

Prohibited employers

Purpose

This procedure details the process under the *Further Education and Training Act 2014* (FET Act):

- to declare an employer to be a prohibited employer, and
- for an employer to have a declaration as a prohibited employer revoked.

Overview

Employers may be declared as a prohibited employer if the delegated officer determines they are not suitable to employ an apprentice/trainee.

Employers may also apply to have a declaration revoked.

Process

Employer:

- Upon receiving a show cause notice from the Department relating to a proposal to declare the employer a prohibited employer, provide a written response to the information outlined in the notice by the date stated in the notice.
 - **Note** – Only responses provided by the date stated in the notice will be considered by the delegated officer when making a decision about declaring an employer a prohibited employer.
- Upon receiving an information notice from the Department, the employer must comply with the decision. If the Department decides to declare the employer a prohibited employer, the information notice will state that the employer may apply for revocation of the declaration; and how the employer may apply.
- If an employer is declared a prohibited employer under section 59 of the FET Act, the decision can be appealed through the Queensland Industrial Relations Commission (QIRC).
- If seeking to revoke a declaration as a prohibited employer, apply to the Department, ensuring the application details the reasons why the employer is seeking a revocation.

An [Application to revoke declaration as a prohibited employer \(ATF-042\)](#) is available to assist the employer to apply.

Apprentice Connect Australia Provider (Provider), or the Racing Queensland Board (RQB):

IMPORTANT – Limitation of delegated authority **MUST** be observed. Providers and the RQB do not have delegation to declare an employer to be a prohibited employer under section 59(1) of the FET Act, or to revoke a declaration of a prohibited employer under section 62 of the FET Act. Refer to the [Executive Director's sub-delegations under the FET Act 2014](#) for details of delegated authority.

Regional officer:

- When poor work practices/behaviours of an employer of an apprentice/trainee are suspected, conduct an investigation into the matter. A range of factors may inform an investigation, and these will vary from case to case. Whilst not an exhaustive list of factors and considerations, Attachment 1 may assist in making a decision regarding an employer being a suitable person to employ an apprentice/trainee.
- Exhaust all possible avenues to correct the employer's behaviour, such as education, warnings, or a reprimand.
- If considering making a submission to the Queensland Apprenticeship and Traineeship Office (QATO) recommending an employer be declared a prohibited employer, prior to proceeding take into account the fundamental 23 Human Rights under the [Human Rights Act 2019](#). If proceeding with a submission to QATO –
 - Seek Regional Director endorsement
 - Request the addition of an ad hoc risk identifier (if one has not already been applied).
- Detailed notes (DELTA Contacts) must be recorded throughout the process.
- Undertake the process, if requested by QATO, of cancelling any registered training contracts under section 36(1)(g) of the FET Act, and provide options to any apprentices/trainees affected by the decision to prohibit an employer to maintain their training.

Note – A decision to prohibit an employer under section 59 of the FET Act is appealable to the QIRC.

Regional Director:

- Endorse (or otherwise) submissions from regional officers recommending an employer be declared a prohibited employer.
- If endorsing a submission, forward the submission to QATO at OPRA@desbt.qld.gov.au for consideration.

Note – A decision to prohibit an employer under section 59 of the FET Act is appealable to the QIRC.

Queensland Apprenticeship and Traineeship Office (QATO), Manager:

- Consider submissions recommending employers be declared prohibited employers.
- Seek Legal and Administrative Law Branch opinion.
- Make a recommendation/s to Director, QATO.
- Keep and maintain a register of employers with ad hoc risk identifiers.
- Inform the relevant Australian Government department for the purpose of employer incentive payments if an employer is declared to be a prohibited employer (if applicable).
- Inform other relevant stakeholders if an employer is declared to be a prohibited employer (if applicable).

Note – A decision to prohibit an employer under section 59 of the FET Act is appealable to the QIRC.

