



Further Education and Training Bill 2014

Report No. 32
Education and Innovation Committee
April 2014

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Abbreviations and definitions

CQUniversity	Central Queensland University
QTIC	Queensland Tourism Industry Council
HIA	Housing Industry Association
IEUA-QNT	Independent Education Union of Australia – Queensland and Northern Territory
QCU	Queensland Council of Unions
RTO	Registered Training Organisation
SRTO	Supervising Registered Training Organisation
VET	vocational education and training
VEVE Act	<u>Vocational Education Training and Employment Act 2000</u>

Chair's foreword

This report presents a summary of the committee's examination of the Further Education and Training Bill 2014.

The committee's task was to consider the policy outcomes to be achieved by the legislation, and to ensure that fundamental legislative principles have been adhered to in the Bill – that is, whether it has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

A number of issues were identified by inquiry participants, which the committee considered in conjunction with evidence provided by the department in both written and oral form. The committee has requested that the Minister provide clarification on three points in the government's response to this report.

On behalf of the committee I thank those individuals and organisations who made written and oral submissions in respect of this Bill. I thank others who have informed the committee's deliberations: officials from the Department of Education, Training and Employment, the committee's secretariat, the Parliamentary Library and our Technical Scrutiny secretariat.

The committee makes two unanimous recommendations, including that the Bill be passed.

I commend the report to the House.



Rosemary Menkens MP
Chair

April 2014

Recommendations

Recommendation 1

2

The committee recommends that the Further Education and Training Bill 2014 be passed.

Recommendation 2

18

The committee recommends that the terms 'calling' and 'restricted calling' be defined in the Further Education and Training Bill 2014.

Points for clarification

Point for clarification 1

4

The committee seeks the Minister's clarification as to how terminated employment contracts will be monitored to ensure procedural fairness, particularly where the department has not been required to intervene.

Point for clarification 2

13

The committee requests that the Minister confirm the extent of the amendments that the chief executive may make without application by the parties to a contract; and advises of what rights an apprentice or trainee might have in a situation where the legal entity that is their employer changes for many employment contracts.

Point for clarification 3

17

The committee requests that the Minister explain the rationale for the timeframe within which the chief executive is required to make a decision on an application to extend a probationary period; and why the Bill provides for the chief executive failing to make a decision rather than extending the time frame within which the decision must be made.

1 Introduction

1.1 Role of the committee

The Education and Innovation Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

The Further Education and Training Bill 2014 (the Bill) was referred to the committee on 4 March 2014, and the committee is required to report to the Legislative Assembly by 29 April 2014.

Section 93 of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of fundamental legislative principles to the Bill.

1.2 Inquiry process

The committee was briefed by officials from the Department of Education, Training and Employment (the department) in respect of the Bill, and received five written submissions from stakeholders (see Appendix A). The committee held a public hearing on 2 April 2014 at Parliament House, at which it took oral evidence from five witnesses (see Appendix B).

An additional public briefing with department officials was also held on 2 April, allowing committee members to seek further advice on matters raised in written and oral submissions.

Transcripts of briefings, hearings, submissions received and accepted by the committee are published on the committee's webpage at www.parliament.qld.gov.au/committees.

1.3 Policy objectives of the Bill

The objectives of the Bill, as stated in the Explanatory Notes to the Bill, are to:

- establish a new regulatory framework for apprenticeships and traineeships
- reduce legislative barriers to employment and training opportunities
- modernise apprenticeship and traineeship provisions through: changes to restricted callings; reducing duplication regarding employment related matters; introducing permanent transfers; and encouraging parties to resolve disputes themselves
- recognise alternative training pathways by providing for the issuing of a certificate of achievement by the chief executive
- establish a new regulatory framework for group training organisations (GTO's) and principal employer organisations (PEO's)
- repeal legislation regulating vocational placements.¹

The Bill would also repeal the [Higher Education \(General Provision\) Act 2008](#).

The stated objects of the Bill, which if passed would be the objects of the Act, are to:

- (a) strengthen Queensland's economic base by providing a skilled workforce that meets the current and future needs of industry, Government and the community and

¹ Explanatory Notes, p1

- (b) facilitate the provision of vocational education and training that is linked to employment and is responsive to the future workforce development and skills requirements of industry and
- (c) support the continued development of high-quality training by and within industry and
- (d) support Queenslanders to access and complete the skills training they need to get a job and contribute to the State's economy and their own prosperity and
- (e) establish a simple, streamlined apprenticeship and traineeship system featuring flexible, industry-endorsed approaches to trade training and
- (f) support industry and employers to take on, train and retain apprentices and trainees.²

1.4 Background

The Bill is introduced in the context of a suite of reforms to the vocational education and training (VET) sector at both the national and state levels. At a national level, responsibility for regulating providers of VET was referred to the commonwealth by all states and territories other than Western Australia, in 2012. Some VET responsibilities, including for apprentices and trainees, restricted callings, and for TAFE remained with Queensland.

In June 2012 the Queensland Government established an independent, industry-led Skills and Training Taskforce to review the VET sector in Queensland. Its focus was to ensure that VET can deliver the future skills needs of the Queensland economy by strengthening the links between training and employment. One area of the Taskforce's recommendations related to reform of Queensland's apprenticeship system, with a view to "*removing barriers and red tape through improved administration and harmonisation of the system as well as increasing flexibility through complementary trade and skills training pathways*".³

The government accepted all of the Taskforce's recommendations and released its action plan for VET: *Great skills. Real opportunities.* in June 2013. This Bill would implement the commitments contained in the action plan around reforms to apprenticeships and traineeships.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

After examination of the Bill, consideration of submissions and the further information provided from the department, the committee is satisfied the Bill should be passed. The committee has also made one other recommendation and sought points of clarification in relation to the Bill.

