



New South Wales

Apprenticeship and Traineeship Amendment Act 2017 No 42

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New South Wales

Apprenticeship and Traineeship Amendment Act 2017 No 42

Act No 42, 2017

An Act to amend the *Apprenticeship and Traineeship Act 2001* to make further provision with respect to the regulation of apprenticeships and traineeships; to make related amendments to other legislation; and for other purposes. [Assented to 20 September 2017]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Apprenticeship and Traineeship Amendment Act 2017*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Apprenticeship and Traineeship Act 2001 No 80

[1] Whole Act (except where otherwise amended by this Schedule)

Omit “public servant” and “public servants” wherever occurring.

Insert instead “Public Service employee” and “Public Service employees”, respectively.

[2] Section 3A

Insert after section 3:

3A Application of National Vocational Education and Training Regulator Act 2011 (Cth)

(1) In this section:

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

State apprenticeship and traineeship regulation provisions means the provisions of this Act and the regulations:

- (a) regulating organisations providing training, assessment or instruction in relation to a recognised trade vocation or a recognised traineeship vocation, and
- (b) providing for the approval by or under this Act of training, assessment or instruction provided by organisations, and
- (c) providing for the standards to be complied with under this Act by organisations, and
- (d) providing for the exercise of investigative powers, sanctions and enforcement by or under this Act in relation to such matters.

(2) The State apprenticeship and traineeship regulation provisions are declared to be an excluded matter for the purposes of section 10 of the Commonwealth Act in relation to section 9 (Immunity from State and Territory laws) of the Commonwealth Act to the extent that section 9 would prevent the application of the State apprenticeship and traineeship regulation provisions to an NVR registered training organisation (within the meaning of the Commonwealth Act) providing training, assessment or instruction in relation to a recognised trade vocation or a recognised traineeship vocation.

(3) Without limiting subsection (2), each provision of this Act (and of any regulations made under this Act) is declared to be a VET legislation displacement provision for the purposes of section 11 of the Commonwealth Act generally.

[3] Section 4 Vocational training guidelines

Omit “Secretary” from section 4 (1). Insert instead “Commissioner”.

[4] Section 6 Vocational training orders

Omit “required training for a particular recognised trade vocation or recognised traineeship vocation” from section 6 (1).

Insert instead “training that an apprentice or trainee who is employed in a recognised trade vocation or recognised traineeship vocation is required to undertake in connection with that vocation”.

[5] Section 6 (1) (c)

Omit “appropriate”.

[6] Section 6 (1) (c1)

Insert after section 6 (1) (c):

(c1) the units of competency forming part of the training for that vocation,

[7] Section 6, note

Omit “Department of Education and Training website at <http://apprenticeship.det.nsw.edu.au>”.

Insert instead “Department of Industry website at https://www.training.nsw.gov.au/promotions/apprenticeships_traineeships.html”.

[8] Part 2, Division 2

Insert before section 7 in the Division:

Note. Certain information relating to apprenticeships and traineeships established under this Division (including the names of the employer and apprentice or trainee) is required to be recorded in the register of apprenticeships and traineeships (see Division 5). Registration of a person as an employer or apprentice or trainee may render the person eligible for certain payments available under State or Commonwealth incentive schemes. Eligibility for those payments may be affected by changes in circumstances such as a variation of the training contract or training plan approved under this Division in relation to the apprenticeship or traineeship or the transfer, suspension or cancellation of the apprenticeship or traineeship.

[9] Section 7 Applications to establish apprenticeships and traineeships

Omit “(including a recognised traineeship vocation that is, or forms part of, a recognised trade vocation)” from section 7 (1) (b).

[10] Sections 7 (2) and 25 (1)

Omit “20 penalty units” wherever occurring. Insert instead “100 penalty units”.

