



EDUCATION, TOURISM AND SMALL BUSINESS COMMITTEE

Members present:

Mr SJ Stewart MP (Chair)
Mr MA Boothman MP
Mr SE Cramp MP
Dr JJ McVeigh MP
Ms JE Pease MP
Mr BM Saunders MP

Staff present:

Ms S Cawcutt (Research Director)
Ms K Christensen (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE FURTHER EDUCATION AND TRAINING (TRAINING OMBUDSMAN) AND ANOTHER ACT AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 4 DECEMBER 2015

Brisbane

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Committee met at 8.30 am

WAUCHOPE, Ms Suzanne, Deputy Director-General, Training and Skills, Department of Education and Training

KOCH, Mr Steven, Executive Director, Skills Participation and Pathways, Department of Education and Training

MATTHIAS, Ms Patricia, Principal Advisor, Legislative Services, Department of Education and Training

FAVELL, Mr Geoff, Interim Training Ombudsman

CHAIR: I declare open this public briefing for committee's inquiry into the Further Education and Training (Training Ombudsman) and Another Act Amendment Bill. I am Scott Stewart, member for Townsville and chair of the committee. I would like to introduce the other members of the Education, Tourism and Small Business Committee. They are Dr John McVeigh, member for Toowoomba South and deputy chair; Ms Joan Pease, member for Lytton; Mr Mark Boothman, member for Albert; Mr Bruce Saunders, member for Maryborough; and Mr Sid Cramp, member for Gaven.

The briefing is being broadcast live on the parliament's website and is being transcribed by Hansard. Before we start please make sure you have your mobile phone switched off or at least turned to silent. The committee's proceedings are proceedings of the Queensland parliament and are subject to standing rules and orders. On 1 December the Attorney-General and Minister for Justice and Minister for Training and Skills introduced the Further Education and Training (Training Ombudsman) and Another Act Amendment Bill into the Queensland parliament. The bill was referred to the Education, Tourism and Small Business Committee for detailed consideration. The committee is required to report to the Legislative Assembly by Monday, 15 February. The Department of Education and Training will brief us on the bill this morning. We have allocated until 9.15 for a briefing and members questions.

Ms Wauchope: I would like to thank the committee for giving the department the opportunity to provide a briefing on the Further Education and Training (Training Ombudsman) and Another Act Amendment Bill 2015. I propose to provide the committee with some details about the background to this bill, its provisions and the current interim arrangements that are in place to support students, apprentices, trainees and employers in the vocational education and training, or VET, sector. The Working Queensland program jobs plan was announced as part of the Queensland government's 2015 election commitments. This plan included the commitment to invest \$5 million over three years to establish an independent Training Ombudsman with the power to investigate complaints made about VET in Queensland.

The VET sector is complex and for consumers it can be difficult to know where to direct complaints and seek resolution of issues. Queensland consumers do not currently have access to an independent complaints mechanism to assist with the resolution of the wide range of issues that may arise in the VET sector. The sector includes a broad range of stakeholders as well as several agencies at a national and state level involved in regulation and funding activities. Establishing a new Training Ombudsman in Queensland will assist consumers to address concerns and complaints about the provision of VET in Queensland, including in relation to apprenticeships and traineeships. The Training Ombudsman will offer an independent review role and will assist VET consumers with a complete end-to-end complaint support process. This includes monitoring complaints that are received and assisting complainants to have their issues addressed by appropriate state and federal entities as required.

The Training Ombudsman will also be charged to consider and make recommendations to the minister about systemic issues in the VET sector. This will assist in ensuring that Queensland has a strong, productive and high quality VET sector. The bill amends the Further Education and Training Act 2014, also known as the FET Act, to provide for the establishment of the independent statutory

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position of the Training Ombudsman and the Office of the Training Ombudsman. The Training Ombudsman will be appointed by the Governor in Council for a term no longer than four years. The Training Ombudsman will be supported by the Office of the Training Ombudsman which will consist of the Training Ombudsman and staff. A key function of the Training Ombudsman will be to receive complaints about the provision or quality of any VET services in Queensland. How the Training Ombudsman will deal with a complaint will depend on the nature of the complaint and against which type of entity it has been made. The Training Ombudsman will be able to support resolution of complaints through mediating between the relevant parties. However, where a resolution cannot be reached the Training Ombudsman will be able to assist complainants to take the matter up with appropriate agencies such as the national VET regulator, the Australian Skills Quality Authority, also known as ASQA, or the Office of Fair Trading, for example. This can be achieved by referring the complaint to the relevant agency or assisting the complainant to take the matter up with that agency.

