



EDUCATION AND INNOVATION COMMITTEE

Members present:

Mrs RN Menkens MP (Chair)
Mr SA Bennett MP
Mr MA Boothman MP
Mrs YM D'Ath MP
Mr RG Hopper MP
Mr MR Latter MP
Mr NA Symes MP

Staff present:

Ms B Watson (Research Director)
Ms E Booth (Principal Research Officer)

PUBLIC HEARING—INQUIRY INTO THE FURTHER EDUCATION AND TRAINING BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 2 APRIL 2014

Brisbane

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Committee met at 10.00 am

BABOVIC, Mr Nic, Deputy Vice-Chancellor, Industry and VET, Central Queensland University (by video conference)

MOORE, Ms Jenny, Executive Officer to Deputy Vice-Chancellor, Central Queensland University (by video conference)

CHAIR: Good morning again. Welcome to those who have joined us either in person or via the internet broadcast again. Our second hearing this morning is to inform our inquiry into the Further Education and Training Bill 2014. I will not introduce again the members of our committee, as I introduced them to you previously. This hearing is a formal process of the parliament and parliamentary privilege applies to all evidence presented. Any person intentionally misleading the committee is committing a serious offence.

Although this briefing is public, you are able to request through me as chair that any material or information that you provide be kept private and you can object to particular questions. You might also wish to take questions on notice if you do not have that information at hand.

The briefing today is being broadcast, recorded and will be transcribed by Hansard. The transcript will be published on the committee's web page when it is available and the video recording will also be available until it is superseded by more recent committee hearings and briefings.

This morning, we will hear from the Central Queensland University, who are appearing via a video conference, followed by the Independent Education Union Australia, Queensland and Northern Territory Branch, and then the Queensland Council of Unions.

First, we will hear from the Central Queensland University, who have remained on video conference from the preceding hearing. May I welcome again Mr Nic Babovic, who is the Deputy Vice-Chancellor, Industry and VET and Ms Jenny Moore, who is the Executive Officer for the Deputy Vice-Chancellor. Would you like to make an opening statement in respect of the Further Education and Training Bill? For the benefit of Hansard, I would ask that you please state your name the first time you speak. Thank you.

Mr Babovic: Thank you, Rosemary. For an opening statement I would just like to say that the university is in support of the bill and thinks that it is a great initiative to create flexibility within the traineeship and apprenticeship system. I think that it has been a long time coming and needs to happen.

There were some concerns about the bill—and this will probably be worked through—around the sign-off of students not going through an apprenticeship process but going through the registered trade skills pathway, as suggested in the documentation. Currently, when an apprentice is signed up by an employer, the RTO or the TAFE will go out there and assess the employer's ability to be able to meet the training requirements on site. Our concern was that there needs to be some control measures in there so that if a young person or a mature-aged person is pursuing their own apprenticeship or flexible pathway to achieve that apprenticeship that they are supported so that the workplace that they are attending, the sign-off that they are getting, that the training and work skills that they are getting, is appropriate.

Our other concern is that, should a young person or person pursuing that pathway not be currently employed by that workplace, what sort of insurance mechanism is there should they be going through a work placement process? Currently, if a student is attending a training course within a TAFE college, the TAFE college will cover that insurance. Should that person just be coming in to do a skill set of competencies and then going out on their own to find a suitable work placement, what sort of coverage is there and where will the onus be?

Probably my last point is the sign-off of what currently is the knowledge-testing component to the complete competency. There needs to be some sort of process in there to link that sign-off process with the training provider so that it is working in unison with whoever is signing the completion of the competency from a work placement perspective. Thank you.

CHAIR: Thank you for that. Do we have some questions?

Mr BENNETT: Thank you. I am curious to hear your thoughts about the distinction between traineeships and apprenticeships. It was one of the queries that you raised in your submission. Would you like to elaborate a little more on that? I think the department has provided a response that they do not see a linear distinction anymore in that capacity, but they are introducing some flexibility in certificates of achievement.

Mr Babovic: I think the department has covered that distinction. There is a concern when students who complete their apprenticeship are pursuing their trade licensing from the building services authority or whatever authority they are working with. Currently, that certification is a little bit different from an apprenticeship. I guess the query was in between there, but the response certainly covers that distinction.

Mr HOPPER: In your submission you spoke about risks to licensed trades by allowing employers who are not registered tradespeople to sign certificates. Could you explain how you think this bill would allow that to happen? Does that happen at the moment or is this going to be able to happen as a result of this legislation?

Mr Babovic: Ray, my concern was that it did not elaborate enough on how that sign-off would happen in the workplace. Our concern was that it would allow a student to pursue an employer at that workplace and pursue sign-off, but who would be doing the assessment that that employer is appropriately qualified to ensure that they can sign off on that particular competency? At the moment, if they are in a registered apprenticeship and traineeship, that coverage lies with the RTO, or the responsibility lies with the RTO to ensure that they have completed that assessment. We just have to make sure that the bill covers off to ensure that there are appropriate safeguards in there for the person who is working with that employer that the employer has that appropriate skill level to sign off on that.

Mr HOPPER: Thank you.

CHAIR: Thank you. I appreciate that.

Ms D'ATH: Can I just follow on from that comment then? Are you saying that the bill currently does not provide that clarity and that that is something that the committee should be considering?

Mr Babovic: Yes. That is what I was thinking—it just did not cover that enough.

Ms D'ATH: Okay. Thank you.

Mr BENNETT: From an old broken-down apprentice and builder, I can tell you that the training plans remain in place. I think the bill remained silent on it because nothing is changing. That is a comment.

Mr Babovic: From an older carpenter, Steve—

CHAIR: I think there are quite a few of us here who have had quite a lot to do with VET over the years. Do we have any further questions?

Ms D'ATH: Could I just ask one follow-up question? Some of the submissions to the committee have particularly mentioned clause 22 of the bill in relation to when the chief executive may amend registered training contracts without application by the parties. Do you have any concerns about the ability for the chief executive to be doing this without any consultation or notification with the parties?

Mr Babovic: No, we thought the bill sufficiently covered off on that issue. We did not really have concerns about that area. So, no, we did not have any concerns with that.