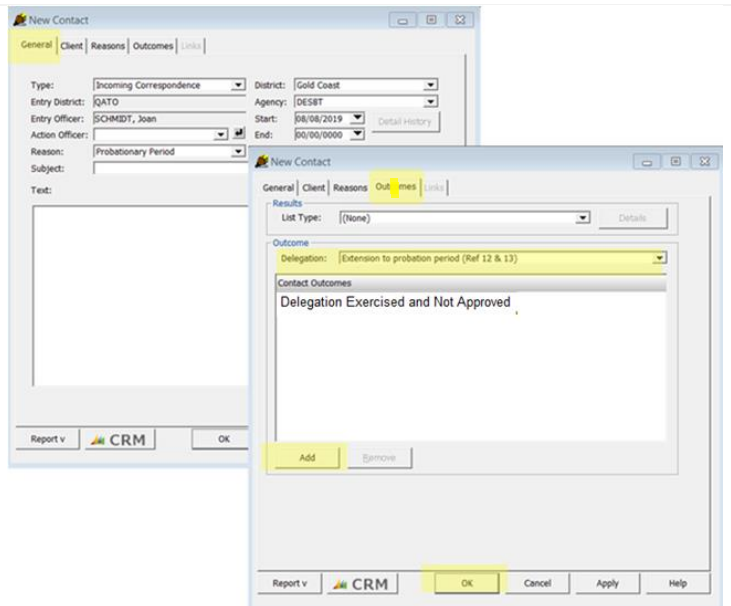
Queensland Apprenticeship and Traineeship Office (QATO), Director:

- Consider the recommendation/s and if supported, undertake a show cause process (note – prior to giving a show cause notice, undertake a HR compatibility review (by completing Part A of the *Human Rights Act 2019 – compatibility review form. Show Cause Notice process*) regarding the proposed decision, taking into account the 23 fundamental Human Rights under the [Human Rights Act 2019](#)).
- Send a show cause notice to the employer stating -
 - that the chief executive proposes to declare the employer to be a prohibited employer; and
 - the reasons for the proposed declaration; and
 - whether the proposed declaration is to apply –
 - indefinitely; or
 - for the period stated in the show cause notice; and
 - whether the proposed declaration is to apply either to –
 - all apprenticeships and traineeships; or
 - only the apprenticeships and traineeships stated in the show cause notice; and

- that the employer may, within 14 calendar days after the notice is given, give the chief executive a written response to the proposed declaration.
- When the show cause period has elapsed, consider any written response received from the employer and make a decision.
- Undertake an HR compatibility review (by completing Part B of the *Human Rights Act 2019 – compatibility review form. Show Cause Notice process*) regarding the decision, taking into account the 23 fundamental Human Rights under the [Human Rights Act 2019](#).
- Advise the employer about the decision -
 - If the decision is not to declare the employer to be a prohibited employer, give the employer an information notice for the decision
 - If the decision is to declare the employer to be a prohibited employer, give the employer an information notice for the decision which states –
 - that the employer may apply for revocation of the declaration; and
 - how the employer may apply.
- Save a copy of the completed Human Rights Compatibility Review Form (Parts A and B) in CEDRIC.
- A copy of the show cause notice and information notice given to the employer, and any other documentation relating to this matter, including written responses provided by the employer, must be saved in CEDRIC.
- Create a DELTA Contact and record the exercising of delegation as follows -

In the training contract maintenance window:

1. On the Links tab create a new Contact.
 - (i) On the General tab, complete the fields.
 - (ii) On the Outcomes tab, select the *Delegation* 'Prohibited Employer (Ref 59, 60, 61)'.
 - (iii) Click on the Add button, select 'Delegation Exercised and Approved' OR 'Delegation Exercised and Not Approved'. Click OK to save.
 - (iv) Click OK in the New Contact window to save.