The Training Ombudsman may receive complaints about a matter relating to an apprenticeship or traineeship in Queensland. This might include complaints about a decision of the director-general of the Department of Education and Training about a training contract or the declaration of or nominal term for an apprenticeship or traineeship. The Training Ombudsman may receive complaints about prescribed decisions—that is, certain decisions made by the director-general under the FET Act, for example, a decision to register a training contract and the decision to issue a completion certificate for an apprenticeship or traineeship. The Training Ombudsman may also receive complaints about non-compliance with obligations under the FET Act. For example, apprentices and trainees have obligations to attend work, follow the employer's lawful instructions and to undertake the training and assessment required under their training plan. Employers have obligations to provide adequate facilities, work and supervision to their apprentices and trainees. Supervising registered training organisations have obligations to prepare a training plan and provide apprentices and trainees with the facilities, services, supervision and required training. Finally, the Training Ombudsman may also receive complaints about matters involving a pre-qualified supplier registered training organisation also known as an RTO. A pre-qualified supplier RTO is a training organisation that has entered into an agreement with the department to deliver government funded training in Queensland. To be eligible to deliver training subsidised by the Queensland government through one of its funded programs, including User Choice and a certificate III guarantee, an RTO must have a pre-qualified supplier status. The department already has strict requirements in place to ensure the quality of VET provided by pre-qualified supplier RTOs and closely monitors these suppliers. However, giving the Training Ombudsman a clear role in the oversight of pre-qualified supplier RTOs will also assist to ensure Queensland government funding is targeted to quality VET providers.

Of note, the bill is prescriptive about how the Training Ombudsman must deal with complaints relating to compliance matters, prescribed decisions and matters involving pre-qualified supplier RTOs. For example, if a complaint relates to a compliance matter or a matter involving a pre-qualified supplier, the Training Ombudsman will be required in most instances to refer the matter to the department for investigation in the first instance. The bill provides exceptions to this requirement. For example, where the matter has already been considered by the department and the complainant is still aggrieved by the decision. Similarly, if a matter is referred to the department to investigate and parties remain aggrieved, they may ask the Training Ombudsman to further investigate the matter. The Training Ombudsman will be able to assess these complaints and make recommendations to the director-general about appropriate action to address the matters. For example, for compliance matters the recommendations could include that the director-general consider prosecution or disciplinary action against the party. For matters involving pre-qualified suppliers, the Training Ombudsman might make recommendations about methods to improve DET's systems, policies and processes in relation to pre-qualified RTOs or that the pre-qualification status of a specific RTO be terminated.

As I mentioned earlier, the bill provides that the Training Ombudsman has the function to monitor the outcome of complaints. This will ensure wraparound support to complainants as well as providing information to the Training Ombudsman to identify systemic issues in the VET system. The Training Ombudsman will have functions to make recommendations about ways to improve the department's systems, policies and processes in relation to pre-qualified suppliers and supervising registered training organisations, matters relating to apprenticeships and traineeships and strategies to improve the quality of VET in Queensland. The bill also gives the Training Ombudsman the function to make recommendations to the director-general about apprenticeships and traineeships, including, for example, declaring an apprenticeship or traineeship. The Training Ombudsman will have the power to do all things necessary or convenient to be done for or in connection with the performance of the Training Ombudsman's functions.

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The bill includes specific powers to support investigations of certain complaints. The Training Ombudsman may enter into an information-sharing arrangement with other government entities for the purpose of sharing or exchanging information. The bill also gives the Training Ombudsman the power to require a person to give information or a document to the Training Ombudsman or attend before the Training Ombudsman to answer questions or to produce documents. The bill limits the type of information that may be obtained under these provisions to information that relates to a complaint about a compliance matter, a matter involving a pre-qualified supplier or a prescribed decision.