[11] Section 7 (3) (a) and (a1)

Omit section 7 (3) (a). Insert instead:

- (a) must be accompanied by the proposed training contract (as executed by the prospective employer and prospective apprentice or trainee), and
- (a1) must be accompanied by the training plan proposal (as endorsed by the relevant registered training organisation), and

[12] Section 7 (3) (d)

Omit the paragraph.

[13] Section 7 (3) (e)

Omit “and address”. Insert instead “, business address, ACN (if any) and ABN”.

[14] Section 7 (4)–(6)

Omit the subsections. Insert instead:

- (4) A *training plan proposal* is a document prepared by the prospective employer and prospective apprentice or trainee outlining the following matters in relation to the proposed apprenticeship or traineeship:

- (a) the proposed arrangements for the provision of training to the prospective apprentice or trainee,
 - (b) the appropriate qualification or qualifications proposed to be awarded to the prospective apprentice or trainee.
- (5) The proposed training contract and training plan proposal:
- (a) must be set out in the form approved by the Commissioner, and
 - (b) must be prepared in accordance with the relevant vocational training order.
- (5A) The Commissioner may require the applicant to lodge with the application a training plan for the proposed apprenticeship or traineeship instead of a training plan proposal.
- (5B) An application under this section may be made on behalf of the employer by an agent of the employer approved by the Commissioner if the agent certifies that the relevant training contract and any associated documentation have been duly executed by the parties to the contract.
- (5C) The Commissioner may refuse to accept applications lodged by a particular agent (and must notify the relevant applicants accordingly) if the agent fails to comply with this section or any requirement of the regulations in relation to any application lodged by the agent.
- (5D) The establishment of a trainee apprenticeship is not permitted under this Act, even if the relevant industrial award or agreement recognises that the apprenticeship may be undertaken as a trainee apprenticeship.
- (6) An application under this section may not be made by a prohibited employer contrary to a prohibition order.

[15] Section 8 Determination of applications

Omit section 8 (1) (c).

[16] Section 8 (2)

Omit the subsection.

[17] Section 8 (4)

Insert “and the relevant registered training organisation” after “applicant”.

[18] Sections 9 (1), 10 (1) and 20 (4)

Omit “or Review Panel, as the case may be,” wherever occurring.

[19] Section 9 (1) (a1)–(a4)

Insert after section 9 (1) (a):

- (a1) that the employer will employ the apprentice or trainee under conditions that do not contravene the relevant industrial award or agreement, and
- (a2) that the apprentice or trainee is capable of undertaking the required training in the relevant vocation, and
- (a3) that the proposed training contract has been prepared in accordance with the relevant vocational training order, and
- (a4) that the employment provided, or to be provided, by the employer complies with the relevant vocational training order, and

[20] Section 9 (2)

Omit the subsection.

[21] Sections 10 (3) and 77 (e)

Omit “or Review Panel” wherever occurring.

[22] Section 12 Training contracts

Omit “a full apprenticeship” from section 12 (2) (a). Insert instead “an apprenticeship”.

[23] Section 12 (2) (b)

Omit the paragraph.

[24] Section 12 (2A)

Insert after section 12 (2):

- (2A) A reference in this section to a training contract is a reference to the training contract most recently executed by the employer and apprentice or trainee, as varied in accordance with this Act.

[25] Section 12A

Insert after section 12:

12A Training plans

- (1) A training plan is to be prepared in respect of each apprenticeship or traineeship.
- (2) A training plan for an apprenticeship or traineeship is a document prepared in accordance with the relevant vocational training order that indicates, in particular:
 - (a) the arrangements for the provision of training to the apprentice or trainee that have been agreed to by the employer and the relevant registered training organisation, and
 - (b) the appropriate qualification or qualifications to be awarded to the apprentice or trainee in relation to the apprenticeship or traineeship, and
 - (c) the units of competency forming part of the training for the relevant vocation.
- (3) The training plan is to be prepared by the relevant registered training organisation in relation to the apprenticeship or traineeship in consultation with the employer and the apprentice or trainee.
- (4) The training plan is to be lodged with the application for the establishment of the apprenticeship or traineeship, if required by the Commissioner.
- (5) If a training plan was not required to be lodged with the application, the relevant registered training organisation must prepare the plan within 12 weeks after the organisation is notified that the establishment of the apprenticeship or traineeship has been approved.
Maximum penalty: 50 penalty units.
- (6) A training plan is to be in the form approved by the Commissioner.
- (7) The relevant registered training organisation in relation to the apprenticeship or traineeship to which a training plan relates must:

