent, for the same accreditation and on the same conditions as the interstate accreditation, subject to any conditions imposed by the chief executive under section 27.

(3) However, the interstate accreditation does not authorise anything that can not be authorised by an accreditation under this Act.

(4) If the interstate accreditation is amended, suspended, cancelled or expires (a **"significant event"**) under the corresponding law, from the day the significant event happens the accreditation under subsection (2) is—

(a) if the significant event is an amendment—amended in the same way to the greatest possible extent, subject to any condition imposed by the chief executive under subsection (2); or

(b) if the significant event is a suspension—suspended in the same way to the greatest possible extent; or

(c) if the significant event is expiry—expired.

Reassessment of accredited course

33.(1) The chief executive may reassess an accredited course to ensure it continues to meet the needs of industry and the community.

(2) For a reassessment, the chief executive—

(a) must apply the accreditation criteria for the course; and

(b) may have regard to anything else the chief executive considers appropriate.

PART 4—ADMINISTERING BODIES

Approval as administering body

34.(1) A person may apply to the chief executive for the grant of an approval as an administering body to exercise or perform any of the following powers or functions—

(a) registration of training organisations under part 2;

(b) accreditation of courses under part 3;

(c) administration of registered training agreements under part 5;

(d) another power or function under this Act that is stated under a regulation.

(2) The chief executive may grant the approval only if the chief executive is satisfied—

(a) the person meets the criteria for approval as an administering body published by the QTA by gazette notice; and

(b) the person is a suitable person to hold the approval.

Suitability of applicant

35.(1) In deciding whether an applicant for an approval as an administering body is suitable, the chief executive—

(a) may have regard to any of the following—

(i) the applicant's business reputation;

(ii) the applicant's current financial position and financial background;

(iii) if the applicant has, or is able to obtain appropriate resources;

(iv) if the applicant has the capacity to exercise the powers or perform the functions for which the approval is sought; and

(b) must have regard to anything stated under a regulation.

(2) In subsection (1)—

"appropriate resources" means resources the chief executive decides are reasonably necessary to ensure the effective and efficient performance of the functions.

Approval conditions

36.(1) The chief executive may grant an approval as an administering body on conditions.

(2) Without limiting subsection (1), a condition may be about any of the following—

(a) exercising the approval;

(b) restrictions on exercising the approval;

(c) the collection, keeping or production of records and the submission of returns;

(d) anything required under a regulation.

Term of approval

37.(1) The term of an approval is the term stated under a regulation not longer than 5 years.

(2) An approval is not renewable but a new approval may be applied for.

Amending or cancelling approval on application

38. The chief executive may, on the application of a person who is approved as an administering body, amend or cancel the approval.

Procedure for granting or amending approval

39. The grant or amendment of an approval as an administering body may be applied for and granted or refused as stated under a regulation.

Cancellation etc. of approvals without application

40. The chief executive may cancel, suspend or amend a person's approval as an administering body without application by the person by fair procedures stated under a regulation.

Authority given by approval

41.(1) An approval of a person as an administering body authorises the person to—

(a) exercise a power or perform a function; and

(b) access a register;

stated in the approval.

(2) A person must not exercise a power or perform a function, or purport to exercise a power or perform a function, as an administering body unless the person is approved as an administering body to exercise the power or perform the function.

Maximum penalty—40 penalty units.

Administering body must comply with chief executive's directions

42.(1) A person approved as an administering body must comply with written directions given by the chief executive to the person about exercising a power and performing a function stated in the approval.

(2) The person must not contravene the direction.

Maximum penalty—40 penalty units.

PART 5—TRAINING AGREEMENTS

Division 1—Preliminary

Objectives of this part and underlying principles

43.(1) The objectives of this part are to—

(a) establish procedures for the following—

(i) training apprentices;

(ii) the registration of training agreements;

(iii) the administration and completion of registered training agreements;

(iv) the cancellation or suspension of registered training agreements; and

(b) provide for—

(i) the obligations of an employer and an apprentice under a registered training agreement; and

(ii) the sanctions available for contravention of a registered training agreement and misconduct.

(2) The principles underlying a registered training agreement are—

(a) the employer and the apprentice should perform their obligations under the agreement as required under its conditions and this Act; and

(b) the agreement should be carried out to its completion; and

(c) the agreement may only be cancelled or suspended as stated in this Act.

Examples of obligations for paragraph (2)(a)—

- the employer's obligation to provide the apprentice with the training stated in the agreement.
- the apprentice is obliged to participate in training conducted by the registered training organisation stated in the agreement.

What is a training agreement

44.(1) A **"training agreement"** is a contract for training between an employer and a person who is to become an apprentice and be trained for a qualification stated in the agreement by the employer, or by another person for the employer.[2]

[2] Under the *Workplace Relations Act 1997*, section 7, an apprentice is an employee.

(2) The agreement must include a condition that it is to be registered under this Act and otherwise be in the approved form.

(3) The employer and the apprentice are the **“parties”** to the agreement.

(4) To remove doubt, it is declared that a vocational placement agreement is not a training agreement.

What is an apprentice

45. An apprentice is a person (irrespective of whether the person is called an apprentice, a trainee or anything else) who is being, or who is to be, trained for a qualification under a training agreement that is, or is to be, registered.

Term of training agreement

46.(1) The term (the **“nominal term”**) of a training agreement is the term agreed by the parties.

(2) However, the parties must have regard to the guidelines about nominal terms for registered training agreements published by the QTA.[3]

(3) The nominal term must be consistent with the guidelines.

(4) The nominal term may be extended under section 72.

Probation term

47.(1) The nominal term of a training agreement must include a probation term (a **“probation term”**), not longer than 3 months, agreed by the parties.

(2) The parties must have regard to the guidelines about probation terms for registered training agreements published by the QTA.

(3) The probation term must be consistent with the guidelines.

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3 The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

Grounds for cancelling or suspending registered training agreement

48. A registered training agreement may only be cancelled or suspended as provided under this Act.

Cancellation or completion of registered training agreement terminates employment

49.(1) This section applies when a registered training agreement—

(a) is cancelled other than under section 64; or

(b) is completed.

(2) The employment of the apprentice being trained under the agreement (the **"employee"**) with the employer is taken to be terminated under the *Workplace Relations Act 1997* unless the employer and the employee agree that it continue.

(3) To remove doubt, it is declared that if the employment is terminated, the employee has, under the *Workplace Relations Act 1997*, the rights given to an employee whose employment has been lawfully terminated under that Act.[4]

Division 2—Signing and registration of training agreements

Training agreement to be signed within 14 days of starting training

50.(1) The employer of a person who is to be trained by the employer as an apprentice must ensure that the employer and the person sign a training agreement.

(2) Training as an apprentice can not have started more than 14 days before the agreement is signed unless the chief executive approves a longer period.

4 See, for example the *Workplace Relations Act 1997*, chapter 9 (Records and wages), part 2 (Wages and occupational superannuation), division 3 (Paying and recovering wages).

(3) In deciding whether or not to approve a longer period under subsection (2), the chief executive must have regard to guidelines published by the QTA.[5]

Parent to sign training agreement

51.(1) This section applies if a minor is to be a party to a registered training agreement.

(2) A parent of the minor must sign the training agreement as well as the minor.

(3) However, subsection (2) does not apply if the minor is not in the care and control of a parent.

(4) If subsection (2) does not apply, the agreement must also be signed by an adult, other than the employer, who agrees with the minor to sign the agreement.

Training agreement to be registered

52. Within 14 days of a training agreement being signed under section 50, the employer must give it to the chief executive or an appropriately approved administering body for registration.

Maximum penalty—40 penalty units.

Chief executive or administering body to register training agreements

53. The chief executive or an appropriately approved administering body may register a training agreement in accordance with the guidelines or criteria issued by the QTA.

How registration effected

54. Registration of a training agreement may be applied for and granted or refused in the way stated under a regulation.

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5 The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

Division 3—Supervising registered training organisations

What is a supervising registered training organisation

55. A **"supervising registered training organisation"**, for a registered training agreement, is a registered training organisation that has agreed with the parties to the agreement that it will—

(a) as required by the parties to the agreement—provide to the apprentice training that complements the training to be provided under the agreement by the employer; and

(b) when satisfied the apprentice has achieved the competencies required for the qualification—issue the qualification to the apprentice.

Requirement for supervising registered training organisation

56.(1) There must be a supervising registered training organisation for every registered training agreement.

(2) There can not be more than 1 supervising registered training organisation for a registered training agreement at any one time.

Changing supervising registered training organisation

57.(1) The parties to a registered training agreement may change from one supervising registered training organisation (the **"existing organisation"**) to another by agreeing with the other registered training organisation that it is to be the supervising registered training organisation for the agreement.

(2) The employer must notify the existing organisation in writing within 14 days after the change that it is no longer the supervising registered training organisation for the agreement.

Maximum penalty—40 penalty units.

Division 4—Employers obligations under registered training agreement

Employer to provide facilities

58. An apprentice's employer must provide, or arrange for the provision of, the facilities and training necessary for the apprentice to attain the qualification stated in the apprentice's training agreement.

Maximum penalty—40 penalty units.

Employer not to prevent participation in training

59. An apprentice's employer must not directly or indirectly—

(a) obstruct, or attempt to obstruct, or interfere with the apprentice's participation in training conducted by a registered training organisation required under the agreement; or

(b) prejudice the apprentice's employment, or place the apprentice at a disadvantage—

  (i) because the apprentice participates, or attempts to participate; or

  (ii) to discourage the apprentice from participating;

in training conducted by a registered training organisation required under the agreement.

Maximum penalty—40 penalty units.

Payment for participating in training

60.(1) An apprentice's time spent in training required under the apprentice's training agreement to be provided by a registered training organisation is taken to be part of the apprentice's normal working hours.

(2) The apprentice's employer must pay the apprentice while the apprentice participates in the training.

(3) The payment under subsection (2) is to be at the rate for ordinary time worked by the apprentice.

(4) However, if the apprentice is employed under an industrial instrument and there is an inconsistency between the instrument and subsections (1) and (2), the industrial instrument prevails to the extent of the inconsistency.

Employer to report notifiable events

61.(1) This section applies if any of the following (a **"notifiable event"**) happens in relation to a registered training agreement—

(a) a party to the agreement cancels it in the probation term;

(b) the parties to the agreement agree to—

(i) amend the agreement; or

(ii) temporarily assign the agreement; or

(iii) cancel the agreement; or

(iv) change the supervising registered training organisation for the agreement;

(c) the agreement is completed;

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

(e) the employer is a partnership and a partner in the partnership dies or retires or the partnership is dissolved.

(2) The employer must give the chief executive or an appropriately approved administering body signed notice of the event within 14 days after the event happens.

Maximum penalty—40 penalty units.

Employer to notify completion of training

62.(1) An apprentice's employer must notify the apprentice and the supervising registered training organisation in writing that the apprentice has achieved the competencies in the employer based training within 14 days after the apprentice achieves the competencies.

Maximum penalty—40 penalty units.

(2) In this section—

"employer based training" means all training provided by an employer under a registered training agreement other than training actually provided by a registered training organisation.

Division 5—Statutory assignment of registered training agreement

Statutory assignment etc. of registered training agreement

63.(1) This section applies if an employer mentioned in section 61(2) gives a notice about an event mentioned in section 61(1)(d) or (e).

(2) When the notice is given—

(a) for an event mentioned in section 61(1)(d)—the training agreement is taken to have been assigned by the employer to the purchaser; or

(b) for an event mentioned in section 61(1)(e)—the training agreement is taken to have been assigned to the surviving partner; or

(c) for an event mentioned in section 61(1)(e)—

(i) if the former partners agree—the training agreement is taken to have been assigned to the agreed former partner; or

(ii) if the former partners can not agree on the former partner the agreement is to be assigned to—

(A) the chief executive or administering body may decide by signed notice to them, the former partner to whom the training agreement is to be assigned; and

(B) on the giving of the notice the agreement is taken to be assigned to that former partner; or

(iii) otherwise—the agreement is cancelled.

(3) Subsection (2)(c)(iii) applies despite section 67.

Division 6—Cancelling registered training agreement

Cancelling registered training agreement in probation term

64. A party to a registered training agreement may cancel the agreement at any time before the probation term under the agreement ends in a way stated under a regulation.

Reinstatement in old job

65.(1) This section applies if—

(a) a registered training agreement is cancelled under section 64; and

(b) the apprentice who was being trained under the agreement by the employer had a job (the "**old job**") with the employer immediately before the agreement started; and

(c) within 5 days of the cancellation, the apprentice asks the employer to be re-employed in the apprentice's old job.

(2) The employer must re-employ the apprentice in the apprentice's old job, or another position, on at least the same pay and conditions as applied to the old job immediately before the agreement started.

Maximum penalty—40 penalty units.

Cancelling registered training agreement by consent

66.(1) After the probation term under a registered training agreement ends, the parties to the agreement may cancel it at any time if they agree in writing to the cancellation.

(2) If an apprentice is a minor, the cancellation agreement under subsection (1), must be signed by a parent of the apprentice as well as the apprentice.

(3) However, subsection (2) does not apply if the minor is not in the care and control of a parent.

(4) If subsection (2) does not apply, the cancellation agreement must also be signed by an adult, other than the employer, who agrees with the minor to sign the cancellation agreement.

(5) A party to a registered training agreement must not coerce, or attempt to coerce, another party to the agreement to agree to its cancellation.

Maximum penalty for subsection (4)—40 penalty units.

Cancelling registered training agreement on grounds stated under regulation

67.(1) If a party to a registered training agreement applies, the chief executive or an appropriately approved administering body may cancel the agreement on the grounds and by the fair procedures stated under a regulation.

(2) If a registered training agreement is cancelled under subsection (1), the chief executive or administering body must give notice of the cancellation to the parties to the agreement.

(3) The cancellation has no effect until at least 4 weeks from the day the notice is given, unless a shorter time is stated in the notice.

(4) The notice must not state a time less than 4 weeks unless the chief executive or administering body is satisfied it is in the best interests of the parties to the agreement.

Action following misconduct

68.(1) This section applies if an apprentice who is being trained under a registered training agreement engages in misconduct of a type that would make it unreasonable for the apprentice's employer to continue the training.

(2) The employer may immediately suspend the agreement.

(3) If the employer suspends the agreement—

(a) the employer must within 2 working days of the suspension, apply to the chief executive to cancel it; and

(b) the suspension is effective until the chief executive makes a decision about the cancellation.

(4) The chief executive is to make a decision about the cancellation within 7 days of receiving the application.

(5) In making the decision, the chief executive must have regard to guidelines published by the QTA.[6]

(6) The chief executive may only cancel the agreement if the chief executive reasonably believes—

(a) the apprentice has engaged in the misconduct; and

(b) it is unreasonable in the circumstances for the employer to continue the training.

(7) However, if the employer does not apply for the cancellation of the agreement under subsection (3)(a) or the chief executive refuses to cancel the agreement—

(a) the suspension is taken not to have happened; and

(b) the employer must—

(i) resume training the apprentice under the agreement; and

(ii) reimburse the apprentice for wages lost during the suspension.