To ensure the integrity of the position, the bill ensures the independence of the Training Ombudsman. For example, the bill ensures that the Training Ombudsman is not subject to direction from anyone, including the government, around the performance of the Training Ombudsman's functions. Also, the bill specifically ensures that only the Training Ombudsman controls the staff of the office. There are interim arrangements in place whereby on 14 September 2015 the Minister for Training and Skills, the Hon. Yvette D'Ath, established through a ministerial charter an interim Training Ombudsman and appointed Geoff Favell to this position. The interim Training Ombudsman provides a free, confidential and independent service to review and resolve inquiries and complaints about the VET system. The interim Training Ombudsman has established a website and 1800 number to receive complaints. Since 14 September the interim Training Ombudsman has received 25 complaints. Of these, 13 have been completed and 12 are ongoing at various stages of investigation. Complaints have been received from apprentices, trainees, students, employers, RTOs, other stakeholders, parents and guardians.

As noted in the explanatory notes for the bill, the department undertook consultation with a number of stakeholders on a draft version of the bill. In general, there was support for the bill and the introduction of an independent statutory position to assist VET stakeholders, including from key industry stakeholders such as ASQA, Energy Skills Queensland and the Australian Council of Private Education and Training. I would be happy now to take questions from the committee members on the bill.

CHAIR: Thank you, Suzanne. That was very comprehensive. Can you tell me how many complaints you have received?

Ms Wauchope: 25 to date.

Mr SAUNDERS: We are hearing of RTOs going to nursing homes to sign people up and some companies offering free laptops or a trip to Vanuatu. Will the Ombudsman have the power to investigate these RTOs and stop that?

Ms Wauchope: It is not so much about the power to stop because those things can happen regardless. It cannot actually prevent those things from happening. What it does do is provide an avenue that if somebody feels aggrieved or wants to lodge a complaint about that behaviour, and in that particular case you have provided us an excellent example because you are talking about matters that span both state and federal jurisdictions, that particular matter they could take up with the Training Ombudsman and they would then be in a position to assist that complainant to have that matter resolved.

Ms PEASE: Following on from Bruce's inquiry, you may have already explained this but I might have missed it. Given that some of the RTOs are under the federal jurisdiction, what sort of intervention can the Ombudsman have in terms of the investigation?

Ms Wauchope: It is really a facilitatory role. The Ombudsman will have memorandums of understanding in place with bodies like ASQA, which is our federal regulator and body. In fact, I understand that there is already an early draft of that MOU in place at the moment. It is to make sure that there is free flow of that through to the right authorities and if that is not resolved appropriately that the Ombudsman take further action.

Ms PEASE: So a person would not come to the Training Ombudsman with an issue with regard to one of those RTOs?

Ms Wauchope: Absolutely they would.

Ms PEASE: Then the Training Ombudsman would direct them to the appropriate place.

Ms Wauchope: It is the problem that the Ombudsman's role is designed to address, because people in public do not necessarily know or understand whether the training provider that they are working with is a federal RTO or whether they are a state based PQS. It gives them a single point of contact to deal with the matter.

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Ms PEASE: Thank you for that. And just a further question, if that is okay?

CHAIR: Absolutely.

Ms PEASE: A lot of schools offer school based traineeships. Can parents come to you if they have an issue with a school based traineeship?

Ms Wauchope: Absolutely.

Ms PEASE: And then further to that, if the traineeship or the certificate course that they are undertaking has been with TAFE, would they come to the Training Ombudsman with that query as well?

Ms Wauchope: The Ombudsman covers the entire sector.

Ms PEASE: Okay.

Ms Wauchope: So it is TAFE.

Ms PEASE: So school based VET in schools, TAFE Queensland—the entire sector for Queensland. Okay.