Recommendation 1

The committee recommends that the Further Education and Training Bill 2014 be passed.

² Further Education and Training Bill, clause 4, p15

³ Skills and Training Taskforce, Final Report, p1

2 Examination of the Further Education and Training Bill 2014

Apprenticeships and traineeships in Queensland are currently regulated under the *Vocational Education Training and Employment Act 2000* (the VETE Act).

Some regulatory functions, including advising the Minister on training requirements for apprentices and trainees, were undertaken by Skills Queensland under the VETE Act until Skills Queensland was abolished by the VETE (Skills Queensland) and Another Act Amendment Bill 2013. Those Skills Queensland functions were delegated to the chief executive (that is, the Director-General, Department of Education, Training and Employment) for a period of one year from November 2013 as a transitional arrangement.

The Bill now provides for ongoing regulation of apprenticeships and traineeships in Queensland, with the Department of Education, Training and Employment retaining responsibility for regulation.

As outlined in section 1.4 of this report, the objective of the reforms to the VET sector are to enhance economic growth, through ensuring industry needs are met by the vocational education and training sector. The Queensland Tourism Industry Council (QTIC) and the Housing Industry Association (HIA) both submitted to the committee their support for the Bill and the policy outcomes it aims to achieve. The QTIC identifies the alignment between the Bill's objectives, and those articulated in other state government strategic directions statements:

*The newly released Destination Success 20-year tourism plan identifies “deliver quality, great service and innovation” as one of six themes. Under the theme, the strategic direction is stated as ‘identify workforce priorities to meet the needs of the industry’. The strategic direction of Destination Success can be achieved through an industry-led approach to workforce development that is supported by a strong and responsive government.*⁴

The HIA similarly supports the objective of the Bill, sees that it will make it easier to employ apprentices, and notes that “the need for more apprentices is a crucial focus for the residential construction industry”.

2.1 Policy issues

2.1.1 The relationship between employment contracts and training or apprenticeship contracts

Under the Bill, apprenticeship or traineeship contracts are separate from employment contracts. The former would be regulated under this Bill, while employment contracts would be regulated under the Commonwealth's [Fair Work Act 2009](#). The Queensland Council of Unions (QCU) raises the issue of the impact on a person's ongoing training, if an employment contract is terminated; and notes the potential for a wrongful termination of employment with a resulting impact on training.⁵

The QCU advised at the hearing on 2 April 2014 that the potential for wrongful termination of contracts remains an issue, due to the potential for employers to use a ‘churn’ of first year, low cost apprentices as cheap labour with no real intention of continuing a training plan, by extending the probationary period to one year.⁶ While on a probationary period, an apprentice is not able to appeal to the Industrial Relations Commission under the Fair Work Act, so has no protection against

⁴ QTIC, submission 1, p2

⁵ QCU, submission 4, p1

⁶ Hansard, 2 April 2014, Mr Martin, p9

wrongful dismissal. Under current law, both parties have to apply to terminate an employment contract, or apply to the department to intervene and make a final decision.⁷ In such cases the employment contract is considered in conjunction with the training contract. The QCU did not consider that the existence of the training plan offers any protection against wrongful termination (and thus ending of a training plan) in the context of the separate Fair Work Act regime.

At the public briefing on 2 April 2014 committee members sought further advice from the department as to the process around termination of employment contracts. The department advised that there are limits to the length of a probationary period under the Commonwealth's *Fair Work Act 2009* so the apprentice or trainee in such a situation could in fact apply for a review of employment termination under that Act. Further, the new provision in the Bill for the training contract to transfer to a new employer would help to ensure that the training contract was not cancelled due to a termination of employment. The Department also advised that:

... 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.⁸

Committee comment

The committee deliberated about whether there are sufficient checks and balances to ensure protection for apprentices and trainees against wrongful dismissal which might also impact upon their training, including negating the effort they have already put in to date.

The committee acknowledges that the department will continue to play a mediating role where there are disputes between employers and apprentices or trainees which would affect ongoing training and employment, and which cannot be readily mutually agreed. The committee also acknowledges the role of the federal *Fair Work Act 2009* in respect of resolving employment disputes; and the ability provided under this Bill for the training contract to be transferred to a new employer, rather than terminated.

It is noted there is no requirement in the legislation that the department follow up the reasons an employment contract may be terminated, even where this occurs ostensibly by mutual consent.

The committee queries whether it might be appropriate for the Bill to provide that the department takes a clearer monitoring role in respect of terminated employment contracts between apprentices and employers.

Point for clarification 1

The committee seeks the Minister's clarification as to how terminated employment contracts will be monitored to ensure procedural fairness, particularly where the department has not been required to intervene.

⁷ Hansard, 2 April 2014, Mr Stephens, p14

⁸ Hansard, 2 April 2014, Mr Stephens, p12

2.1.2 Distinction between certificates, traineeships, and apprenticeships

The Bill provides for more flexible pathways to qualifications. The change to who can be employed in restricted callings without a formal apprenticeship or traineeship will enable young persons to access more flexible pathways to becoming a tradesperson, including using training packages rather than working as an apprentice or trainee.⁹ The chief executive could issue certificates of achievement. Applications for such certificates would be supported by evidence of the employment the person has undertaken in the relevant calling; and a qualification or statement of attainment issued by a registered training organisation.¹⁰

A point of concern raised by Central Queensland University (CQUniversity) is that there is no distinction in the Bill between certificates, traineeships and apprenticeships.¹¹

The department advice is that it considers that the Bill does distinguish between apprenticeships, traineeships and certificates of achievement.