(8) In this section—

"misconduct" includes the following—

(a) theft;

(b) assault;

(c) fraud;

(d) other conduct stated under a regulation.

"working day" means a day on which the employer normally carries on the employer's business.

6 The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

Division 7—Sanctions

Sanctions for contravening registered training agreement

69.(1) This section applies if the chief executive reasonably believes a party to a registered training agreement—

(a) has contravened the agreement; or

(b) has engaged in misconduct stated under a regulation.

(2) The chief executive may make any of the following orders—

(a) an order reprimanding the party;

(b) an order directing the party to do one or both of the following—

(i) pay the chief executive an amount not more than 4 penalty units;

(ii) comply with the agreement;

(c) an order cancelling or suspending the agreement.

(3) The chief executive may act under this section only by fair procedures required under a regulation.

(4) In making an order the chief executive must have regard to guidelines published by the QTA.[7]

(5) The term for which the agreement may be suspended may not be longer than 6 months.

(6) If the agreement is cancelled, section 49 applies and subject to that section, the employment of the apprentice being trained under the agreement is taken to be terminated.

(7) If the agreement is suspended, the apprentice being trained under the agreement is taken to be stood down from employment without pay for the term of the suspension.

(8) If an order under subsection (2)(b)(i) directs the apprentice being trained under the agreement to pay an amount to the chief executive, the order may direct that—

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7 The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

(a) the amount be directly paid by the apprentice; or

(b) despite the *Workplace Relations Act 1997*, section 419[8], the apprentice's employer deduct the amount from the apprentice's wages and pay it; or

(c) the amount be paid in instalments or by deductions over a stated time or number of pay periods.

(9) A deduction from the apprentice's wages under subsection (8)(b) can not be made in an amount that would reduce the wages payable to the apprentice for a pay period to less than an amount stated under a regulation.

(10) A person must not contravene an order made under subsection (2)(b).

Maximum penalty—40 penalty units.

Division 8—Completion of registered training agreement

Issuing qualification on achievement of competency

70.(1) The supervising registered training organisation for a registered training agreement must issue the qualification stated in the agreement to the apprentice being trained under it if—

(a) the organisation has received a notice from the apprentice's employer under section 62; and

(b) it is reasonably satisfied the apprentice has achieved the competencies required to be provided by the employer or a registered training organisation under the agreement.

(2) When a supervising registered training organisation issues a qualification under subsection (1), it must give the chief executive or an appropriately approved administering body and the apprentice's employer signed notice of the issue of the qualification within 14 days after it is issued.

Maximum penalty for subsection (2)—40 penalty units.

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8 *Workplace Relations Act 1997*, section 419 (Wages to be paid without deduction)

Issue of qualification ends registered training agreement

71.(1) If the supervising registered training organisation for a registered training agreement issues the qualification stated in the agreement to the apprentice being trained under it before the nominal term ends, the agreement ends when the qualification is issued.

(2) This section applies despite the nominal term of the agreement.

Delayed completion of registered training agreement

72.(1) This section applies if the nominal term of a registered training agreement would end before the apprentice being trained under the agreement could achieve the competencies stated in the agreement.

(2) The parties to the agreement may apply in writing to the chief executive or an appropriately approved administering body to extend the nominal term.

Example—

An apprentice experiences a long illness and can not participate in training for several months. The parties to the agreement may apply to the chief executive or an appropriately approved administering body for an extension of the nominal term of the agreement.

(3) The chief executive or administering body may extend the nominal term by a reasonable time.

(4) However, the nominal term may only be extended if the chief executive or administering body reasonably believes the apprentice being trained under the agreement would be able to achieve the competencies required under it in the extended term.

(5) If the chief executive or administering body extends the nominal term, the agreement is taken to be amended in the same way.

Division 9—Other provisions

Cancelling qualification or statement of attainment

73.(1) A supervising registered training organisation or a registered training organisation may cancel a qualification or statement of attainment it has issued by fair procedures stated under a regulation if the qualification or statement 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.

(2) If a qualification or statement of attainment is cancelled, the person to whom it was issued must return it to the supervising registered training organisation or registered training organisation within 7 days after the cancellation takes effect unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

Amending or assigning registered training agreement

74.(1) Other than as provided in sections 63, 71 and 72 a registered training agreement—

(a) may not be amended or assigned unless the parties to it agree in writing; and

(b) may only be—

(i) amended as stated under a regulation; or

(ii) temporarily assigned in the circumstances and way stated under a regulation.

(2) If an apprentice is a minor, an amendment or assignment of a registered training agreement must be signed by a parent of the apprentice as well as the apprentice.

(3) However, subsection (2) does not apply if the minor is not in the care and control of a parent.

(4) If subsection (2) does not apply, the amendment or assignment must also be signed by an adult, other than the employer, who agrees with the minor to sign the amendment or assignment.

(5) A party to a registered training agreement must not coerce, or attempt to coerce, another party to the agreement to agree to its amendment or assignment.

Maximum penalty—40 penalty units.

Temporary stand down under registered training agreement

75.(1) This section applies if an apprentice's employer can not temporarily provide the apprentice with the training required under a registered training agreement.

(2) The employer may apply in writing to the chief executive or an appropriately approved administering body for approval to temporarily stand down the apprentice from the training.

(3) If the chief executive or administering body approves the application, the employer may stand the apprentice down from training without pay for the time approved by the chief executive or administering body.

(4) If the apprentice is stood down from training under subsection (3), the apprentice is also stood down from employment with the employer unless the employer and the apprentice otherwise agree.

Disputes about progress

76.(1) This section applies if an apprentice and the apprentice's employer are in dispute about the apprentice's progression through levels of competence stated in an industrial instrument or an order made under the *Workplace Relations Act 1997*.

(2) On application by the employer or the apprentice, the chief executive may decide the apprentice's level of competence.

(3) The decision must be made by fair procedures stated under a regulation.

Employer restriction on training

77.(1) An employer must not enter into a training agreement to train a person as an apprentice for a qualification if the person is already being trained as an apprentice under a registered training agreement for the qualification by another employer (the **"original employer"**).

Maximum penalty—40 penalty units.

(2) However, the employer does not contravene subsection (1) if the original employer consents to the apprentice entering into the training agreement with the employer.

Apprentice restriction on training

78.(1) An apprentice under a registered training agreement must not enter into a training agreement with an employer (the **"second employer"**) for training for the same qualification for which the apprentice is being trained under the registered training agreement.

Maximum penalty—40 penalty units.

(2) However, the apprentice does not contravene subsection (1) if the apprentice's employer consents to the apprentice entering into the training agreement with the second employer.

Age restriction for young persons in specified occupations

79.(1) An employer must not employ or use a young person in an occupation specified by the Minister by gazette notice unless the young person—

(a) has at least the minimum qualification for the occupation; or

(b) is being trained by the employer as an apprentice for the minimum qualification for the occupation.

Maximum penalty—40 penalty units.

(2) The Minister may specify an occupation for subsection (1) only on the recommendation of the QTA.

(3) A person does not contravene this section if the person provides a young person with a vocational placement under part 6.

(4) In this section—

"young person" means a person under 21.

Premiums prohibited

80.(1) A person must not demand, accept or agree to accept (directly or indirectly) from another person a premium for—

(a) employing the person as an apprentice to be trained under a registered training agreement; or

(b) inducing, or attempting to induce, another person to employ a person as an apprentice to be trained under a registered training agreement; or

(c) cancelling a registered training agreement.

Maximum penalty—40 penalty units.

(2) If a person is convicted of an offence against subsection (1), the court by, or before, which the person is convicted may order the person to—

(a) return the premium to the person who gave the premium; or

(b) reimburse the person who gave the premium.

(3) Subsection (2) does not affect the court's power to impose a penalty.

(4) An order under subsection (2) may be filed in a court with jurisdiction in an action for debt for the amount payable under the order and be enforced as an order of the court.

PART 6—VOCATIONAL PLACEMENT

Division 1—General

When part applies

81. This part applies if the course a student is undertaking requires the student to complete a vocational placement.

Definitions

82. In this part—

"course" means a course that—

(a) is conducted by a registered training organisation; and

(b) leads to the issue of a qualification or statement of attainment.

"person" includes a department of the Commonwealth or the State.

"placement person" means a person who has signed a vocational placement agreement with—

(a) for section 87(1)—the registered training organisation and the student; or

(b) for section 87(2)(a)—the registered training organisation.

"student" means a student undertaking a course.

"vocational placement" see section 83.

"vocational placement agreement" see section 87.

What is a vocational placement

83. A **"vocational placement"** is a placement under a vocational placement agreement of a student with a person who agrees with the student and the registered training organisation providing the student's course, to give the student practical training and experience that is required under, and is an assessable part of, the student's course.

Registered training organisation to arrange vocational placement

84. The registered training organisation is to arrange the vocational placement.

Placement person not an employer

85. The placement person is not the student's employer.

Application of Workplace Health and Safety Act 1995

86. Despite section 85, the *Workplace Health and Safety Act 1995* applies to the vocational placement and under that Act—

(a) the student is taken to be a worker; and

(b) the placement person is taken to be an employer.

Division 2—Vocational placement agreements

Signing vocational placement agreements

87.(1) Before the student starts the vocational placement, the registered training organisation must ensure that an agreement (a **"vocational placement agreement"**) in the approved form is signed by the organisation, the student and the person who is to provide the placement.

Maximum penalty—40 penalty units.

(2) However, the registered training organisation does not contravene subsection (1) if—

(a) immediately before the start of the placement there is a written agreement (also a **"vocational placement agreement"**), in the approved form, in force between the training organisation and the placement person under which the person agrees to provide a stated number of placements in a stated period; and

(b) before starting the placement, the training organisation and the student sign an agreement (also a **"vocational placement agreement"**) in the approved form; and

(c) the placement happens as required under the agreement.

Parent to sign vocational placement agreement

88.(1) This section applies if a minor is to be a party to the vocational placement agreement.

(2) A parent of the minor must sign the vocational placement agreement as well as the minor.

(3) However, subsection (2) does not apply if the minor is not in the care and control of a parent.

(4) If subsection (2) does not apply, the agreement must also be signed by an adult, other than the employer, who agrees with the minor to sign the vocational placement agreement.

Vocational placement agreement register

89.(1) The registered training organisation must keep a register of each vocational placement agreement it enters into under section 87.

Maximum penalty—40 penalty units.

(2) The register must contain the particulars stated under a regulation.

Maximum penalty—40 penalty units.

Registered training organisation to be satisfied about facilities

90. However, the registered training organisation must not enter into the vocational placement agreement with the placement person, unless the organisation is satisfied the person has the facilities to provide the student with the training to be given under the agreement.

Maximum penalty—40 penalty units.

Placement person to provide facilities

91. The placement person must provide—

(a) the student with the training stated in the agreement; and

(b) the facilities necessary for the student to be trained as required by the agreement.

Maximum penalty—40 penalty units.

Conditions in vocational placement agreements

92.(1) The vocational placement agreement must include the conditions stated under a regulation.

(2) Without limiting subsection (1), it is a condition of the vocational placement agreement that—

(a) training under the agreement—

(i) is unpaid; and

(ii) must not be more than the lesser of—

(A) 240 hours for each year of the course; or

(B) 40% of the nominal course time; and

(iii) must be given in the ordinary working hours of the placement person; and

(b) the placement must end within 1 year after it starts.

(3) A condition imposed under subsection (1) or (2) applies despite a provision of the agreement.

(4) In this section—

“nominal course time” means the time nominated for the duration of the course—

(a) if the course is an accredited course—in its accreditation; or

(b) otherwise—by the registered training organisation.

Extending vocational placement

93.(1) This section applies despite section 92(2)(a)(ii), if the registered training organisation considers that—

(a) the student has an impairment that impacts adversely on the student’s ability to undertake training; and

(b) the vocational placement longer than the term stated in the course the student is undertaking is necessary for the student to gain the practical training and experience stated in the course.

(2) On application by the training organisation before the student starts the placement, the chief executive may extend the vocational placement.

(3) In deciding the application the chief executive must have regard to guidelines about extending vocational placements published by the QTA.[9]

(4) The term of the extended placement can not be longer than is reasonably necessary for the student to gain the practical training and experience.

(5) In this section—

"impairment", see *Anti-Discrimination Act 1991*, section 4.[10]

Amending or cancelling vocational placement agreements

94. The registered training organisation may only amend or cancel a vocational placement agreement as stated under a regulation.

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9 The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

10 In section 4 (Definitions) impairment is defined as—
"impairment", in relation to a person, means—

(a) the total or partial loss of the person's bodily functions, including the loss of a part of the person's body; or

(b) the malfunction, malformation or disfigurement of a part of the person's body; or

(c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or

(d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or

(e) the presence in the body of organisms capable of causing illness or disease; or

(f) reliance on a guide dog, wheelchair or other remedial device;

whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—

(g) presently exists; or

(h) previously existed but no longer exists.

Workers compensation cover

95. The registered training organisation conducting the course must enter into, and keep in force, an insurance contract under the *WorkCover Queensland Act 1996* to cover the student for injury arising out of, or in the course of, the vocational placement.

Maximum penalty—40 penalty units.

Protection from liability

96.(1) The registered training organisation must enter into, and keep in force, an insurance policy indemnifying—

(a) the placement person against—

(i) proceedings for damages brought by—

(A) the student for injury to the student, or loss of or damage to the student's property, arising out of the placement; and

(B) another person for injury to the person, or loss of or damage to the person's property, arising out of the placement; and

(ii) loss of, or damage to, the placement person's property caused by the student in the placement; and

(b) the student against proceedings for damages brought by the placement person or the placement person's employee or agent, or another person for injury to a person, or loss of or damage to property, arising out of the placement.

Maximum penalty—40 penalty units.

(2) The amount payable under the policy for a single claim or action relating to an injury, loss or damage must not be less than $5 000 000 unless another higher amount is stated under a regulation.

Student and placement person to be advised of insurance covers

97. The registered training organisation conducting the course must give the student and the placement person written notice of the insurance policies entered into under sections 95 and 96 before the student starts the placement.

Maximum penalty—40 penalty units.

PART 7—REVIEW OF REVIEWABLE DECISIONS

Division 1—What is a reviewable decision

What is a reviewable decision

98.(1) Each of the following decisions is a **“reviewable decision”**—

(a) a decision stated in schedule 1;[11]

(b) a decision made, under a competitive process open to the public, by the chief executive about granting an amount to a person involved in vocational education and training activities;

(c) a decision by the parties to a registered training agreement cancelling, or purportedly cancelling, a registered training agreement under section 66;[12]

(d) another decision by a party to a registered training agreement cancelling, or purportedly cancelling, the agreement, other than a cancellation under section 64.[13]

(2) However, a review of a reviewable decision mentioned in subsection (1)(b) is limited to a review of the process used in making the decision.

[11] Schedule 1 (Reviewable decisions)

[12] Section 66 (Cancelling registered training agreement by consent)

[13] Section 64 (Cancelling registered training agreement in probation term)

Division 2—Appointing reviewers

Appointing reviewers

99.(1) The Minister must appoint qualified individuals as reviewers.

