

Cancel registered training contract by chief executive

Purpose

This procedure details the process for:

- Cancelling, or not cancelling, a registered training contract under the *Further Education and Training Act 2014* (FET Act) for an apprentice or trainee without an application to cancel, and
- re-registering a cancelled training contract following an order by the Queensland Industrial Relations Commission (QIRC) or Fair Work Commission that the employer reinstate an apprentice or trainee's employment.

Note – Racing Queensland has delegations under the FET Act to manage training contracts with support from the Metropolitan North regional office of the Department of Employment, Small Business and Training (DESBT), relating to:

- Stablehand traineeship
- Trackrider traineeship
- Advanced Stablehand traineeship
- Jockey apprenticeship.

This procedure does not apply to training contracts in the above mentioned apprenticeships/traineeships. The procedure titled 'Racing Queensland – management of training contracts' applies to these training contracts.

Overview

Registered training contracts may be cancelled by a delegated officer if the officer is reasonably satisfied that one or more of the grounds stated in section 36 of the FET Act applies.

If the apprentice/trainee's employment is terminated, the apprentice/trainee may seek to contest the cessation of employment. As a result, the QIRC or Fair Work Commission may order the employer to reinstate the employment of the apprentice/trainee into their former apprenticeship/traineeship position. When notified of such a case, if the training contract is already cancelled, the cancelled training contract will be re-registered by DESBT.

Process

Employer:

- Employers are encouraged to contact the Fair Work Ombudsman on 13 13 94 to discuss employment related obligations.
- If the employment of an apprentice/trainee in the apprenticeship/traineeship has ceased, notify the nominated Australian Apprenticeship Support Network (AASN) Provider of this occurrence and the date of effect of cancellation, or DESBT by calling the Apprenticeships Info line on 1800 210 210.
- If aware that the apprentice/trainee is contesting the termination of their employment, refer to the below section titled [Contested termination of employment](#) regarding actions the employer must take.
- If a show cause notice is received from DESBT proposing to cancel the registered training contract with the apprentice/trainee, provide a written response to the information outlined in the notice if required, by the stated in the notice.
 - **Note** – Only responses provided by the date stated in the notice will be considered by the delegated officer when deciding whether to cancel the training contract.
- If an information notice following a show cause process is received from DESBT, the employer must comply with the decision.

- If DESBT decides to cancel the training contract, DESBT will issue an information notice or a written notice which will state the day the cancellation takes effect. The apprenticeship/traineeship of the person who was the apprentice/trainee ends on the day the cancellation takes effect.
- If the training contract is cancelled under section 36(1)(c), (e) or (h) of the FET Act, the decision can be appealed through the Queensland Industrial Relations Commission (QIRC) (refer to Attachment 1 for information regarding section 36(1)(c), (e), and (h) of the FET Act).

Apprentice/Trainee:

- Apprentices/trainees are encouraged to contact the Fair Work Ombudsman on 13 13 94 to discuss employment related obligations.
- If employment in the apprenticeship/traineeship has ceased, notify the nominated AASN Provider of this occurrence and the date of effect of cancellation, or DESBT by calling the Apprenticeships Info line on 1800 210 210.
- If contesting the termination of employment (i.e. a contested event), refer to the below section titled [Contested termination of employment](#) regarding the actions the apprentice/trainee must take.
- If a show cause notice is received from DESBT proposing to cancel the registered training contract with the employer, provide a written response to the information outlined in the notice if required, 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 deciding whether to cancel the training contract.
- If an information notice following a show cause process is received from DESBT, the apprentice/trainee must comply with the decision.
- If DESBT decides to cancel the training contract, DESBT will issue an information notice or a written notice which will state the day the cancellation takes effect. The apprenticeship/traineeship ends on the day the cancellation takes effect.
- If the training contract is cancelled under section 36(1)(c), (e) or (h) of the FET Act, the decision can be appealed through the Queensland Industrial Relations Commission (QIRC) (refer to Attachment 1 for information regarding section 36(1)(c), (e), and (h) of the FET Act).

Delegated officer – AASN Provider or DESBT:

IMPORTANT – Limitation of delegated authority MUST be observed when making a decision whether to cancel the registered training contract. AASN Providers do not have delegation to cancel a registered training contract under section 36(1)(c), (e), (f), (g), (h), (j), or (k). Refer to the [Executive Director's sub-delegations under the FET Act 2014](#) for details of delegated authority (note – AASN Providers who are also the employer for the registered training contract do not have delegation under sections 36 or 39(2) of the FET Act. AASN Providers must refer the notification information to DESBT via apprenticeshipsinfo@qld.gov.au for DESBT to action).