Ms D'ATH: Okay. Thank you.

Mr Babovic: One thing I just would like to add is that, where the bill allows now for apprentices to transfer between employers, I think that is particularly great and it should really be encouraged to allow that to happen. Currently in the system, should an apprentice want to transfer to an employer, that apprenticeship has to be cancelled and then another apprenticeship started. I think that is very restrictive and sometimes in that transition the apprentice is lost. I just think that is a fantastic part of this bill and, hopefully, employers will embrace that and work really closely together with that.

CHAIR: It is certainly of benefit to the employee and that is what training is all about, is it not? Any further questions? I believe that you may have answered all of our queries. Mr Babovic, is there anything else that you would like to add before our time finalises?

Mr Babovic: No, I think we have pretty much covered everything that we have added in there.

Mr HOPPER: There is nothing more outstanding that you would rather see in the bill?

Mr Babovic: Ray, probably what I would like to see in the bill is some sort of capstone testing for apprentices. I know that is a little bit hard on the apprentices, but if they are going to manage their own training I think there needs to be some sort of check towards the end of their apprenticeship to ensure that they have those skill sets and some sort of way of monitoring those training plans would be of specific benefit for the students as well as for the public who are going to engage those people as tradespeople.

CHAIR: Thank you for that. I sincerely thank you both. We really have appreciated this. Thank you for your time today, particularly on both bills, and for the use of the video conferencing. As I said, this has been a new experience for us all. Thank you for your patience with us as well. Goodbye and could I say good luck with the new venture.

Mr Babovic: Thank you very much.

SCHMIDT, Ms Adele, Research Officer, Independent Education Union, Queensland and Northern Territory Branch

CHAIR: I now welcome Ms Adele Schmidt. Ms Schmidt, would you like to make an opening statement?

Ms Schmidt: We represent teachers, support staff and ancillary staff in non-government education institutions. That includes, in relation to the VET sector, both private post-secondary colleges and also schools that offer VET programs either as in-house programs as registered RTOs themselves or making use of external providers.

In relation to the bill, our submission arose through consultation with our members about responses to the general changes in relation to VET generally. So they were raising some issues with us. We recognise that there are different aspects of regulation that are federal and state. So there is a little bit of confusion out there among our members. The emphasis in our submission has been on the significance of VET training as an alternative to academic pathways and our belief that that is of vital importance, particularly for disadvantaged students, Indigenous students and students from remote and rural backgrounds.

Our concerns in relation to the bill are just that there are some clauses that weaken the position of school based apprentices and trainees in terms of, for example, their coverage by workplace health and safety legislation and their ability to expect fair and reasonable stability in their training experience. We are also concerned that there is a loss of funding or support for TAFE and an emphasis on private commercial providers. That is translating, according to our members in schools, into a loss of access to appropriate, affordable and diverse opportunities for students.

There are also some issues around the clarity of the certificate III guarantee. We are particularly concerned about whether or not students who obtain their certificate III at school are then entitled to post-secondary training, particularly when sometimes the certificate they gain at school is very general. For instance, in some of our religious schools they might gain a certificate III in ministry, which is not necessarily a vocational thing that they can take with them beyond the school environment.

We recognise that a lot of our concerns are downstream and they are not necessarily immediately relevant to the bill, but we were urged by our members to actually engage in the process of debate around the changes that were happening in the VET sector. That is one of the reasons why we have put in our submission and raised some of the issues that we have.

CHAIR: Thank you for that. I do appreciate those comments, Ms Schmidt. Are there any questions from the committee?

Ms D'ATH: Has the Independent Education Union received the department's response to the issues you raised.

Ms Schmidt: Yes, I have.

Ms D'ATH: Are you able to go through for the committee and highlight which of those based on the responses you see are still outstanding issues? Then I can go specifically to those.

Ms Schmidt: I have annotated some of the responses that we have here. In relation to the government's first response to our query as to why there had been an explicit removal of the element of community commitment to training young people, I guess we are satisfied with the response in that we do know that that policy document exists. We are familiar with it. In the second part of that response, they were responding to our comments about the objects of the Act. We do not have too many issues with the responses that they have given us.

They then ask us why we were challenging the fact that there was no explicit reference to vocational placement schemes and training contracts. We do recognise that there has been a referral of that to the federal government, so it is in the federal jurisdiction now. But we do have a couple of concerns still. One of the issues that was raised by our members working in schools was that one of the biggest issues with offering VET training in schools is that of getting relevant workplace experience and getting enough of it to make that certificate that is being gained a useful qualification in terms of moving into employment. There is an issue around employers recognising that certificate IIIs and certificate IVs coming out of schools often do not contain sufficient hours of workplace experience. So we still have some issues. We would like to see that clarified. This bill may not be the best place to do that and we recognise that, but that is an issue that we wanted to raise.

CHAIR: Do you have any suggestions on improvement in that area or how this can be addressed?

Ms Schmidt: My position is a little awkward in that I need to be speaking for our members and not for myself personally and my own opinions. So we would certainly be willing to consult with the membership and see what they propose in relation to that as a viable solution. I would be reluctant to suggest anything without consultation with the membership.

The next response was in relation to the query that we raised about the deletion of the phrase that the chief executive needed to 'promptly' give parties notification. That was in the original bill and the word 'promptly' was omitted from the revised bill. In the government response they say that the response time for registration decisions have been reduced from 121 to 28 days. I went back to the bill this morning and I could not actually find that information in there. Again, it is a small thing but we believe it could be important that that needs to be specified.

The next response was in relation to the query that we raised about training contracts for students who commence their apprenticeships or traineeships while they are in school and why their traineeship contract could not provide for continuation after completion of secondary schooling. I have read the government's response. We have no huge issues in relation to that, but, like QCU in their submission, we are concerned that there is an opening within the bill for students to be exploited by employers who could keep a running supply of trainees and never have any obligation to actually see that commitment through to completion of the training certificate so that they could move beyond that. So we feel that that is still open within the bill.