The Bill provides for both apprenticeships and traineeships to be declared. The department provides a list that identifies whether a calling is an apprenticeship or traineeship.

Certificates of achievement are a new concept included in the Bill that provide for alternative training pathways to be recognised. Certificates of achievement will be available in areas where there are currently apprenticeships and traineeships. These alternative pathways will still enable a rigorous work based skill formation experience underpinned by quality training, but allow for a more flexible work pattern.¹²

At the public hearing on 2 April, CQUniversity expanded on its concern, stating that:

...there needs to be some control measures in there so that if a young person or a mature-age person is pursuing their own apprenticeship of flexible pathway to achieve that apprenticeship that they are supported so that the workplace that they are attending, the signoff that they are getting, that the training and work skills that they are getting, is appropriate.

CQUniversity also raised a concern about the potential risks to licensed and complex trades if employers, who may not be registered tradespeople, can sign certificates regarding experience on the job.¹³

The department advises:

The Bill does not change the current process for signing off on completion of an apprenticeship or traineeship. Apprenticeships and traineeships will remain employment based skill formation where an apprentice or trainee develops skills by working in a particular calling. Apprenticeships and traineeships can be contrasted to gaining skills through studying a vocational education and training course in an institutional setting without being employed in a calling.

The Bill will ensure that apprenticeships and traineeships continue to provide quality training outcomes. The training plan will continue to be part of the apprenticeship/traineeship system. Employers and Supervising RTOs will be required to

⁹ Explanatory notes, p2

¹⁰ Further Education and Training Bill, clause 100

¹¹ Central Queensland University, submission 2, p1

¹² Department response to submissions, p1

¹³ Hansard, 2 April 2014, Mr Babovic, p1

comply with the plan to ensure that the apprentice/trainee gains the necessary skills to qualify for the issue of a completion certificate.

The Bill creates the concept of a certificate of achievement. The certificate of achievement will be administered by the Department of Education, Training and Employment. Certificates of achievement will recognise training and more flexible employment arrangements undertaken outside the traditional apprenticeship pathway. They will receive access to government funded training and support to enable them to complete a qualification and build a portfolio of relevant work experience. A range of qualifications and pathways will be offered under the proposed Registered Trade Skills Pathway (RTSP) program.

Further alternative pathway arrangements are also being considered and developed by industry in consultation with Government for possible implementation.

Committee comment

The committee considers that the CQUniversity concern in relation to certificates of achievement that employers who may not be tradespeople would certify that employment requirements have been met, is mitigated by the fact that the registered training organisation, regulated by the Australian Skills Quality Authority, will have responsibility for certification that the industry skills required under the person's training plan have been achieved.

The committee also sees a significant positive effect on individual employment and broader industry outcomes (and thus, economic outcomes for the state) can result from recognising achievement at levels below that of an apprenticeship or traineeship, with the possibility of those articulating to full trade qualifications.

2.1.3 VET in schools

The Independent Education Union of Australia - Queensland and Northern Territory Branch (IEUA-QNT) submission focuses on VET in schools, particularly school-based apprenticeships and traineeships, and on the impact of the Bill in those areas. It explains that independent schools offer both in-house training programs and make use of external RTOs.¹⁴ The IEUA-QNT suggest that several clauses of the Bill reflect a lack of understanding about how further education and training in schools works; and that the government should commit to protecting and enhancing school-based further education and training programs and in particular those with a vocational focus.

Issues raised that relate specifically to the Bill's impact on school-based vocational education programs include the removal of the object contained in the current *VETE Act* of "community commitment to supporting young people in the compulsory participation phase".¹⁵ IEUA-QNT is concerned that the lack of a similar clause in the Bill implies a reduced commitment to fulfilling the community obligations to young people for the greater good, and does not adequately acknowledge the role of schools as RTOs for young people in the compulsory phases of participation.¹⁶

On this, the department advises:

The Queensland Government has detailed its commitment to creating a more competitive, responsive and innovative VET sector to meet the needs of individuals,

¹⁴ IEUA-QNT, submission 3, p1

¹⁵ VETE Act, s3 (g)

¹⁶ IEUA-QNT, submission 3, p2

communities, industry and employers around the State in the five year VET action plan – Great skills. Real opportunities., which was launched in June 2013. It is based on the recommendations of the industry-led Queensland Skills and Training Taskforce. The actions in the plan aim to foster economic growth by making sure Queenslanders, including young people in the compulsory participation phase, have access to quality training linked to employment.

The transformation of Queensland’s VET sector rests on three foundations: making sure all Queenslanders can access training; ensuring the sector delivers high quality training linked to employment; and effective Government engagement with industry and employers.

A key initiative within the reforms is the Certificate 3 Guarantee, which gives eligible Queenslanders the opportunity to attain their first post-school certificate III level qualification in a priority training area.

The Education (General Provisions) Act 2006 establishes the compulsory participation phase concept and outlines how a young person complies with the requirements of compulsory participation. This Bill is about the regulation of apprenticeship, traineeships and other training related matters and it is not necessary to refer to the declaration currently referred to in Chapter 3A VETE Act.¹⁷

Another comment by IEUA-QNT is that the Bill does not make explicit reference to vocational placement schemes, nor does it define a training contract, while the current Act does. Further, adequate levels of meaningful workplace experience are highly valuable and can be difficult to provide, so minimum hours should be specified.

The Department advises that:

Queensland will no longer regulate vocational placements.

Employers and RTOs can still organise these placements.

A Training Contract is defined in the Dictionary of the Bill, and only relates to apprenticeships and traineeships.