- If notification is received that the apprentice/trainee has commenced (or will be commencing) proceedings contesting the termination of employment (i.e. a contested event) refer to the below section titled [Contested termination of employment](#).
- Consider events affecting the registered training contract and whether there may be grounds for cancellation under section 36 of the FET Act (refer to [Attachment 1](#) for information to consider, including a brief description of the intent of each sub-section under section 36 and some examples of evidence).
 - If the details have been received by DESBT from a stakeholder other than the nominated AASN Provider, and no advice has been received of pending action by the apprentice/trainee contesting the termination of their employment, send the details to the nominated AASN Provider (if within the limits of their delegated authority).
- Verify information received.
 - Document all attempts to contact the parties to the contract, and where contact has been successful, document details of the discussion, for example agreement to the date of effect of cancellation.
 - During the verification process if contact has been successful, question if the apprentice/trainee has gone to a new employer. If so, the correct action relating to the registered training contract might be a permanent transfer rather than cancellation (where applicable, preservation of the training contract should occur rather than cancellation).
 - If considered feasible or appropriate in the circumstances, discuss alternatives to cancellation such as completion or amending the training contract (e.g. full-time to part-time).

- Provide the affected apprentice/trainee (or employer) with Fair Work Ombudsman and/or Queensland Training Ombudsman information if considered appropriate (refer to Attachment 2).
- Decide which sub-section under section 36 the cancellation should be progressed under, appropriate to the circumstances.
 - If considering cancellation under section 36(1)(i) – *the apprentice or trainee is no longer employed by the employer* – ensure cancellation of the training contract does NOT occur until at least 21 calendar days after the employment ceased.
 - i. **Note** – The 21 calendar days allows the apprentice or trainee to commence proceedings contesting the termination of employment. Cancellation of the training contract must NOT occur during this period of time.
- Consider whether it is practicable to give the parties to the training contract (i.e. employer and apprentice/trainee) a show cause notice proposing to cancel the training contract (refer to Attachment 2 for information to consider).
 - If giving a show cause notice is NOT practicable, progress the cancellation.
 - If giving a show cause notice is considered practicable:
 - i. **AASN officers** – take no further action regarding the cancellation notification, and immediately notify DESBT at apprenticeshipsinfo@qld.gov.au using the following naming convention in the subject line of the email to assist prioritisation:
<CancShowCause> <Registration number> <Apprentice/trainee's surname>
 - ii. **DESBT officers** – refer to the below section titled [Show cause process](#).
- In making a decision, take into account the 23 fundamental Human Rights under the [Human Rights Act 2019](#).
 - Note – mandatory for section 36(1)(i) only - undertake a HR compatibility review (for the apprentice/trainee, and if applicable, the employer) by completing the associated HR compatibility review form.
 - i. **AASN officers** – retain on file and also submit a copy via DELTA.
 - ii. **DESBT officers** – save in CEDRIC against the training contract
- If the delegated officer decides to cancel the training contract (with NO show cause notice given).
 - **AASN officers** – send details of the decision to DESBT via DELTA.
 - **DESBT officers** – update DELTA and ensure any related documentation is saved in CEDRIC against the training contract.

Note – if there was no show cause process, DESBT will give the employer and apprentice/trainee a written notice of the date of the cancellation. If there was a show cause process, refer to the section below titled 'Show cause process'.

- DESBT officers – refer to the section below titled 'Section 36(1)(e) – the contract contains false or misleading information' for additional requirements when considering cancelling a registered training contract due to false or misleading information.

Show cause process

Delegated officer – DESBT:

When giving a show cause notice is considered practicable (for any sub-sections of section 36):

- 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 parties to the registered training contract stating -
 - that the chief executive proposes to cancel the contract; and
 - the reasons for the proposed cancellation; and
 - that the party may, within 14 days after the notice is given, give the chief executive a written response to the proposed cancellation.

Note – a letter is also available to send to the parent/guardian if applicable and appropriate.
- When the show cause period has elapsed, consider any written responses received from the parties and make a decision.
- Undertake a 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](#).