- (a) keep a copy of the training plan, in a manner approved by the Commissioner, for the period specified by the Commissioner, and
- (b) make the training plan available for inspection on request by the Commissioner.

Maximum penalty: 50 penalty units.

[26] Section 14 Duties of employers using host employment arrangements

Omit section 14 (3) and (4). Insert instead:

- (3) An employer (the *principal employer*) must not place an apprentice or trainee with a host employer if the principal employer knows:
 - (a) that the host employer is a prohibited employer, and
 - (b) that the employment of the apprentice or trainee by the host employer would be contrary to the relevant prohibition order.

Maximum penalty: 200 penalty units.

[27] Section 15 Duties of employers to notify Commissioner of certain matters

Insert “relevant” after “change in the” in section 15 (1) (c).

[28] Section 15 (1) (f)

Omit the paragraph. Insert instead:

- (f) any notice given to the apprentice or trainee of the employer’s intention to terminate the employment of the apprentice or trainee.

[29] Section 16A

Insert after section 16:

16A Duties of registered training organisations

- (1) A relevant registered training organisation for an apprenticeship or traineeship:
 - (a) must provide to the employer, on request, information in relation to the progress of the apprentice or trainee in obtaining the relevant qualification, and
 - (b) must review the training plan at least once every 6 months and, in addition, on any date determined in consultation with the employer and the apprentice or trainee, and
 - (c) must obtain the confirmation of the employer before determining whether the apprentice or trainee has acquired the competencies of the relevant qualification, and
 - (d) must, as soon as practicable after the apprentice or trainee becomes eligible to be awarded the relevant qualification by the registered training organisation, notify the Commissioner of that fact.

Maximum penalty: 200 penalty units.

- (2) The relevant registered training organisation must also notify the Commissioner 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 organisation to conduct the training or assessment components specified in the training plan,

- (c) any failure by the employer to provide any information requested by the organisation for the purpose of assessments of competence in relation to the training specified in the training plan.

Maximum penalty: 200 penalty units.

[30] Section 19 Attendance at relevant registered training organisation

Omit “a relevant”. Insert instead “the relevant”.

[31] Section 20 Transfer of apprenticeships and traineeships

Omit section 20 (2) (c) and (3).

[32] Section 21 Variation of training contracts and training plans on application by a party

Omit section 21 (3) (c) and (4).

[33] Sections 21A (1) and 23 (1) (b) and (3) (b)

Omit “a registered training organisation” wherever occurring.

Insert instead “the relevant registered training organisation”.

[34] Section 22

Omit the section. Insert instead:

22 Suspension and cancellation of apprenticeships and traineeships

- (1) The Commissioner may, on the application of the employer and the apprentice or trainee (or either of them alone) or on the Commissioner’s own initiative, suspend or cancel an apprenticeship or traineeship.
- (2) The Commissioner may not suspend or cancel the apprenticeship or traineeship unless the Commissioner is satisfied:
 - (a) that both the employer and the apprentice or trainee consent to the suspension or cancellation, or
 - (b) that it is reasonable in the circumstances to do so.
- (3) In addition, the Commissioner may not suspend or cancel an apprenticeship or traineeship on the application of the employer or the apprentice or trainee or on the Commissioner’s own initiative unless the Commissioner:
 - (a) has given notice to the employer and the apprentice or trainee of the Commissioner’s intention to suspend or cancel the apprenticeship or traineeship, and
 - (b) has given the employer and apprentice or trainee at least 21 days within which to make submissions to the Commissioner with respect to the proposed suspension or cancellation, and
 - (c) has taken any such submissions into consideration.
- (4) The Commissioner must give notice to the employer and apprentice or trainee of a suspension or cancellation under this section specifying:
 - (a) the grounds for the suspension or cancellation, and
 - (b) the date from which the suspension or cancellation takes effect, and
 - (c) in the case of suspension—the period of suspension.