(2) The number of reviewers to be appointed is the number the Minister considers necessary.

(3) An individual is qualified for appointment as a reviewer only if the individual—

(a) has wide knowledge of, and experience in, vocational education and training; or

(b) has other qualifications and experience the Minister considers appropriate.

(4) However, the Minister must also appoint at least 1 reviewer (a **"specialist reviewer"**) who is a commissioner under the *Workplace Relations Act 1997*.

(5) The following individuals are not qualified for appointment as reviewers—

(a) a member of the QTA;

(b) a public service employee;

(c) an owner, director, employee or agent, of—

(i) a registered training organisation; or

(ii) an administering body; or

(iii) a training advisory body;

(d) a person convicted of an indictable offence or an offence against this Act.

(6) The Minister may appoint a reviewer with very wide knowledge of, and experience in, vocational education and training as the convenor (the **"convenor"**) of reviews.

(7) A reviewer is appointed under this Act and not the *Public Service Act 1996*.

(8) The appointment of a reviewer or the convenor is to be notified in the industrial gazette.

Duration of appointment

100.(1) A reviewer—

(a) is to be appointed for not longer than 3 years; and

(b) may resign by signed notice given to the Minister.

(2) If a person who is a specialist reviewer stops being a commissioner, the person also stops being a specialist reviewer.

Conditions of appointment

101.(1) A reviewer—

(a) holds office on a casual basis; and

(b) for a reviewer other than a specialist reviewer—is to be paid the remuneration and allowances decided by the Governor in Council.

(2) A reviewer holds office on the conditions not provided in this Act that are decided by the Minister.

Reviewer's function

102.(1) The function of a reviewer is, if selected by the convenor under section 105, to review a reviewable decision in accordance with this Act.

(2) A reviewer may also perform another function stated under a regulation.

Removal from office

103. The Minister may end a reviewer's appointment if the reviewer—

(a) engages in misbehaviour; or

(b) becomes incapable because of a physical or mental incapacity; or

(c) is incompetent; or

(d) is convicted of an indictable offence or an offence against this Act.

Division 3—Arranging review

Applying for review

104.(1) A person whose interests are affected by a reviewable decision may apply to the convenor for the decision to be reviewed by a reviewer.

(2) The application must be in writing and—

(a) be made—

(i) if the reviewable decision is a decision mentioned in section 98(1)(a) or (b)—within 21 days after receipt of written notice of the decision; or

(ii) if the reviewable decision is a decision mentioned in section 98(1)(c) or (d)[14]—within 21 days after notice of the decision is given, irrespective of whether the notice is given orally or in writing; and

(b) state—

(i) the decision to be reviewed; and

(ii) the person who made the decision and any other person the applicant considers should be a party to the review; and

(iii) how the applicant's interests are affected; and

(iv) the grounds for the review; and

(v) the other particulars required under a regulation.

(3) If the convenor reasonably believes the time for making the application should be extended, the convenor may extend the time for making the application.

[14] Section 98 (What is a reviewable decision)

Convenor to select reviewer for review

105.(1) The convenor is to select the reviewer who is to review the reviewable decision as soon as practicable after receiving an application under section 104.

(2) The convenor must, within 3 days of selecting the reviewer, give written notice to—

(a) the parties to the review; and

(b) the reviewer.

(3) A copy of the application and a statement to the effect of section 117[15] must be included with the notice.

(4) If the convenor considers 2 or more reviews arise from the same circumstance, subsection (1) does not prevent the convenor from selecting the same reviewer to deal with all of the reviews at the same review.

Special selection of reviewer

106.(1) Section 105 does not limit the convenor from selecting himself or herself for the review.

(2) If the reviewable decision is a decision about cancelling, or purporting to cancel, a registered training agreement, the reviewer must be a specialist reviewer.

Disclosure of interests

107.(1) This section applies if the reviewer has or acquires a direct or indirect interest that could conflict with the proper performance of the reviewer's functions.

(2) The reviewer—

(a) must disclose the interest to—

(i) if the reviewer is the convenor—the Minister; or

(ii) otherwise—the convenor; and

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[15] Section 117 (Conciliation before starting review)

(b) must not start, or proceed with, the review or exercise a power in relation to it.

Maximum penalty—40 penalty units.

Reviewer ceasing to be available for review

108.(1) This section applies if the reviewer—

(a) ceases to be able to conduct the review because of section 100(2) or 107;[16] or

(b) gives the convenor written notice that the reviewer is no longer able to conduct the review; or

(c) dies, resigns as a reviewer under section 100(1)(b) or is removed from office as a reviewer under section 103.

(2) The convenor must select another reviewer and the reviewer selected must start the review afresh.

Parties to review

109.(1) The parties to the review are—

(a) the applicant; and

(b) the person who made the reviewable decision; and

(c) another person granted leave by the reviewer to become a party.

(2) The reviewer may, on application, grant a person leave to become a party to the review if the person has a genuine concern in the subject matter of the review.

(3) A person found by the reviewer to be unjustifiably interfering in the review is not entitled to become a party to the review.

(4) If directed by the reviewer before or during the review, the applicant must give notice of the review to a stated person.

(5) The reviewer may, before or during the review, join a person as a party to the review and give the person notice of the joinder.

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16 Section 100 (Duration of appointment) or 107 (Disclosure of interests)

Division 4—Restriction and powers

Stay of action

110.(1) This section applies if the review is a review of a reviewable decision other than a decision mentioned in section 98(1)(b).

(2) The applicant may immediately apply for a stay of the decision to the Industrial Magistrates Court nearest the place where the applicant lives or carries on business.

(3) The Industrial Magistrates Court may stay the decision if it considers this is necessary to secure the effectiveness of the review.

(4) In setting the time for the hearing of the application, the Industrial Magistrates Court must allow at least 3 business days between the day the application is filed with it and the hearing day.

(5) The applicant must serve a copy of the application showing the time, date and place of the hearing and any document filed in the Industrial Magistrates Court with it on the person who made the reviewable decision at least 2 business days before the hearing.

(6) If at the stay hearing, the Industrial Magistrates Court considers a person who may have an interest in the outcome of the stay has not been served with notice of the application, the court may—

(a) give directions to ensure the person is served with notice of the application and has the opportunity of being heard at a later hearing of the stay; and

(b) adjourn the hearing to a time, date and place fixed by the court.

(7) The stay—

(a) may be given on conditions the Industrial Magistrates Court considers appropriate; and

(b) operates for the term stated by the Industrial Magistrates Court; and

(c) may be revoked or amended by the Industrial Magistrates Court.

(8) The term of a stay under this section must not extend past the time when the reviewer decides the review.

(9) The application for the review of the decision does not affect the operation of the decision or carrying out of the decision unless the decision is stayed.

Restriction on reviews (process in deciding grants reviewable)

111.(1) This section applies if the review is a review of a reviewable decision mentioned in section 98(1)(b).

(2) The reviewer may—

(a) confirm the decision; or

(b) recommend to the Minister that—

(i) the process used in reaching the decision be changed in a way recommended by the reviewer; and

(ii) the recommended decision making process be used in future to decide similar grants.

Restriction on reviews (decision maker not following process)

112.(1) This section applies if the review is a review of a reviewable decision mentioned in section 98(1)(a) and the only ground for the review is that, in reaching the decision, the decision maker did not follow a process that must be followed under this Act.

(2) The reviewer may review the process used in reaching the decision and make an order—

(a) confirming the decision; or

(b) setting aside the decision; or

(c) setting aside the decision and returning the issue to the decision maker for reconsideration as required by the reviewer; or

(d) declaring the decision has no legal effect.

All other reviews

113.(1) This section applies if the review is a review of a reviewable decision, other than a review mentioned in sections 111 and 112.

(2) The review is to be by way of deciding the matter afresh, unaffected by the reviewable decision.

(3) In deciding the review, the reviewer—

(a) has the same powers as the entity that made the decision under review; and

(b) may make an order—

(i) affirming, varying or setting aside the reviewable decision; or

(ii) setting aside the reviewable decision and substituting the reviewer's own decision; or

(iii) setting aside the reviewable decision and returning the issue to the decision maker for reconsideration as required by the reviewer.

Additional powers

114.(1) This section applies if the review is a review under section 98 about the cancellation of a registered training agreement and the reviewer finds the employer or the apprentice under the agreement has purported to cancel the agreement other than in a way allowed under this Act.

(2) The reviewer may order—

(a) the employer to resume training the apprentice under the agreement; or

(b) the apprentice to resume undertaking the training under the agreement.

(3) If the reviewer makes an order under subsection (2), the reviewer may—

(a) make an order the reviewer considers necessary to maintain the continuity of the training; or

(b) order the employer to pay to the apprentice the remuneration lost or likely to have been lost by the apprentice because of the purported cancellation; or

(c) order the apprentice to repay an amount paid to the apprentice by or for the employer on the purported cancellation of the agreement.

(4) If the reviewer considers it would be inappropriate for training under the agreement to continue, the reviewer may order that—

(a) the agreement be cancelled; and

(b) the employer pay to the apprentice the compensation decided by the reviewer if the reviewer is satisfied the payment of compensation is reasonable in all the circumstances.

(5) When deciding the amount of compensation payable under subsection (4)(b), the reviewer—

(a) must not award an amount that is more than—

(i) if the apprentice is not employed under an industrial instrument—the lesser of the remuneration under subparagraph (ii) and an amount stated under a regulation; or

(ii) otherwise—the remuneration the employer would have been liable to pay the apprentice for the 6 months immediately after the purported cancellation, paid at the rate the apprentice received immediately before the purported cancellation; and

(b) may take into account an amount paid to the apprentice by, or for, the employer on the purported cancellation.

(6) If satisfied an employer has cancelled, or purported to cancel, the agreement, other than in a way that is allowed under this Act, the reviewer may, in addition to amounts ordered to be paid under subsection (3)(b) or (4)(b), order the employer to pay the apprentice an amount of not more than 135 penalty units.

(7) The reviewer may allow an amount ordered to be paid under this section to be paid in instalments decided by the reviewer.

(8) A person must not contravene an order under this section.

Maximum penalty—40 penalty units.

(9) If the employer wilfully contravenes an order to continue training under the agreement, the reviewer may—

(a) further order the employer to pay to the apprentice—

(i) an amount not more than 50 penalty units; and

(ii) an amount as remuneration for lost wages; or

(b) make a further order the reviewer considers necessary about the continuity of training.

Division 5—Review procedure

Procedure

115.(1) When conducting the review, the reviewer must—

(a) observe natural justice; and

(b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before the reviewer.

(2) In conducting the review, the reviewer—

(a) is not bound by the rules of evidence; and

(b) may become informed of any thing in the way the reviewer considers appropriate; and

(c) may decide the procedures to be followed for the review.

(3) However, the reviewer must comply with this division and any procedure that may be required under a regulation.

(4) The reviewer must take the measures that are reasonably practicable—

(a) to explain to the parties to the review—

(i) the extent to which the decision is reviewable by the reviewer; and

(ii) the reviewer's procedures; and

(iii) the orders the reviewer may make; and

(b) if asked to do so—to explain to the parties any aspect of the review procedures, or any review decision or order; and

(c) to ensure the parties have the fullest opportunity practicable to be heard.

Reviewer may ask for reports

116. The reviewer may require a decision maker to give the reviewer a report about a reviewable decision the reviewer is reviewing.

Conciliation before starting review

117.(1) Before the reviewer starts the review, the reviewer must hold a conference to attempt to settle the matter by conciliation.

(2) The reviewer may, by written notice, require the parties to the review to attend the conference at a stated time and place.

(3) A party must not contravene a requirement under subsection (2) unless the party has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) If the reviewer is satisfied all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful, the reviewer—

(a) must inform the parties to that effect and of the possible results of proceeding with the review; or

(b) may recommend to the applicant that the application be discontinued, whether or not the reviewer also recommends another way of resolving the matter.

(5) The application lapses and can not be continued unless the person who asked for the review, within 1 month after the person has been informed by the reviewer under subsection (4) gives the reviewer written notice that the reviewer is to start the review.

Venues

118. The reviewer may sit at the times and places decided by the reviewer.

Alternative way of attending conference or review

119.(1) The reviewer may permit anyone taking part in the conciliation conference or the review to take part in the conference or review by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between those taking part.

(2) Anyone who takes part in a conference or review under a permission under subsection (1) is taken to be present at the conference or review.

Review open to public

120.(1) The review is open to the public unless the reviewer decides, in the circumstances of the review, it is in the best interests of a party that the review be held in private.

(2) If the reviewer decides the review is to be held in private, the reviewer must—

(a) ensure the reasons for the decision to hold the review in private are recorded in writing; and

(b) give a copy of the decision and reasons to the convenor.

(3) The convenor must include a statement of the reviews that were held in private and the reasons they were so held in the report mentioned in section 139.[17]

Right of appearance

121. A party to the review or a person ordered or permitted to appear, or to be represented, at the review may—

(a) appear in person; or

(b) be represented by—

(i) an agent who is not a lawyer appointed in writing; or

(ii) if the parties agree and with the reviewer's permission—a lawyer.

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[17] Section 139 (Annual report by convenor)

Reviewer to give notice of decision

122. The reviewer must give the parties to the review a notice in the approved form of the reviewer's decision on the review as soon as possible after making the decision.

Reviewer's procedural powers

123.(1) The reviewer may, by written notice (an **"attendance notice"**), require a person to attend the review at a stated time and place—

(a) to give evidence; or

(b) to produce a stated document or thing.

(2) At the review, the reviewer may proceed in the absence of a party.

(3) The reviewer may adjourn the review from time to time.

Inspection of documents

124.(1) If a document or thing is produced to the reviewer at the review, the reviewer may—

(a) inspect the document or thing; and

(b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the review.

(2) The reviewer may also take possession of the document or thing, and keep it while it is necessary for the review.

(3) While the reviewer keeps a document or thing, the reviewer must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the reviewer decides.

Offences

125.(1) A person served with an attendance notice must not fail, without reasonable excuse—

(a) to attend as required by the notice; or

(b) to continue to attend as required by the reviewer until excused from further attendance.

Maximum penalty—40 penalty units.

(2) A person appearing as a witness at the review must not fail—

(a) to take an oath or make an affirmation when required by the reviewer; or

(b) without reasonable excuse—

(i) to answer a question the person is required to answer by the reviewer; or

(ii) to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—40 penalty units.

Self-incrimination

126. At the review, it is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

False or misleading statements

127. A person must not state anything to the reviewer that the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

False or misleading documents

128.(1) A person must not give to the reviewer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

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

(a) informs the reviewer, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the reviewer if the person has, or can reasonably obtain, the correct information.

Contempt of review

129. A person must not—

(a) insult the reviewer; or

(b) deliberately interrupt the review; or

(c) create or continue or join in creating or continuing, a disturbance in or near the review; or

(d) do anything that would be contempt of court if the reviewer were a judge acting judicially.

Maximum penalty—40 penalty units.

Division 6—Appeals to Industrial Court

Effect of reviewer's decision and appeal rights

130.(1) The reviewer's decision is final and binding on the parties.