- Send each party to the training contract an information notice (if the decision is to cancel) or a written notice (if the decision is not to cancel) of the decision
 - If the decision is to cancel under section 36(1)(c), (e), or (h) the information notice must also include the reasons for the decision.
- Note** – a letter is also available to send to the parent/guardian if applicable and appropriate, and school if applicable.
- Save a copy of the completed Human Rights Compatibility Review Form (Parts A and B) in CEDRIC against the training contract.
- Detailed information must be retained in CEDRIC against the training contract throughout the process.
- A copy of the show cause notice and information notice given to the employer and apprentice/trainee (and correspondence given to the parent/guardian and school if applicable), and any other documentation relating to this matter, including written responses provided by the employer and/or apprentice/trainee, must be saved in CEDRIC against the training contract.

Note – A decision to cancel a registered training contract under section 36(1)(c), (e) or (h) of the FET Act is appealable to the QIRC.

Investigating officer – DESBT:

- A delegated officer – DESBT may decide to allocate the investigation of the grounds for cancellation to an investigating officer – DESBT. In these cases, the investigating officer will follow the process as per the delegated officer – DESBT above. The delegated officer will oversee the investigation. The investigating officer will prepare all the written notices, show cause notices and information notices for review and signing off by the delegated officer.

Section 36(1)(e) – the contract contains false or misleading information

Delegated officer – DESBT

- Prior to cancelling a registered training contract under section 36(1)(e), seek endorsement of the proposal from the local Regional Director, DESBT.
 - Include any recommendations and/or actions to be taken against the relevant party/parties.
- If the proposal to cancel under section 36(1)(e) is endorsed by the local Regional Director, and a show cause process is considered practicable, follow the general show cause process as detailed in the section above titled 'Show cause process'.
 - If the proposal is endorsed by the local Regional Director, however a show cause process is not undertaken, cancel the registered training contract and give the parties (i.e. the employer, apprentice/trainee, and parent/guardian if applicable and appropriate) written notice of the date of cancellation.
 - If the proposal is not endorsed by the local Regional Director, determine and facilitate at a regional level alternative action that might be required.
- If a show cause process was undertaken, and the decision is to cancel the training contract, notify the local Regional Director, DESBT of the decision.

Regional Director, DESBT:

- Endorse, or otherwise, proposals by delegated officers – DESBT to cancel training contracts under section 36(1)(e) – *the contract contains false or misleading information*.
- On receiving notification from a delegated officer that the decision, after having undertaken a show cause process, is to cancel a training contract, notify the Queensland Apprenticeship and Traineeship Office at OPRA@desbt.qld.gov.au.

Queensland Apprenticeship and Traineeship Office (QATO), DESBT:

- Notify Contract Management, DESBT of the action/s taken and the recommendations made if the reason/s for cancellation under section 36(1)(e) had any implications to a supervising registered training organisation (SRTTO) with a Skills Assure Supplier (SAS) status.
- Notify the relevant Australian Government department of the action/s that DESBT has imposed, for their consideration, if the reason/s for cancellation under section 36(1)(e) had any implications with respect to employer incentives.

Contract Management, DESBT:

- Facilitate any necessary actions in response to notifications from QATO, DESBT regarding cancellations under section 36(1)(e) relevant to the [User Choice Policy](#) in respect of SRTOs with a SAS status.

Contested termination of employment

Employer:

- Notify the nominated AASN Provider or DESBT in writing within 14 calendar days if the employer becomes aware the person who is/was the apprentice/trainee has:
 - made an application for unfair dismissal under section 394 of the *Fair Work Act 2009* (C'wlth); or
 - made an application for reinstatement under section 317 of the *Industrial Relations Act 2016*; or
 - commenced another proceeding contesting the cessation of employment.
- Notify DESBT by calling the Apprenticeships Info line on 1800 210 210 as soon as possible after becoming aware of the outcome of the application/proceeding.

Apprentice/Trainee:

- Notify the nominated AASN Provider or DESBT by calling the Apprenticeships Info line on 1800 210 210 if you:
 - make an application for unfair dismissal under section 394 of the *Fair Work Act 2009* (C'wlth); or
 - make an application for reinstatement under section 317 of the *Industrial Relations Act 2016*; or
 - commence another proceeding contesting the cessation of employment.
- Promptly notify DESBT by calling the Apprenticeships Info line on 1800 210 210 after becoming aware of the outcome of the application/proceeding.