[35] Section 23 (1) (c) and (3) (c)

Insert at the end of section 23 (1) (b) and (3) (b):

and

- (c) has, if required by the Commissioner, been assessed by any other registered training organisation nominated by the Commissioner as having acquired the competencies of that vocation,

[36] Section 23 (2) and (4)

Omit the subsections.

[37] Section 23 (4)

Insert after section 23 (3):

- (4) The Commissioner may provide to the Australian Skills Quality Authority a copy of the report of an assessment under subsection (1) (c) or (3) (c) (including any information contained in the report that is personal information under the *Privacy and Personal Information Protection Act 1998* or health information under the *Health Records and Information Privacy Act 2002*).

[38] Section 28 Register of apprenticeships and traineeships

Omit “registered training organisation associated with the apprenticeship or traineeship” from section 28 (2) (i).

Insert instead “relevant registered training organisation”.

[39] Section 29 Advertising of group training organisations

Omit “10 penalty units”. Insert instead “100 penalty units”.

[40] Sections 33 (1), 67 (2), 69, 70 and 71 (1)

Omit “20 penalty units” wherever occurring. Insert instead “200 penalty units”.

[41] Sections 35 (2) and (3), 42, 45 (1), 46 (1) (a) (ii), 51 (1)–(5), 52 and 53 (1) and (2)

Omit “Review Panel” and “Review Panel’s” wherever occurring.

Insert instead “Commissioner” and “Commissioner’s”, respectively.

[42] Section 35 (5)

Omit “or a craft certificate, whichever is appropriate.”.

[43] Sections 36 and 37

Omit the sections. Insert instead:

36 Recognition of other trade training—applications

- (1) A person may apply to the Commissioner for recognition of the person’s qualifications or experience in a particular recognised trade vocation.
- (2) The Commissioner may require the applicant to undergo an assessment by a registered training organisation nominated by the Commissioner to determine whether the applicant has acquired the competencies of the recognised trade vocation (an *independent competency assessment*).
- (3) A registered training organisation may not be nominated to conduct an independent competency assessment if the organisation has previously provided training to the applicant in the recognised trade vocation.

- (4) The Commissioner may refuse to deal with the application if the applicant fails to comply with a requirement to undergo an independent competency assessment.
- (5) If the report of an independent competency assessment specifies that the applicant requires further training to acquire the competencies of the recognised trade vocation, the Commissioner may refuse to determine the application until the Commissioner is satisfied that the applicant has satisfactorily completed the training.
- (6) The Commissioner may seek expert advice in connection with the application from any person who, in the Commissioner's opinion, has special knowledge of, and experience in, the recognised trade vocation.
- (7) The regulations may provide that the Commissioner must, in specified circumstances, seek expert advice in connection with an application under this section from specified persons or classes of persons.
- (8) The Commissioner may provide to the Australian Skills Quality Authority a copy of the report of an independent competency assessment (including any information contained in the report that is personal information under the *Privacy and Personal Information Protection Act 1998* or health information under the *Health Records and Information Privacy Act 2002*).