(2) However, a party to the review may appeal against the reviewer's decision on a question of law by filing an appeal in the registry of the Industrial Court within 28 days after the party is given notice of the decision.

(3) The Industrial Court may at any time extend the time for filing an appeal.

Powers of Industrial Court

131. On the hearing of the appeal, the Industrial Court may—

(a) affirm, vary or set aside the reviewer's decision; or

(b) substitute, or make, in addition, a decision that should have been made in the first instance; or

(c) return the matter to the reviewer to be reviewed afresh; or

(d) make an order about costs or another matter the court considers appropriate.

Stay of decisions pending appeal

132.(1) The Industrial Court may make an order granting a stay of a decision appealed against if the Court considers the stay is necessary to secure the effectiveness of the appeal.

(2) An order may be made on conditions the court considers appropriate and has effect for the term stated by the court.

(3) The term of a stay under an order must not extend past the time when the court decides the appeal.

(4) An appeal against a decision does not affect the operation of the decision or carrying out of the decision unless the decision is stayed.

Division 7—Other provisions about reviews

Protection of reviewers, legal representatives and witnesses

133.(1) The reviewer has, in conducting the review, the same protection and immunity as a judge of the Supreme Court.

(2) A lawyer or other person appearing before the reviewer for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person required to attend, or appearing before the reviewer as a witness, has the same protection as a witness in a proceeding in the Supreme Court.

Costs

134. Each party to the review or the appeal must bear the party's own costs of the review or appeal.

Reviewers to keep record of proceedings

135.(1) The reviewer must keep a record of the review proceedings.

(2) The record must be kept in the way the convenor directs unless another way is required under a regulation.

(3) A copy of the record must be given to the convenor within 14 days after written notice of the reviewer's decision is given to the parties to the review.

Authentication of documents

136. A document requiring authentication by the reviewer is sufficiently authenticated if it is signed by the reviewer.

Judicial notice

137. Judicial notice must be taken of the reviewer's signature when it appears on a document issued for the review by the reviewer.

Regulation may provide for practice and procedure

138. A regulation may provide for the practice and procedure of reviews.

Annual report by convenor

139.(1) Within 3 months after the end of each financial year, the convenor must give to the Minister a report on the operation of reviews and the decisions of reviewers in the preceding financial year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives the report.

Chief executive to help convenor or reviewer

140. The chief executive is to give the convenor or the reviewer reasonable help to perform their functions.

PART 8—QUEENSLAND TRAINING AUTHORITY

Division 1—The QTA

Establishment of QTA

141. The Queensland Training Authority is established.

QTA's functions

142.(1) The QTA has the following functions—

(a) to advise the Minister on—

(i) the anticipated supply and demand for skills in various industries, particularly expanding industries, that are experiencing or are expected to experience a shortage of skilled labour; and

(ii) proposed strategies to support the industries mentioned in subparagraph (i); and

(iii) strategic directions, policies and priorities of the Queensland vocational education and training system; and

(iv) international, national and State vocational education and training issues; and

(v) the extent to which vocational education and training services meet the current and future requirements of industry and the community; and

(vi) the equality of opportunity to access vocational education and training services throughout Queensland; and

(vii) strategies to—

(A) promote vocational education and training to industry, enterprises, the community and individuals; or

(B) improve cross-sectoral links between schools, universities and the vocational education and training sector; and

(viii) policy for ensuring quality in the provision of vocational education and training services; and

(ix) the most effective application of funds for vocational education and training; and

(x) anything the Minister refers to it;

(b) to recommend a State vocational education and training plan to the Minister for approval;

(c) to perform the functions of an approving authority under the *Workplace Relations Act 1996* (Cwlth) and the *Workplace Relations Act 1997*;

(d) to recommend to the Minister appropriate bodies that may be appointed training advisory bodies;

(e) to determine guidelines or criteria for—

(i) registering training organisations; or

(ii) accrediting courses; or

(iii) administering registered training agreements; or

(iv) competency assessment of a person in an occupation who does not have a qualification for the occupation; or

(v) carrying out any other function conferred on the QTA by this Act;

(f) to monitor the application of the guidelines and criteria mentioned in paragraph (e) and if necessary refer matters to the Minister for the action the Minister considers appropriate;

(g) to perform the functions of the state training agency stated in the *Australian National Training Authority Act 1992* (Cwlth);

(h) to perform any other function conferred on the QTA under this Act.

(2) The QTA has the power to do all things necessary or convenient for performing its functions.

QTA to consult

143. In performing its functions under section 142, the QTA must ensure, as far as practicable, that it consults with, and has regard to the views and interests of, interested groups and persons and the community generally.

QTA subject to Minister's directions

144.(1) The QTA is subject to the Minister and must comply with the Minister's written directions about exercising its powers or performing its functions.

(2) The QTA must disclose directions given by the Minister in a financial year in its annual report for the financial year.

Composition

145.(1) The QTA consists of—

(a) at least 5 but not more than 9 members, appointed by the Minister (**"appointed members"**); and

(b) the chief executive without further appointment.

(2) The appointed members must—

(a) have knowledge of, or experience in, vocational education and training, industry or community affairs; and

(b) be able to contribute to the strategic direction of the State's vocational education and training system.

(3) Also, the appointed members must include employer and employee representation.

(4) The Minister—

(a) is to appoint an appointed member (to be called the training commissioner) as chairperson; and

(b) may appoint an appointed member as deputy chairperson.

Division 2—Meetings of QTA

Times and places of meeting

146.(1) Meetings of the QTA are to be held at the times and places it decides.

(2) However, the chairperson may call a meeting at any time.

(3) The Minister may also call a meeting of the QTA.

Presiding at meetings

147.(1) The chairperson is to preside at all meetings of the QTA at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson, if present, is to preside.

(3) If the chairperson and the deputy chairperson are absent, the member chosen by the members present is to preside.

Voting

148.(1) At a meeting of the QTA, all questions are to be decided by a majority of votes of the members present.

(2) If a member abstains from voting, the member is taken to vote for the negative.

(3) The chairperson or member presiding at a meeting is to have a vote, and if the votes are equal, a second or casting vote.

Quorum

149. At a meeting of the QTA, a simple majority of the members of the QTA make a quorum.

Conduct of meetings

150.(1) The QTA may conduct its meetings as it considers appropriate.

(2) The QTA may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(3) A member who participates in a QTA meeting under a permission under subsection (2) is taken to be present at the meeting.

(4) A resolution is a valid resolution of the QTA, even though it is not passed at a meeting of the QTA, if—

(a) notice of the resolution is given to the QTA members under procedures approved by the QTA; and

(b) the required minimum number of members agree in writing to the resolution.

Minutes

151. The QTA must keep a record of the minutes of its meetings and its decisions.

Division 3—Provisions about members

Duration of appointment

152. An appointed member is to be appointed for not longer than 3 years.

Vacation of appointment

153.(1) An appointed member's office becomes vacant if the member—

(a) dies; or

(b) resigns by signed notice given to the Minister; or

(c) is absent from 3 consecutive meetings of the QTA without leave and reasonable excuse; or

(d) is removed from office by the Minister under subsection (2).

(2) The Minister may remove an appointed member from office if the member—

(a) engages in misbehaviour; or

(b) becomes incapable of performing the duties of a member because of a physical or mental incapacity; or

(c) is incompetent; or

(d) is convicted of an indictable offence or an offence against this Act.

Conditions of appointment

154.(1) An appointed member may be paid the fees and allowances decided by the Governor in Council.

(2) An appointed member holds office on the conditions not provided by this Act that may be decided by the Minister.

Division 4—Other provisions

Delegation

155.(1) The QTA may delegate the QTA's powers to an appropriately qualified entity.

(2) In this section—

"appropriately qualified", for an entity to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise of power.

Establishing committees

156.(1) The QTA may, with the Minister's earlier written approval, establish committees to help it to perform its functions.

(2) A person may not be appointed to a committee without the Minister's earlier written approval.

(3) Subsections (1) and (2) do not limit the QTA in establishing committees of its members.

Chief executive to help QTA

157. The chief executive is to give the QTA reasonable help to perform its functions.

Reports on QTA's operations

158.(1) The QTA must, within—

(a) 1 month after the end of each quarter of the financial year, prepare and give to the Minister a report on its operations in the quarter; and

(b) 3 months after the end of each financial year, prepare and give to the Minister a report (the **"annual report"**) on its operations in the year.

(2) The Minister must table a copy of the annual report in the Legislative Assembly within 14 days after the Minister receives it.

PART 9—TRAINING ADVISORY BODIES

Training advisory bodies

159.(1) The Minister may, on the QTA's recommendation, by gazette notice appoint a corporation to be a training advisory body (**"training advisory body"**) for—

(a) an industry; or

(b) a sector of an industry; or

(c) an area.

(2) However the QTA—

(a) may not recommend an ineligible corporation for appointment as a training advisory body; and

(b) may only recommend a corporation for appointment as a training advisory body if the corporation meets the criteria published by the Minister by gazette notice.

(3) A training advisory body's function is to advise the QTA about vocational education and training for the industry, sector of industry or area for which the declaration is made.

(4) In this section—

"ineligible corporation" means a corporation that is a training organisation registered to provide training.

Automatic cancellation of appointment as training advisory body

160.(1) This section applies if a training advisory body becomes registered as a training organisation to provide training.

(2) The appointment as a training advisory body stops on the day the registration is granted.

PART 10—ADMINISTRATION

Division 1—Functions and powers of chief executive

Functions or powers not limited

161. This Act does not limit the chief executive's functions or powers under another Act or law.

Chief executive's functions for vocational education and training

162. The functions of the chief executive are as follows—

(a) to implement the State vocational education and training plan;

(b) to administer the following, in accordance with guidelines or criteria established by the QTA—

(i) the registration of training organisations;

(ii) the accreditation of courses;

(iii) registered training agreements;

(iv) competency assessment of a person in an occupation who does not have a qualification for the occupation;

(v) if a function is conferred on the QTA under section 142(1)(e)(v)—the function;

(c) to approve administering bodies in accordance with criteria established by the QTA;

(d) to develop, and promote the development and provision of, vocational education and training to meet the State's need for a highly skilled and adaptable workforce;

(e) to encourage people to enter learning and continue to learn throughout their lives;

(f) to undertake consultancy, or enter into consultancy agreements, regarding research, promotion or administration of vocational education and training;

(g) to help or encourage—

(i) the development or promotion of research associated with vocational education and training; or

(ii) the application or use of the results of the research;

(h) to promote the development of a competitive vocational education and training market;

(i) to exploit commercially—

(i) State vocational education and training resources including any study, research and knowledge; or

(ii) the practical application of any study, research and knowledge;

(j) to pursue other objects or purposes not inconsistent with this Act the chief executive considers appropriate.

General powers of chief executive

163.(1) The chief executive has, under the Minister and as agent of the State, all the powers of the State that are necessary or desirable for performing the chief executive's functions.

(2) Anything the chief executive does in the name of, or for the State, in performing the chief executive's functions is taken to be done for, and bind the State.

(3) Without limiting subsection (1), the chief executive may, for example, in performing the chief executive's functions—

(a) enter into arrangements, agreements, contracts and deeds; and

(b) acquire, hold, deal with and dispose of property; and

(c) appoint agents and attorneys; and

(d) charge, and fix terms, for goods, services, facilities and information supplied; and

(e) seal a document; and

(f) form or establish, or participate in forming or establishing, an association, corporation, trust or other arrangement for a purpose calculated to further the objects of this Act; and

(g) compound or prove in a court of competent jurisdiction all debts or sums of money owing to the State; and

(h) accept gifts, grants, bequests or devises and create and administer trust funds; and

(i) do other things necessary or convenient to be done in connection with the functions.

(4) Without limiting subsection (1), the chief executive has the powers given to the chief executive under this or another Act or at common law.

(5) However, the chief executive's powers are subject to any restriction expressly imposed on the chief executive under this or another Act.

(6) In this section—

"function" includes responsibility.

"law" includes a common law rule.

"restriction" includes prohibition.

Power of chief executive to be a member of other bodies

164.(1) The chief executive—

(a) may become and be a member, or manager, of an entity that—

(i) has among its objects—

(A) vocational education or training; or

(B) research relevant to vocational education or training; or

(C) anything associated with vocational education or training; or

(ii) in the chief executive's opinion, is engaged in the furtherance of vocational education or training; and

(b) may enter into agreements with an entity in relation to those objects.

(2) However, the chief executive may not be a member or manager of an entity unless its governing body agrees.

(3) The chief executive may be a member of the governing body of an entity of which the chief executive is a member or manager.

(4) The chief executive may incur expenditure for contributions or other liability that membership of an entity entails.

(5) In this section, except for subsections (1)(a)(ii) and (4)—

"chief executive" includes a person authorised by the chief executive.

Chief executive to keep registers

165.(1) The chief executive must keep the following registers—

(a) a register of registered training organisations;

(b) a register of accredited courses;

(c) a register of registered training agreements.

(2) A register mentioned in subsection (1) must contain the particulars required under a regulation.

(3) Subsection (1) does not prevent the chief executive from keeping a combined register.

Returns to be given as required

166.(1) A corporation in whose formation the chief executive has participated, and an entity of which the chief executive is a member or manager must give to the Minister the reports, returns and information as to its affairs required by the Minister.

(2) In this section—

"chief executive" includes a person authorised by the chief executive.

Delegation

167.(1) The chief executive may delegate the chief executive's powers to an appropriately qualified officer of the department or entity.

(2) In this section—

"appropriately qualified", for an officer of the department or entity to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of 'standing' for an officer of the department—

An officer's classification level in the public service.

Example of 'standing' for an entity—

A statutory body that is authorised under its Act to exercise delegated powers.

Use of facilities and staff

168. The chief executive may contract, or enter into an arrangement, with an entity for the use by the entity of the facilities and staff available to the chief executive.

Approval of forms

169. The chief executive may approve a form (an **“approved form”**) for use under this Act.

Division 2—Trusts

Definitions

170. In this division—

“approved scheme” means a scheme approved by the Minister under section 171(4).

“trust property” see section 171.

Variation of trust purposes

171.(1) This section applies if—

(a) property (the **“trust property”**) is held by or for the State, at the commencement of this Act or at a later time, on terms requiring the property or income from the property to be applied to a purpose (the **“original purpose”**) calculated to further in any way the objects of this Act; and

(b) any of the following happen—

(i) the original purpose has been effected;

(ii) the original purpose has ceased to exist;

(iii) the original purpose has been adequately provided for otherwise;

(iv) the original purpose is uncertain or insufficiently defined or can not be identified;

(v) it is or becomes impossible, impracticable or inexpedient to carry out the original purpose;

(vi) the property or income from the property is not enough to carry out the original purpose.

(2) The chief executive may prepare a scheme to apply the trust property or a part of it or the income from the property to a purpose stated in the scheme.

(3) The chief executive must submit the scheme to the Minister and it has no effect unless it is approved by the Minister.

(4) If the Minister approves the scheme, the approved scheme must be published in the industrial gazette.