AASN Provider:

- If the AASN Provider becomes aware that the person who is/was the apprentice/trainee has made (or will be making) an application or commenced (or will be commencing) a proceeding contesting termination of employment, take no further action regarding the cancellation notification, and immediately email DESBT (even if the training contract has already been cancelled) at apprenticeshipsinfo@qld.gov.au using the following naming convention in the subject line of the email to assist prioritisation:
<ContestedEvent> <Registration number> <Apprentice/trainee's surname>.
- If the employer or the person who is/was the apprentice/trainee contacts the AASN Provider in relation to an outcome of the application/proceeding, redirect the party to contact DESBT by calling the Apprenticeships Info line on 1800 210 210.

Training and Skills, DESBT:

- If DESBT becomes aware that the person who is/was the apprentice/trainee has made (or will be making) an application or commenced (or will be commencing) a proceeding contesting termination of employment, record the details in CEDRIC against the training contract and refer the matter to the relevant DESBT regional office to follow up and monitor the outcome. The DESBT regional office will:
 - If the registered training contract has not yet been cancelled, take no action regarding the cancellation notification until the outcome of the contested event is known.
 - If notification is received that the Queensland Industrial Relations Commission (QIRC) or the Fair Work Commission has made an order that the employer reinstate the employment of the apprentice or trainee into their former apprenticeship/traineeship position –
 - i. If the registered training contract has not yet been cancelled (i.e. still active or active-recommencement), no further action is required
 - ii. If the registered training contract has already been cancelled, an appropriately delegated officer – DESBT must oversee the re-registration of the cancelled training contract.

Note – Refer to the below section titled [Re-registration of a cancelled training contract](#) for more information.

- If notification is received of an outcome other than above, record the details in CEDRIC against the training contract and take no further action regarding the outcome (i.e. if the training contract is already cancelled no action is required, or if the training contract is still active, continue to action the cancellation as per normal). Examples of other outcomes may be:
 - i. a reinstatement order to another position with the employer; or

- ii. a reinstatement order to the former apprenticeship/traineeship position that is now with an associated entity of the employer; or
- iii. an order for the payment of compensation.

Re-registration of a cancelled training contract

Delegated officer – DESBT:

Section 40D of the FET Act provides that an appropriately delegated officer must, as soon as practicable after receiving notification of a decision to reinstate the employment of an apprentice/trainee:

- re-register the apprentice/trainee's training contract; and
- provide each relevant entity (i.e. employer, apprentice/trainee and parent/guardian if applicable and appropriate, the SRT0 for the cancelled contract, the school if applicable, and the AASN Provider) written notices stating:
 - that the cancelled training contract has been re-registered as a registered training contract
 - that the nominal term of the re-registered training contract is extended by the period the contract was cancelled before being re-registered
 - the date the nominal term ends taking into account the period of extension
 - that the training plan for the apprentice/trainee under the cancelled training contract continues in force unless the parties enter into a new training plan.
- Record the details regarding the order to reinstate employment and the date training recommences in CEDRIC against the training contract.
- Save all associated documentation in CEDRIC against the training contract.
- At a regional level, develop a strategy for monitoring the apprentice/trainee's re-employment, where necessary.

Note – This provision relates to cancellations under Division 6 of the FET Act and therefore does not include registered training contracts cancelled under section 29 of the FET Act, or relate to completion certificates cancelled under section 53 of the FET Act.

AASN Provider:

- If notified by DESBT that a cancelled training contract has been re-registered as a registered training contract, update organisational records accordingly.

Definitions

AIRDOCS	A system used by DESBT for letter templates which are subsequently generated through DELTA.
Australian Apprenticeship Support Network (AASN) Provider	AASN Providers, also known as Apprenticeship Network Providers, are contracted by the Australian Government to provide targeted services which deliver tailored advice and support to employers, apprentices and trainees. AASN Providers also have an agreement with DESBT to provide training contract related services. The AASN Provider is the first point of contact for the administration of all training contracts.
CEDRIC	A Client Relationship Management system used by DESBT to capture information on client and stakeholder engagement and correspondence (for internal access only).
Contested event	A 'contested event' means the apprentice/trainee is claiming unfair dismissal or seeking the reinstatement of their employment (not just remuneration).
Date of effect of cancellation	<ol style="list-style-type: none"> 1. If a show cause process has been followed, the date of effect is the date indicated in the notice of the decision issued by the DESBT delegated officer. 2. Where the delegated officer reasonably considers it is not practicable to issue a show cause notice to the parties to a registered training contract, the date of effect is the date provided by either party to the training contract. 3. Where notification that employment has ceased comes from a third party (e.g. school, SRT0), and the delegated officer is unable to contact either party to the registered training contract to determine the actual date of termination, the date of effect is the date the delegated officer came to the reasonable belief that employment had ceased.