In terms of the next response, we were one of the parties you were referring to before in relation to clause 22, which was about the chief executive having the power to amend a training contract without consultation on notification. Our main issue there is that we do recognise, as the government says in its response, that the purpose of the clause may be to assist the parties by allowing for limited or small amendments without having to go through a lengthy process. But, again, we are concerned that there is nothing to prevent modification without consultation. So it is another opening that we are not necessarily happy with in the legislation because it leaves students in particular vulnerable.

We have a very similar comment in relation to the government's response to our suggestions around temporary transfer of training contracts. So the government responded by telling us that the chief executive did not have the power to order transfers. But, again, it is not prevented in the legislation either. So it is very open and it reads a little unstable, if you like, for students. So when we were reading the bill we were concerned that there are openings there that leave students in particular vulnerable.

The next response that we have a comment on is that we did specify in our statement that we realised why the section in relation to the TAFE sector is not present in the current bill. We do understand that that is not there. But what we were trying to register in our submission was that there is genuine concern out there from schools, from people who are offering VET training in schools, about the ramifications of removal of TAFE programs and access to those for their students. So they are finding that it is more difficult to engage a student in a VET program without TAFE being there for a number of reasons. One reason in particular that came up with several members was the fact that, if you are reliant on private providers who are very keen to get into the market, they are often offering programs that they want a whole cohort of students to enrol in to make them profitable, which is understandable from their perspective, but it limits the diversity of options that can be offered to students when you have disengaged students in schools and you are trying to find something you can engage them with to keep their education and training going. The point about TAFE was that it had multiple options and you could enrol a single student in a particular course that suited them. There is a concern that that capacity is being lost from the system.

The next response that we have a comment on is that we raised some concerns about the fact that the time limit for cancellation of a trade certificate had been removed from the bill and it was left open. I do note that in the response to our concerns the government have written—

... the chief executive must first give the person a show cause notice, which allows the person to make a submission in relation to the proposed cancellation ...

I am not sure that it is clear whether they are talking about the RTO responding or the student themselves responding. I understand that there are some issues around quality of providers, and I think that leaves that open a little bit.

The next government response that we had something we wanted to say about relates to our statement in relation to the removal of government support for TAFE programs and that that is reducing the number of school based students. The government responded by saying that the

Great skills. Real opportunities. document outlines a broader plan for that. They said that the role of schools in this area is recognised through funding programs and other administrative arrangements. But the word we are getting from our members is that that support is greatly reduced and that that is having a significant impact.

We had a few minor statements in relation to requiring an inspector to obtain a warrant before entering premises. We note that the government response says—

Matters of public safety and the welfare of children are outside the scope of this Bill.

We do recognise that that is outside the scope of the bill, but the original bill made explicit reference to the fact that students were covered by workplace health and safety. So, again, we are seeing an opening up of the legislation that potentially leaves students vulnerable.

We raised the issue of concern in relation to the redistribution of TAFE assets and how clause 183, in the absence of any further information, appeared to be related to that. I do acknowledge the government's response that that is not the purpose of that particular clause—that the purpose is to do with dealing with property that is actually left to the department on trust. Again, I would say that that is not necessarily clear in the bill, which is why we assumed that it was related to the redistribution of TAFE assets—which, as I mentioned, we have dual interest in because we do represent members who work in private VET providers but we also recognise the impact on schools, and that is our primary concern in relation to our submission.

I did make a little note on the Queensland Council of Unions submission, which we had a look at as well. We just wanted to note that we agree with them in relation to the fact that the bill really does seem to have a lack of appeal rights for individuals, apprentices and trainees. So we see their position as having been weakened a little bit by the new bill and we would agree with CQU in relation to that.

CHAIR: Thank you for those comments. What you have done there is very good because you have outlined your responses to the department's comments. Are there any questions?

Mr BENNETT: Just going back to your concerns around apprenticeships and traineeships, the RTO would still have a contract with that employer. You were talking about some of the concerns that it could be open ended training. Wouldn't the RTO in the training contract or their training plan take care of that anyway? None of that is changing. The bill does not change any of that. Would you mind elaborating on your concerns?

Ms Schmidt: I am trying to understand exactly what you are asking.

Mr BENNETT: One of the comments you made earlier was that perhaps the bill might weaken the capacity of an RTO. You did not mention an RTO; you mentioned that the contracts might be weakened. I was just making the point that the apprentice or the trainee would always have a training plan and they would always have a registered training organisation administering that training plan and the contract. So I was curious about why you still think there is a concern there.

Ms Schmidt: I think our main concern is in relation to what appears to be largely unlimited powers for the chief executive in terms of alteration of those training contracts. So the training contract exists but there is very little provision for security and stability from the student perspective. The bill reads as though they are in a position where that training contract could be altered without notification or consultation, and that is explicit within the bill. So we are making that leap—and I recognise that it is a little bit of a leap—that that leaves the student vulnerable. That is the only point that we are trying to raise.

Mr BENNETT: Do you have an example that would clarify that? That is where I was going: I think it is a bit of a leap to suggest that somehow this new legislation that is proposed might in fact change something that has been fairly successful over many years—training plans, contracts, RTOs, all with a vested interest in the training of an apprentice. Is there an example you are able to provide?

Ms Schmidt: We do not have a specific example. It was just something our process—

Mr BENNETT: Something that teachers have raised with you.

Ms Schmidt: Yes. We widely consult on it. So what you get in our submissions is a snapshot or an attempted summary of some of the issues that members are raising in response to certain clauses in the bill, and that was one of their concerns. I guess when you are dealing with the teachers in schools, who as I said, were our focus in relation to this submission—we were not getting much from private providers; they were not giving us much feedback—it was a concern of

the teachers. I guess part of their job or their MO, if you like, is to be concerned about the rights of students. I do note that it comes up in the QCU submission as well—that there is a concern there that there is a weakening of the position of students in the way that the bill is phrased, whatever the intent of it.

Mr BENNETT: Again, in relation to some of your teachers' concerns about the possibility of the opportunities for students going forward under this legislation, the intent I think is about more industry engagement and some more flexibility and more private providers coming into the space around skills and particularly your diverse independent schools network. Were the teachers conscious of the fact that there was an intent that we are trying to expand vocational educational outcomes or are they making a comment about what they see now as opposed to what they will see when the legislation is introduced? Does that make sense?