Note – there is provision in CEDRIC under a Case to also record the exercise of a delegation. Before resolving the Case in CEDRIC, record the exercise of a delegation in the Outcome Tags (Delegation Exercised And Approved OR Delegation Exercised And Not Approved) and the Delegation Tags (Prohibited Employer (Ref 59, 60, 61))

Note – A decision to prohibit an employer under section 59 of the FET Act is appealable to the QIRC.

Revocation process

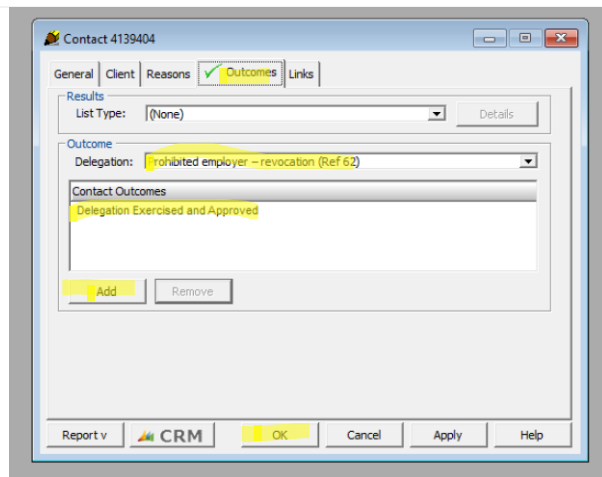
An employer may apply, in the approved form, for the revocation of the prohibited employer declaration. The application must detail the reasons why the employer is seeking a revocation.

Queensland Apprenticeship and Traineeship Office (QATO), Director:

- Consider the revocation application and make a decision. Note – a revocation can only be considered if satisfied the employer is no longer an unsuitable person to employ an apprentice/trainee.
- Send the employer –
 - If the decision is to completely revoke the declaration, a written notice of the decision
 - If the decision is not to revoke, or to partly revoke the declaration, a written notice of the decision, including the reasons for the decision.
- A copy of the written notice given to the employer, and any other documentation relating to this matter, must be saved in CEDRIC.
- If the decision is to revoke the declaration, create a DELTA Contact and record the exercising of delegation as follows -

In the training contract maintenance window:

1. On the Links tab create a new Contact.
 - (i) On the General tab, complete the fields.
 - (ii) On the Outcomes tab, select the *Delegation* 'Prohibited Employer Re-vocation (Ref 62)'.
 - (iii) Click on the Add button, select 'Delegation Exercised and Approved'. Click OK to save.
 - (iv) Click OK in the New Contact window to save.



Note – there is provision in CEDRIC under a Case to also record the exercise of a delegation. Before resolving the Case in CEDRIC, record the exercise of a delegation in the Outcome Tags (Delegation Exercised And Approved) and the Delegation Tags (Prohibited Employer Re-vocation (Ref 62))

Definitions

Ad hoc risk identifier	An automated business rule that is derived from the Department and other departments' legislation, policies and procedures. Additionally, a business rule for a specific purpose may be added for a temporary period. DELTA automatically checks the contract details against all the business rules during the registration process.
Apprentice Connect Australia Provider	Apprentice Connect Australia Providers (Providers), also known as Providers, are contracted by the Australian Government to provide targeted services which deliver

