



New South Wales

# Apprenticeship and Traineeship Regulation 2017

under the

Apprenticeship and Traineeship Act 2001

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Apprenticeship and Traineeship Act 2001*.

GIOVANNI BARILARO, MP  
Minister for Skills

## Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the *Apprenticeship and Traineeship Regulation 2010*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the making of applications to establish apprenticeships and traineeships,
- (b) the employment of persons under the age of 21 years in certain trade vocations,
- (c) the payment of the expenses of witnesses before the Civil and Administrative Tribunal of New South Wales in connection with apprenticeships and traineeships,
- (d) the procedures relating to appeals,
- (e) the form for an industry training officer's certificate of identification,
- (f) the payment of fees and the circumstances in which fees may be waived or refunded,
- (g) the nomination of persons for appointment to the Vocational Training Review Panel of New South Wales,
- (h) repeals, savings and formal matters.

This Regulation is made under the *Apprenticeship and Traineeship Act 2001*, including sections 7 (7), 25 (2) (c), 46 (3), 54 (1), 55 (1), 67 (6), 75 and 81 (the general regulation-making power) and clauses 2 and 5 (2) of Schedule 1.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

## Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definition	3
4 Applications to establish apprenticeships and traineeships	3
5 Preparation of training plans	4
6 Duties of registered training organisations	4
7 Juniors may be employed in certain trade vocations	4
8 Witnesses' expenses	5
9 Applications to Review Panel for reviews of decisions of Commissioner	5
10 Appeals to NCAT against decisions of Review Panel	5
11 Certificates of identification	5
12 Fees	6
13 Nomination of members for Review Panel	6
14 Repeal and savings	7

## Apprenticeship and Traineeship Regulation 2017

under the

Apprenticeship and Traineeship Act 2001

### 1 Name of Regulation

This Regulation is the *Apprenticeship and Traineeship Regulation 2017*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note.** This Regulation repeals and replaces the *Apprenticeship and Traineeship Regulation 2010* which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

(1) In this Regulation:

**Secretary** means the Secretary of the Department.

**the Act** means the *Apprenticeship and Traineeship Act 2001*.

(2) Notes included in this Regulation do not form part of this Regulation.

### 4 Applications to establish apprenticeships and traineeships

(1) An application that complies with section 7 of the Act may be lodged by an agent on behalf of an employer by electronic means approved by the Commissioner if the agent certifies that the relevant training contract and any associated documentation (such as a training plan) have been duly executed by the parties to the contract.

**Note.** The *Training Plan Guidelines* contain information on the preparation and lodgment of training plans required by section 7 of the Act. The Guidelines can be found on the State Training Services website at [www.training.nsw.gov.au](http://www.training.nsw.gov.au).

(2) An application may be varied or withdrawn by the same method by which it was made.

(3) If an application is made electronically by an agent, a hard copy of the relevant training contract and associated documentation:

(a) must be kept by the agent, in a manner approved by the Commissioner, for the period specified by the Commissioner, and

(b) must be made available for inspection by the Commissioner at the Commissioner's request if reasonable notice of the request is given.

Maximum penalty: 5 penalty units.

(4) The Commissioner may refuse to accept applications lodged by a particular agent (and notify the relevant applicants accordingly) if the agent fails to comply with subclause (1) or (3) in respect of any application lodged by the agent.

**Note.** Section 70 of the Act makes it an offence for a person to make any statement or furnish any information, in relation to any application, that the person knows to be false or misleading in a material particular.

## **5 Preparation of training plans**

- (1) A training plan must be prepared, in consultation with the relevant employer and apprentice or trainee, by the registered training organisation by which training is to be provided to the apprentice or trainee within 12 weeks of an application being approved under section 8 of the Act.
- (2) A copy of the training plan:
  - (a) must be kept by the registered training organisation, in a manner approved by the Commissioner, for the period specified by the Commissioner, and
  - (b) must be made available for inspection by the Commissioner at the Commissioner's request if reasonable notice of the request is given.Maximum penalty: 5 penalty units.

## **6 Duties of registered training organisations**

- (1) A registered training organisation that has endorsed a training plan for the purposes of section 7 of the Act must:
  - (a) provide information requested by the employer in relation to the progress of the apprentice or trainee in obtaining the relevant qualification, and
  - (b) review the training plan at least every 6 months and, in addition, on any date determined in consultation with the employer and the apprentice or trainee, and
  - (c) obtain the confirmation of the employer before determining whether the apprentice or trainee has acquired the competencies of the relevant qualification, and
  - (d) notify the Department, as soon as practicable, when the apprentice or trainee is eligible to be awarded the relevant qualification by the registered training organisation.
- (2) The registered training organisation must also notify the Department of the following matters within 21 days after the matter arises:
  - (a) any failure by the employer to allow the apprentice or trainee to commence or participate in the training specified in the training plan,
  - (b) any failure by the employer to allow the registered training organisation to conduct the training or assessment components specified in the training plan,
  - (c) any failure by the employer to provide information requested by the registered training organisation for the purpose of assessments of competence in relation to the training of an apprentice or trainee specified in an approved training plan.Maximum penalty: 10 penalty units.

## **7 Juniors may be employed in certain trade vocations**

For the purposes of section 25 (2) (c) of the Act, the employment of a junior in the following recognised trade vocations is exempted from the operation of section 25 of the Act:

- (a) beauty therapy, but only if the junior has been awarded the qualification known as the "Certificate IV in Beauty Therapy SIB40110" (or any qualification which replaces that certificate) by a registered training organisation,

- (b) hairdressing, but only if the junior has been awarded an authorised qualification (within the meaning of section 4 of the *Hairdressers Act 2003*) by a registered training organisation.