Work placements, such as vocational placements or work experience under the Education (Work Experience) Act 1996, do not specify minimum hours of work, rather they set maximum periods. As noted above, vocational placements will no longer be regulated by Queensland so it will not be possible to specify any requirements for such placements. The amount of work experience required to gain a particular qualification will be determined by the RTO in accordance with the requirements of the relevant training package.

RTOs are regulated by the Australian Skills Quality Authority (ASQA) under the National Vocational Education and Training Regulator Act 2011 (Cwlth).

Anecdotally, IEUA-QNT members report that withdrawal of government supported TAFE programs is leading to a reduction of school based VET programs, particularly in rural and regional areas where TAFE facilities have closed.¹⁸

Committee comment

The advice provided by the department would seem, in the main, to address the IEUA-QNT concerns in relation to VET in schools, and this was confirmed by the IEUA-QNT at the public hearing on 2 April

¹⁷ Department response to submissions, p3

¹⁸ IEUA-QNT, submission 3, p6

2014. However, the committee believes that the perception that there is a withdrawal of government support for TAFE programs is worthy of comment.

The committee strongly supports VET in schools and would be very concerned if the Bill diminished school-based VET in any way.

The committee acknowledges that there is a perception in some quarters, as expressed by IEUA-QNT and by the QCU, that opportunities for schools to access vocational education and training programs will be reduced in the context of broader reforms to the VET sector which require the government VET provider (TAFE Queensland) to compete with private providers of vocational education and training (RTOs). These concerns are not specifically related to this Bill, as is acknowledged in the written and oral submissions made by IEUA-QNT. However the committee would like to acknowledge them and to comment that it has not seen evidence to suggest that this is, or will be, the case.

It points out that the Ministerial Industry Commission will advise the Minister for Education, Training and Employment on:

...skilling and funding priorities. The Commission will determine the workforce needs of industry and employers, and the priorities for training to inform the most effective use of finite public training funds.

The Minister for Education, Training and Employment will use the Commission's advice to prioritise training that is linked to employment outcomes, to be published in an annual VET investment plan.¹⁹

The committee notes that the first Annual Skills Priority Report was published by the Ministerial Industry Commission in March 2013;²⁰ and that budget allocations for VET will be determined as part of the 2014-15 budget process.

2.1.4 Rights of appeal

The QCU and the IEUA-QNT consider that there is a lack of appeal mechanisms provided by the Bill.

The Explanatory Notes to the Bill detail the rights of review or appeal which would be available (p5).

The IEUA-QNT notes that employers would be given a right of reply (clause 59) if the chief executive proposes they be declared unsuitable providers of apprenticeship and traineeship opportunities (p5). However, apprentices and trainees are given no similar right of reply or of appeal in respect of decisions under the Bill that may be detrimental to them.

The department response is that:

the Bill does include appeal and review rights for particular decisions. Appeals are not provided for where seeking a review is unlikely to be practical or necessary, due to other natural justice mechanisms in place or the lesser significance of some decisions.

The Bill takes the approach of removing employment related matters from the regulation of apprenticeships and traineeships and allows those matters to be dealt with under

¹⁹ Ministerial Industry Commission terms of reference. Accessed on 15 April 2014 at: <http://www.ministerialindustrycommission.com.au/About>

²⁰ Ministerial Industry Commission terms of reference. Accessed on 15 April 2014 at: <http://www.ministerialindustrycommission.com.au/Home>

*relevant industrial relations legislation. This removes the need for a number of review and appeal processes currently included in the VETE Act.*²¹

Further, it advises that:

... the Bill continues to provide for the regulation of apprenticeships and traineeships. The Bill, however, recognises the nature of the modern workplace and reflects current practices. The process for suspension and cancellation is simplified and places the onus on the parties to resolve issues in relation to the training contract.

*The Bill removes duplication between the current regulatory framework and the industrial relations legislation, meaning that apprentices and employees can continue to pursue employment-related remedies under appropriate employment laws (rather than under the Bill).*²²

IEUA-QNT also points out that while students can appeal cancellation of a training contract (clause 168 (3)), if it was cancelled under clause 22 they may not have actually received notice that it has been cancelled. Therefore, the timeframe of 21 days for lodging an appeal is unreasonable.²³ However department advice would seem to suggest that cancellation of a training contract cannot occur under clause 22 (see detailed discussion of clause 22 in this report, section 2.1.7).

Committee comment

The explanatory notes (pp5-6) say that administrative review rights will exist in the Queensland Industrial Relations Commission (QIRC) regarding some training matters (cancelling a training contract, making a disciplinary order, cancelling a completion certificate, declaring a prohibited employer). Some other rights will be available under the Queensland Civil and Administrative Tribunal (QCAT), mainly for RTOs and employers.

The committee is generally satisfied with the rights to review of decisions relating to apprenticeships and traineeships that would be available should the Bill be passed. However, it will be interested in the Minister's response to point for clarification 1 in respect of terminated employment contracts, and whether there is a risk for some apprentices or trainees to 'fall through the cracks' (see section 2.1.1 of this report).

2.1.5 Work Health and Safety

The current VETE Act provides for the coverage under the Work Health and Safety Act 2011 (WHS Act) of students on vocational placements as part of their training course.²⁴ The Bill does not. This is raised by IEUA-QNT.²⁵

The department advises that:

... the Work Health and Safety Act 2011 makes it clear that any person conducting a business or undertaking must ensure the health and safety of workers. 'Worker' is defined in that Act as including 'a student undertaking work experience', which would cover a student on a placement. From 29 June 2014, Queensland no longer has the

²¹ Department response to submissions, p12

²² *ibid*, p13

²³ IEUA-QNT. submission, 3, p6

²⁴ VETE Act s111

²⁵ IEUA-QNT, submission 3, p7

*power to regulate vocational placement arrangements, and the appropriate place for Work Health and Safety provisions is in the Work Health and Safety Act 2011.*²⁶

*Employers and RTOs can still organise these placements and RTOs will still be able to apply for WorkCover insurance eligible for vocational placement students under the Workers' Compensation and Rehabilitation Act 2003.*²⁷

Committee comment

The committee notes that IEUA-QNT advised at the public hearing on 2 April that it was satisfied this matter was adequately dealt with, and the committee concurs with that assessment.