Mr Favell: I am happy to add to that. One of the issues with complaints about the VET sector is that it invariably covers a number of areas. So the Ombudsman, and certainly the interim Ombudsman at the moment, is providing that conduit for people to monitor their complaints and refer parts of it to the various centres but keep an eye on how it is tracking. Quite often it is not just an ASQA issue, or it is not just a Commonwealth government issue or an Office of Fair Trading issue; it covers everything. So that is part of the benefit of the Training Ombudsman.

Ms PEASE: Just further to that, are the schools open to intervention by the Ombudsman, to have open discussions with you? Is that how the investigation would take place or would you just direct them as, 'This is an issue that goes back to the school?'

Mr Favell: With any complaint received in the Ombudsman's office, resolution of it as quickly as possible is obviously the aim. So it is about the informal approach first and foremost to try to get the parties together to resolve the matter. If not, it can be referred on to other regulatory areas for investigation.

Ms PEASE: But the schools, for example, are not obligated to talk to you?

Mr Favell: Generally, an RTO would be delivering on behalf of the school. For example, with the school based traineeship, the interaction from the Ombudsman would normally be with the RTO and the employer in that case.

Ms PEASE: Okay.

Mr Favell: There are instances where schools are registered as RTOs as well and the Ombudsman would have a role, if there was an issue associated with that, in talking to them in their RTO capacity.

Ms Wauchope: Tricia, just confirm if I am wrong, but, as I understand it, the powers of the Ombudsman is that they can seek information as part of executing their duties regardless of who that is from, which would include schools. But clearly, if the schools were doing something inappropriate that would be where the Ombudsman would get in contact with the department.

Ms Matthias: Yes, there are specific powers. The Ombudsman can, obviously, ask anyone for information. There are specific powers to require someone to produce a document, or to attend before the Ombudsman if it is related to Queensland jurisdiction around that RTO. That would be an RTO that has a prequalified supplier contract with the department. So the department is providing funding. So there is that relationship and also, for compliance matters under the apprenticeship and traineeship roles under the legislation, because the department has a role in prosecuting compliance, for those matters they can require a person or an RTO to attend and produce documents.

For other matters that are more related to ASQA and quality, or an RTO that falls outside of that, as Geoff said, it would be an informal approach and then referred to ASQA. But as I understand it, a large proportion of RTOs fall within a prequalified supplier contract.

Mr SAUNDERS: Will the Ombudsman have the powers to recommend the deregulation of an RTO?

Ms Wauchope: Yes.

Mr SAUNDERS: It is?

Ms Wauchope: Yes, they can recommend the termination of a prequalified supplier by the department. Certainly, in a federal context there is referral that can be made to ASQA as well, but that would be at the discretion of ASQA as to whether they cancel the RTO.

Mr SAUNDERS: Right.

Dr McVEIGH: Thank you for the briefing this morning.

Ms Wauchope: Pleasure.

Dr McVEIGH: You made some comments in relation to the independence of the Ombudsman. I note in some of the notes that there was advice that, despite that, the minister can, if the minister wishes, issue a statement of expectations.

Ms Wauchope: Yes, that is the right.

Dr McVEIGH: I just wanted to explore what a statement of expectations might be, because what one might consider simply that if the minister has an issue that they want to raise with the Ombudsman, who is independent, is that not just another complaint? The minister, like anyone else, could simply issue a complaint and ask the Ombudsman to investigate. I just want to explore what a statement of expectations might really be.

Ms Wauchope: Yes, you are right. There are two instruments that are available to the minister in that regard. The statement of expectations—and we have other precedents for these; there is a statement of expectations, for example, for TAFE Queensland and for Jobs Queensland—basically, the minister outlines their vision and expectations more in an objective sense for the organisation as to what they will deliver upon whereas if the minister seeks to make a complaint, they can refer that complaint directly to the Ombudsman which, in effect, is the same for any other complainant.

Dr McVeigh: Thank you.

Ms Wauchope: The other thing is, actually, when I think about it is that they can also refer if they want a particular recommendation or seek particular advice in relation to the operation of the system. That is based on the Ombudsman's breadth of scope.

Dr McVEIGH: So, in effect, the Ombudsman deals with complaints largely but from time to time may receive a statement from the minister, or a request from the minister?