Ms Schmidt: Yes. I think there is a receptivity to greater involvement of employers, because at the end of the day the purpose of any VET training is to move a student into an employable situation so they have skills and training that are relevant and recognised in the workplace so there is no overt resistance to the greater involvement of employers. It is that question of access which is being diminished by a lack of safe opportunities and not just access itself but access to diversity of programs.

There is some concern that some of that diversity is being lost through an increased reliance on the commercial providers who, as I said, often want a whole cohort of students for a particular course which is not necessarily the best approach to the type of student that you are trying to engage in VET. It is not your academically inclined students who want to go off to university; it is the students who are disadvantaged or having trouble engaging. So you are trying to find something that engages them and that is easier if you have a well-resourced and well-supported TAFE system because you can slot one student into a particular course of interest, whereas that becomes harder with that narrowing of the field.

Mr BENNETT: I suppose I am challenging that comment that the services in TAFE are being diminished, because what we have been working on for the last two years is to improve access through TAFE's VET sector by more inclusion of the skills, whether it is the resource sector or the private sector as well as our TAFE colleagues. Is there evidence of what you are claiming? That is clearly contradictory to everything we have been working on over the last two years about improving VET outcomes for Queenslanders.

Ms Schmidt: The submission does detail a couple of case studies. I did not give details on the actual schools because we believe that was not appropriate.

Mr BENNETT: It is confidential.

CHAIR: That is fine.

Ms Schmidt: But there is evidence from some of our schools, and it was coming through fairly clearly for a lot of our schools that are heavy users of external VET programs, that withdrawal of the VRG funding, in particular, has led to a decrease in the number of students who are accessing those TAFE courses. I do not know whether the government has plans to fill the gap—

Mr BENNETT: Guaranteed results funding or something?

Ms Schmidt: Yes.

Mr BENNETT: There has been increased funding in that space, though. I would be interested maybe off-line if we can talk about some of that if that is in fact happening.

CHAIR: You had a very broad overview of comments and we certainly welcome the fact that what you are bringing to us is coming from the coalface—from the teachers—because that is important. As a committee that is what we need to hear. I thank you very much for your time this morning.

MARTIN, Mr John, Research and Policy Officer, Queensland Council of Unions

CHAIR: Welcome. I did not introduce us at the beginning of this hearing but I will introduce the committee now. I introduce the deputy chair, Mr Ray Hopper, the member for Condamine; Ms Yvette D'Ath, who is the member for Redcliffe; Mr Neil Symes, the member for Lytton; Mr Michael Latter, the member for Waterford; Mr Mark Boothman, the member for Albert; and Mr Steve Bennett, the member for Burnett. Mr Martin, would you like to make an opening statement?

Mr Martin: In the main we would rely upon our submissions. Having heard some of what was said from the previous witness, I think some of the discussion will be the same. I have had the opportunity to look at the departmental response to our submission and I think it is reasonable to say in the main it could be, as the member for Burnett suggested to the last witness, somewhat of a leap. However, as we previously discussed—and it seems there is a little *deja vu* with respect to this particular committee—the union movement has concerns about a diminution of the TAFE system, some of which is probably manifested in our submission that may not be expressly provided for by the bill or any of the material beside it.

I would frame our discussion in those terms because, as we have previously stated, our greatest concern with the continuation of the TAFE system is what might be described as a level playing field is not. This can be said for any suggestion of contestability in a range of services that are ordinarily provided by the state, and that is by virtue of private providers being able to cherry pick with respect to those courses that they specialise in, which does not necessarily mean that will meet the demands of employers or potential employees in the future. The private sector, by its very nature, is going to adopt the more high volume and less labour intensive courses in preference to the alternative. Our fear and suspicion is that that will be left to the public sector to maintain training that is the opposite of what I have described and that is the labour intensive low turnover which if they are forced to compete with the private sector on what is meant to be a level or an even playing field is not because the public sector is being forced to do that which the private sector will not do. I just frame our concerns and that might explain what is perhaps a leap in logic between what the bill says and what our concerns are. That may then overcome some of the potential questions that may or may not have been asked.

There are a number of department responses that can explain why we put two and two together and got five from their point of view. What I think we need to address that is still not satisfactorily addressed by the departmental response from my point of view is what appears to be a mainstreaming of the conditions of employment for apprentices. In the main if we are talking about hours of work or other forms of leave, it makes sense that if the bulk of employees are going to be in the fair work system it would make sense that the apprentices likewise are. But I guess it is the termination of employment aspect of it that we have great concerns. It appears to me that the departmental response is satisfied with saying that there will still be protection under the fair work system, and for the reasons I am going to outline we say that that is not satisfactory. This is perhaps an area that the member for Redcliffe would be familiar with—and, in fact, her predecessor would be aware of unfair dismissal within the fair work system. To say that that replicates the protections that exist for apprentices is not accurate, in our view.

One needs to look at what happens within the fair work system in terms of an employee who has had their employment terminated. First of all, there is a probationary period which is an exclusion from taking any action for unfair dismissal. That probationary period is three months unless otherwise agreed so that could be 12 months quite easily. That would get into an esoteric debate about whether that is reasonable or not, but it is quite perceivable that an apprentice would have a one-year probationary period during which they would have no remedy for unfair dismissal. That is the first hurdle and the first aspect of the fair work system that would not provide the same level of safeguards in our view as currently exists.

Add to that the likely outcome of an unfair dismissal claim. Then the applicant would have to demonstrate that the termination of employment is harsh, unjust and unfair. It is not always easy to demonstrate that that is the case. The onus is on the applicant. Then if you do succeed the likelihood is that you are going to be awarded an amount of compensation as opposed to reinstatement and that is just the reality of the jurisdiction. Employers will in the main successfully argue that, even if the termination of employment was found to be invalid, the employment relationship has broken down to such an extent that it cannot be put back together again. To say that the Fair Work Commission would provide the safety for an apprentice in terms of the employment aspect I would suggest is incorrect.

