

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2015 - 2016

Agency - Fair Work Ombudsman

Department of Employment Question No. EMSQ15-000183

Senator Cameron provided in writing.

Question

FWO - Memoranda of Understanding

In relation to the Ombudsman's national apprentices campaign and the following statement by Mr. Campbell at page 11 of the proof Hansard of the hearing on 2nd June 2015:
Mr Campbell: As Ms James has pointed out, we have met with industry representatives. We have largely been working with registered training organisations and also bodies which regulate apprentices in each of the states and territories. We have sought to establish information about apprentices in the market at the moment and issues they are facing in a workplace relations perspective. We have also entered into MOUs with at least two of those bodies to formalise the sharing of information about issues facing apprentices.
Please provide copies of the Memoranda of Understanding referred to.

Answer

The Fair Work Ombudsman and the Victorian Registration and Qualifications Authority signed a Memorandum of Understanding on 23 September 2014 to formalise the sharing of information about issues facing apprentices.

A copy of the Memorandum of Understanding between the Victorian Registration and Qualifications Authority and the Fair Work Ombudsman is attached at Appendix A. A copy is also available at www.fairwork.gov.au.

Memorandum of Understanding
Information sharing to facilitate the effective regulation of
apprenticeships and traineeships in Victoria and to
protect and enforce the rights of workers and employers
under Commonwealth workplace relations laws

Between

VRQA	Name	Victorian Registration and Qualifications Authority
	Lynn Glover	Casselden Place Level 4 2 Lonsdale Street Melbourne VIC 3000

- and -

FWO	Name	The Office of the Fair Work Ombudsman ("The Fair Work Ombudsman")
	Michael Campbell	Level 6 414 La Trobe Street Melbourne VIC 3000

RECITALS

- A. The Victorian Registration and Qualifications Authority (VRQA) is a body corporate established under Chapter 4 of the *Education and Training Reform Act 2006* (Vic) (ETR Act) whose functions include the registration and regulation of apprenticeships and traineeships and administering legislation including, and non-limited to, the ETR Act and the Education and Training Reform Regulations 2007.
- B. The Office of the Fair Work Ombudsman (FWO) is a Commonwealth agency established by the *Fair Work Act 2009* (Cth) and is responsible for promoting harmonious, productive and cooperative workplaces and ensuring compliance with the *Fair Work Act 2009*, the Fair Work Regulations 2009 and fair work instruments.

1 Interpretation

1.1 Definitions

For ease of description this Memorandum uses the following terms:

Apprentice means a person whom an employer has undertaken to train under a training contract.

Apprenticeship means the contracted employment and training arrangement between the apprentice and the employer.

Busy Inc (trading as Busy At Work) or any successor has been appointed as an Approved Training Agent for the purposes of Part 5.5 of the ETR Act. Busy At Work is contracted by the VRQA to provide apprenticeship and traineeship regulatory field services and relevant staff have been authorised by the VRQA as Authorised Officers under section 5.8.1 of the ETR Act.

Director VRQA means the person appointed to, holding or acting for the time being in the position of Director of the VRQA.

FWO means the Office of the Fair Work Ombudsman.

Memorandum means this memorandum of understanding.

Parties means the VRQA and the FWO.

Trainee has the same meaning as an apprentice except that either party may cancel the contract by signing a cancellation form or letter stating the date of cancellation. Mutual agreement is not required.

Traineeship means the contracted employment and training arrangement between the trainee and the employer.

Training Contract has the meaning given in Part 5.5 Division 4 in ETR Act.

VRQA means the Victorian Registration and Qualification Authority established under the ETR Act and includes any delegate or successor of the VRQA with responsibility for the matters relating to the VRQA in this Memorandum.

VRQA Executive Manager, Apprenticeships and Traineeships means the person appointed to, holding, or acting for the time being in the position of Executive Manager, Apprenticeships and Traineeships of the VRQA.

2 Purposes of Memorandum

2.1 The purposes of this Memorandum are:

- i. To assist the FWO fulfil its responsibilities in promoting and monitoring compliance with Commonwealth workplace relations laws, as they relate to apprentices and trainees, including the *Fair Work Act 2009* (the Act), the

- National Employment Standards (NES) and relevant industrial instruments within various industry sectors.
- ii. To assist the VRQA fulfil its responsibilities in relation to compliance of employers and their apprentices and/or trainees with their training contract obligations and obligations set out in Part 5.5 of the ETR Act.
 - iii. To set out a common statement of intent and the commitment of both parties.
- 2.2 This Memorandum records the parties' shared understanding and expectations about their respective roles and responsibilities in relation to:
- i. The VRQA's legislative responsibility for the regulation of apprenticeships and traineeships in Victoria under the ETR Act.
 - ii. The FWO's role in promoting harmonious, productive and cooperative workplace relations and ensuring compliance with Australian workplace laws.
- 2.3 This Memorandum is not intended to restrain the VRQA or the FWO in the way it investigates any matter, or how they take decisions to pursue matters to Court, or other outcomes.