2.1.6 Timeframe for registering a training contract (clause 17)

Clauses 15 and 16 of the Bill provide timeframes for signing and lodging of training contracts with the department, from the time the apprenticeship or traineeship commences. However no timeframe is provided for the chief executive to notify parties of the decision, once he or she has received that contract. The current VETE Act requires the chief executive to provide such advice 'promptly'.

While IEUA-QNT raises this in respect of VET in schools²⁸, the concern applies more broadly: with no specified timeframe or even directive about promptness for such advice, people (usually young people) waiting to find out whether their apprenticeship or traineeship will proceed could be significantly disadvantaged.

The department response to the concern raised by IEUA-QNT was that:

The timeframes relating to the signing of a training contract and the submission of the training contract to the chief executive for a registration decision have been greatly reduced from up to 121 days to 28 days.

*The Bill requires the chief executive to notify parties of the decision on registration of a training contract. This notification will be given as soon as possible.*²⁹

The reduction in timeframes was welcomed by the HIA, which pointed out that Queensland would now align with other jurisdictions in this regard.³⁰

IEUA-QNT indicated at the hearing that the timeframes were still not clear.³¹ The department further indicated at the public briefing on 2 April 2014 that responses were, in practice, provided within one to three days of registration; and that this was due to information system capacity. As this was now standard, it had not been considered necessary to legislate the timeframe.³²

The QCU raised another concern about registration of training contracts, including its general concern that the Bill not allow for outsourcing of this or any other function or decision in respect of regulating apprentices and traineeships; and recommending that apprentices be tested prior to registration of training certificates to ensure that they have the capacity to complete an apprenticeship or traineeship, "to ensure that sham arrangements are not created".³³

²⁶ Department response to submissions, p11

²⁷ Department response to submissions, p4

²⁸ IEUA-QNT, submission 3, p2

²⁹ Department response to submissions, pp4-5

³⁰ HIA, submission 5, p2

³¹ Hansard, 2 April 2014, Ms Schmidt, p5

³² Hansard, 2 April 2014, Mr Stephens, p16

³³ QCU, submission 4, p2

The Department's response to the question of testing apprentices and trainees was that:

Clause 17 requires the chief executive to make the decisions in relation to registration of training contracts. The chief executive has a power of delegation but that power is in the same terms as the current delegation power under the VETE Act.

Employers make decisions about the suitability of employing apprentices and trainees taking into account the requirements of the calling. The Supervising RTO develops a training plan with the parties and monitors the apprentice's or trainee's progress against the training plan. This is an established process that meets the needs of employers and apprentices/trainees. It is therefore not necessary to create a new process of testing apprentices/trainees as this would impose additional red tape.³⁴

Committee comment

In respect of the IEUA-QNT concern about the timeframe for notification of registration of training contracts not being specified, the committee notes the advice of the department in respect of the information systems which now allow the practice to be advised within one to three days; and suggests that in the context of the matters to which the chief executive must have regard in making his or her decision, this is quite an achievement.

The reduced timeframe in terms of signing, submission and registration of a contract from 121 to 28 days relates to the time from the commencement of the apprenticeship or traineeship arrangement by which the training contract must be signed (now 14 days); and the lodging of that contract with the chief executive (within 28 days of the commencement of the apprenticeship or traineeship arrangement).³⁵ This will, with the practical situation of the department advising of registration or otherwise within one to three days, ensure much greater certainty within a much shorter timeframe than is currently the case.

The committee is satisfied that the Bill does not provide for outsourcing. The Bill does provide for the chief executive to delegate, which is standard operating procedure for most government functions and responsibilities and essential to the effective operation of any organisation.

The committee also notes the recommendation of the QCU with respect to testing of apprentices and trainees before their arrangement commences; and agrees with the department's position that this would create unnecessary red tape in the context of involvement of a supervising RTO (SRTO), an employer, a registered training plan, and a process to support resolution of disputes firstly through exploring mutual consent, then department mediation, and the Commonwealth's Fair Work Act regime.

2.1.7 Amendment of registered training contracts without application by the parties (clause 22)

The Bill allows the chief executive to amend registered training contracts without application by the parties to the contract, where it is a matter of updating changed circumstances. Examples in the Bill include "*where the supervising RTO for the apprentice changes and it's not reasonably practical for the parties to tell the CE; and where the legal entity that is the employer changes for many registered training contracts*".³⁶ The chief executive is not required to notify the parties of the amendment.

³⁴ Department response to submissions, p14

³⁵ Further Education and Training Bill, clauses 15-17

³⁶ Further Education and Training Bill, clause 22 (1)

The IEUA-QNT takes issue with the example given in that clause of where “*an apprentice who started his or her apprenticeship while at school continues the apprenticeship after leaving school*”. IEUA-QNT argue that the training contract for students who commence apprenticeships at school should already specify provisions and conditions of continuity, and have appropriate flexibility to accommodate changes.

The department advice is that:

The training contract for a particular apprenticeship or traineeship must be accurate at the time of registration. The contract is in a standard form used by all jurisdictions and it is not appropriate for Queensland to alter how that form is used. The intention with school based apprenticeships or traineeships is the apprenticeship or traineeship continues until the requirements of the training contract are completed, or the parties decide to cancel.