Now add to that from what we understand—and I do not pretend to be an expert in this particular field and that will be evidence that perhaps the reinstatement is more my field of expertise than vocational education and training—this also seeks to separate the employment contract from the training contract and thereby one of the grounds for which the training contract can be terminated is that the employment contract is terminated. Let us go back to the start: it will be far easier for an employer to terminate the employment of an apprentice subject to this bill. Then it follows that that may be grounds for the determination of the training contract. That, to our mind, turns on its head the concept of an apprenticeship. If one looks at why apprentices receive a lower rate of pay, it is because it is part of an agreement. The agreement is that for your first year you will get 20 per cent of a trade rate. The quid pro quo is that this is part of a training arrangement and that is why you are subsidising your employer with a substantially lower rate of pay to enable that training to take place. The very term 'indentures' signifies that there is that expectation of ongoing employment for the term of the apprenticeship.

From my experience it was generally accepted that once the apprenticeship was up some people stayed with the employer who they did their trade with but others moved on. In fact, I have heard it said it is recommended that you do not continue with the same employer that you did your trade with in terms of your development as a tradesperson. For those reasons, that is our concern with the potential as we see it to make it easier for the termination of employment of the apprentice.

To short circuit, no, I do not have any examples because no examples would be live at this stage. However, there are industries that spring to mind. That would be particularly concerning if there was the capacity to employ people at 40 per cent of a trade rate for 12 months and then decide that their employment is no longer necessary or desirable and terminate their employment with potentially no recourse. If you had the apprentice agree to a probationary period of 12 months—and it would not be terribly difficult to obtain that sort of consent—then there would be the capacity for a churn. I am not saying that all employers or even a majority of employers would conduct themselves in such an appalling way, but I am saying that there would be some. The potential exists. For that reason we are very much concerned with the mainstreaming of the conditions of employment for apprentices insofar as termination of employment and its implications for that indentured period of employment are concerned.

Mr BENNETT: If I can take you back to your opening comments, there are some that I would like to query with you, particularly comments around your assumptions about cherry picking and private providers and how they would run courses. Again, they are all assumptions and, in your words, I think it is a bit of a leap. Are you aware of the industry commissioned skills and how training will be provided in sectors in regions into the future and how as a government and how as Queenslanders we can rely on some of these innovative outcomes about providing? To make claims that automatically we are assuming that all private providers are somehow evil and would only cherry pick—

Mr Martin: I never said that.

Mr BENNETT: Cherry picking is one—

Mr Martin: You are putting words in my mouth, which is verballing. You are saying that I said—and you were not at the last meeting where I discussed these matters with this committee. The discussion that took place then was no, we do not say that all providers are bad or evil. I have never said anything of that type here, publicly or privately. That is an incorrect assumption that you are making. You are suggesting that I am making comments that I simply did not. What I did say—and if you want—

Mr BENNETT: Can I ask the question again? I can rephrase the question.

Mr Martin: Yes, please.

Mr BENNETT: Are you aware of the industry skills model that has just come out about how the provision of skills and of course training would be provided in particular sectors and regions into the future, which would dictate and take away some of your concerns about how in particular private providers may, as you said, cherry pick and run the courses through the VET sector?

Mr Martin: No, I am not an expert in this area.

Mr BENNETT: I am just saying—

Mr Martin: I am not familiar with that.

Mr BENNETT: To alleviate some of your fears perhaps we could make that available to you.

Mr Martin: Yes, please, that would be good.

Mr BENNETT: Again, I think it would relieve all of those concerns that some of those comments around potential for private providers in a contestable market would be a good thing, or perhaps not?

Mr Martin: I would be happy to hear what you say and I would be pleased to receive that information and disseminate that amongst—

Mr BENNETT: It is now in the public domain, Mr Martin—

Mr Martin:—affiliates as well, yes.

Mr BENNETT: Of course, the Skills and Training Taskforce that set out over the last couple of years to identify skills and training needs in Queensland I think, again, would probably take some of those concerns out of play and the comments about how private providers may or may not operate in the VET sector.

Mr Martin: Perhaps to frame where the concerns may have come from, that would be—and I previously suggested this was the case and no-one objected to it—what you might describe as the ‘tick and flick cert III’. That is our concern. That has had the impact of degrading what is the equivalent of a trade qualification. We all knew that it happened. It was in the early 2000s when I experienced it. That was the explosion of employment of trainees whose training was almost universally provided by private providers. The training consisted of putting a manila folder in your bottom drawer, referring to that on an infrequent basis and handing in documentation which alleged that you undertook training. In the meantime, the employer was receiving a subsidy and paying less than the going rate of pay to employ that trainee. That was the scenario to which I was referring in terms of the high-volume and low-cost training. That qualification is being compared to a tradesperson who has done a four-year apprenticeship. That is the concern that I am expressing. I understand that is a concern that has been expressed by employers as well, that degradation of the certificate III qualification.

CHAIR: I am certainly aware of what you are saying, Mr Martin. But do you not recognise that the legislation has moved on from there and that there is more strength within this legislation?

Mr Martin: I would be happy to be convinced that that was the case.

Mr BENNETT: I was curious about comments and your concerns around the exploitation or some things that might have emerged in training of young people, particularly apprentices. Are we not comfortable, though, that the training plans, the RTOs and the contracts that have been in existence for some time and continue to be in existence would not be the protections that we need? So if a young person is going to sign up with an employer, there are those external arbitrators or people to make sure that the young person’s interests are protected under the training plan and under the contract and having an independent RTO administering that contract between the apprentice and employer as the third person?

Mr Martin: Not if the RTO is the employer. That is the first issue. I think you would describe that as a conflict of interest or certainly no separation of power. If the supposed independent arbiter and the employer, who is alleged to have terminated employment on an unfair basis is the same organisation, then that would not provide me with any comfort whatsoever.

Mr BENNETT: Do you have examples of where that may be the case because I have not seen—

Mr Martin: Where an employer is an RTO? Yes, I worked in the aged care industry for some time. Without wanting to name the particular employer because I could guarantee that they would not do what I was describing a very reputable employer, but that is an industry where some of the larger aged care providers will be an employer and the RTO. As I said, it is a very reputable industry in the main—it is usually run by a religious organisation, I might add—so I would not suspect that that sort of thing would occur in that sort of industry. However, there may be less scrupulous employers who are both employers and RTOs.