Delegated officer	An appropriately qualified person to whom the chief executive has delegated functions and powers.
DELTA	Direct Entry Level Training Administration – DESBT's database of registered apprentices and trainees (for internal access only)
DESBT	Department of Employment, Small Business and Training
False or misleading information	Information that a party to the training contract may have intentionally provided which, if revealed/identified at the time of signing and lodging the training contract, may have or would have resulted in the training contract not being registered.
Not practicable	Does not mean 'impossible' but means more than 'inconvenient' or 'difficult'. For example, the business has closed down and mail would not be delivered.
Prohibited employer	DESBT has declared an employer to be a prohibited employer
QATO	Queensland Apprenticeship and Traineeship Office, DESBT
QIRC	Queensland Industrial Relations Commission
Skills Assure Supplier (SAS)	The Skills Assure Supplier (SAS) system provides a central register of pre-approved registered training organisations for the delivery of training and assessment services subsidised by the Department of Employment, Small Business and Training.
Supervising registered training organisation (SRTTO)	Is a registered training organisation that: <ol style="list-style-type: none"> 1. accepts a nomination to deliver training and assessment to apprentices or trainees as negotiated and agreed under individual training plans; 2. assesses an employer's capacity to provide the supervision, facilities and training required under the training plan for an apprentice or trainee; 3. assesses whether the apprentice or trainee has completed the training and assessment required to be completed under a training plan; and 4. when satisfied the apprentice or trainee has completed the training and assessment required, issues the qualification or statement of attainment stated in the training plan, and is a signatory on a completion agreement verifying that all training and assessment required under the training plan has been completed by the apprentice or trainee.

Legislation

- [Further Education and Training Act 2014](#) – Sections 36 to 40D, 58, 58A, 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

- [Declaration of apprenticeships and traineeships in Queensland policy](#)
- [Electronic signing policy for apprenticeships and traineeships in Queensland](#)
- [School-based apprenticeships and traineeships policy – Queensland and Norfolk Island](#)
- [User Choice Policy](#)

Related procedures

- [Adequate training arrangements](#)
- [Cancel registered training contract by one party](#)
- [Cancel registered training contracts by all parties](#)
- [Transfer of registered training contracts – permanent or temporary](#)
- [False and misleading information](#)

Supporting information/websites

Agreements (DESBT and AASN Providers only)

- Protocols between DESBT and the AASN Providers
- Services Agreement (or Deed of Agreement) between DESBT and AASN Providers

Forms

- [Notification that employment has ceased – ATF-043](#)
- **SharePoint** – HR compatibility review form – general decision (*Human Rights Act 2019 – compatibility review form. Australian Apprenticeship Support Network (AASN) Provider decision*) (AASNs)
- **SharePoint** – HR compatibility review form – general decision (*Human Rights Act 2019 – compatibility review form. Decision (when no Show Cause process undertaken)*) (DESBT)
- **SharePoint** – HR compatibility review form – Show Cause notice (*Human Rights Act 2019 – compatibility review form. Show Cause Notice process*) (DESBT)

Work instructions

- Cancellation by the chief executive (section 36)

AASN officers can access AASN Work Instructions in the [AASN library on SharePoint](#).

DESBT officers can access DESBT Work Instructions at this [internal website](#).

Online materials

- **SharePoint** – Guide to the show cause process and evidence based decision making (DESBT)

Letters

DESBT employees only:

- AIRDOCS – Canc by CE – Written Notice – No Show Cause 36(1)(a)
- AIRDOCS – Canc by CE – Written Notice – No Show Cause 36(1)(b)
- AIRDOCS – Canc by CE – Written Notice – No Show Cause 36(1)(d)
- AIRDOCS – Canc by CE – Written Notice – No Show Cause 36(1)(f)
- AIRDOCS – Canc by CE – Written Notice – No Show Cause 36(1)(i)
- AIRDOCS – Pre-Cancellation Letter (Apprentice Initiated) 36i
- AIRDOCS – Pre-Cancellation Letter (Employer Initiated) 36i
- AIRDOCS – Registration\Cancellation Combination Letter
- AIRDOCS – Reinstate Training Contract to Active
- DocumentCorePack – Cancel by chief exec – information notice AFTER SHOW CAUSE – cancel 36 C E H
- DocumentCorePack – Cancel by chief exec – written notice cancel A B D F G I J K
- DocumentCorePack – Cancel by chief exec – written notice cancel NO show cause
- DocumentCorePack – Cancel by chief exec – written notice NOT cancel AFTER SHOW CAUSE - 36 A to K
- DocumentCorePack – Cancel by chief executive – show cause 36 A to K – EMP-APP-Parent