(5) Despite the original purpose for which the trust property was held immediately before the approved scheme becomes effective, when the approved scheme becomes effective the trust property or income from it is to be applied to the purpose stated in the approved scheme.

(6) However, the chief executive may not prepare a scheme 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 an event mentioned in subsection (1)(b) happens.

Amendment of approved scheme

172.(1) The chief executive may prepare an amendment of an approved scheme.

(2) The chief executive must submit the amendment to the Minister and it has no effect unless it is approved by the Minister.

(3) If the Minister approves the amendment—

(a) the amendment as approved must be published in the industrial gazette; and

(b) on publication of the amendment under paragraph (a), the approved scheme as amended by the amendment, becomes the approved scheme for the trust property, or the part of the property, to which it relates.

Requirements about purposes for schemes

173.(1) This section applies if the chief executive is going to—

(a) prepare a scheme under section 171(2); or

(b) prepare an amendment of an approved scheme under section 172(1) and the amendment is to change the purpose of the approved scheme.

(2) The chief executive must—

(a) select 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—

(i) the preparation of the scheme; or

(ii) the amendment of the approved scheme; and

(b) in selecting the purpose, have regard to—

(i) its usefulness; and

(ii) how easily it can be achieved.

(3) It is not a sufficient ground for a court—

(a) to declare the chief executive's selected purpose invalid or defective; or

(b) to stop the chief executive's selected purpose from being carried out;

if a purpose other than the selected purpose might have been selected, or should have been selected for a scheme.

Recording schemes in land register

174.(1) This section applies if trust property to which an approved scheme, or an amendment of an approved scheme, relates, consists wholly or partly of land.

(2) The chief executive must notify the registrar of titles or other person (both a **"recorder"**) charged by law with recording dealings for the land of the approved scheme or an amendment the scheme within 1 month after publication of the approved scheme or amendment in the industrial gazette.

(3) On receiving the notification and any other particulars about the land, scheme or amendment the recorder requires, the recorder must make in the appropriate register the entries necessary to record the existence of the approved scheme or the amendment.

Rights and jurisdiction in equity not affected

175. Except as is provided in this division, this division 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 declare about, trusts.

Division 3—Advisory committees

Advisory committees

176.(1) The Minister may establish as many advisory committees as the Minister considers necessary for the administration of this Act.

(2) An advisory committee has the functions the Minister decides.

(3) A member of an advisory committee may be paid the fees and allowances decided by the Governor in Council.

PART 11—INSPECTORS

Division 1—Administration

Chief executive may appoint inspectors

177.(1) The chief executive may appoint any of the following persons as an inspector—

(a) a public service officer of the department;

(b) another person stated under a regulation.

(2) However, the chief executive may appoint a person as an inspector only if satisfied—

(a) the person has the necessary expertise or experience to be an inspector; or

(b) the person has satisfactorily finished training approved by the chief executive.

Inspector's identity card

178.(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

(a) contain a recent photo of the person; and

(b) be signed by the person; and

(c) identify the person as an inspector; and

(d) state an expiry date.

(3) A person who stops being an inspector must return the person's identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

Production or display of inspector's identity card

179.(1) An inspector may exercise a power in relation to someone only if—

(a) the inspector first produces the inspector's identity card for the other person's inspection; or

(b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

Powers of inspector

180.(1) An inspector is subject to the directions of the chief executive.

(2) The powers of an inspector may be limited—

(a) under a regulation; or

(b) under a condition of appointment; or

(c) by written notice given by the chief executive to the inspector.

Inspector's appointment conditions

181.(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector—

(a) if the appointment provides for a term of appointment—stops holding office at the end of the term; and

(b) if the conditions of appointment provide—stops holding office when the inspector stops holding another office stated in the appointment conditions (the **"main office"**); and

(c) may resign by signed notice given to the chief executive.

(3) However, an inspector may not resign from the office under this Act (the **"secondary office"**) if a term of employment to the main office requires the person to hold the secondary office.

Division 2—General powers of inspectors

Entry of place

182.(1) An inspector may enter a place if—

(a) its occupier consents to the entry; or

(b) the entry is authorised by a warrant; or

(c) the place is a public place and the entry is made when the place is open to the public; or

(d) if its occupier is a responsible body and the entry is made when the place is open for the conduct of business or otherwise open for entry; or

(e) the place is a place, other than a dwelling house, where the inspector reasonably believes a registered training organisation or an employer is—

(i) training an apprentice under a registered training agreement or a student under vocational placement agreement; or

(ii) assessing a person's competency for the issue of a qualification or statement of attainment;

and the entry is made when the place is open for work or the conduct of business or otherwise open for entry.

(2) An inspector, without the occupier's consent or a warrant, may enter the land around the premises to ask its occupier for consent to enter the premises.

(3) In this section—

"responsible body" means any of the following—

(a) a registered training organisation;

(b) an administering body;

(c) a training advisory body.

Consent to entry

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

(2) Before asking for the consent, the inspector must inform the occupier—

(a) of the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

(a) that the occupier was informed—

(i) of the purpose of the entry; and

(ii) that the occupier is not required to consent; and

(b) that the occupier gives an inspector consent to enter the place and exercise powers under this Act; and

(c) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if—

(a) a question arises, in a proceeding in or before the court, whether the occupier of a place consented to an inspector entering the place under this Act; and

(b) an acknowledgment under this section is not produced in evidence for the entry; and

(c) it is not proved that the occupier consented to the entry.

(7) The court may presume that the occupier did not consent.

Warrants

184.(1) An inspector may apply to a magistrate for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) 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 application to be given by statutory declaration.

(4) The magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the **"evidence"**) that may provide evidence of an offence against this Act; or

(b) the evidence is at the place, or may be at the place, within the next 7 days.

(5) The warrant must state—

(a) that the inspector may, with reasonable and necessary help and force, enter the place and exercise the inspector's powers under this Act; and

(b) the offence for which the warrant was issued; and

(c) any evidence that may be seized under the warrant; and

(d) the hours when the place may be entered; and

(e) the date, within 7 days after the warrant's issue, when the warrant ends.

Warrants—applications made other than in person

185.(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax a copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

(a) the magistrate must—

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the **"warrant form"**) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated by the warrant issued by the magistrate.

(7) The inspector must, at the first reasonable opportunity, send the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

(a) a question arises, in a proceeding in or before the court, whether a power exercised by an inspector was authorised by a warrant issued under this section; and

(b) the warrant is not produced in evidence.

(10) The court may presume that the exercise of the power was not authorised by a warrant issued under this section, unless the contrary is proved.

General powers after entering places

186.(1) This section applies to an inspector who enters a place under this part when it is open to inspection or the public or with the occupier's consent or under a warrant.

(2) For monitoring or enforcing compliance with this Act, the inspector may—

(a) search any part of the place; or

(b) examine, inspect, test, measure, photograph or film anything on the place; or

(c) take samples of anything on the place; or

(d) copy a document on the place; or

(e) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or

(f) require a person in the place, to give the inspector reasonable help to exercise the powers mentioned in paragraphs (a) to (e).

(3) A person required to give reasonable help under subsection (2)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) If the help is required to be given to an inspector by—

(a) answering a question; or

(b) producing a document (other than a document required to be kept under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

Power to seize evidence

187.(1) An inspector who enters a place under this part when it is open to inspection or the public or with the occupier's consent may seize a thing in the place 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 told to the occupier.

(2) An inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else in a place mentioned in subsection (1) or (2) 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 hidden, lost or destroyed or used to continue or repeat the offence.

Receipt for seized things

188.(1) As soon as possible after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each thing seized and its condition.

Return of seized things

189.(1) An inspector must return a seized thing to the person from whom it was seized at the end of—

(a) 6 months; or

(b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the inspector must return the seized thing to the person immediately the inspector stops being satisfied its retention as evidence is necessary.

Power to require name and address

190.(1) This section applies if—

(a) an inspector finds a person committing an offence against this Act; or

(b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) A person does not commit an offence against subsection (5) if—

(a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

Power to require production of documents

191.(1) An inspector may require a person to produce to the inspector, for inspection, a document this Act requires the person to hold or keep.

(2) The person must produce the document, unless the person has a reasonable excuse for not producing it.

Maximum penalty—40 penalty units.

(3) The inspector may keep a document that is produced—

(a) to take an extract from the document; or

(b) to make a copy of it.

(4) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

Division 3—Other provisions about inspectors

False or misleading statements

192. A person must not state anything to an inspector that the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

False or misleading documents

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

Maximum penalty—40 penalty units.

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

(a) tells the inspector, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably get, the correct information—gives the correct information to the inspector.

Obstruction of inspectors

194.(1) A person must not obstruct an inspector, or a person helping an inspector, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) If a person obstructs an inspector in the exercise of a power under this Act and the inspector decides to exercise the power, the inspector must warn the person.

(3) In warning the person, the inspector must tell the person—

(a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

(b) the inspector considers the person's conduct is an obstruction.

(4) In this section—

"obstruct" includes hinder and attempt to obstruct.

Impersonation of inspector

195. A person must not pretend to be an inspector.

Maximum penalty—40 penalty units.

PART 12—GENERAL

Division 1—General accountability provisions

Executive officers must ensure corporation complies with Act

196.(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the maximum penalty for the contravention of the provision by an individual.

(3) Evidence that a corporation has been convicted of an offence against a provision of this Act is evidence each of the corporation's executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—that the officer took reasonable steps to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Responsibility for acts or omissions of representatives

197.(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—

(a) if the person was in a position to influence the conduct of the representative in relation to the act or omission—the person took reasonable steps to prevent the act or omission; or

(b) the person was not in a position to influence the conduct of the representative in relation to 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.

Disclosure of interests by member of disclosure body

198.(1) This section applies if a member of a disclosure body has a direct or indirect interest in a matter being considered, or about to be considered, by the body.

(2) The member must disclose the nature of the interest to a meeting of the body as soon as practicable after the relevant facts come to the member's knowledge.

Maximum penalty—40 penalty units.

(3) The disclosure must be recorded in the minutes of the meeting of the body.

Voting etc. by interested member of disclosure body

199.(1) A member of a disclosure body who has a material personal interest in a matter being considered by the body must not—

(a) vote on the matter; or

(b) vote on a proposed resolution (a **"related resolution"**) under subsection (2)(a) in relation to the matter (whether in relation to the member or another member); or

(c) be present while the matter, or a related resolution, is being considered by the body; or

(d) otherwise take part in any decision of the body in relation to the matter or a related resolution.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to the matter if—

(a) the body has passed a resolution that—

(i) states the member, the interest and the matter; and

(ii) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter; or

(b) if a quorum of the body can not be formed because of subsection (1)—the Minister has given a written direction to that effect for the matter.

Other disclosure of interests

200.(1) This section applies if a person has a direct or indirect interest in a matter that appears likely to conflict, or capable of conflicting, with the exercise of the person's powers or the performance of the person's functions under this Act.

(2) The person must disclose the interest to—

(a) if the person is an executive officer, employee or agent of a training advisory body—the Minister; or

(b) if the person is an owner, executive officer, employee or agent of a registered training organisation or an administering body—the chief executive; or

(c) otherwise—the chief executive.

Maximum penalty—40 penalty units.

(3) The Minister or chief executive may, by signed notice, direct the person to take the action stated in the notice to resolve the conflict.

(4) The person must not contravene the direction unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) In this section—

"person" means any of the following—

(a) an executive officer, employee or agent of a training advisory body;

(b) an owner, executive officer, employee or agent of a registered training organisation or an administering body;

(c) a person, other than a public service employee or a reviewer, who exercises a power or performs a function under this Act.[18]

Duty to act honestly

201.(1) This section applies to a person who exercises a power or performs a function under this Act.

(2) The person must at all times act honestly in exercising the power or performing the function.

Maximum penalty—40 penalty units.

[18] The *Public Service Act 1996*, sections 56 and 84 provide for the disclosure of interests by public service employees. In this Act, part 7 (Review of reviewable decisions) section 107 (Disclosure of interests) provides for disclosure of interests by a reviewer.

(3) A person to whom this section applies, or at any time applied, 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—40 penalty units.

Protection of confidentiality

202.(1) This section applies to a person who exercises a power or performs a function under this Act.

(2) The person must not disclose to anyone else information that comes to the person's knowledge in exercising the power or performing the function or because of an opportunity provided by the exercise of the power or performance of the function.

Maximum penalty—40 penalty units.

(3) However, subsection (2) does not apply to disclosure of information—

(a) under this Act; or

(b) with the authorisation of the chief executive; or

(c) required by a review panel to be disclosed under proceedings before it; or

(d) ordered by a court or tribunal constituted according to law to be disclosed under proceedings before it; or

(e) otherwise required by law to be disclosed.

Division 2—Procedural and evidentiary provisions

Summary proceedings for offences

203.(1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate.

(2) If the parties to a proceeding commenced, or to be commenced, before a magistrate agree, by notice signed by them or their representatives, that the proceeding should be continued or taken before a magistrate at a particular place in the State (other than the place where the proceeding should be heard and decided under the *Justices Act 1886*)—

(a) the magistrate at the particular place is authorised to hear and decide the proceeding; and

(b) jurisdiction is conferred on each magistrate accordingly.

(3) If the proceeding has been commenced before the agreement is made, the magistrate, if satisfied the agreement exists, must—

(a) adjourn the proceeding to the magistrate at the agreed place; and

(b) send the record of the proceeding taken before the magistrate to the clerk of the Magistrates Court at the agreed place.

(4) For the adjourned proceeding, evidence heard or produced in the proceeding before it was adjourned, is taken to have been heard or produced before the magistrate to whom the proceeding is adjourned, unless the parties otherwise agree.

(5) A proceeding for an offence under this Act must be commenced—

(a) within 1 year after the offence was committed; or

(b) within 6 months after the offence comes to the complainant's knowledge, but within 18 months after the offence was committed.

Representation of parties

204.(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.

Evidentiary provisions

205.(1) This section applies to a proceeding under this Act.

(2) It is not necessary to prove—

(a) the appointment of—

(i) the chief executive, an inspector, the convenor or a reviewer; or

(ii) a member of the QTA or a committee established under section 156;[19] or

(b) the authority of the chief executive, an inspector, the convenor or a review panel to take an action, commence a proceeding or make or give an order, direction or requirement; or

(c) the approval of a person as an administering body to exercise a power or perform a function stated in the approval,

unless a party, by reasonable notice, requires proof of the appointment, authority or approval.

(3) A signature purporting to be that of the chairperson of the QTA, chief executive, inspector, convenor or owner or executive officer of an administering body or registered training organisation is evidence of the signature it purports to be.

(4) An entry in a register required by the Act to be kept, or a copy or extract from a register, certified by the chief executive or an owner or executive officer of a registered training organisation, to be a true copy or extract is evidence of the matters contained in the register.

(5) A certificate signed by the chief executive, an inspector or the owner or executive officer of an administering body and stating any of the following matters is evidence of the matter—

(a) on a stated day, or during a stated time, a stated person was, or was not, a party to a registered training agreement;

(b) on a stated day, or during a stated time, a stated training organisation was, or was not, a registered training organisation.