Ms D’ATH: I want to follow up on the issue of your concerns about the separation of the training contract and the employment contract. You have gone through the scenario of what would be the process under this bill if a trainee was dismissed and what that would mean for their contract. Are you able to tell us how that compares to what would currently apply if an employee was dismissed?

Mr Martin: From what I understand—and my knowledge is somewhat dated I have to admit—to terminate both requires application to an independent body to see that there are sufficient grounds for both the employment and training contract to be terminated. What I describe as the quid pro quo for the lower rate of pay is that guarantee, the aim of which is to get as many people

through the apprenticeship system as possible. That is my understanding, and I do not know whether that has changed over recent years. With the federally regulated—I am going back to ancient history now as I recall having done a number of these—preWork Choices, a board of reference was required to terminate an apprentice's indentures. So that would mean there would be a commission member, employer and union representative and two of those three would have to decide. It was quite interesting because if it was unanimous, you knew how everyone voted. If it was two to one, you still knew how everyone voted. That was the process within the state. Names of agencies changed but what would have once been described as the apprenticeship board used to maintain a hearing process whereby an employer who found that they could no longer employ this apprentice for whatever reason or, alternatively, the employee wished to remove themselves from the apprenticeship as well—so it is a double edged sword—would need to make application to that body for that to happen. My reading of this is that that now becomes like any other employment contract. If that is the case, why do we have the apprentice rates of pay? It is not a reasonable deal anymore unless the apprentice is protected for the term of that indenture. They become like any other employee and that would degrade again the nature of this very special relationship that exists between an employer and their apprentice.

CHAIR: Thank you for that, Mr Martin.

Mr Martin: Thank you, Chair.

CHAIR: I do appreciate your very frank comments. I appreciate your time today and thank you. This does bring to a close this public hearing on the Further Education and Training Bill 2014. I would like to thank everyone from whom we have heard this morning on this bill. Your contributions have been most valuable. The committee will shortly break for half an hour and we will reconvene at 11.30 am to speak again with officials from the Department of Education, Training and Employment in relation to, first, the TAFE Queensland (Dual Sector Entities) Amendment Bill and then the Further Education and Training Bill. I would ask everyone in the room who is not a member of either the committee or our secretariat to please leave the room until we reconvene at 11.30 am. You will all be welcome to return then if you wish.

Proceedings suspended from 10.58 am to 12.00 pm

BUSBY, Mr Stuart, Executive Director, Policy and Programs, Department of Education, Training and Employment

FAVELL, Mr Geoff, Assistant Director-General, Employment, Skills and Training, Department of Education, Training and Employment

MULLER, Ms Carina, Executive Director, Strategic Policy and Portfolio Relations, Department of Education, Training and Employment

RONEY, Mr Christopher, Principal Adviser, Legislative Services, Department of Education, Training and Employment

STEPHENS, Mr Wayne, Director, Queensland Apprenticeship and Traineeship Office, Department of Education, Training and Employment

CHAIR: We will now talk about the Further Education and Training Bill. Having heard the discussions this morning, would you like to make any preliminary comments?

Mr Busby: Again, we had not planned on introductory comments. We are happy to take questions.

CHAIR: This hearing is into the Further Education and Training Bill, and there have been quite a lot of comments this morning about it. Acknowledging that restricted callings are not defined in the current Vocational Education, Training and Employment Act at present, is there any reason why 'restricted calling' is not defined in the bill or in the current Act?

Mr Roney: I will just respond to that in terms of the bill. The bill provides for the declaration of restricted callings, and that is similar to what was in the Vocational Education, Training and Employment Act. Those ones declared by the chief executive then are the restricted callings, so I guess that is the approach that the bill takes—that they are administratively declared and then that becomes a restricted calling under the provision in the bill which allows the chief executive to make that declaration.

CHAIR: I guess the problem is that no-one quite knows what it means.

Mr Stephens: In relation to restricted callings and the associated process, we also have a declaration of apprenticeships and traineeships which is covered off within the bill. As part of that declaration process, and to get an apprenticeship declared, we rely on advice from industry and industry parties in relation to what is an apprenticeship and what is a traineeship. As part of that declaration process, industries will self-identify whether they want to declare a calling restricted or not—which means that is the only pathway that can be delivered to a person through a trade calling. The construction industry, for example, might say that carpentry needs to be a restricted calling so, outside of restricted calling, there is no other way to deliver that pathway. That is the process that ties into the restricted calling component.

Mr HOPPER: Wayne, can you tell us how the arrangements proposed under the bill, with respect to apprenticeship and traineeship contracts being separate from employment contracts, differ from the arrangements now?

Mr Stephens: Currently, within the Vocational Education, Training and Employment Act, there is a provision for one-party cancellations so an employer may apply to the department for cancellation of an apprenticeship and give their reasons why. The department will then go and investigate that particular application and the department will make a decision independently to the employer and the apprentice around the termination or not of that training contract.

What we are doing is removing that application for one-party cancellation and saying to the parties, 'You are the parties that are best placed within the system. You are the ones to deal with the day-to-day ins and outs of the employment relationship. You need to come to a mutual agreement around the termination of that employment.'

By the way, the process the department undertakes in the future will be no different to what we do now—that is, we mediate those disputes, for want of a better term, to try to get to a resolution, be that employment or a mutual consent type of arrangement. If they cannot get to a mutual consent type of arrangement, then the employer and/or the apprentice need to make a decision around that employment relationship, which then puts it back, under the new legislation, into the fair work or the federal sphere as part of an employee-employer relationship.

An apprentice, for example, may have found another apprenticeship in the mines in Central Queensland. He is currently employed at Pinkenba on a relatively low rate of pay and can get a better job as an apprentice in Central Queensland. If that employer currently says, 'I do not agree to cancellation,' then that apprentice has to stay with that employer and cannot move to Central Queensland.

Mr HOPPER: That is currently now.

Mr Stephens: That is now. Under the new bill, an employee can give two weeks notice, or whatever is in your industrial instrument around termination of that employment. Likewise, if an employer terminates employment, they would need to make sure that they do it in a fair and just manner.