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

Intent of the sub-sections under section 36

The delegated officer must decide the correct section of the FET Act under which to progress the cancellation of a registered training contract. Below is a brief description of the intent of each sub-section under section 36. Examples of evidence that may support each sub-section is also provided. It is not a comprehensive list but a guide to assist in understanding the sub-section.

***Note** – A decision to cancel a registered training contract under section 36(1)(c), (e) or (h) may be appealed to the Queensland Industrial Relations Commission (QIRC).

Section of the FET Act	Intent / Examples for the section
36(1)(a) – the employer has ceased business	<p>The employer is no longer trading.</p> <p>To obtain evidence that may support this section the delegated officer may:</p> <ul style="list-style-type: none">• conduct a drive by of the registered business address• speak to neighbouring businesses• check the status of the business on the ABN Lookup website: https://abr.business.gov.au/• search ASIC published notices: https://insolvencynotices.asic.gov.au/browsesearch-notices• check the employer's business website for any notices• speak to the apprentice/employer.
36(1)(b) – the employer has ceased operating the business in which the apprentice or trainee under the contract was employed	<p>The employer may have several arms of the business and will continue trading but will be closing down the business arm that the apprentice/trainee was employed under.</p> <p>Consider:</p> <ul style="list-style-type: none">• speaking to employer regarding the business arm that has closed and establishing whether the new structure could provide the range of work for any outstanding competencies• speaking to the apprentice/trainee to establish their understanding of the new business structure• speaking to other workers within the business to confirm that the business arm the apprentice/trainee was employed under has ceased operating.

Section of the FET Act	Intent / Examples for the section
36(1)(c)* – there has been a substantial change in a party's circumstances and the change has affected the party's capacity to perform their obligations under the training contract	<p>Since the commencement of the training contract, the circumstances of the employer or apprentice/trainee have changed substantially and, as a result, that party is unable to perform their obligations under the training contract.</p> <p>For example:</p> <ul style="list-style-type: none"> • The business was financially viable when the apprentice/trainee was employed, however now it is running at a loss. • The apprentice/trainee was interested in pursuing a career in the apprenticeship/traineeship pathway, however now does not wish to stay in the industry. • The apprentice/trainee's health has declined significantly and they are unable to continue as a result. • There is no longer the range of work and/or the appropriate level of supervision in the workplace for the apprentice/trainee. • The apprentice/trainee has relocated to a place from which it is impracticable or unreasonable for them to travel to the workplace.
36(1)(d) – the employer has moved the employer's business to a place to which it is impracticable or unreasonable for the apprentice or trainee to travel	<p>There is no set distance that would be deemed 'impracticable or unreasonable' to travel. Each apprentice/trainee's situation is different. As a first step to understanding the apprentice/trainee's situation, ask them why they believe it is 'impracticable/unreasonable' for them to travel.</p> <p>Consider, for example:</p> <ul style="list-style-type: none"> • the financial implications for the apprentice/trainee – such as an increased cost of petrol/vehicle maintenance associated with travel to the new location • public transport – Is this available to get the apprentice/trainee to the new location? Is it practicable based on the apprentice/trainee's occupation (i.e. do they have to carry a lot of tools) • travel time – Is there a significant increase due to the relocation of the business?
36(1)(e)* – the training contract contains false or misleading information	<p>Use the information supplied by the parties in the completed training contract to establish whether false or misleading information was provided by a party/the parties, and whether this significantly impacts on the terms and conditions of the training contract.</p> <p>It would be necessary to establish that the party knowingly and intentionally gave false and/or misleading information.</p>
36(1)(f) – the SRTO withdraws from the training plan for the training contract and a replacement SRTO has not been nominated	<p>This section relates to an SRTO that has a non-current/cancelled or withdrawn status as a registered training organisation (RTO), or no longer has the scope to deliver the qualification and there is no replacement RTO that has the scope to deliver the qualification.</p>
36(1)(g) – the employer has been declared a prohibited employer	<p>The employer has been declared a 'prohibited employer' under section 59 of the FET Act.</p> <p>Confirm with QATO that the employer has been declared a prohibited employer and that the restriction on the employer extends to the apprenticeship/traineeship, qualification or mode.</p>