(6) A certificate signed by an owner or executive officer of a registered training organisation is evidence that on a stated day, or during a stated time, a stated person was, or was not, a party to a vocational placement agreement.

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19 Section 156 (Establishing committees).

(7) A registered training agreement or a vocational placement agreement is evidence of the things stated in it.

(8) A document apparently published by or for the Minister, the QTA or the chief executive, is evidence that the document and the things stated in it are authorised by the Minister, the QTA or chief executive.

(9) A copy signature on a document purporting to be a facsimile of the signature of the person who is, or was, the chief executive is evidence—

(a) of the signature of the person who is, or was, the chief executive; and

(b) the signature was placed on the document by or with the authority of the person who is, or was, the chief executive.

Complaints for certain offences

206.(1) This section applies if a person is charged with an offence against section 127, 128, 192 or 193.

(2) It is enough for the complaint for the offence to state that the statement or document was "false or misleading" to the person's knowledge without stating which.

Division 3—Other provisions

Protection from liability

207.(1) A member of the QTA or an official 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 a member of the QTA or an official, the liability attaches instead to the State.

(3) In this section—

"official" means—

(a) the Minister; or

(b) the chief executive; or

(c) an officer or employee of the department; or

(d) an inspector; or

(e) a person mentioned in section 186(2)(e).[20]

Regulation-making power

208.(1) The Governor in Council may make regulations under this Act.

(2) 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; or

(c) prescribe laws of other States about vocational education and training as corresponding laws.

PART 13—REPEALS AND TRANSITIONAL ARRANGEMENTS

Division 1—Acts repealed

Repeal of Acts

209. The Acts mentioned in schedule 2 are repealed.

20 Section 186 (General powers after entering places)

Division 2—Transitional arrangements[21]

Definitions

210. In this division—

"approval" means—

(a) the accreditation of a course; or

(b) the approval of a training scheme; or

(c) the registration of a training organisation; or

under the former VETE Act.

"commission" means the Vocational Education, Training and Employment Commission established under the former VETE Act.

"corporation" means the Vocational Education, Training and Employment Corporation established under the former VETE Act.

"former body" means any of the following bodies established or established under the former VETE Act—

(a) the commission;

(b) the accreditation council;

(c) the state planning and development council;

(d) the state training council.

"former industry placement Act" means the *Vocational Education and Training (Industry Placement) Act 1992*.

"former VETE Act" means the *Vocational Education, Training and Employment Act 1991*.

"industrial body" means the Industrial Relations Commission or an industrial magistrate.

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21 See the *TAFE Institutes Act 1998* for transitional arrangements about State colleges called TAFE Institutes. See also schedule 3 (Consequential amendments of other Acts) for consequential amendments of the *Agricultural Colleges Act 1994* of provisions about colleges declared agricultural colleges under the *Agricultural Colleges Act 1994*.

Dissolution of corporation and former bodies

211.(1) The corporation and a former body are dissolved.

(2) The members of a former body go out of office.

Assets and liabilities

212.(1) The assets and liabilities of the corporation and a former body vest in the State.

(2) If the corporation held property on trust, the State holds the property on the terms of the trust.

Proceedings

213.(1) A proceeding by or against the corporation or a former body that has not ended before the commencement, may be continued and finished by or against the State.

(2) If a proceeding could have been taken by or against the corporation or a former body if the corporation or former body had continued to exist, the proceeding may be taken by or against the State.

Contracts

214. If the corporation or a former body was a party to a contract in force immediately before the commencement, the contract continues in force and the State is taken to be the party.

References

215. A reference, other than a reference in relation to a State college, in an Act or document to—

(a) the former VETE Act or the former industry placement Act may, if the context permits, be taken to be a reference to this Act; or

(b) the corporation or a former body may, if the context permits, be taken to be a reference to the chief executive.

Existing approvals

216.(1) An approval in force immediately before the commencement is taken to be an approval granted under this Act.

(2) The approval—

(a) continues in force subject to this Act and is not renewable; and

(b) ends when it would have ended under the former VETE Act, unless the chief executive sooner suspends or cancels it by fair procedures stated under a regulation.

(3) Subsection (2) applies despite a provision of the approval or the former VETE Act about renewing the approval.

Awards conferred under former VETE Act

217.(1) An award conferred under the former VETE Act is taken to be a qualification issued under this Act.

(2) In this section—

"award" means—

(a) a certificate of completion given under section 73 of the former VETE Act; or

(b) a certificate, advanced certificate, associate diploma, diploma or other award that was approved by the commission under the former VETE Act.

Existing decisions

218.(1) This section applies to a decision made under—

(a) the former VETE Act by the corporation or a former body; or

(b) the former industry placement Act by a former body;

if the effect of the decision is not finished at the commencement.

(2) The decision continues in force subject to this Act and—

(a) for a decision made under the former VETE Act by the corporation, an excluded decision or a decision made under the former industry placement Act by a former body—is taken to be a decision made by the chief executive; or

(b) for a decision, other than an excluded decision, made under the former VETE Act by a former body—is taken to be a decision made by the QTA.

(3) If a person had a right to appeal against a decision mentioned in subsection (2)(a) under the former VETE Act that had not ended immediately before the commencement, the person may, within the time for appealing under the former VETE Act, ask for a review of the decision in the same way as if it were a reviewable decision under this Act.

(4) Despite section 109(1)(b),[22] the chief executive is a party to the review instead of the person mentioned in that section.

(5) In this section—

"decision" includes a determination, direction and ruling.

"excluded decision" means a decision made under the former VETE Act by the commission or the state training council to—

(a) grant or refuse to grant or renew the recognition of a training organisation; or

(b) cancel or suspend the recognition of a training organisation; or

(c) amend, cancel, suspend or otherwise vary a training agreement; or

(d) discipline an apprentice or trainee; or

(e) grant or refuse to grant recognition of work or training.

Existing orders of industrial body

219.(1) This section applies to an order made under the former VETE Act by an industrial body if the effect of the order is not finished at the commencement.

(2) The order continues in force as if it were an order under the corresponding provisions of the *Workplace Relations Act 1997*.

22 Section 109 (Parties to review)

Existing proceedings before industrial body

220. A proceeding started before an industrial body under the former VETE Act but not finished at the commencement may be carried on and prosecuted as if it had been started under the corresponding provisions of the *Workplace Relations Act 1997*.

Existing training agreements

221.(1) A training agreement (the **"former training agreement"**) approved under section 70 of the former VETE Act and in force immediately before the commencement continues in force, subject to this Act, as if it were a registered training agreement (the **"new training agreement"**) under this Act.

(2) Despite a provision of the former training agreement, the new training agreement is taken to provide that at its completion, the apprentice being trained under it will be eligible to receive the qualification—

(a) decided by the QTA by gazette notice as being most appropriate for the training undertaken under the former training agreement and the new training agreement; and

(b) issued by the supervising registered training organisation for the agreement.

(3) The apprentice continues to be entitled to the conditions of employment that the apprentice was entitled to under section 87 of the former VETE Act.

(4) If the unexpired term of the new training agreement is more than 2 years, the parties to the agreement must, as soon as is practicable after the commencement, agree with a registered training organisation that it be the supervising registered training organisation for the agreement.

(5) Subsection (6) applies if—

(a) the unexpired term of the new training agreement is 2 years or less; and

(b) at the end of the new training agreement—there is no supervising registered training organisation for it.

(6) The chief executive is taken to be the supervising registered training organisation for the agreement.

Existing vocational placement agreements etc.

222.(1) A vocational placement agreement and a vocational training agreement in force under the former industry placement Act immediately before the commencement continues in force, subject to this Act, as if it were a vocational placement agreement under this Act.

(2) However, section 92(2)(a)(i) and (ii)[23] does not apply to a vocational training agreement continued in force as a vocational placement agreement under this Act.

Interim training advisory bodies

223.(1) An existing entity is taken to be an interim training advisory body.

(2) An existing entity stops being an interim training advisory body—

(a) if—

(i) the Minister appoints it as a training advisory body; or

(ii) it becomes a registered training organisation registered to provide training; or

(b) otherwise, 18 months after the commencement.

(3) This section expires 18 months after the commencement.

(4) In this section **"existing entity"** means an entity with an Australian company number or incorporated association number mentioned in schedule 4.

23 Section 92 (Conditions in vocational placement agreements)

Continued operation of s 87 of former VETE Act

224. Despite the repeal of section 87 of the former VETE Act (the **“repealed section”**) the repealed section continues to apply to an apprentice who enters into a registered training agreement under this Act until 6 months after the commencement.

PART 14—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Consequential amendments in sch 3

225. The Acts mentioned in schedule 3 are amended as stated in the schedule.

SCHEDULE 1

REVIEWABLE DECISIONS

section 98

Section	Description of decision
9	Refusing to grant registration of training organisation
12	Imposing conditions on registration of training organisation
15	Refusing to amend or cancel registration of training organisation
17	Cancelling, suspending or amending registration of training organisation
22	Direction to stop conduct
25	Refusing to issue qualification or statement of attainment
	Issuing a qualification or statement of attainment other than that applied for
	Cancelling a qualification or statement of attainment
26	Refusing to grant accreditation
27	Imposing conditions on accreditation of course
29	Refusing to amend or cancel accreditation of course
31	Cancelling, suspending or amending accreditation
34	Refusing to grant approval as administering body
36	Imposing conditions on approval as administering body

SCHEDULE 1 (continued)

38	Refusal to amend or cancel approval as administering body
40	Cancelling, suspending or amending approval as administering body
53	Refusing to register training agreement
63(2)(c)	Deciding former partner to whom registered training agreement is to be assigned
67	Cancelling registered training agreement on stated grounds
68	Cancelling, or refusing to cancel, registered training agreement for misconduct
69	Imposing reprimand, penalty, cancellation or suspension or order to comply
70	Issuing, or refusing to issue, a qualification
72	Extending term of registered training agreement
73	Cancelling qualification or statement of attainment
75	Standing down apprentice temporarily under registered training agreement
76(2)	Determining apprentice’s progress
93	Extending term of vocational placement

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SCHEDULE 2

REPEALED ACTS

section 209

Vocational Education, Training and Employment Act 1991 No 43

Vocational Education and Training (Industry Placement) Act 1992 No 57

SCHEDULE 3

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

section 225

AGRICULTURAL COLLEGES ACT 1994

1. Section 3, definitions “agricultural college”, “appointed member”, “official member” and “State college”—

omit.

2. Section 3—

insert—

‘ **“agricultural college”** means a college established under this Act that offers, or will offer courses about agriculture, pasturage or animal husbandry.

“appointed member” see section 12.

“premises” means—

(a) land; or

(b) a building, structure or erection of any kind, whether completely or partly constructed or erected or in the course of construction or erection; or

(c) an aircraft, vehicle or vessel.

“reasonably suspects” means suspects on grounds that are reasonable in the circumstances.’.

SCHEDULE 3 (continued)

3. Section 3, definition “accredited”, ‘*Vocational Education, Training and Employment Act 1991*’—

omit, insert—

‘*Vocational Education and Training Act 1998*’.

4. Section 3, definition “State land”, ‘*Land Act 1962*’—

omit, insert—

‘*Land Act 1994*’.

5. Sections 4 and 5—

omit, insert—

‘PART 1A—ESTABLISHING COLLEGES

‘Power to establish colleges

‘**4.(1)** The Minister may establish a college.

‘**(2)** The Minister may—

(a) amalgamate a college, or part of a college, with another college or part of a college; or

(b) close or abolish a college, or part of a college.’.

6. Sections 6(3) and (4)—

omit, insert—

‘**(3)** The corporation’s name is the ‘[Name of locality] [type of college] College Board’.

‘**(4)** For subsection (3), the Minister may, by gazette notice, nominate for inclusion in the corporation’s name—

(a) the name of the locality; and

(b) the type of college, for example—agricultural or pastoral.’.

SCHEDULE 3 (continued)

7. Section 7(3)(b)—

omit, insert—

‘(b) providing vocational education and training that meets the needs of industry and the community to a standard appropriate to workplace, industry and community needs; and’.

8. Section 7(3)—

insert—

‘(h) exploiting commercially—

(i) its resources including any study, research and knowledge; or

(ii) the practical application of any study, research and knowledge.’.

9. Section 8(2)—

insert—

‘(aa) subject to any relevant industrial instrument made under the *Workplace Relations Act 1997*, to decide employment conditions for the staff mentioned in paragraph (a); and’.

10. Section 8(2)(j)—

omit.

11. Sections 12 to 14—

omit, insert—

‘**Membership of college board**

‘**12.(1)** A college board consists of—

(a) at least 7 but not more than 10 members appointed by the Minister (an **“appointed member”**); and

SCHEDULE 3 (continued)

(b) the college's director without further appointment.

'**(2)** An appointed member must—

(a) have knowledge of, or experience in rural industry, vocational education and training or community affairs; and

(b) be able to contribute to the strategic direction of the college.

'**(3)** The Minister—

(a) is to appoint an appointed member as chairperson; and

(b) may appoint an appointed member as deputy chairperson.'.

12. Section 15—

omit, insert—

'**Duration of appointment**

'**15.** An appointed member is to be appointed for a term not longer than 3 years.'.

13. Sections 16 and 17—

omit.

14. Section 18(1)(b), 'of the type concerned'—

omit.

15. Section 19(1)—

omit, insert—

'**(1)** The Minister must appoint 1 of the members of a college board as chairperson of the board.'.

SCHEDULE 3 (continued)

16. Section 24(1), ‘A’ to ‘college)’—

omit, insert—

‘An appointed member’.

17. Section 25, ‘of the department’—

omit.

18. Part 2—

insert—

‘**Disclosure of interests by member of board**

‘**25A.(1)** If a member of a board has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member’s knowledge.

Maximum penalty—40 penalty units.

‘**(2)** The disclosure must be recorded in the minutes of the meeting of the board.

‘**Voting etc. by interested member of board**

‘**25B.(1)** A member of a board who has a material personal interest in a matter that is being considered by the board must not—

(a) vote on the matter; or

(b) vote on a proposed resolution (a **“related resolution”**) under subsection (2)(a) in relation to the matter, whether in relation to the member or another member; or

(c) be present while the matter, or a related resolution, is being considered by the board; or

SCHEDULE 3 (continued)

(d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—40 penalty units.

‘**(2)** Subsection (1) does not apply to the matter if—

(a) the board has passed a resolution that—

(i) specifies the member, the interest and the matter; and

(ii) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter; or

(b) if a quorum of the board can not be formed because of subsection (1)—the Minister has given a written direction to that effect for the matter.’.

19. Section 28, heading, ‘Land Act 1962’—

omit, insert—

‘Land Act 1994’.

20. Section 28(1), ‘*Land Act 1962*’—

omit, insert—

‘*Land Act 1994*’.

21. Section 36(2)—

insert—

‘(f) a review of, and a right of appeal against, a decision made under a rule made under paragraphs (b) or (c).’.

SCHEDULE 3 (continued)

22. Section 36(3), after 'students'—

insert—

'for publicly funded training or residing at the college'.