Mr Busby: Just to clarify, the proposed bill and the current Act are no different in that they provide for the training contract, which is separate to the employment contract. So we are not changing the current system—that there are two different contracts in relation to an apprentice's relationship with their employer.

Mr Stephens: Essentially, what we are saying now is that, within a workplace, employers are dealing with in the main a national system around industrial relations and employment law. We are saying that apprentices and trainees will basically fall under that similar arrangement. To say that you can terminate an apprentice, if you terminate you will need to make sure that the termination is fair and just in regard to termination of any employment. So that is the system that will apply.

To take some of the comments that came from the public hearing earlier, yes, Fair Work have remedies that they can put in place in regard to unfair dismissal, for example, and they may include payment—compensation for want of a better word—but also there is a remedy for reinstatement through that process. Having said that, it has been highlighted that in many cases that is probably not practical because if the employment relationship is broken it is sometimes very difficult to put it back together. That fundamentally means you will have difficulty having a training contract to get a good training outcome. What we are saying is if that component is broken down—which is a fundamental component of an apprenticeship—then we move on.

Mr LATTER: Just to follow on from that, in one of the submissions this morning from the Queensland Council of Unions, we talked about this and there was some considerable discussion around unfair dismissal. Certainly, it was pointed out that there are industrial relations remedies in that space. However, one of the examples that was raised was that when you have the employer as the RTO that may present some difficulties. It was also pointed out that perhaps there were ways around some of the industrial relations protections—for example, an agreed extended probationary period that might then subsequently result in, I guess, a continuum of traineeships that are effectively being utilised as low-cost labour. Is there anything that you would like to say in response to that?

Mr Stephens: In relation to the probation period issue, you cannot fundamentally, even under the fair work arrangements through the national system, continue to extend a probation period. There are requirements. If the probation period is, say, three months, I understand that federally you can extend it for another three months to up to six months. If your organisation has fewer than 15 employees, yes, there is a 12-month probation period as a period. If it has more than 15 employees, I think it is a six-month probation period. Within that, that is the probation period. They are the minimum restrictions within that system. You cannot waive away those rights as part of an enterprise agreement. They are some of the minimum foundations of that employment law that exist federally.

In relation to the issue around RTOs being the employers as well, RTOs do not have a role in termination. The Act talks about employers and apprentices and trainees; it is not about RTOs determining their employment arrangements. RTOs oversight the quality of training. The quality of the employment marketplace and the workplace still rests within this Act around the department actually approving training contracts with employers that have the right facilities, range of work and all those sorts of issues. So the quality issues still sit with the department. That is not dissimilar to what currently exists under the VETE Act under this legislation.

CHAIR: While we are discussing where RTOs may be the employer, who is the certifier in those situations?

Mr Stephens: Of the arrangements?

CHAIR: Yes, of the arrangement for the apprentices. If the RTO is the employer as well, which does occur with some large businesses and so forth, who is the certifier?

Mr Stephens: If the RTO is the employer and the RTO as well, they still have a requirement to do a resource assessment of the employer's organisation within that. Our department then has an oversight role through monitoring of apprenticeship and traineeship arrangements across the state—where we do visits to employer workplaces to actually find out how those sorts of arrangements are actually being undertaken and are going at a point in time. We look at issues around how the resource assessment was undertaken. It takes away some of that conflict of interest issue—as the department still has an oversight role in regard to that.

Ms D'ATH: I just want to follow on from the same issue and the examples you gave under the Fair Work Act about small- to medium-sized businesses and having that longer probationary period. What remedies are available to a trainee who has served their probationary period under their training contract but who might find themselves dismissed nine or 11 months down the track? Have they got any remedy under this bill in relation to the cancellation of their training contract?

Mr Stephens: If they are in probation and it is within the federal employment law framework then, yes, termination can occur.

Ms D'ATH: And that is different to what exists now? They would have a remedy?

Mr Stephens: They do terminate now, and it is through either mutual consent or they apply to our department and we intervene and make a final decision. But if that employment relationship has broken down, that final decision is generally termination as well given the fact that you cannot have a good trainee outcome if the employment relationship is fundamentally broken.

Mr HOPPER: Once you get to that stage, it is pretty well gone anyway.

Ms D'ATH: In that case, you would obviously have that information on hand as to why that termination occurred. Under this bill, will you have any of that information? So when the employment ceases, the contract is cancelled at 11 months into the training contract, would you have any of that information?

Mr Stephens: If they have contacted the department and it is a dispute and we have been involved in it, certainly. However, if the employer and/or apprentice and trainee send in a form 'mutual cancellation' and they say 'mutually agree to cancellation', there is no further investigation by this department under the current system and there will be no change to that under the new system. That is the majority of the cases in regard to termination of apprenticeships and traineeships.

Ms D'ATH: I have one simple question. The definition of 'chief executive' does not appear in the bill. Is there any particular reason?

Mr Busby: It is defined in the Acts Interpretation Act and it applies across Queensland statute. So it will be the chief executive for the department responsible for the legislation.

Mr LATTER: I want to continue with the previous line of questioning. While I appreciate some of the discussions around mutual consent to separation and I take on board what you have said there, it is my understanding that the bill might in fact offer some protections in terms of a circumstance where one of the parties, particularly the apprentice, does not necessarily agree with separation and subsequently can apply for a transfer or portability of their prior learning. Is that right?

Mr Stephens: In regard to the bill, the bill certainly expands the options available to employers, apprentices and the department in providing solutions, and transfer is certainly one of those. So instead of going down a cancellation pathway and a dispute around that, the department can try to facilitate a mutual arrangement to transfer to another employer to alleviate a cancellation process. So in that respect you are right.

Mr LATTER: That is a significant benefit under the new arrangements that were not there previously. Is that right?

Mr Stephens: That is right.

Mr HOPPER: In country towns like Dalby, we have had a lot of companies lose their staff to the mines—their diesel fitters and everyone like that. From what I am hearing here, under the current situation an apprentice signs up and stays with that company or employer for his or her trade, but now under this legislation they can transfer quite easily—as in they can just give notice and go. Do you think this will have an effect on our towns?