Section of the FET Act	Intent / Examples for the section
36(1)(h)* – the employer is failing, or has failed, to comply with their obligations under the FET Act or the training contract	<p>Use the FET Act and/or the training contract to determine whether the employer is failing, or has failed, to comply with the FET Act or the training contract.</p> <p>For example:</p> <ul style="list-style-type: none"> • The employer is not providing the apprentice/trainee with the facilities, range of work, supervision and training. • The employer is obstructing the apprentice/trainee from participating in training and assessment specified in the training plan. • The employer is inducing or coercing the apprentice/trainee to not participate in training.
36(1)(i) – the employment of the apprentice or trainee has ceased	<p>The apprentice/trainee no longer works in the workplace in any capacity.</p> <p>For example:</p> <ul style="list-style-type: none"> • A 'Notification that employment has ceased' form has been received and the information provided verified. • The employer or apprentice/trainee has verbally confirmed the termination of employment on a particular date. • A third party has advised that the apprentice/trainee is no longer employed at a workplace and this information has been verified.
36(1)(j) – the apprentice/trainee is a school student and the school withdraws support for the student's participation under the training contract	<p>Either the school that originally supported the SAT contract withdraws their consent or, if the school-based apprentice/trainee changes schools, the new school does not support the continuation of the SAT contract.</p> <p>Before cancelling the training contract, consider whether amending to part-time arrangements would be an option.</p>
36(1)(k) – the training contract was registered in error	<p>The training contract has been registered when it should have been refused.</p> <p>Some common examples are training contracts registered:</p> <ul style="list-style-type: none"> • without SRTO acceptance • without school support for a SAT contract • without an approved business case for a SAT outside of year 10, 11 or 12 • the apprentice/trainee does not hold a visa that permits them to work in Australia.

Attachment 2

Factors to be considered in decision making process

A range of factors may impact on the decision of the delegated officer 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
Is an application required in order to cancel a training contract in relation section 36?	Section 36 of the FET Act does not require an application (or written notice) in order to cancel a registered training contract.
What might affect an officer's decision to proceed with cancelling under section 36?	<p>(1) If advice is received during the verification process that an apprentice/trainee has gone to a new employer, the correct action relating to the registered training contract might be a permanent transfer rather than cancellation</p> <p>(2) During verification/investigation it may be determined that completion of the registered training contract is feasible</p> <p>(3) During verification/investigation it may be determined that amending the registered training contract to part-time arrangements will resolve the need to cancel</p> <p>AASN Providers have delegation for four sub-sections under section 36 of the FET Act – 36(1)(a), (b), (d), and (i). If an AASN Provider believes grounds for cancellation relate to s36(1)(c), (e), (f), (g), (h), (j) or (k) they must refer the matter to DESBT.</p> <p>AASN Providers do not have delegation to cancel a registered training contract when they are also the employer. The AASN Provider must refer the matter to DESBT.</p>
Does advice that employment has ceased need to be submitted on the 'Notification that employment has ceased' form?	No. cancellations under section 36 of the FET Act are about cancellations without application. There is no requirement for the advice to be in writing and there is no approved form – advice can be provided verbally. It is however a requirement that attempts are made to verify the information with the parties, and to record and retain details regarding the verification in CEDRIC against the training contract (DESBT) or in File Notes (AASN).
What should an officer do if advice is received from a third party, such as a supervising registered training organisation, that a registered training contract has been cancelled?	<p>Attempt to contact the parties to the training contract to confirm there are grounds for cancellation and to determine the actual cancellation date.</p> <p>If unable to contact either party, the date of effect of cancellation is the date the delegated officer reasonably believes the training contract ended. Record and retain details in CEDRIC against the training contract (DESBT) or in File Notes (AASN) supporting how this date was determined.</p>
What should an officer do if a training contract was cancelled after failed attempts to contact the parties, and subsequently found that cancellation should not have happened?	Send an email to OPRA@desbt.qld.gov.au providing information on the circumstances which led to the belief that the training contract should be cancelled, and request OPRA's advice and assistance.
If advice is received that a training contract with an 'expired' status has cancelled, should action be taken to cancel the training contract?	<p>If the date of cancellation is:</p> <ul style="list-style-type: none"> • <u>before</u> the nominal term end date – process the cancellation in the usual way; • <u>after</u> the nominal term end date – no action regarding the cancellation is required to be taken.