While an apprentice and trainee is still at school there are a number of specific requirements that apply to the training contract. These requirements ensure that they get a head start in their career, such as ensuring that the apprenticeship/traineeship training and work fits within the school calendar. Once the apprentice or trainee leaves school it is no longer necessary to manage these issues so the training contract converts to another non-school based category to give the apprentice or trainee the chance to complete the apprenticeship/traineeship. As employment matters are separate from the training contract if the apprentice/trainee decides to leave employment before completing the apprenticeship/traineeship then that will cause the apprenticeship or traineeship to come to an end.

When an apprentice/trainee leaves school there will usually be a need for the RTO to negotiate a change to the training plan with the apprentice/trainee and employer, as the apprentice/trainee will now have more time available for training and work which will enable them to complete the remaining requirements of the training plan. The apprentice/trainee will therefore be aware of the changes being made to their apprenticeship or traineeship.

The other examples given in the Bill for the chief executive’s power to amend the training contract are amendments which are not of any concern to the parties. For example, the name of a qualification may change affecting hundreds of apprentices and trainees. For administrative efficiency the chief executive will amend the contract but will not notify the parties of this amendment. The parties will, however, be aware of the change because the training plan will also need to be amended.³⁷

IEUA-QNT indicated at the hearing that it was generally satisfied with the department’s response regarding contracts for school-based apprentices.

IEUA-QNT also pointed out, that changes to training contracts being made unilaterally by the chief executive, without any requirement to notify the parties to the contract (as clause 22 provides) would lead to uncertainty for employers and RTOs as well as for students.³⁸

However, the department advises:

The purpose of allowing the chief executive to amend a training contract under clause 22 of the Bill is to assist the parties by allowing for limited amendments to be made without the need for an application.

³⁷ Department response to submissions, pp5-6

³⁸ IEUA-QNT, submission 3, p4

This reduces red tape for the parties to a training contract in situations where circumstances change and the details in the training contract require updating. Clause 22 gives examples of situations in which this power would be used. Clause 22 will not allow the chief executive to fundamentally alter the training contract.

Further, the training contract is a national template with limited scope for meaningful amendment beyond reference to training matters, so amendments made by the chief executive will be limited and not associated with employment related matters.³⁹

Further, the department advice makes it clear that clause 22 does not operate in conjunction with Divisions 4 or 5 of the Bill, and in fact the decisions to suspend or to temporarily transfer a training contract from one employer to another to ensure continuity of training, can only be exercised by the parties to the training contract. This appears to address the specific concerns expressed by IEUA-QNT about clause 22.

Committee comment

This clause has caused some confusion, and the committee appreciates the clarification provided by the department to date.

Given the confusion, and based on its own consideration of clause 22, the committee would like to seek further clarification about the limitations on what the chief executive can alter without application from the parties – that, is whether it is sufficiently clear that only minor amendments can be made under that clause.

The example provided at clause 22 (1) of where “*the legal entity that is the employer changes for many registered training contracts*” could quite conceivably apply to situations where, say, a company transfers all of its employment contracts to a labour hire company. It is quite possible that the company may close a particular site, and that ongoing employment under the new employer would be at a different site to which travel might cause significant hardship to an apprentice or trainee; or that the employee has an objection to being employed by a labour hire company.

Essentially, the committee is concerned that the examples of changed circumstances are not necessarily confined to what are ‘minor’ amendments. What are apparently minor amendments could have significant implications, and perhaps notification in such cases could be required. It is also unclear what action, if any, an apprentice or trainee could take in the event that their training contract was amended in a manner that did have a significant impact upon them, for example where the legal entity that is their employer changes as outlined above.

Point for clarification 2

The committee requests that the Minister confirm the extent of the amendments that the chief executive may make without application by the parties to a contract; and advises of what rights an apprentice or trainee might have in a situation where the legal entity that is their employer changes for many employment contracts.

2.1.8 Transfers of training contracts

One element of the Bill that attracted broad support was the proposed introduction of transfers of training contracts, or apprenticeships and traineeships, between employers. The HIA identified this

³⁹ Department response to submissions, pp5-6

as “*necessary to address difficult economic conditions or training needs*”; and CQUniversity noted that “*it is a fantastic part of this Bill and hopefully, employers will embrace that and work really closely together with that*”.

Committee comment

The committee agrees that this is a positive move which will benefit all parties to a training contract. Further, it provides additional options to an apprentice or trainee where an employment contract may have been terminated for any number of reasons, making continuation of their training much more easily achievable.

2.1.9 Cancellation of registered training contracts (clauses 36-40)

While clause 22 deals with amendments to training contracts without application by the parties, clause 36 of the Bill gives the chief executive the power to cancel registered training contracts in a range of circumstances without application by the parties. An example given in the Bill of where this could occur, is where the SRTTO withdraws from the training plan for the contract and no replacement SRTTO has been nominated; or where the employer has moved the employer’s business to a place to which it is impractical or unreasonable for the apprentice or trainee to travel.⁴⁰

IEUA-QNT, along with the QCU, queries what happens to the employment of apprentices or trainees where the chief executive cancels a registered training contract.^{41, 42} The apprentice or trainee may have made a significant commitment to and investment in a long term training program and may end up in a situation when an employer goes out of business, where they are unable to transfer or retain credit for their work. Employers and RTOs are also left vulnerable by the chief executive having the power to cancel training contracts without consultation or notification.

Notably, the IEUA-QNT points out, the new Bill omits the current *VETE Act* (section 65) provision for the chief executive to reinstate training following cancelled or disrupted training contracts.