37 Recognition of other trade training—determinations

- (1) If the Commissioner is satisfied that an applicant for recognition of qualifications or experience in a particular recognised trade vocation (other than a certified vocation) has acquired the competencies of the vocation, the Commissioner may determine that the applicant is adequately trained to pursue that vocation.
- (2) A recognised trade vocation is a ***certified vocation*** if a person is required to have a certificate of proficiency in order to obtain a licence, permit or other authority under an Act to work in the vocation.
- (3) In making a determination under subsection (1), the Commissioner must have regard to:
 - (a) the length of time for which the applicant has been working in the recognised trade vocation, and
 - (b) the nature and duration of any instruction or training received by the applicant in the recognised trade vocation, and
 - (c) the nature of any qualifications held by the applicant in relation to the recognised trade vocation, and
 - (d) any expert advice obtained in connection with the application, and
 - (e) the applicant's performance in any examination or test set by the Commissioner or any independent competency assessment, and
 - (f) such other matters as the Commissioner considers relevant.
- (4) The following provisions apply in relation to the determination of an application for recognition of qualifications or experience in a certified vocation:
 - (a) the Commissioner is to nominate at least one employee representative and one employer representative (the ***industrial representatives***) for the purpose of making a recommendation under this section as to whether the applicant is adequately trained to pursue the certified vocation,

- (b) the Commissioner may determine that the applicant is adequately trained to pursue the recognised trade vocation, but only if the industrial representatives have unanimously recommended that the applicant is adequately trained to pursue that vocation,
 - (c) the industrial representatives must have regard to the matters specified in subsection (3) (a)–(e) (and such other matters as the representatives consider relevant) in making a recommendation under this section,
 - (d) the Commissioner must have regard to the matters specified in subsection (3) in making a determination under this section.
- (5) The Commissioner is to provide to the industrial representatives any information obtained by the Commissioner in connection with the application and required by the representatives for the purpose of making the recommendation. For that purpose, the Commissioner is authorised to disclose to the industrial representatives personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) and health information (within the meaning of the *Health Records and Information Privacy Act 2002*).
- (6) A determination under this section must be set out in an instrument signed by the Commissioner.
- (7) The Commissioner must issue a certificate of proficiency to the person to whom the determination relates.
- (8) The regulations may make provision for or with respect to:
- (a) applications for the recognition of qualifications or experience in a recognised trade vocation, and
 - (b) the making of determinations and recommendations under this section.
- (9) In this section:
- employee representative*, in relation to an application under this section, means a representative of an organisation that represents employees in industrial matters relating to the recognised trade vocation to which the application relates.
- employer representative*, in relation to an application under this section, means a representative of an organisation that represents employers in industrial matters relating to the recognised trade vocation to which the application relates.

[44] Section 40

Omit the section. Insert instead:

40 Conciliation

- (1) The Commissioner is to refer a complaint made by a party to an apprenticeship or traineeship to a conciliator in the first instance.
- (2) The conciliator must attempt to bring the parties to a settlement acceptable to each of them.
- (3) If such a settlement is not achievable, the Commissioner is to deal with the complaint in accordance with this Part.
- (4) In this section:
conciliator means a person employed in the Department who is authorised in writing by the Commissioner as a conciliator for the purposes of this section.

[45] Section 41 Suspension of apprenticeships and traineeships pending hearing

Insert “, without prior notice to the employer and apprentice or trainee,” after “Commissioner may” in section 41 (1).

[46] Section 44 Procedure generally

Omit “Review Panel is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it” from section 44 (1).

Insert instead “Commissioner is not bound by the rules of evidence, and may be informed in any manner that the Commissioner”.

[47] Section 44 (4)

Omit “Review Panel” and “it considers”.

Insert instead “Commissioner” and “the Commissioner considers”, respectively.

[48] Sections 46 (1) and 47 (1)

Omit “presiding member of the Review Panel” wherever occurring.

Insert instead “Commissioner”.

[49] Section 46 (2)

Omit “Review Panel may retain possession of a document produced to it under this section for such period as it”.

Insert instead “Commissioner may retain possession of a document produced to the Commissioner under this section for such period as the Commissioner”.

[50] Sections 46 (4), 47 (3) and 48

Omit “5 penalty units” wherever occurring. Insert instead “50 penalty units”.

[51] Section 50 Conciliation

Omit the section.

[52] Section 51 Determinations

Omit “it is satisfied” from section 51 (3). Insert instead “the Commissioner is satisfied”.