Ms Wauchope: I would imagine that the statement of expectations would be made relatively early after the Training Ombudsman is formally established. Typically, you would not expect to see that statement of expectations vary frequently, if at all. What you might see, though, are special requests go through. So the Training Ombudsman, because of their unique insight into what systemic issues might be happening within the department, or within the operation of the VET sector—and, in fact, there is the requirement for an annual report to the minister on the performance and to make any recommendations on systemic improvements in the sector—may take more of that type of reform as opposed to if a minister has a specific complaint referred to them that they may then refer on to the Ombudsman's office.

Dr McVEIGH: Okay. I would imagine, then, that the minister also has the power to remove the Ombudsman if there are any conduct issues.

Ms Wauchope: Correct.

Dr McVEIGH: Quite apart from the content and the performance of the role.

Ms Wauchope: Absolutely. As is the case with the other Ombudsman's role, if the Ombudsman themselves is brought into disrepute, yes, there is the ability to remove them.

Dr McVEIGH: Okay. Thank you.

Mr BOOTHMAN: Your opening speech was very informative. You briefly mentioned closely monitoring providers. What does that entail? I am just curious as to what the department does to monitor each and every provider.

Ms Wauchope: There is an entire quality framework that the department uses. All of prequalified suppliers that we operate have a contract in place and, as part of normal contract management, we make regular contact with all of our providers as well as them remitting information to us on a monthly basis as to their performance as well as a comprehensive audit program that we have.

We also operate under a memorandum of understanding with ASQA and have an information-sharing arrangement where we talk about any concerns in relation to a particular prequalified supplier that might operate in Queensland. There are several other aspects to it, but it is

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all essentially as part of the standard contract management approach. In fact, if there are situations of a prequalified supplier being in breach of the agreement, the department takes steps to respond to that appropriately, including suspension and termination of the contract.

CHAIR: Geoff, do you become involved in the external audit process at any stage or would that come only from concerns raised during an external audit process as in like a complaint from someone outside?

Mr Favell: No direct involvement in an external audit process, whether that is conducted by ASQA in terms of registration of an RTO or by the department for their prequalified supplier process, but in investigating complaints, certainly providing information to the department on the nature of activities, which obviously informs future audits, identifies risk categories to be looked at and providing any systemic issues to the minister and strategies on how to address them.

CHAIR: Thank you.

Mr SAUNDERS: You said that you had 25 investigations going on currently. What is the theme? What is the most common investigation that you come across from people?

Mr Favell: It is a variety of things. Through the interim Training Ombudsman's process we are using it as an opportunity to explore pretty much all of the types of complaints that we would have thought that we would have received early on. The majority of issues are about student fee and refunds. We are investigating matters. So it is not just a prequalified supplier arrangement, because there are clear contractual arrangements in place. These matters relate to VET FEE-HELP matters for the Commonwealth but also a significant number of complaints from people who are paying themselves for fee-for-service matters and are having difficulties in getting refunds from RTOs.

Mr SAUNDERS: I am hearing from some employers that if Harry Blogs or Mary Smith turn up at their workplace with a certificate from the Bruce Saunders training company, they feel that they are a bit dodgy. They have had people from there before. Are you able to investigate that from the employer's perspective—that the training is not up to the standard that the employer is requiring?

Mr Favell: The issue to do with the standard of training and assessment that is undertaken is clearly one for ASQA—the Australian Skills Quality Authority. We receive complaints and we have received some. We work with employers to clarify what the issues are and if it is something that we can provide to the department in terms of a prequalified supply agreement, that has happened. But at the same time matters have been referred to ASQA around that as well.

CHAIR: No further questions? Are there any other final statements, or anything?

Ms Wauchope: No, thank you for your time.

CHAIR: So if there are no further questions, we will close. I thank Steve, Suzanne, Geoff and Tricia for coming along this morning and giving us their briefing this morning and, of course, answering our questions. Thank you very much. The committee will continue on with its private meeting.

Ms Wauchope: Thank you very much.

Committee adjourned at 8.55 am