The department advice is that:

Clause 36 provides for the cancellation of a training contract by the chief executive if the employer ceases business. Other provisions in the Bill deal with the recognition of prior training and the issue of statements of attainment so that an apprentice or trainee is not disadvantaged when their employer ceases business.

When deciding the nominal term of a particular training contract the chief executive can take into account previous training experience of the apprentice under clause 10. An apprentice who previously completed two years of a four year apprenticeship could be given a reduced nominal term when they register a new contract with a new employer.

Supervising RTOs are regulated by the Australian Skills Quality Authority as RTOs under the National Vocational Education and Training Regulation Act 2011 (Cwlth). That legislation sets standards for RTOs including the requirement to issue a statement of attainment after training ends.

Section 65 of the VETE Act dealt with reinstatement after cancellation of a training contract. This provision was a remedy that related to employment of an apprentice or

⁴⁰ Further Education and Training Bill, clause 36 (d) and (f)

⁴¹ IEUA-QNT, submission 3, p4

⁴² QCU, submission 4, p1

*trainee. This Bill takes the approach of leaving employment related matters to the relevant industrial relations legislation. Section 65 is therefore not included in the Bill because these matters are more appropriately dealt with as employment matters under the Industrial Relations Act 1999 or Fair Work Act 2009 (Cwlth).*⁴³

QCU queries the impact of this clause combined with the lack of appeal rights for an affected individual. It points out that some employers could use an ongoing stream of apprentices and or trainees as cheap labour, terminating their employment contracts after a year. While the apprentices could address the employment termination under other legislation, their training contract would have been cancelled with no right of appeal. (Note that appeal rights are addressed separately in section 2.1.4 of this report).

The department response in relation to the appeals issue is that:

Apprentices and trainees will have recourse to the relevant industrial relations tribunal for employment related matters in the same way as other employees in their workplace.

Also, clause 60 provides for the chief executive to declare an employer to be a prohibited employer, which requires the chief executive to consider amongst other matters ‘the employer’s record in delivering training to apprentices or trainees’....

*Administrative review rights to the Queensland Industrial Relations Commission are in place for certain decisions under clause 36 (cancellation of a training contract). Other employment related matters frustrating the training contract can be addressed directly through proceedings in the relevant industrial relations tribunal, which is the same for other employees in their workplace.*⁴⁴

The HIA welcomed “*the simplification of suspension and cancellation of training contracts, which has been unclear, and overly complex for parties to a training contract*”.⁴⁵

Committee comment

The committee is satisfied that the Bill appropriately deals with the treatment of employment contracts and training contracts, as discussed in section 2.1.1 of this report.

⁴³ Department response to submissions, pp7-8

⁴⁴ Department response to submissions, pp13-14

⁴⁵ HIA, submission 5, p2

3 Fundamental legislative principles

As well as considering the policy to be given effect by the legislation, portfolio committees are required to review Bills in respect of their lawfulness, and advise the Legislative Assembly on whether fundamental legislative principles have been given appropriate regard.

Section 4 of the [Legislative Standards Act 1992](#) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee has examined the application of fundamental legislative principles to the Bill and identified the following issues.

3.1 Rights and liberties of individuals

The *Legislative Standards Act 1992* provides that to protect the rights and liberties of individuals, legislation must be unambiguous, and drafted in a sufficiently clear and precise way.⁴⁶ The committee has identified some areas of the Bill which could either be more clearly articulated or where some clarification is required as to rationale.

3.1.1 Training contracts - Provision for failure of chief executive to make a decision (clause 13)

Under clauses 12 and 13 of the Bill, the parties to a training contract can apply to the chief executive to extend a probationary period for an apprenticeship or traineeship. If the chief executive does not decide an application within seven days of receiving it, then that failure is taken to be a negative decision by the chief executive – that is, that the application is not approved.

Having put in place a statutory timeframe within which the chief executive must make a decision, making provision for when the chief executive does not comply is a potential breach of the fundamental legislative principles defined under the *Legislative Standards Act 1992*, especially given that the provisions appear to automatically disadvantage the applicants by rejecting their application.

Committee comment

The committee is concerned about the lack of clarity in the Bill regarding whether the chief executive is required to make (and presumably give notification of) a decision in respect of extending probationary periods. The impact of probationary periods on employment contracts and an apprentice or trainee’s access to *Fair Work Act 2009* dispute resolution mechanisms is significant, as discussed in section 2.1.1 of this report.

The committee considers that it is ambiguous for inaction by a chief executive to be provided for when the same clause of the Bill (13 (1)) expressly provides for action.

Further, the failure to make a decision would not provide the parties with any reason for what is taken to be negative decision. Such advice would be necessary in the event that a party wished to pursue a review of that decision.

⁴⁶ *Legislative Standards Act 1992*, s4 (3) (k)

This lack of clarity could result in additional red tape in respect of reviews, which would not be in line with the intention of the Bill.

The committee queries the rationale for the ambiguity in this clause of the Bill.

As well as noting the technical ambiguity of this clause, the committee notes that a decision about extending a probationary period is highly significant for parties to that training contract. If it is foreseeably unachievable for the chief executive to make that decision within seven days, then perhaps that timeframe should be extended and a definitive decision of the chief executive required.

Point for clarification 3

The committee requests that the Minister explain the rationale for the timeframe within which the chief executive is required to make a decision on an application to extend a probationary period; and why the Bill provides for the chief executive failing to make a decision rather than extending the time frame within which the decision must be made.

3.1.2 Restricted callings

‘Restricted callings’ are jobs in which employees must be qualified or completing an apprenticeship or traineeship in that trade, before they can be employed in that trade – unless they are aged under 21 (and under 18, if the Bill is passed). There are currently 137 restricted callings, or jobs, in Queensland.⁴⁷

The term ‘restricted callings’ is not widely understood, and is not defined in the Bill.