#### **8 Witnesses' expenses**

For the purposes of section 46 (3) of the Act, the allowances and expenses payable to a person who is required to attend or to give evidence at a hearing under Part 4 of the Act are the same as the allowances and expenses payable to a witness in proceedings before the Civil and Administrative Tribunal of New South Wales.

#### **9 Applications to Review Panel for reviews of decisions of Commissioner**

- (1) For the purposes of section 54 (1) of the Act, an application for a review of a decision is to be made by way of a written notice lodged at, or sent by post to, any of the offices of the Department within 30 days after the aggrieved person is notified of the relevant decision of the Commissioner.
- (2) In the case of a review referred to in section 54 (1) (c) of the Act, a copy of the notice of review must be given to the apprentice or trainee, and to the current employer of the apprentice or trainee within 7 days after the application for review is made.
- (3) In the case of a review referred to in section 54 (1) (d) or (e) of the Act, a copy of the notice of review must be given to the other party to the apprenticeship or traineeship within 7 days after the application for review is made.
- (4) In the case of a review referred to in section 54 (1) (i) of the Act, a copy of the notice of review must be given to the other party or parties to the complaint within 7 days after the application for review is made.
- (5) The Review Panel may, within 28 days of receipt of an application for review of a decision, require the applicant to provide the Review Panel with such additional information as the Review Panel may reasonably require to review the decision.

#### **10 Appeals to NCAT against decisions of Review Panel**

- (1) For the purposes of section 55 (1) of the Act, an appeal is to be made by way of a written notice of appeal lodged at, or sent by post to, the Civil and Administrative Tribunal within 30 days after the appellant is notified of the relevant decision of the Review Panel.
- (2) In the case of an appeal referred to in section 55 (1) (c) of the Act, a copy of the notice of appeal must be given to the apprentice or trainee, and to the current employer of the apprentice or trainee, within 7 days after the appeal is made.
- (3) In the case of an appeal referred to in section 55 (1) (d) or (e) of the Act, a copy of the notice of appeal must be given to the other party to the apprenticeship or traineeship within 7 days after the appeal is made.
- (4) In the case of an appeal referred to in section 55 (1) (g) of the Act, a copy of the notice of appeal must be given to the other party or parties to the complaint within 7 days after the appeal is made.

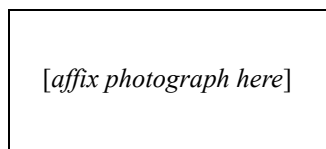
#### **11 Certificates of identification**

For the purposes of section 67 (6) of the Act, the following form is prescribed:

**(Apprenticeship and Traineeship Act 2001)**

I, the Commissioner for Vocational Training, certify that the holder of this certificate, [*insert name of holder*] whose photograph and signature appear below, is

an industry training officer for the purposes of the *Apprenticeship and Traineeship Act 2001*.



Signature of holder: *[insert signature]*

Signature of Commissioner: *[insert signature]*

## 12 Fees

- (1) For the purposes of section 75 of the Act, the matters for which fees are payable and the amounts of those fees are as follows:
  - (a) for dealing with any application lodged under section 36 or 37 of the Act for recognition of a person's qualifications or experience in a particular recognised trade vocation, \$200,
  - (b) for conducting any examination, test or work-based assessment for the purposes of section 35, 36 or 37 of the Act to ascertain if a person has acquired the competencies of a particular recognised trade vocation, \$350,
  - (c) for issuing any replacement craft certificate, certificate of completion or certificate of proficiency, \$60,
  - (d) for verifying the authenticity of a craft certificate, certificate of completion or certificate of proficiency, \$60.
- (2) A fee referred to in subclause (1) may be waived or refunded in any circumstances in which the Commissioner is satisfied that it would be harsh or unconscionable, or otherwise inappropriate, to charge the fee.

## 13 Nomination of members for Review Panel

- (1) For the purposes of clause 2 (a) (i) of Schedule 1 to the Act:
  - (a) all registered training organisations that provide training in respect of a recognised trade vocation or a recognised traineeship vocation are prescribed, and
  - (b) the prescribed manner of nominating candidates is for each prescribed registered training organisation to nominate in writing up to 3 candidates (from the total number of whom the Secretary must appoint at least one member).
- (2) For the purposes of clause 2 (b) (i) of Schedule 1 to the Act:
  - (a) all industrial organisations of employers that are parties to an industrial award or agreement relating to the employment of apprentices or trainees in a recognised trade vocation or a recognised traineeship vocation are prescribed, and
  - (b) the prescribed manner of nominating candidates is for each prescribed industrial organisation of employers to nominate in writing up to 3 candidates (from the total number of whom the Secretary must appoint at least one member).
- (3) For the purposes of clause 2 (c) (i) of Schedule 1 to the Act:
  - (a) all industrial organisations of employees that are parties to an industrial award or agreement relating to the employment of apprentices or trainees in a recognised trade vocation or a recognised traineeship vocation are prescribed, and

- (b) the prescribed manner of nominating candidates is for each prescribed industrial organisation of employees to nominate in writing up to 3 candidates (from the total number of whom the Secretary must appoint at least one member).
- (4) For the purposes of clause 5 (2) of Schedule 1 to the Act, the prescribed manner of withdrawing the nomination of a member of the Review Panel is for the organisation by which the nomination was made to give notice in writing to the Secretary that the nomination is withdrawn.

**14 Repeal and savings**

- (1) The *Apprenticeship and Traineeship Regulation 2010* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Apprenticeship and Traineeship Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.