[53] Section 53 Orders prohibiting employer from entering into apprenticeships and traineeships

Omit “, either indefinitely or for a specified period” from section 53 (1) (a).

Insert instead “(a *prohibition order*)”.

[54] Section 53 (1) (b)

Omit “if it does”. Insert instead “if the Commissioner does”.

[55] Section 53 (1A)

Insert after section 53 (1):

(1A) A prohibition order may be unlimited or limited as to particular circumstances specified in the order.

[56] Section 53 (2)

Omit “An order under this section”. Insert instead “A prohibition order”.

[57] Section 53 (2) (a)

Omit “its intention”. Insert instead “the Commissioner’s intention”.

[58] Section 53 (2A)

Insert after section 53 (2):

- (2A) The Commissioner may vary a prohibition order by notice in writing to the employer.

[59] Section 53 (4)

Insert after section 53 (3):

- (4) A prohibited employer must not employ an apprentice or trainee (including under a host employment arrangement) contrary to a prohibition order.
Maximum penalty: 200 penalty units.

[60] Part 5

Omit the Part. Insert instead:

Part 5 Reviews

54 Administrative review of decisions by Civil and Administrative Tribunal

A person aggrieved by any of the following decisions of the Commissioner may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision:

- (a) a decision to dismiss an application for establishment of an apprenticeship or traineeship,
- (b) a decision to issue a vocational training direction,
- (c) a decision to dismiss an application for approval to the transfer of an apprenticeship or traineeship,
- (d) a decision to approve or dismiss an application for the variation of a training contract or training plan,
- (e) a decision to suspend or cancel an apprenticeship or traineeship,
- (f) a decision to refuse to register a person as an existing worker trainee,
- (g) a decision to refuse to register a person or body as a group training organisation or to suspend or cancel the registration of a person or body as a group training organisation,
- (h) a decision to refuse to issue a certificate of proficiency under Part 2 or 3,
- (i) a decision determining a complaint under Part 4,
- (j) a decision to give a direction under section 52,
- (k) a decision to make an order declaring an employer to be a prohibited employer or authorising the transfer to other employers of an apprenticeship or traineeship.

[61] Section 56 Commissioner

Omit “appointed under Part 2 of the *Public Sector Management Act 1988*”.

Insert instead “employed under the *Government Sector Employment Act 2013*”.

[62] Section 58 Delegation by Commissioner

Omit “Subject to section 60 (5), the”. Insert instead “The”.

[63] Section 58, note

Omit the note.

[64] Part 6, Division 2

Omit the Division.

[65] Section 73A

Insert after section 73:

73A Penalty notices

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, *penalty notice officer* means a person authorised in writing by the Commissioner as a penalty notice officer for the purposes of this section.

[66] Section 74 Applications and notices

Omit section 74 (1). Insert instead:

- (1) An application under this Act must be made in the manner and form approved by the Commissioner.

[67] Section 77 Liability

Omit section 77 (b).

[68] Section 77

Omit “any member of the Review Panel,”.

[69] Section 78 Delegation by Secretary

Omit the section.

[70] Section 81 Regulations

Insert after section 81 (1) (d):

- (d1) assessments for the purpose of determining whether a person has acquired the competencies of a recognised trade vocation (including consultation processes to be conducted in connection with the determination of assessment standards and procedures), and

[71] Section 81 (2)

Omit “10 penalty units”. Insert instead “100 penalty units”.

[72] Schedule 1 The Vocational Training Review Panel

Omit the Schedule.

[73] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 5 Provisions consequent on enactment of Apprenticeship and Traineeship Amendment Act 2017

28 Definitions

- (1) In this Part:

abolition day—see clause 30.

amending Act means the *Apprenticeship and Traineeship Amendment Act 2017*.

appeal body means NCAT or a court.

NCAT means the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

pending proceedings are proceedings (including appeals) that:

- (a) were instituted or commenced before the repeal day, and
(b) have not been finally determined before that day by the appeal body in which the proceedings were instituted or commenced.

repeal day—see clause 29.

