

EDUCATION AND INNOVATION COMMITTEE
REPORT No.32 ON THE
FURTHER EDUCATION AND TRAINING BILL 2014
QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 29 April 2014 the Education and Innovation Committee tabled Report No.32 in relation to the Further Education and Training Bill 2014.

The Queensland Government response to recommendations made by the Committee and points for clarification sought by the Committee are provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

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

Government Response

The Government thanks the Committee for this recommendation and for its prompt consideration of the Bill.

Recommendation 2 -

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

Government Response

The Government does not support this recommendation.

The term ‘calling’ is defined in the dictionary in Schedule 2 of the Bill, and is the same definition as used in the *Vocational Education, Training and Employment Act 2000*. Restricted calling is also defined in the dictionary in Schedule 2 of the Bill.

The term calling is well understood by stakeholders in the apprenticeship and traineeship system. The definition of calling in the dictionary of the Bill is:

calling means—

- (a) a craft, manufacture, occupation, trade, undertaking or vocation; or
- (b) a section of something mentioned in paragraph (a).

Examples of callings are plumbing, electrical, carpentry and tiling. Each of these callings are distinct occupations or trades. The chief executive may declare apprenticeships or

traineeships for a calling after consulting with industry about whether it is appropriate to do so. Over time apprenticeships and traineeships change as new callings are established due to changes in technology and work practices. The current definition permits this to occur and it is not necessary to amend this definition.

For example, a new apprenticeship was introduced in September 2010 for the calling of Fire Protection Control Tradesperson. This apprenticeship covers the installation and maintenance of fire control, commercial and industrial premises. Whilst there has always been a sprinkler type fitter apprenticeship, fire protection systems have advanced beyond sprinkler pipes, and it was appropriate to recognise a new apprenticeship in the specific calling of fire protection control. The fire protection industry has a broader focus now and it was necessary to change the apprenticeships recognised under the *Vocational Education, Training and Employment Act 2000* to take account of recent developments.

The effect of declaring a calling to be a restricted calling under clause 64 of the Bill is clear on the face of the legislation. The effect of this declaration is that young persons may only be employed in that calling if they are qualified or are engaged in an apprenticeship or traineeship (see clause 64(2)). This concept is currently used in the *Vocational Education, Training and Employment Act 2000*. It is a term well understood within industry.

During the consultation conducted by the Skills and Training Taskforce on the vocational education and training system, stakeholders advised that the current definition of young person, being someone under the age of 21 years, did not provide industry with sufficient flexibility and did encourage the use of alternative training pathways outside the apprenticeship and traineeship system. The Bill retains the concept of restricted calling but changes the meaning of young person to someone under the age of 18 years.

POINTS FOR CLARIFICATION

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.

Government advice

The Department of Education, Training and Employment currently attempts to contact all apprentices who mutually consent to cancel and are in the 3rd or 4th year of the training contract, and will continue to do so post implementation of the FET Bill. The intent of this contact is to ensure the apprentice understands options other than cancellation and whether further training assistance can be provided, such as early completion, transfer or placement on an out of trade register which facilitates placement back into the apprenticeship to increase completions. Through this contact with apprentices/trainees, the Department can gather information about why the contract was terminated.

Additionally, from 1 July 2014, all cancelled apprentices will be contacted via an automated letter confirming that the training contract has been cancelled and providing contact information for Fair Work Australia and the Department of Education, Training and Employment should they require any further information or have concerns.

Although the Bill does not provide for employment related matters, the Department will continue to assist employers and apprentices/trainees to resolve issues. This assistance will

take a variety of forms such as: providing information on the Department's website at www.training.qld.gov.au; providing notices with updates on important changes or developments in the sector; and operating regional offices and a call centre which also provide advice and assistance. This ensures that employers and apprentices/trainees are aware of their rights and obligations and available avenues for resolving disputes.

In addition, when an apprentice or trainee and employer sign a training contract they are given a briefing on key aspects of the apprenticeship and traineeship system by the Australian Apprenticeship Centre representative. This briefing includes advice about the wide range of matters that can arise during a training contract including employment related matters and the rights of an apprentice/trainee to seek remedies under relevant industrial relations legislation.