Is an apprentice/trainee eligible to continue their funded training under the User Choice program if their training contract is active and cancellation is pending a contested event?	<p>Normally training assistance would be available only where the training contract has been cancelled, however where employment has ceased and cancellation of the training contract is pending the outcome of a contested event (e.g. unfair dismissal, reinstatement of employment, etc), it may be possible for the apprentice/trainee to still attend the training.</p> <p>Eligibility would include the following conditions:</p> <ul style="list-style-type: none"> • The apprentice/trainee was already booked to attend training with the SRTTO at the time of their dismissal; • DESBT has been informed that the employment of the apprentice/trainee by the employer under the training contract has ceased; • The apprentice/trainee has provided notice of a contested event; • Cancellation of the training contract is pending the outcome of the contested event, and DESBT is monitoring the progress of this; • The apprentice/trainee would have been eligible for funded training with the SRTTO under the User Choice program, had they remained employed in the apprenticeship/traineeship; • The apprentice/trainee lodges form ATF-015 – Training assistance for cancelled apprentices and trainees, stating the dates of the proposed training and signed by the apprentice/trainee and SRTTO, to DESBT for approval before attending training; • Approval by DESBT is required before any continued attendance at the SRTTO commences.
Can an AASN Provider cancel a training contract if they are not the AASN Provider for that particular training contract, for example, to do a new sign-up of the apprentice/trainee with a different employer?	No. If an AASN Provider needs an active training contract cancelled in order to allow for a new training contract to be registered, and they are not the AASN for the old contract, they need to contact the AASN Provider for the old contract and request that AASN to action cancellation.
Can a mutual consent cancellation application be actioned under section 36 of the FET Act?	<p>If a mutual consent cancellation application is received that doesn't contain the signatures of all parties, in the first instance attempt to obtain the missing signature/s.</p> <p>If the signature/s cannot be obtained, cancellation cannot be actioned under section 35 of the FET Act (i.e. cancellation on application by all parties), however the application supports that grounds for cancellation may exist therefore cancellation can be progressed under section 36 of the FET Act.</p>
Can a training contract be cancelled during a suspension period?	Yes, however the suspension period end date will need to be amended to reflect the date of cancellation to ensure the SRTTO can claim under User Choice funding arrangements, if applicable (note – process the cancellation as per the Work Instructions).
If advice is received in writing on a notification that employment has ceased form however the effective date of cancellation is within the probationary period, is this a cancellation under section 36 or a withdrawal in probationary period?	If the apprenticeship/traineeship has ended before the end of the probationary period, process as a withdrawal during the probationary period even if the advice was received in writing on a notification that employment has ceased form.
When would it be appropriate to provide the affected apprentice/trainee (or employer) with	If an employer or employee requires advice or guidance regarding work related matters, for example, pay and entitlements or resolving workplace issues, the Fair Work Ombudsman can be contact by:

<p>Fair Work Ombudsman and/or Queensland Training Ombudsman information?</p>	<ul style="list-style-type: none"> • Web: www.fairwork.gov.au • Telephone: 13 13 94 <p>If any party to the training contract disagrees with a decision, they may contact the Queensland Training Ombudsman who will conduct a review of the decision and, if necessary, make a recommendation to DESBT if it is seen that a delegated officer has not followed the correct process. The Queensland Training Ombudsman can be contacted by:</p> <ul style="list-style-type: none"> • Telephone: 1800 773 048 • Email: info@trainingombudsman.qld.gov.au • Web: www.trainingombudsman.qld.gov.au
<p>When might it be considered practicable (or not practicable) to undertake a show cause process?</p>	<p>It might be considered 'not practicable' to undertake a show cause process if, for example, the business has closed down and mail would not be delivered.</p> <p>If there is no evidence to the contrary or no doubt that grounds for cancellation apply in accordance with one of the subsections of section 36(1) of the FET Act, it would generally be considered not practicable to undertake a show cause process. Note - this does not mean a delegated officer cannot undertake a show cause process. The decision is ultimately the delegated officers and should be determined on a case-by-case basis.</p> <p>It might be considered 'practicable' to undertake a show cause process in relation to section 36(1)(c), (e), or (h). A show cause process provides the parties to the training contract an opportunity to submit a written response to the proposed cancellation and therefore may provide additional information which will assist in making a decision. Sections 36(1)(c), (e), and (h) are appealable.</p>