The IEUA-QNT suggests that the term should be defined, and a rationale for making reference to a restricted calling should be provided.⁴⁸

Department comment on this matter was:

The power to declare restricted callings in clause 64 of the Bill is in similar terms to the current power in the VETE Act. The VETE Act allows the chief executive to declare restricted callings and the Bill continues this approach. The declaration of a restricted calling prevents employers from engaging an employee under the age of 18 in that calling unless the employee is an apprentice or trainee.⁴⁹

At the hearing, the department further advised that restricted callings are jobs where a determination is made that the only way to be employed in that job is via an apprenticeship; and that a list of restricted callings is available on the department website.⁵⁰

Committee comment

The committee acknowledges that the terms ‘calling’ and ‘restricted calling’ are not defined in the current *Vocational Education, Training and Employment Act* at present. Members also acknowledge the explanation provided by the department, that there are clearly rationales relating to quality and safety in a decision to declare that a vocation is restricted. However, it is clear from submissions and from the committee’s own internal deliberations that the terms are not widely understood in a modern context.

⁴⁷ <http://qtis.training.qld.gov.au/RestrictedCalling>

⁴⁸ IEUA-QNT, submission 3, p5

⁴⁹ Department response to submissions, p9

⁵⁰ Hansard, 2 April 2014, Mr Stephens, p12

Recommendation 2

The committee recommends that the terms ‘calling’ and ‘restricted calling’ be defined in the Further Education and Training Bill 2014.

3.2 Clear and precise drafting – general

Committee comment

Possible typographical error

The committee notes a possible typographical error in clause 82 (3), where the tense seems inconsistent: - *The change takes effect when the parties received the changed training plan.*

Editor’s note

The repeat of the same ‘editor’s note’ throughout, giving the department’s website address, does not appear to be good practice. Such widely applicable notes could be placed in an overarching section of the Bill, or in subordinate legislation or guidelines. Further, the inclusion of a website address in an Act may mean legislative amendment is required at any time the website address changes, for example, as occurs relatively frequently as part of machinery of government changes.

Parental consent

Many clauses in the Bill refer to an employer obtaining parental consent where an apprentice or trainee is aged under 18 years (for example, clause 15). How far would an employer be required to go to determine whether parental consent is required? The Bill repeatedly provides as an example of where consent would not be required, as being where the person lives independently of their parent.

The committee queries whether:

- a) as with the example of the editor’s note (above), it is necessary to repeat the same example throughout the Bill
- b) the employer should be required to confirm that it is reasonable not to have obtained parental consent, in instances where consent is not sought or provided.

Level of detail contained in the Bill

In his introductory speech the Minister stated that the Bill reflects modern drafting practices by including in it details of factors the chief executive has to consider in decision making; policies; and guidelines. The committee welcomes this approach, and notes that such an approach in this instance supports the warranted level of Parliamentary scrutiny.

3.2.1 Explanatory notes

Committee comment

The committee considers that the explanatory notes provided with the Bill are fairly detailed and contain the information required by part 4 of the *Legislative Standards Act 1992*. They contain a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

Appendix A – List of submissions

Sub #	Submitter
1	Queensland Tourism Industry Council
2	CQUniversity Australia
3	Independent Education Union – Queensland and Northern Territory Branch
4	Queensland Council of Unions (QCU)
5	Housing Industry Association Ltd

Appendix B – Witnesses at public briefings and public hearing

Witnesses at public briefing, 5 March 2014

Department of Education, Training and Employment

- Ms Gabrielle Sinclair, Deputy Director-General, Policy and Programs
- Mr Stuart Busby, Executive Director, Policy and Programs
- Mr Geoff Favell, Assistant Director-General, Employment, Skills and Training
- Ms Carina Muller, Executive Director, Strategic Policy and Portfolio Relations
- Mr Christopher Roney, Director, Legislative Services

Witnesses at public hearing, 2 April 2014

Central Queensland University (via videoconference)

- Mr Nic Babovic, Deputy Vice-Chancellor (Industry & VET)
- Ms Jenny Moore – Executive Officer to Deputy Vice-Chancellor (Industry & VET)

Independent Education Union, Queensland and Northern Territory Branch

- Ms Adele Schmidt, Research Officer

Queensland Council of Unions

- Mr John Martin, Research and Policy Officer

Witnesses at public briefing, 2 April 2014

Department of Education, Training and Employment

- Mr Stuart Busby, Executive Director, Policy and Programs
- Mr Geoff Favell, Assistant Director-General, Employment, Skills and Training
- Ms Carina Muller, Executive Director, Strategic Policy and Portfolio Relations
- Mr Christopher Roney, Principal Advisor, Legislative Services
- Mr Wayne Stephens, Director, Queensland Apprenticeship and Traineeship Office

Statement of reservation

YVETTE D'ATH MP

SHADOW MINISTER FOR EDUCATION AND TRAINING

SHADOW MINISTER FOR DISABILITY SERVICES

SHADOW MINISTER FOR SCIENCE, INFORMATION TECHNOLOGY AND INNOVATION

MEMBER FOR REDCLIFFE

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28 April 2014

Ms Bernice Watson
Research Director
Education and Innovation Committee
Parliament House
George St
Brisbane QLD 4000

Dear Ms Watson

Re: Further Education and Training Bill 2014

I wish to notify the committee of my reservations about aspects of Report No. 32 of the Education and Innovation Committee into the *Further Education and Training Bill 2014*. The opposition will detail the reasons for our concerns during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in blue ink that reads "Yvette D'Ath".

Yvette D'Ath MP

Member for Redcliffe
Shadow Minister for Education and Training