23. Part 6—

insert—

'**Duty to act honestly**

'**37A.(1)** This section applies to a person who exercises a power or performs a function under this Act.

'**(2)** The person must at all times act honestly in exercising the power or performing the function.

Maximum penalty—40 penalty units.

'**(3)** A person to whom this section applies, or at any time applied, 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—40 penalty units.

'**Protection of confidentiality**

'**37B.(1)** This section applies to a person who exercises a power or performs a function under this Act.

'**(2)** The person must not disclose to anyone else information that comes to the person's knowledge in exercising the power or performing the function or because of an opportunity provided by the exercises of the power or performance of the function.

Maximum penalty—40 penalty units.

'**(3)** However, subsection (2) does not apply to disclosure of information—

SCHEDULE 3 (continued)

(a) under this Act; or

(b) with the chief executive’s authorisation; or

(c) ordered by a court or tribunal to be disclosed under proceedings before it; or

(d) otherwise required by law to be disclosed.

‘Trespass on colleges

‘**37C.(1)** A person must not enter, or be on, premises of a college unless the person has a lawful authority or excuse for the entry or for being there.

Maximum penalty—40 penalty units.

‘**(2)** Subsection (3) applies if a person—

(a) is found on premises in contravention of subsection (1); and

(b) fails to comply with a request from an authorised officer to leave the premises.

‘**(3)** The authorised officer may remove the person from the premises using reasonable force.

‘**(4)** The authorised officer may require a person found contravening subsection (1) to—

(a) state the person’s name and address; and

(b) if the authorised officer reasonably suspects that a name or address stated is not correct—produce evidence of the correctness of the person’s name or address.

‘**(5)** A person must not contravene a requirement under subsection (4) unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘**(6)** A person does not contravene subsection (5) if—

(a) the person was required to state the person’s name and address by an authorised officer who suspected the person had committed an offence against subsection (1); and

SCHEDULE 3 (continued)

(b) the person is not proved to have committed the offence.

'**(7)** In this section—

"authorised officer" means—

(a) the director or a person authorised by the director; or

(b) a police officer.'.

24. Section 39(2), 'Corporation' to '*1991*'—

omit, insert—

'State'.

25. Section 39(3) and (4), 'Corporation'—

omit, insert—

'State'.

26. After part 7—

insert—

'PART 7A—FURTHER TRANSITIONAL PROVISIONS

'Existing agricultural colleges

'**48A.** A State college declared an agricultural college in existence immediately before the commencement is taken to be an agricultural college established under this Act.

'Existing college board members go out of office

'**48B.** On the commencement all college board members go out of office.

SCHEDULE 3 (continued)

‘Continued legal personality of corporations

‘**48C.** To remove doubt and despite section 48B, it is declared that a corporation constituted under section 6 in existence immediately before the commencement continues in existence after the commencement without change to its legal personality.’.

ANTI–DISCRIMINATION ACT 1991

1. Section 4—

insert—

‘ **“apprentice”** means a person (irrespective of whether the person is called an apprentice, a trainee or anything else) who is being, or who is to be, trained under a registered training agreement under the *Vocational Education and Training Act 1998*.’.

2. Section 4, definition “work”, paragraph (ea)—

omit, insert—

‘(ea) work under a vocational placement under the *Vocational Education and Training Act 1998*; and’.

3. Section 14(1)(e) and (f)—

omit, insert—

‘(e) by denying a person seeking work access to—

(i) a guidance program or other occupational training or retraining program; or

(ii) training as an apprentice; or

‘(f) in developing the scope or range of the program or training.’.

SCHEDULE 3 (continued)

4. Section 15(1)(d) and (e)—

omit, insert—

‘(d) by denying access to—

(i) a guidance program or other occupational training or retraining program; or

(ii) training as an apprentice; or

(e) in developing the scope or range of the program or training; or’.

ART UNIONS ACT 1992

1. Section 4, definition “educational purpose” paragraph (a)(i), ‘(including’ to ‘1991)’—

omit, insert—

‘, TAFE institute within the meaning of the *TAFE Institutes Act 1998*’.

BUILDING ACT 1975

1. Section 16(1)(d)(i), ‘apprenticeship’—

omit, insert—

‘training as an apprentice under the *Vocational Education and Training Act 1998*’.

SCHEDULE 3 (continued)

BUILDING AND CONSTRUCTION INDUSTRY (PORTABLE LONG SERVICE LEAVE) ACT 1991

1. Section 3, heading—

omit, insert—

‘**Definitions**’.

2. Section 3, definition “contract of employment”—

omit, insert—

‘ **“contract of employment”** includes training as an apprentice under a training agreement under the *Vocational Education and Training Act 1998* in the building and construction industry.’.

CHILDREN’S SERVICES ACT 1965

1. Section 8, heading—

omit, insert—

‘**Definitions**’.

2. Section 8—

insert—

‘ **“training”** means training as an apprentice under a training agreement.

“training agreement” means a training agreement that is, or is to be, registered under the *Vocational Education and Training Act 1998*.’.

SCHEDULE 3 (continued)

3. Section 110(1), (1A)(a), (3) and (4), ‘or apprenticeship’—

omit, insert—

‘or training’.

4. Section 110(1A)(b), ‘or master’—

omit.

5. Section 110(2), ‘and’ to ‘care’—

omit, insert—

‘of a child in care and a training agreement under which the child is being trained’.

6. Section 110(3) and (4), ‘indenture’—

omit, insert—

‘training agreement’.

7. Section 111(1), ‘apprenticeship’—

omit, insert—

‘training’.

8. Section 111(1), (3) and (4) ‘or master’—

omit.

9. Section 133(b), ‘indentures of apprenticeship’—

omit, insert—

‘training agreement’.

SCHEDULE 3 (continued)

10. Section 152(e), ‘or apprenticeship’—

omit, insert—

‘or training’.

11. Section 152(e), ‘indentures of apprenticeship’—

omit, insert—

‘training agreements’.

COMMUNITY SERVICES (ABORIGINES) ACT 1984

1. Section 59(2)(c), ‘contracts of apprenticeship’—

omit, insert—

‘agreements for training apprentices under the *Vocational Education and Training Act 1998*’.

COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

1. Section 57(2)(c), ‘contracts of apprenticeship’—

omit, insert—

‘agreements for training apprentices under the *Vocational Education and Training Act 1998*’.

SCHEDULE 3 (continued)

CRIMINAL LAW (REHABILITATION OF OFFENDERS) ACT 1986

1. Section 9A(1), table, column 1, item 7, ‘ in which the *Vocational Education, Training and Employment Act 1991’*—

omit, insert—

‘ in which the *TAFE Institutes Act 1998*’.

2. Section 9A(1), table, column 1, item 7(d), ‘State college under the *Vocational Education, Training and Employment Act 1991’*—

omit, insert—

‘ TAFE institute under the *TAFE Institutes Act 1998*’.

DENTAL TECHNICIANS AND DENTAL PROSTHETISTS ACT 1991

1. Section 25(1)(b)(i)—

omit, insert—

‘(i) successful completion of dental technician training as an apprentice under—

(A) a registered training agreement under the *Vocational Education and Training Act 1998*; or

(B) a training agreement or indenture under a former Act;’.

2. Section 25(1)(b)(ii), ‘apprenticeship’—

omit, insert—

‘training’.

SCHEDULE 3 (continued)

3. Section 25(2)(b)(i), from ‘of an’ to ‘*1988*’—

omit, insert—

‘of a qualification under the *Vocational Education and Training Act 1998*’.

4. Section 25—

insert—

‘**(3)** In this section—

“former Act” means—

(a) the *Vocational Education, Training and Employment Act 1991*; or

(b) the *Employment, Vocational Education and Training Act 1988*.’.

EDUCATION (SENIOR SECONDARY SCHOOL STUDIES) ACT 1988

1. Section 4, definitions “State college” and “vocational education”—

omit.

2. Section 4—

insert—

‘ **“agricultural college”** means an agricultural college under the *Agricultural Colleges Act 1994*.

“registered training organisation” means a training organisation registered under the *Vocational Education and Training Act 1998*.

“TAFE institute” means a TAFE institute under the *TAFE Institutes Act 1998*.’.

SCHEDULE 3 (continued)

3. Section 4, definition "higher education", 'technical and further education colleges'—

omit, insert—

'registered training organisations'.

4. Section 4, definition "recorded subject", 'State college'—

omit, insert—

'agricultural college, TAFE institute'.

5. Section 4, definition "Vocational Education Minister" '*Vocational Education, Training and Employment Act 1991*'—

omit, insert—

'*Vocational Education and Training Act 1998*'.

6. Section 5(3)(d), 'Vocational Education, Training and Employment Commission'—

omit, insert—

'Queensland Training Authority'.

7. Sections 6(1)(h) and 44, '*Vocational Education, Training and Employment Act 1991*, section 26'—

omit, insert—

'*Vocational Education and Training Act 1998*, section 167[24]'.

8. Section 6(1)(j)(ii)—

omit, insert—

24 Section 167 (Delegation).

SCHEDULE 3 (continued)

‘(ii) the recording on senior certificates issued to students of—

(A) results in board subjects, board registered subjects and recorded subjects; or

(B) competencies achieved under qualifications and statements of attainment issued to students by the board under the *Vocational Education and Training Act 1998* section 23;[25]’.

EDUCATION (TERTIARY ENTRANCE PROCEDURES AUTHORITY) ACT 1990

1. Sections 5(1)(d) and 6(1)(f)(v), ‘*Vocational Education, Training and Employment Act 1991*’—

omit, insert—

‘*Vocational Education and Training Act 1998*’.

EDUCATION (WORK EXPERIENCE) ACT 1996

1. Section 5(1)(f) and (g)—

omit, insert—

‘(f) if the student is enrolled in an agricultural college under the *Agricultural Colleges Act 1994* or a TAFE institute under the *TAFE Institutes Act 1998*—the college or institute; and

‘(g) if the student is enrolled in a training organisation registered under the *Vocational Education and Training Act 1998*—the organisation; and’.

25 *Vocational Education and Training Act 1998*, section 23 (Board may issue qualifications etc.)

SCHEDULE 3 (continued)

2. Section 11—

omit.

LAW REFORM ACT 1995

1. Section 3(2), ‘or apprenticeship’—

omit, insert—

‘, a registered training agreement under the *Vocational Education and Training Act 1998*’.

2. Section 3(2), ‘apprenticed’—

omit, insert—

‘being trained’.

PRIVATE EMPLOYMENT AGENCIES ACT 1983

1. Section 5, heading—

omit, insert—

‘**Definitions**’.

2. Section 6—

omit.

3. Section 7 and 7A—

omit, insert—

SCHEDULE 3 (continued)

‘**Licensing officer**

‘**7.** The chief executive is to exercise the powers and perform the functions of the licensing officer under this Act.

‘**Inspectors**

‘**7A.(1)** The chief executive may appoint a person as an inspector under this Act.

‘**(2)** The chief executive may appoint a person as an inspector only if—

(a) the chief executive considers the person has the necessary expertise or experience to be an inspector; or

(b) the person has satisfactorily finished training approved by the chief executive.

‘**Delegations**

‘**7B.(1)** The chief executive may delegate the chief executive’s powers as the licensing officer to an appropriately qualified officer of the department.

‘**(2)** In this section—

“appropriately qualified” includes having the qualifications, experience or standing appropriate to the exercise of the power.’.

Example of ‘standing’—

An officer’s classification level in the public service.’.

PUBLIC SECTOR ETHICS ACT 1994

1. Section 2, definition “State college”—

omit.

SCHEDULE 3 (continued)

2. Section 2—

insert—

‘ **“TAFE institute”** means a TAFE institute under the *TAFE Institutes Act 1998*.’.

3. Section 2, definition “public sector entity” paragraph (e), ‘State college’—

omit, insert—

‘TAFE institute’.

WHISTLEBLOWERS PROTECTION ACT 1994

1. Schedule 5, section 2(1)(h), ‘State college’—

omit, insert—

‘TAFE institute’.

2. Schedule 6, dictionary, definition “State college”—

omit.

3. Schedule 6, dictionary—

insert—

‘ **“TAFE institute”** means a TAFE institute under the *TAFE Institutes Act 1998*.’.

SCHEDULE 3 (continued)

WORKCOVER QUEENSLAND ACT 1996

1. Schedule 3, dictionary definition "contract of service", 'an apprenticeship agreement'—

omit, insert—

'a registered training agreement under the *Vocational Education and Training Act 1998*'.

WORKERS' ACCOMMODATION ACT 1952

1. Section 4, heading—

omit, insert—

'**Definitions**'.

2. Section 4, definition "worker", 'of apprenticeship'—

omit, insert—

'a registered training agreement under the *Vocational Education and Training Act 1998*'.

WORKPLACE HEALTH AND SAFETY ACT 1995

1. Section 10(3), 'or trainee'—

omit.

2. Section 10(4)—

omit, insert—

'**(4)** In this section—

SCHEDULE 3 (continued)

“apprentice” see *Vocational Education and Training Act 1998*, schedule 5, dictionary.[26]

“group training organisation” see *Vocational Education and Training Act 1998*, schedule 5, dictionary.

“host employer” means a person who contracts with a group training organisation for the training of an apprentice under the *Vocational Education and Training Act 1998*.’.

WORKPLACE RELATIONS ACT 1997

1. Section 7(2)(e), ‘or trainee’—

omit.

2. Section 7(3), ‘*Vocational Education and Training (Industry Placement Act) 1992*’—

omit, insert—

‘*Vocational Education and Training Act 1998*’.

3. Section 115, definitions “approved apprenticeship”, “approved traineeship” and “approving authority”—

omit.

4. Section 115—

insert—

‘ **“approving authority”** means the Queensland Training Authority.

“approved training” means training that is—

(a) for an apprentice under a registered training agreement; and

(b) approved by the approving authority.’.

[26] *Vocational Education and Training Act 1998*, schedule 5, dictionary.

SCHEDULE 3 (continued)

5. Section 116(2), 'sections 117 to 119'—

omit, insert—

'sections 117 and 118'.

6. Section 118—

omit, insert—

'**Special case—employee undertaking approved training**

'**118(1)** This section applies if—

(a) an agreement provides for the payment of wages to an employee undertaking approved training in a particular trade, occupation or kind of work; and

(b) there is an award—

(i) regulating the rate of payment of wages to an apprentice undertaking training in the same, or a similar trade, occupation or kind of work (the **"benchmark apprenticeship"**); or

(ii) regulating the rate of payment of wages to the employee if the employee were not undertaking the approved training (the **"benchmark rate"**).

'**(2)** The approval or certification of the agreement results in a reduction of the employee's wages only if the agreement provides for the payment of wages to the employee at a rate less than—

(a) the rate that applies under the award to the benchmark apprenticeship; or

(b) the benchmark rate;

as determined by the approving authority under subsection (3).

'**(3)** For subsection (2), the rate is—

(a) where a benchmark apprenticeship exists—the rate adjusted by the proportionate difference between the productive time of the employee and the productive time of an apprentice in the

SCHEDULE 3 (continued)

benchmark apprenticeship, as determined by the approving authority by industrial gazette notice; or

(b) where a benchmark rate applies—the appropriate percentage of the award wage rate having regard to the reduction in productive time of the employee undertaking approved training, as determined by the approving authority by industrial gazette notice.