3 Obligations

- 3.1 The VRQA and the FWO will give effect to the arrangements and procedures set out in **Annexure A**.
- 3.2 Subject to legal restrictions on information disclosure, the VRQA and FWO will exchange information and respond to requests where relevant, to assist each other in their roles.
- 3.3 The VRQA and the FWO will establish and maintain liaison contacts to ensure the effective operation of this Memorandum.

4 Variation and termination

4.1 Variation

This Memorandum may be varied at any time by agreement of both parties. Any variations must be in writing and signed by both parties.

4.2 Termination

Either party may terminate this Memorandum by providing 28 days notice in writing to the other party.

5 Constraints imposed by Laws

- 5.1 The VRQA and the FWO acknowledge that from time to time the other may be unable to fully comply with all the requirements of this Memorandum due to constraints imposed by laws (including but not limited to Commonwealth and State privacy legislation). Each Party agrees to use its best endeavours to exchange information to the extent permissible by law.

6 No intention to enter legal relations

The parties:

- i. Agree that by entering this Memorandum they have no intention to enter legal relations.

- ii. Confirm that this Memorandum is not a legally binding document and is not enforceable as such, and neither party shall be entitled to any compensation or make any claim on the other before a court or any other person or body arising out of a breach by a party of this Memorandum.

7 Privacy

VRQA and FWO respectively:

- i. Undertake that any disclosure of information, and any use, storage or transfer of such information, shall only be made to the extent permitted by law and, in particular:
- ii. Assure each other that any personal information as defined in the relevant privacy legislation disclosed by one to the other in connection with this Memorandum has been collected in accordance with applicable privacy legislation.
- iii. Assure each other that the disclosure of the information to, and its use by, the organisation to which it is disclosed is authorised by the individual or by law.
- iv. Agree not to use, disclose, store, transfer or handle personal information collected in connection with this Memorandum except in accordance with applicable privacy legislation.
- v. Agree to cooperate with any reasonable request of the other relating to the protection of personal information or the investigation of complaint of personal information.

8 Communication

- 8.1 The VRQA and the FWO agree to meet when requested by the Responsible officers to discuss issues arising in relation to apprentices and trainees in Victoria, including issues arising under this Memorandum.
- 8.2 The exchange of information outlined in this Memorandum will, unless agreed otherwise, occur at an operational level between the Operational officers.
- 8.3 The VRQA and the FWO will publish this Memorandum on their respective websites.

9 Confidential Information

- 9.1 With respect to any information designated as confidential (eg relating to a company) and supplied by one party to the other in connection to this Memorandum, each party agree to:
 - protect the confidential information in a reasonable and appropriate manner and in accordance with any applicable professional standards
 - use and reproduce confidential information only for purposes set out in this Memorandum
 - not disclose or otherwise make available confidential information other than to its personnel who have a need to know the information to give effect to the purpose set out in this Memorandum.
- 9.2 The above paragraph shall not apply to any information which is publically available or permitted to be disclosed to a third party without restriction.

10 Term

This Memorandum has effect from the date it is signed on behalf of the last party to sign it, and operates until 31 December 2016 inclusive, unless varied or terminated in accordance with paragraph 4 or by any right at law.

11 Contacts**11.1 Responsible officers**

The parties acknowledge that the persons appointed to, holding, or acting for the time being in, the following positions will use their best endeavours to facilitate the efficient implementation of this Memorandum.

- i. For VRQA: Executive Manager, Apprenticeships and Traineeships.
- ii. For FWO: Director - Regional Services and Young Workers, Dispute Resolution and Compliance Group.

11.2 Operational officers

The parties acknowledge that the persons appointed to, holding or acting for the time being in the following positions will be responsible for the exchange of information at the operational level to enable the implementation of this Memorandum:

- i. For VRQA: Manager, Apprenticeship Field Officers.
- ii. For FWO: Assistant Director - Young Workers' Team.