Review Panel means the Vocational Training Review Panel as constituted under section 59 immediately before the repeal day.

transition period—see clause 29.

unexercised right means a right that:

- (a) was available to be exercised immediately before the repeal day, and
(b) had not yet been exercised before that day.

- (2) For the purposes of this Part, proceedings are not finally determined if:

- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or

- (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

29 Functions of Review Panel cease on repeal day

- (1) The functions of the Review Panel cease on and from the repeal day, except as provided by this Part.
- (2) The *repeal day* is the day on which Division 2 of Part 6 of this Act is repealed by the amending Act.
- (3) During the transition period, the Review Panel continues to be constituted for the purposes only of exercising the functions conferred by this Part.
- (4) The *transition period* is the period commencing on the repeal day and ending on the abolition day.
- (5) The Commissioner may continue and complete anything begun by the Review Panel before the repeal day, except anything that would involve the exercise of a function conferred on the Review Panel by this Part.

30 Abolition of Vocational Training Review Panel

- (1) The Review Panel is to be abolished on the abolition day.
- (2) The *abolition day* is:
 - (a) the day that is one year after the repeal day, or
 - (b) an earlier or later day appointed by the regulations.
- (3) On the abolition day, each member of the Review Panel ceases to hold office as a member and is not entitled to any remuneration or compensation because of the loss of that office.
- (4) Subclause (3) has effect despite anything to the contrary in any other legislation concerning the circumstances or processes for the removal of (or the vacation of office by) a member of the Review Panel.

31 Pending proceedings and unexercised rights: reviews by Review Panel

- (1) During the transition period, the Review Panel may continue to deal with pending proceedings in the Review Panel.
- (2) For that purpose:
 - (a) the Review Panel continues to have and may exercise all the functions that the Panel had in relation to the proceedings immediately before the repeal day, and
 - (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the Review Panel or the pending proceedings had the amending Act not been enacted continue to apply.
- (3) On and from the repeal day, a person who has an unexercised right to apply to the Review Panel for a review of a decision of the Commissioner under this Act may apply to NCAT for an administrative review of the decision under the *Administrative Decisions Review Act 1997*.

32 Pending proceedings and unexercised rights: appeals to NCAT or court

- (1) This clause applies to:
 - (a) pending proceedings before NCAT on an appeal against a decision of the Review Panel, or before a court on an appeal against (or for the

- judicial review of) a decision of NCAT determining an appeal under this Act, and
- (b) an unexercised right to appeal to NCAT against a decision of the Review Panel, or to appeal to a court against a decision of NCAT determining an appeal under this Act.
- (2) On and from the repeal day:
- (a) the appeal body in which proceedings are pending may continue to deal with the proceedings until they are concluded, and
 - (b) a person who has an unexercised appeal right may appeal against the decision to which that right relates to the appeal body to which the decision was originally appealable.
- (3) For those purposes:
- (a) the appeal body continues to have and may exercise all the functions that the appeal body had in relation to the pending proceedings or appeal immediately before the repeal day, and
 - (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to appeal) that would have applied to or in respect of the pending proceedings or appeal had the amending Act not been enacted continue to apply.

33 Training plans

- (1) Section 12A, as inserted by the amending Act, applies in respect of an existing apprenticeship or traineeship as if a reference to the compliance period were a reference to the period of 12 weeks commencing on the day on which that section commences.
- (2) Section 7 (5A), as inserted by the amending Act, extends to an application for an apprenticeship or traineeship made but not determined before the commencement of that subsection.
- (3) In this clause:
compliance period means the period of 12 weeks after notification of approval of the establishment of an apprenticeship or traineeship.
existing apprenticeship or traineeship means an apprenticeship or traineeship in force immediately before commencement of section 12A.