Mr Stephens: I think the effect will be somewhat negligible, given that apprentices and trainees tend to walk anyway. It is physically difficult for the department to force someone into a workplace if they do not want to be there. They tend to make that decision outside of whatever we

can provide within that space, and some of the bill reflects that outcome. It somewhat simplifies the system for employers and apprentices—in that now the one jurisdiction that looks after that is the federal jurisdiction. If you are a public sector employee, the industrial relations legislation will be amended to include provisions for apprentices and trainees around termination. So it really clarifies for employers and apprentices where they need to go around I suppose a grievance process or the remedies that are available and the processes within that. So it removes that duplication in the system. In fact I think that in some respects may open up more employers to want to come into the system to take on more apprentices and trainees.

CHAIR: What Ray has brought up is certainly an issue in our smaller areas where there is a lot of development and work within the resource industry. We have the small private employer who trains that employee and, as he said, he likes to train that employee, but then the employee walks and goes to where the better money is and where the big money is and of course the employer does not get any benefit of those three or four years training that he put in. That certainly is an issue but this bill does not have the power to address that.

Mr Stephens: It is a situation that does arise and it is somewhat difficult and problematic to try to have a framework around that to force relationships.

CHAIR: You certainly cannot. You can understand that employees naturally look for greener pastures.

Mr Stephens: Which may or may not be greener when they get there.

CHAIR: That is right. They may come back later. Sadly, that is something that our small communities face but it has nothing to do with the bill. Are there further questions?

Mr BOOTHMAN: Are Queensland apprenticeship, traineeship and certificate requirements equal to those obtained in other Australian jurisdictions? One of my constituents brought this to my attention on Friday of last week about transferring their apprenticeship from a New South Wales jurisdiction to Queensland. Will this be affected?

Mr Stephens: The bill will have difficulty doing cross-jurisdictional transfers. The government has signed an MOU with New South Wales and Victoria—so the eastern seaboard—around trying to facilitate a more seamless transfer between jurisdictions. The problem that we have is that it is a legislative thing, so to transfer from a New South Wales legislation base to a Queensland legislation base is difficult. Behind the scenes we certainly have got mechanisms in place where, to the individual, it will seem somewhat seamless.

Mr BOOTHMAN: Thank you.

Ms D'ATH: The Central Queensland University raised the issue of their concern about the distinction between certificates, traineeships and apprenticeships in the bill. I note that the department's response was that you consider that the bill does distinguish between the three but then you went on to say that the bill provides for both apprenticeships and traineeships to be declared and that the department can provide a list identifying what is an apprenticeship or traineeship. Where will the definition of what they are sit? I understand that the department will issue a list, but there is no definition of what criteria they are using to develop that list.

Mr Stephens: The definition I suppose for apprenticeship and traineeship sits in the bill—that they are employment based pathways approved by the chief executive. Then the declaration process, which is separate to that, identifies what industry wants to put up as apprenticeships and traineeships. We rely on the industry process to advise the department what should be declared as an apprenticeship or traineeship. We do not go out and declare apprenticeships and traineeships off our own initiative. We rely on industry to come to us and say, 'There is a demand in this and this qualification needs to be tied to this as an occupational pathway which we want as a traineeship.' Once that is declared, it gets published on the Queensland training information website so it is there for all the stakeholders to see—so RTOs, Australian apprenticeships centres and our regional offices can say, 'This apprenticeship is now available in Queensland.' I do not know whether that answers your question.

The other slant to that was the certificate type arrangement. That really is to sit in here to identify alternative pathways that we may want to recognise at the end. I know the Central Queensland University identified the registered trade skills pathway as an example. It certainly is an alternative pathway to the trades outside of the apprenticeship and traineeship; hence, it is not specified in the bill because the bill is about apprenticeships and traineeships. The registered trade skills pathway has the same identifying components and that means there is a training plan, you have to have an employer involved and the employer has to sign off with the RTO around the competencies as they are achieved.

What we are saying is we are not tying you into a structured apprenticeship wage scenario. For example, the hospitality industry, which is heavily casualised, does not have access to the apprenticeship system because casuals are not allowed into apprenticeships and traineeships. They can now access a registered trade skills pathway to get training and employment, which did not exist before. The certificate of achievement that we have in the bill now basically identifies that, yes, the RTO under the national system will issue a qualification but the certificate of achievement will say, 'This has also been in conjunction with an employment based component to support that qualification outcome,' which identifies that as something outside of an institutional pathway type regime.

CHAIR: That is good.

Ms D'ATH: I have one last point. The Independent Education Union pointed out that, in relation to the chief executive, there is no time frame—even though it was not a time frame, it used the word 'promptly'—in relation to the notice of registration of refusal of a training contract. I appreciate 'promptly' is not a time frame, but the department itself has noted that the times have come right down. Is there a particular reason why a time frame would not be stipulated, considering the importance of notifying the parties if it is refused?

Mr Stephens: I suppose the reason why it has come out of the legislation—and it is something we could probably look at—is that at the end of the day we have gone from a system when the VETE Act was originally brought in that was somewhat administratively burdensome. It was hands on. It was not an IT system. It was not a system that 50 per cent of our training contracts that come in get approved within one day through an IT system—that has conditions in there and risk barriers around to get them in. The next 80 per cent of them are approved in three days, so it is the residual component there. There is some more in-depth investigation around the appropriateness of those arrangements that take a bit longer. The promptness has gone out because the system has overtaken what legislation tried to do before.

CHAIR: You certainly cannot argue with one to three days. I think we have satisfied all of our questioners. I thank you for coming in today and for your time. I know it has taken quite a lot of time for you this morning. This is a different process to what we have done before, but because of the time frames we do appreciate the fact that you did come in to address any further issues that would have been raised by our submitters.

We will be reporting back to the parliament on both bills by 29 April 2014. When tabled, our report will be available on the committee's webpage and the transcript of this morning's proceedings will also be published on our webpage when it is available. I would urge all who have an interest in the work of this committee to subscribe to our email updates, also via the parliament's website. This brings to a close this morning's proceedings of the Education and Innovation Committee. I now declare this briefing closed and I thank everyone who was involved this morning.

Committee adjourned at 12.23 pm