(4) In determining the rate under subsection (3), the approving authority must have regard to the administrative guidelines for approving authorities declared under the Commonwealth Act, section 170X.[27]

‘**(5)** If the agreement adopts, as a qualification for a wage rate, a criterion determined by the approving authority (the **“determined criterion”**) instead of criterion applying under the award (the **“award criterion”**), the award is taken, for this section, to have effect as if the determined criterion were substituted for the award criterion.

‘**(6)** This section does not apply to training under any of the following—

(a) the training wage award—State;

(b) the career start traineeship award—State;

(c) an Australian traineeship system traineeship;

(d) the national training wage award—Commonwealth.

‘**(6)** In this section—

“award”, other than in subsection (5), includes a designated award and order.

7. Section 119—

omit.

[27] Section 170X (Interpretation). The guidelines are available, free of charge, from the offices of the department throughout the State during normal office hours.

SCHEDULE 3 (continued)

8. Section 123(3)(b), 'and trainees'—

omit.

9. Section 128(1)(c), 'or trainees'—

omit.

10. Section 128—

insert—

'**(4A)** In fixing minimum wages for apprentices or different classifications of apprentices in a stated group, the commission may have regard to any matter it considers appropriate including competency or way of progression through training.'.

11. Section 129(6), '*Vocational Education, Training and Employment Act 1991*, section 78'—

omit, insert—

'*Vocational Education and Training Act 1998*, section 79[28]'.

12. Section 129(7), 'in' to '*1991*,'—

omit.

13. Section 134(3)(e), 'and trainee'—

omit.

[28] Section 79 (Age restriction for young persons in specified occupations)

SCHEDULE 3 (continued)

14. Section 142, heading—

insert—

‘**and conditions**’

15. Section 142—

insert—

‘**(2)** In making an order under subsection (1) for an employee who is an apprentice, the commission may include—

(a) a requirement that an apprentice’s employer provide the apprentice with tools of trade appropriate to the calling the apprentice is engaged in; or

(b) other conditions of employment.’.

16. Section 143—

insert—

‘(c) for an order about wages or conditions for apprentices—the chief executive.’.

17. Section 147(5)—

insert—

‘(c) for an order about wages or conditions for apprentices—the chief executive.’.

18. Section 209—

omit, insert—

‘**Service as an apprentice**

‘**209(1)** This section applies if an employer continues to employ a person (the **“employee”**) who was an apprentice when the registered training agreement under which the apprentice was employed ends.

SCHEDULE 3 (continued)

‘**(2)** The term of the agreement must be taken into account in deciding the length of the employee’s continuous service with the employer.

‘**(3)** For subsection (2), if the employer re-employs the employee within 3 months after the agreement has ended, the employer is taken to have continued to employ the employee from the end of the agreement.’.

19. Section 210—

omit, insert—

‘**Annual leave accrued by apprentice**

‘**210.(1)** This section applies if an employer continues to employ a person (the **“employee”**) who was an apprentice when the registered training agreement under which the apprentice was employed ends.

‘**(2)** Annual leave not taken by the employee in the term of the agreement accrues.

‘**(3)** However, unless the commission otherwise decides, a limitation of the amount imposed by the appropriate industrial instrument must not be taken into account in deciding the amount of accrued annual leave.

‘**(4)** This section does not affect the employee’s entitlement to annual leave.’.

20. Section 211—

omit, insert—

‘**Sick leave accrued by apprentice**

‘**211.(1)** This section applies if an employer continues to employ a person (the **“employee”**) who was an apprentice when the registered training agreement under which the apprentice was employed ends.

‘**(2)** Sick leave accrued by the employee before the agreement ended must be taken into account in deciding the employee’s entitlement to be paid for time absent from work through illness during the continued employment.

SCHEDULE 3 (continued)

‘**(3)** If the employer re-employs the employee within 3 months after the agreement has ended, the employer is taken to have continued to employ the employee from the end of the agreement.’.

21. Section 216(1)—

omit, insert—

‘**216.(1)** The *Vocational Education and Training Act 1998*, part 5 deals with the termination of the employment of an apprentice and this chapter does not apply to an apprentice.’.

22. Section 231(3), ‘or trainee’—

omit.

23. Section 258(4), ‘*Vocational Education, Training and Employment Act 1991*’—

omit, insert—

‘*Vocational Education and Training Act 1998*’.

24. Section 372(2)(a), ‘, trainees’—

omit.

25. After section 445—

insert—

‘**Contravening order about supplying tools etc.**

‘**445A.(1)** An employer must not contravene an order made by the commission under section 142 about the supply of tools or the payment of a tool allowance (the **“original order”**) to an apprentice.

Maximum penalty—40 penalty units.

SCHEDULE 3 (continued)

‘**(2)** If a magistrate finds an employer guilty of an offence under subsection (1), the magistrate must, in addition to a penalty the magistrate may impose, order the employer to—

(a) provide the apprentice with the tools required to be provided under the original order; or

(b) pay to the court the amount—

(i) stated in the original order; or

(ii) equivalent to the cost of the tools required to be provided under the original order.

‘**(3)** An order under subsection (2) may be expressed in the alternative so that the employer may decide how to comply with it.

‘**(4)** The court is to pay an amount paid to it under subsection (2) to the apprentice.’.

26. After section 484—

insert—

‘**Employment not to be terminated before registered training agreement cancelled or completed**

‘**484A.(1)** This section applies despite any other provision of this Act if an employer is training an apprentice under a registered training agreement.

‘**(2)** The apprentice’s employment with the employer can not be terminated unless the registered training agreement is cancelled or completed.

‘**(3)** The *Vocational Education and Training Act 1998,* part 5 provides for—

(a) the cancellation and completion of the training agreement and the termination of the apprentice’s employment; and

(b) the apprentice’s rights on termination of the employment.[29]’.

[29] Part 5 (Training agreements).

SCHEDULE 3 (continued)

27. Chapter 16, heading, ‘Transitionals’—

omit, insert—

‘**TRANSITIONAL PROVISIONS**’.

28. Section 496(1), ‘18’—

omit, insert—

‘30’.

29. Section 497, definition “interim period”, ‘18’—

omit, insert—

‘30’.

30. Sections 499(9)(h) and 502(7)(h), ‘and trainees’—

omit.

31. Section 501—

omit.

32. After section 516—

insert—

‘CHAPTER 17—FURTHER TRANSITIONAL PROVISIONS

‘**Continuation of special cases for no-disadvantage test**

‘**517.** Despite their amendment by the *Vocational Education and Training Act 1998*, sections 118 and 119 in force immediately before the commencement continue to apply to an agreement that was in force immediately before the commencement.

SCHEDULE 3 (continued)

‘**Preserving continuity of employment**

‘**518.(1)** This section applies to an employer mentioned in the amended sections.

‘**(2)** Despite their amendment by the *Vocational Education and Training Act 1998*, the amended sections continue to apply to the employer.

‘**(3)** In this section—

“amended sections” means section 209(3) and section 211(3) in force immediately before the commencement.’.

33. Schedule 5, dictionary, definitions “apprentice”, “apprenticeship”, “approved apprenticeship”, “approved traineeship” and “trainee”—

omit.

34. Schedule 5, dictionary—

insert—

‘ **“apprentice”** means an apprentice as defined under the *Vocational Education and Training Act 1998*.[30]

“registered training agreement” means a training agreement that is registered under the *Vocational Education and Training Act 1998*.’.

35. Schedule 5, dictionary, definition “young employee”, ‘or a person’ to ‘*1991*’—

omit.

[30] The *Vocational Education and Training Act 1998*, section 45 is as follows—
‘ **What is an apprentice**
45. An apprentice is a person (irrespective of whether the person is called an apprentice, a trainee or anything else) who is being, or who is to be, trained for a qualification under a training agreement that is, or is to be, registered.’.

SCHEDULE 4

EXISTING ENTITIES FOR INTERIM TRAINING ADVISORY BODIES

section 223

Industry	Australian Company Number (ACN) or Incorporated Association Number (IA)
Queensland Arts Industry Training Council Inc.	IA No 10750
Australian Automotive Industry Training Council Inc.	IA No 335
Business Services Industry Training Council (Qld) Inc.	IA No 13566
Queensland Community Services & Health Industry Training Council Inc.	IA No 9078
Construction Industry Training Council Queensland Inc.	IA No 344
Queensland Fishing Industry Training Council Inc.	IA No 348
Fitness, Sport and Recreation Industry Training Council Inc.	IA No 10927
Queensland Food Industry Training Council Inc.	IA No 301
Forest Industry Training and Education Consortium Inc.	IA No 365
Queensland Furnishing Industry Training Council Inc.	IA No 321

SCHEDULE 4 (continued)

Queensland Information Industries' Training Advisory Board Inc.	IA No 8198
Queensland Light Manufacturing Industry Training Council Inc.	IA No 12345
Local Government Industry Training Advisory Board Qld Inc.	IA No 1099
Manufacturing, Engineering and Related Services Industry Training Advisory Body Ltd.	ACN 072 450 054
Queensland Mining Industry Training Advisory Body Inc.	IA No 9762
Queensland Plastics Industry Training Council Inc.	ACN 011 020 732
Queensland Rural Industry Training Council Inc.	IA No 16479
Tourism and Hospitality Industry Training Council Inc.	IA No 1327
Transport and Distribution Industry Training Advisory Board Inc.	IA No 141
Queensland Utilities and Services Industry Training and Advisory Board Inc.	IA No 16977
Wholesale, Retail and Personal Services Industry Training Advisory Board (Qld) Inc.	IA No 11057

Other advisory bodies	**Australian Company Number (ACN) or Incorporated Association Number (IA)**
Queensland Industry Training Council Inc.	IA No 12223

SCHEDULE 5

DICTIONARY

section 8

“accreditation criteria” see section 26.

“accredited” means accredited under this Act.

“administering body” means a person approved as an administering body under section 34.

“advisory committee” means a committee established under section 176.

“ANTA Act” means the *Australian National Training Authority Act 1992* (Cwlth.)

“ANTA” means the Australian National Training Authority established under the *ANTA Act*.

“appointed member” see section 145.

“apprentice” see section 45.

“appropriately approved administering body”, for the exercise of a power or the performance of a function, means an administering body that is approved under this Act to exercise the power or perform the function.

"approval", for part 13, see section 210.

“approved form” see section 169.

“assessment services” means services to assess a person’s competence for a qualification or statement of attainment.

“claim” includes hold out and represent.

"commission", for part 13, see section 210.

SCHEDULE 5 (continued)

“competencies” means—

(a) knowledge and skills; and

(b) the application of the knowledge and skill to the standards of performance required in the workplace.

“convenor” see section 99.

“convicted” means being found guilty, or the acceptance of a plea of guilt, by a court whether or not a conviction is recorded.

"corporation", for part 13, see section 210.

“corresponding law”, means a law of another State about vocational education and training that corresponds with this Act.

“course” means—

(a) for part 6, see section 82; or

(b) otherwise a structured approach to the development and attainment of competencies designed to lead to the issue of a qualification.

“decision maker”, for a reviewable decision, means a person who made the reviewable decision.

“disclosure body” means—

(a) the QTA or a committee of the QTA; or

(b) an advisory committee.

“EFA” means an enterprise flexibility agreement continued under the *Workplace Relations Act 1997*.

SCHEDULE 5 (continued)

“employer” means—

(a) an employer as defined under the *Workplace Relations Act 1997*, section 8;[31] or

(b) a group training organisation.

“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.

“facilities” includes range of work and supervision.

“former body”, for part 13, see section 210.

“former industry placement Act”, for part 13, see section 210.

“former VETE Act”, for part 13, see section 210.

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31 *Workplace Relations Act 1997*, section 8 states—

‘**Who is an employer**

‘**8.(1)** An **“employer”** is—

(a) a person employing, or who usually employs, 1 or more employees, for the person or someone else; or

(b) for employees employed in a department of government—the chief executive of that department.

‘**(2)** The following persons are also employers—

(a) a person carrying on a calling in which employees are usually employed, even though for the time being employees are not employed in it;

(b) a person who is managing director, manager, secretary or member of the managing body (however called) of a corporation, partnership, firm or association of persons;

(c) if 4 or more persons are, or claim to be, partners working in association in a calling or business—the partnership firm constituted, or claimed to be constituted, by the persons;

(d) for a proceeding for payment or recovery of amounts—a former employer.

SCHEDULE 5 (continued)

“group training organisation” means a body corporate that—

(a) employs apprentices; and

(b) uses the facilities of its members or other employers to train the apprentices.

“industrial agreement” means—

(a) an industrial agreement made under the repealed Industrial Relations Act 1990; and

(b) continued in force under the *Workplace Relations Act 1997*.

“industrial body”, for part 13, see section 210.

“industrial instrument” means any of the following—

(a) an award, certified agreement or QWA made under the *Workplace Relations Act 1997*;

(b) an industrial agreement;

(c) an award, certified agreement or AWA made under the *Workplace Relations Act 1996* (Cwlth).

“inspector” means a person who is appointed under this Act as an inspector.

“issue” includes confer or grant and offer or purport to issue.

“nominal term” see section 46.

“parent” includes a guardian and every person who is liable to maintain, or has the care and control of, a minor.

“parties” means—

(a) for a training agreement that is to be, or is, registered—see section 44; or

(b) for a vocational placement agreement—see section 87; or

(c) for a review—see section 109.

“person” for part 6, see section 82.

“placement person” for part 6, see section 82.

SCHEDULE 5 (continued)

“premium” means money, goods or service paid or provided, or action done, as an inducement or a reward or gift.

“probation term” see section 47.

“qualification” means a certificate I, II, III or IV, diploma or advanced diploma that—

(a) is recorded on ANTA’s national training information service and states a person has achieved nationally endorsed industry competency standards; or

(b) if paragraph (a) does not apply—

(i) is stated in an accredited course; and

(ii) states a person has, or can apply, knowledge and skills to a stated standard appropriate to workplace, industry or community needs.

“QTA” means the Queensland Training Authority.

“reasonably believes” means believes on grounds that are reasonable in all the circumstances.

“reasonably suspects” means suspects on grounds that are reasonable in all the circumstances.

“register” as a noun, means a register kept by the chief executive or a registered training organisation.

“registered” means registered under this Act.

“reviewable decision” see section 98.

“specialist reviewer” see section 99.

“statement of attainment” means a recognised written statement that a person—

(a) has completed part of a stated qualification; or

(b) can apply stated knowledge and skills to the standard appropriate to the workplace, industry or community needs.

“student” for part 6, see section 82.

SCHEDULE 5 (continued)

“supervising registered training organisation” see section 55.

“training advisory body” see section 159.

“training agreement” see section 44.

“training organisation” means a person who provides, or offers to provide one or both of the following—

(a) training services;

(b) assessment services.

“vocational placement” for part 6, see section 82.

“vocational placement agreement” for part 6, see section 82.