The strategies outlined above will enable the Department to gather information in relation to the revised practices for cancellation of training contracts to allow for the ongoing improvement of advice to stakeholders regarding the protections available for the termination of employment under the *Industrial Relations Act 1999* and the *Fair Work Act 2009 (Cth)*.

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.

In particular, the Committee seeks clarification of whether the transfer by an employer of its employees to a labour hire company could be dealt with under clause 22 and the rights of an apprentice/trainee in this situation.

Government advice

The type of amendments the chief executive is likely to make to a training contract under clause 22 are listed in the note under subsection (1). The purpose of making this type of amendment is to ensure the contract is accurate without requiring the parties to submit an application. This power is intended to be used to make minor changes to a contract, particularly where many contracts are affected and it would be onerous on employers and apprentices/trainees to submit applications for amendment.

Clause 22 could be used to make an amendment to the training contract to recognise the change in legal entity of an employer of an apprentice or trainee if the chief executive considered it was appropriate to do so. There is no obligation on the chief executive to use this power and it would be open to the chief executive to instead deal with change of legal entity as a permanent transfer and require the employer to follow the process set out in clause 26. Where the change in legal entity does not change the substance of the employment relationship and there are many employees it would be reasonable to use clause 22 to effect the change to avoid the need for additional applications. For example where an employer changes its company name and the remainder of the arrangements are unchanged clause 22 may be used to facilitate the change of details without requesting an amendment form for each individual apprentice/trainee. Clause 22 may also be used in cases where a Group Training or Principal Employer organisation (GTO/PEO) ceases to trade and existing apprentices/trainees are taken over by another GTO or PEO. In both examples DETE regional staff would be involved and if required written notices would be provided to all affected parties.

The Bill does not deal with employment matters and any transfer of an employee from one entity to another would be subject to provisions in industrial relations legislation about the effect of that transfer on the employee's rights and entitlements. The rights and entitlements of the employee will vary depending on the type of employer, for example whether it is in the National or Queensland industrial relations system.

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.

Government advice

As is current practice, the Bill provides for the chief executive to set probationary periods for apprenticeships and traineeships. During the probationary period either party can end the training contract by giving written notice to the other. Outside of the probationary period the parties will be required to take action to cancel the training contract.

The Bill provides for the extension of the probationary period on application by both parties to the training contract. As the process for ceasing training contracts is simpler during the probationary period, the timeframes in the Bill ensure applications to extend the probationary period are considered prior to the end of the period.

To this end, the Bill encourages parties to make the application within 14 days before the end of the probationary period and requires the chief executive to decide the application within 7 days. Past practice indicates that the 7 day period is sufficient time for the chief executive to make a decision about extending probationary periods. Nevertheless, clause 13 provides for a failure to make a decision within 7 days to be taken to be a refusal of the application. This approach is taken to ensure certainty to parties and prevent the ability for application to be left pending indefinitely. It accords with standard drafting practice in Queensland legislation.

The Bill does not provide for a review of this decision by the Queensland Industrial Relations Commission. It is not practical to provide review rights for this decision given the short timeframes between making a decision and the end of the probationary period. This is consistent with the current approach under the *Vocational Education, Training and Employment Act 2000*.

Other comments made by the Committee

The Committee noted a possible typographical error in clause 82(3). That error has been identified and it is proposed that the Minister for Education, Training and Employment will move an amendment during consideration in detail of the Bill to address that error.

The Committee queried the use of the editor's note throughout the Bill providing the Department's website address. This approach is taken to assist users of the Act, who may only refer to specific sections of the Act relevant to their purposes. It should be noted that the website of www.training.qld.gov.au has been used for many years and has remained the same despite machinery of government changes. It is considered that the use of the note is appropriate in the circumstances.

The Committee also queried the use of a similar provision throughout the Bill dealing with the issue of obtaining parental consent, which includes an example about how parental consent must be obtained. Again, this approach is taken to assist users of the Act, who may only refer to specific sections of the Act relevant to their purposes. This approach accords with modern drafting practice.

In addition, the Committee questioned how an employer would be able to determine whether to obtain consent. The employer will be aware of the apprentice or trainee's age. If the apprentice or trainee is under 18 years of age, the employer would be expected to make reasonable enquiries about whether it is appropriate for the parents to consent but would not be expected to conduct a detailed investigation of the apprentice or trainee's circumstances.