



New South Wales

Apprenticeship and Traineeship Regulation 2010

under the

Apprenticeship and Traineeship Act 2001

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

VERITY FIRTH, MP
Minister for Education and Training

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Apprenticeship and Traineeship Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 Vocational Training Tribunal,
- (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 remitted,
- (g) the keeping of progress cards for apprentices,
- (h) the nomination of persons for appointment to the Vocational Training Tribunal and the Vocational Training Appeal Panel,
- (i) 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), 67 (6), 75 and 81 (the general regulation-making power) and clauses 2 and 5 (2) of Schedule 1 and clauses 2 and 5 (2) of Schedule 2.

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.

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Apprenticeship and Traineeship Regulation 2010

under the

Apprenticeship and Traineeship Act 2001

1 Name of Regulation

This Regulation is the *Apprenticeship and Traineeship Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Apprenticeship and Traineeship Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

- (1) In this Regulation:
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) For the purposes of section 7 (7) of the Act, 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.
- (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

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- (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 (3) in respect of any application lodged by the agent.

5 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 WRB40105" (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.

6 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 under the *Administrative Decisions Tribunal Act 1997*.

Note. See clause 6 of the *Administrative Decisions Tribunal Regulation 2009*.

7 Appeals

- (1) For the purposes of section 54 (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, any of the offices of the Department within 30 days after the appellant is notified of the relevant decision, vocational training direction, refusal or determination.
- (2) In the case of an appeal referred to in section 54 (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 54 (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.

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- (4) In the case of an appeal referred to in section 54 (1) (j) or (k) 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.

8 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*.

<i>[affix photograph here]</i>

Signature of holder: *[insert signature]*

Signature of Commissioner: *[insert signature]*

9 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, \$150,
 - (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, \$275,
 - (c) for issuing any replacement craft certificate, certificate of completion or certificate of proficiency, \$30.
- (2) The fee paid for the conduct of an examination, test or work-based assessment, pursuant to an appeal under section 54 of the Act, to ascertain if a person has acquired the competencies of a particular recognised trade vocation, is to be remitted if the results of the examination, test or assessment indicate that the person has acquired those competencies.
- (3) 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.

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10 Progress cards

- (1) An employer:
 - (a) must complete a progress card for each apprentice who is employed by the employer and who is a party to a training contract for a trainee apprenticeship (a *trainee apprentice*), and
 - (b) must retain each such card at the place where the trainee apprentice is employed, and
 - (c) must produce any such card for inspection on demand made by an industry training officer, and
 - (d) must return each such card to the Commissioner:
 - (i) if the apprenticeship concerned is cancelled, suspended or completed, or
 - (ii) if the Commissioner so requests by notice in writing given to the employer.
- (2) A progress card is to be in the form approved for the time being by the Commissioner and must be completed in accordance with any directions shown on the card.

Maximum penalty: 5 penalty units.

11 Nomination of members for Tribunal and Appeal Panel

- (1) For the purposes of clause 2 (a) (i) of Schedule 1 and clause 2 (a) (i) of Schedule 2 to the Act:
 - (a) all registered training organisations that provide training in respect of a recognised trade vocation or a recognised traineeship vocation are the prescribed, and
 - (b) the prescribed manner of nominating candidates under either of those subparagraphs is for each prescribed registered training organisation to nominate in writing up to 3 candidates (from the total number of whom the Director-General must appoint at least one member).
- (2) For the purposes of clause 2 (b) (i) of Schedule 1 and clause 2 (b) (i) of Schedule 2 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 under either of those subparagraphs is for each prescribed industrial organisation of employers to nominate in writing up to 3 candidates (from the

total number of whom the Director-General must appoint at least one member).

- (3) For the purposes of clause 2 (c) (i) of Schedule 1 and clause 2 (c) (i) of Schedule 2 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 under either of those subparagraphs is for each prescribed industrial organisation of employees to nominate in writing up to 3 candidates (from the total number of whom the Director-General must appoint at least one member).
- (4) For the purposes of clause 5 (2) of Schedule 1 and clause 5 (2) of Schedule 2 to the Act, the prescribed manner of withdrawing the nomination of a member of the Tribunal or the Appeal Panel is for the organisation by which the nomination was made to give notice in writing to the Director-General that the nomination is withdrawn.

12 Savings

Any act, matter or thing that, immediately before the repeal of the *Apprenticeship and Traineeship Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.