34 Complaints

- (1) This clause applies to a complaint made under section 39 but not finally determined before the repeal day.
- (2) The following provisions apply to a complaint made by a party to an apprenticeship or traineeship that was not settled or referred to the Review Panel under section 40 before the repeal day:
 - (a) section 40 (1), as in force immediately before its substitution by the amending Act, continues to apply to the complaint,
 - (b) if a settlement is not achievable, the Commissioner is to deal with the complaint in accordance with Part 4 of the Act, as amended by the amending Act.

35 Suspension and cancellation of apprenticeships and traineeships

- (1) Except as provided by this clause, section 22, as substituted by the amending Act, applies to any apprenticeship or traineeship in force immediately before the substitution.
- (2) Section 22, as in force immediately before its substitution by the amending Act, continues to apply to any application for suspension or cancellation of an apprenticeship or traineeship made but not finally determined before the substitution.

36 Trade recognition and assessment

- (1) An amendment made by the amending Act to section 23 applies to any apprentice or trainee who completes his or her term of apprenticeship or traineeship after the commencement of the amendment.
- (2) Sections 36 and 37, as in force immediately before their substitution by the amending Act, continue to apply to any application made under those sections but not determined before the substitution. However, on and from the repeal day, any reference in those sections to the Review Panel is to be read as a reference to the Commissioner.

37 Trainee apprenticeships

Section 7 (5D), as inserted by the amending Act, does not affect:

- (a) any existing trainee apprenticeship not completed before the commencement of that subsection, or
- (b) any application for a trainee apprenticeship made but not determined before that commencement.

38 Vocational training guidelines

Any vocational training guideline issued by the Secretary under section 4 and in force immediately before the amendment of that section by the amending Act is taken to have been issued by the Commissioner.

[74] Dictionary

Omit the definitions of *certificate of completion*, *craft certificate*, *full apprenticeship*, *public servant* and *Review Panel*.

Insert in appropriate order:

prohibition order—see section 53.

relevant registered training organisation, in relation to an apprenticeship or traineeship, means the registered training organisation by which the training is, or is to be, provided.

training plan—see section 12A.

[75] Dictionary, definitions of “certificate of proficiency” and “qualified tradesperson”

Omit “, 36” wherever occurring.

[76] Dictionary, paragraph (b) of the definition of “industrial award or agreement”

Insert “the *Fair Work Act 2009* of the Commonwealth or” after “provisions of”.

[77] Dictionary, definition of “probationary period”

Omit “or Review Panel’s” wherever occurring.

[78] Dictionary, definition of “prohibited employer”

Omit “an order is in force under section 53”. Insert instead “a prohibition order is in force”.

[79] Dictionary, paragraphs (a) and (b) of the definition of “qualified tradesperson”

Omit “craft certificate or” wherever occurring.

Schedule 2 Amendment of other Acts and instruments

2.1 Apprenticeship and Traineeship Regulation 2017

[1] Clause 4 Applications to establish apprenticeships and traineeships

Omit clause 4 (1) and (4).

[2] Clause 4 (2)

Insert “under section 7 of the Act” after “application”.

[3] Clauses 5, 6, 9, 10 and 13

Omit the clauses.

[4] Clause 12 Fees

Omit “craft certificate, certificate of completion or” wherever occurring in clause 12 (1) (c) and (d).

2.2 Civil and Administrative Tribunal Regulation 2013

Clause 6 Circumstances where no fee or reduced fee is payable

Omit “external appeal” from clause 6 (1) (d).

Insert instead “administrative review application”.

2.3 Government Information (Public Access) Regulation 2009

Schedule 3 Agencies declared to be part of other agencies

Omit the matter relating to the Vocational Training Review Panel.

2.4 Hairdressers Act 2003 No 62

Section 4 When is an individual “qualified to act as a hairdresser”?

Omit “the Vocational Training Review Panel has determined” wherever occurring in section 4 (1) (b) and (c).

Insert instead “a determination has been made”.

[Second reading speech made in—

Legislative Assembly on 9 August 2017

Legislative Council on 13 September 2017]