11.3 Change in responsible officers and operational officers

The VRQA and FWO may change their responsible officers or operational officers by notifying the other party in writing.

Signing page

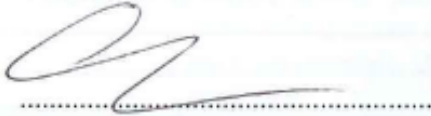
SIGNED by



Lynn Glover, Director

Victorian Registration and Qualifications Authority

in the presence of:



Signature of witness

CHRISTOPHER INGHAM

Name of witness (block letters)

DATED: 23/9/14

SIGNED by



Michael Campbell

Deputy Fair Work Ombudsman (Operations)

in the presence of:



Signature of witness

ROBERT PRICE

Name of witness (block letters)

DATED: 23/9/2014

1. PRINCIPLES

The following general principles will apply in relation to the VRQA and FWO with respect to the investigation of workplace complaints relating to a party or parties to a training contract.

- 1.1 VRQA and FWO will exchange information, to the extent possible that will assist both organisations in the delivery of their services to apprentices and trainees in relation to their entitlements under Commonwealth workplace relations laws, the *Fair Work Act 2009*, the National Employment Standards (NES) and relevant industrial instruments within various industry sectors; and fulfil compliance of employers and apprentices and/or trainees with their training contract obligations and obligations set out in Part 5.5 of the *Education and Training Reform Act 2006*.
- 1.2 VRQA and FWO will provide mutual assistance and support, to the extent possible, when assessing complaints or allegations relating to a party or parties to a training contract who raise/s legitimate employment/training issues that may relate to potential breaches of employment or training contract obligations.

2. JURISDICTION AND RESPONSIBILITIES

- 2.1 **The FWO** is a statutory office created by the *Fair Work Act 2009*. Its jurisdiction under the *Fair Work Act 2009* is to promote harmonious, productive and cooperative workplace relations and ensure compliance with Australian workplace laws. It does this by:
 - providing education, assistance and advice to employers and workers
 - promoting and monitoring compliance with workplace laws
 - investigating workplace acts and practices that are suspected to be contrary to workplace laws
 - enforcing relevant Commonwealth workplace laws.
- 2.2 **The VRQA** administers Part 5.5 of the *Education and Training Reform Act 2006* in relation to apprentices and trainees.
 - 2.2.1 Section 5.5.6 and 5.5.7 requires employers to have the approval of the VRQA to employ apprentices and trainees. In determining whether to approve an employer to employ a person under a training contract, the VRQA must have regard to the employer's ability to comply with the Training Contract, including the following matters:
 - the premises in which the apprentice/trainee is employed
 - the equipment and methods to be used in training
 - whether any person whom the employer uses or proposes to use for the purpose of supervising the training of an apprentice/trainee under a training contract has the appropriate qualifications, knowledge and skills for the purpose and is an otherwise fit and proper person for the purpose

- whether the employer is a fit and proper person for employing an apprentice.

2.2.2 Under Part 5.8 of *Education and Training Reform Act 2006*, the VRQA may appoint persons to be authorised officers for the purposes of that Act, such authorised officers may:

- require the production of any documents relating to the employment of any apprentice or trainee, and inspect and examine them and take copies or extracts from them
- may make any enquires that appear to be necessary to ascertain whether provisions of Part 5.5 of *Education and Training Reform Act 2006* are being or have been complied with.

3. ARRANGEMENTS

To give effect to the principles outlined above:

3.1 Information Sharing

3.1.1 On a regular and frequent basis, FWO will provide information to the VRQA on significant education, compliance and enforcement activities and outcomes involving employers of apprentices and trainees in Victoria

3.1.2 On a regular and frequent basis, VRQA will provide information to the FWO on parties to training contracts where there are reasons to believe that there may be substantial breaches of the *Fair Work Act 2009* and relevant awards.

3.1.3 Any outcomes resulting from referrals, investigations or prosecutions of incidents covered by this **Annexure** will be made available to both parties (subject to legislated restrictions on disclosure any outcomes resulting from investigations or prosecutions of incidents).

3.1.4 VRQA will provide information held on file on a case-by-case basis on request subject to any legal requirements or restrictions.

3.1.5 When using information, the Parties acknowledge each Party's primary responsibility is to comply with the confidentiality requirements of the Acts and privacy policies under which each party operates.

3.2 Formal Meetings

3.2.1 VRQA and FWO will meet formally at least twice a year to share information and discuss strategic and operational issues concerning the employment of apprentices and trainees, over which both have a direct regulatory responsibility.