	tailored advice and support to employers, apprentices and trainees. Providers also have an agreement with the Department to provide training contract related services. The Provider is the first point of contact for the administration of all training contracts.
CEDRIC	A Client Relationship Management system used by the Department to capture information on client and stakeholder engagement and correspondence (for internal access only).
DELTA	Direct Entry Level Training Administration, the Department's database of registered apprentices and trainees.
Department or DTET	Department of Trade, Employment and Training
Employer	For the purposes of this procedure, an employer also includes an employer that is a Group Training Organisation (GTO) or a Principal Employer Organisation (PEO).
QIRC	Queensland Industrial Relations Commission
Racing Queensland Board	The Racing Queensland Board (RQB) is the statutory control body for thoroughbred harness, and greyhound codes of racing in Queensland with responsibility for the management of these codes. The RQB has an agreement with the Department to provide training contract related services for training contracts in these codes of racing for the following industry specific occupations – <ul style="list-style-type: none"> • Stablehand traineeship • Trackrider traineeship • Advanced stablehand traineeship • Jockey apprenticeship.
Submission	A brief containing relevant information including: <ul style="list-style-type: none"> • the full legal name and if applicable, employer's structure • the history of unsuitable behaviour of the employer • a list of current apprentice/s and/or trainee/s in one or more apprenticeships or traineeships the proposed declaration will apply to • overview of the investigation with numbered paragraphs, timeline of events, identity of parties, sources of information, analysis of evidence, options and recommendations • copies of all relevant documents/correspondence to and from the employer. • written statements obtained during investigations and investigation reports • signed records of interview/s • recommendations as to whether the declaration is for a particular period or for an indefinite period • if the prohibited status is across the whole workplace or limited to specific apprenticeships/traineeships.

Legislation

- [Further Education and Training Act 2014](#) Sections 59 to 63, 168

Delegations/Authorisations

- [Director-General's delegations under the Further Education and Training Act 2014](#)
- [Executive Director's Sub-delegations under the Further Education and Training Act 2014](#)

Related policies

- Nil

Related procedures

- [False and misleading information](#)

Supporting information/websites

Agreements

- Nil

Forms

- [Application to revoke declaration as a prohibited employer ATF-042](#)
- **SharePoint** – HR compatibility review form – Show Cause notice (*Human Rights Act 2019 – compatibility review form. Show Cause Notice process*) (Departmental employees only)

Work instructions

- Nil

Online materials

- [SharePoint](#) – Prohibited employer – submission template (Departmental employees only)

Letters

- DocumentsCorePack – Prohibited employer – Information notice (Departmental employees only)
- DocumentsCorePack – Prohibited employer – show cause notice (Departmental employees only)
- DocumentsCorePack – Prohibited employer – written notice NOT declare as prohibited (Departmental employees only)
- DocumentsCorePack – Prohibited employer – written notice – decision revoke declaration (Departmental employees only)

Website

- Human Rights: www.qld.gov.au/law/your-rights/human-rights

Contact

For further information, please contact Apprenticeships Info:

- **Website:** www.desbt.qld.gov.au
- **Telephone:** 1800 210 210
- **Email:** apprenticeshipsinfo@qld.gov.au



Attachment 1

Factors to be considered in decision making process

A range of factors may impact on the decision and these will vary from case to case. Whilst this is not an exhaustive list of factors and considerations, the information below may assist with taking the most appropriate action.

Factor	Consideration
Has the application been received in the approved form?	<p>A prohibited employer may apply to the chief executive in the approved form requesting the chief executive to revoke the declaration.</p> <p>Form ATF-042 – Application to revoke declaration as a prohibited employer includes the requirement for an employer to advise the reasons that the declaration should be revoked.</p>
Is the employer a suitable person to employ an apprentice/trainee?	<p>An investigation may involve the following in determining a reasonable belief that an employer is not a suitable person to employ an apprentice/trainee -</p> <ul style="list-style-type: none"> ○ how many training contracts have been cancelled, expired or withdrawn. ○ applications for excessive extensions of the nominal term. ○ applications for training assistance for cancelled apprentices/trainees. ○ complaints or adverse observations, warnings, fines or orders issued. ○ evidence apprentice/trainees are not making progress under their training plan. ○ evidence of previous education, warnings, reprimands. ○ issues identified during monitoring visits. ○ any pattern of behaviour that may question the employer's suitability to train an apprentice or trainee such as: <ul style="list-style-type: none"> ▪ being unable to provide or arrange to provide the facilities, range of work, supervision and training required under a training plan to an apprentice or trainee. ▪ contravening any Act relating to employment. ▪ being convicted of a serious crime. ▪ behaving, or permitting their employees to behave, in an objectionable way towards an apprentice/trainee.