

## Memorandum of Understanding

### Between

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

- And -

FWO	Name	The Office of the Fair Work Ombudsman ("The Fair Work Ombudsman")
	Mark Scully	Level 14 414 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 not limited to, the ETR Act and the Education and Training Reform Regulations 2017.
- B. The Office of the Fair Work Ombudsman (FWO) is a Commonwealth statutory office established by the *Fair Work Act 2009* (Cth) and is responsible for promoting harmonious, productive, cooperative and compliant workplace relations. The functions of the FWO include promoting and monitoring compliance with workplace laws including the *Fair Work Act 2009* (FW Act), the Fair Work Regulations 2009 and industrial 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.

**FWO** means the Office of the Fair Work Ombudsman established under the FW Act.

**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 training contract by signing a cancellation form or letter stating the date of cancellation. Mutual agreement of the trainee and employer 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 Qualifications 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.

## 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 workplace laws, as they relate to apprentices and trainees, including the FW 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 purpose in promoting harmonious, productive, cooperative and compliant workplace relations and ensuring compliance with workplace laws.

2.3 This Memorandum is not intended to restrain the VRQA or the FWO in the way they investigate any matter, or how each party takes decisions including 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 the 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 privacy legislation 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

### 6.1 The parties:

- iii. Agree that by entering into this Memorandum they have no intention to enter legal relations.
- iv. 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. Costs

Unless otherwise agreed, the Participants will pay their own costs and expenses in connection with the preparation, execution and performance of this Memorandum.

## 8. Dispute resolution

The Participants agree that any dispute should be resolved in the spirit of good faith and open communication between the Operational officers in the first instance.

If they are unable to resolve the dispute it will be referred to the party's Responsible officers for resolution.

## 9. Privacy

- 7.1 The VRQA and the FWO respectively 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:

- i. 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 the applicable privacy legislation.
- ii. 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.
- iii. Agree not to use, disclose, store, transfer or handle personal information collected in connection with this Memorandum except in accordance with applicable privacy legislation.
- iv. Agree to cooperate with any reasonable request of the other relating to the protection of personal information or the investigation of a complaint regarding personal information.

## 10. 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 VRQA and the FWO agree to consider collaborating on education, compliance and enforcement activities involving employers of apprentices and trainees in Victoria, where requested by the Responsible officers.
- 8.3 The exchange of information outlined in this Memorandum will, unless agreed otherwise, occur at an operational level between the Operational officers.
- 8.4 The VRQA and the FWO will publish this Memorandum on their respective websites.

## 11. Confidential Information

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

## 12. Term

This Memorandum has effect from the date it is signed on behalf of the last party to sign it, and operates until 30 June 2022 inclusive, unless varied or terminated in accordance with paragraph 4 or by any right at law.

## 13. 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, Skills and Training.
- ii. For FWO: Director - Young Workers Team, Customer Engagement Team and Assisted Small Claims, Compliance & Enforcement.

#### **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:

- iii. For VRQA: Manager, Apprenticeship Field Officers.
- iv. For FWO: Assistant Director – Young Workers Team.

#### **11.3 Change in Responsible officers and Operational officers**

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

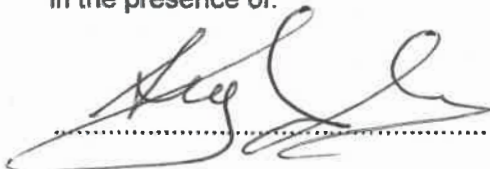
**Signing page**

**SIGNED by**

**Lynn Glover, Chief Executive Officer (Director)**

**Victorian Registration and Qualifications Authority**

in the presence of:



Signature of witness

LEIGHAN MORRELL

Name of witness (block letters)

DATED: 18/6/2020

**SIGNED by**



**Mark Scully**

**Deputy Fair Work Ombudsman (Operations)**

in the presence of:



Signature of witness

Lynda McAlear-Smith

Name of witness (block letters)

DATED: 18/6/2020



# ANNEXURE A

## 1. PRINCIPLES

The following general principles will apply in relation to the VRQA and the 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 workplace laws, the FW Act, 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 ETR Act.
- 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 established by the FW Act. Its purpose is to promote harmonious, productive, cooperative and compliant workplace relations and ensure compliance with workplace laws. It does this by:
  - providing education, assistance, advice and guidance to employers, employees, outworkers, outworker entities and organisations
  - promoting and monitoring compliance with workplace laws
  - inquiring into and investigating breaches of the FW Act
  - taking appropriate enforcement action
  - performing its statutory functions efficiently, effectively, economically and ethically.
- 2.2 The VRQA administers Part 5.5 of the ETR Act in relation to apprentices and trainees.
  - 2.2.1 Sections 5.5.6 and 5.5.7 require employers to obtain 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 ETR Act, 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, examine and take copies of or extracts from those documents

- may make any enquires that appear to be necessary to ascertain whether provisions of Part 5.5 of ETR Act 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 basis, the FWO will provide information to the VRQA on significant education, compliance and enforcement activities and outcomes involving employers and apprentices and trainees in Victoria.
- 3.1.2 On a regular basis, the 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 FW Act 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 of any outcomes resulting from investigations or prosecutions of incidents).
- 3.1.4 The Parties will provide information to one another which is held on file on a case-by-case basis on request, subject to any legal requirements or restrictions.

#### **3.2 Confidentiality of Information**

When using information, the Parties acknowledge each Party's primary responsibility to comply with the requirements of confidentiality pursuant to the laws of the Commonwealth and the State of Victoria and privacy policies under which each party operates.

#### **3.3 Formal Meetings**

The 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.