



New South Wales

# Apprenticeship and Traineeship Amendment Regulation 2019

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*.

GEOFFREY LEE, MP  
Minister for Skills and Tertiary Education

## Explanatory note

The object of this Regulation is to amend the *Apprenticeship and Traineeship Regulation 2017* consequent on the enactment of the *Apprenticeship and Traineeship Amendment Act 2017*. In particular, the Regulation:

- (a) enables the Commissioner for Vocational Training to require an applicant for recognition of qualifications or experience in a particular recognised trade vocation to provide certain information in connection with the application, and
- (b) prescribes the requirements for the conduct of assessments by a registered training organisation for the purposes of determining whether a person has acquired the competencies of a particular recognised trade vocation, and
- (c) provides for the issue of certificates of identification to conciliators and penalty notice officers authorised under the *Apprenticeship and Traineeship Act 2001*, and
- (d) prescribes further requirements relating to the making of applications for the establishment of apprenticeships or traineeships by agents on behalf of employers, and
- (e) increases (from \$550 to \$11,000) the maximum penalty that a court may impose on the agent of an employer for failing to comply with requirements relating to the keeping and inspection of relevant training contracts and associated documentation, and
- (f) prescribes the offences for which penalty notices may be issued under the *Apprenticeship and Traineeship Act 2001*, and the amounts payable under those penalty notices.

This Regulation is made under the *Apprenticeship and Traineeship Act 2001*, including sections 7 (5C) and (7), 37 (8) (a) and (b), 73A (2) and (4), 75 and 81 (the general regulation-making power).

## **Apprenticeship and Traineeship Amendment Regulation 2019**

under the

Apprenticeship and Traineeship Act 2001

### **1 Name of Regulation**

This Regulation is the *Apprenticeship and Traineeship Amendment Regulation 2019*.

### **2 Commencement**

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

## Schedule 1 Amendment of Apprenticeship and Traineeship Regulation 2017

[1] **Clause 3 Definition**

Omit the definition of *Secretary* from clause 3 (1).

[2] **Clauses 4–6A**

Omit clause 4. Insert instead:

**4 Applications for establishment of apprenticeships and traineeships**

- (1) An application under section 7 of the Act for the establishment of an apprenticeship or traineeship must be in the form approved by the Commissioner.
- (2) An application may be varied or withdrawn by the same method by which it was made.

**5 Electronic applications by agent**

- (1) An agent must lodge with an application for the establishment of an apprenticeship or traineeship a declaration, in the form approved by the Commissioner, verifying:
  - (a) that the agent has entered into an agreement with the Commissioner, in the form approved by the Commissioner, for the purposes of facilitating the provision and co-ordination of support services for employers, apprentices and trainees, and
  - (b) that the agent is satisfied that the employer is able to provide the work-based component of the required training in the relevant vocation, and
  - (c) that the agent is satisfied that the apprentice or trainee is able to undertake the required training in the relevant vocation, and
  - (d) any other matter relating to the appropriateness of the proposed apprenticeship or traineeship that is specified in the approved form.
- (2) An electronic copy of the relevant training contract and associated documentation relating to an application for the establishment of an apprenticeship or traineeship:

**Note.** Section 7 (5C) of the *Apprenticeship and Traineeship Act 2001* enables the Commissioner for Vocational Training to refuse to accept any application for the establishment of an apprenticeship or traineeship made by an agent on behalf of an employer if the agent fails to comply with this clause. 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.

- (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: 100 penalty units.

**6 Applications for trade recognition**

- (1) The Commissioner may require an applicant for recognition of qualifications or experience in a particular recognised trade vocation to provide such information as the Commissioner may reasonably require to determine the application.

- (2) Without limiting subclause (1), the Commissioner may require the applicant to provide either or both of the following:
  - (a) written verification of work undertaken by the applicant in the recognised trade vocation, issued by a current or recent employer of the applicant,
  - (b) a transcript issued in any State or Territory by a registered training organisation verifying the duration of the applicant's training in the recognised trade vocation.

#### **6A Independent competency assessments**

- (1) This clause sets out requirements relating to assessments conducted by registered training organisations for the purpose of determining whether a person has acquired the competencies of a particular recognised trade vocation.
- (2) The registered training organisation must assess whether the applicant has acquired the competencies of the recognised trade vocation by any one or more of the following means, as determined by the Commissioner for the purposes of the application:
  - (a) identifying the competencies previously obtained by the applicant that satisfy the requirements of an appropriate qualification,
  - (b) evaluating any work-related evidence supplied by the applicant,
  - (c) assessing theoretical knowledge relevant to the recognised trade vocation,
  - (d) conducting a practical assessment of the applicant's skills in the recognised trade vocation.
- (3) The registered training organisation must provide to the Commissioner the following details in relation to a completed assessment:
  - (a) the name and student identifier of the applicant assessed,
  - (b) any work-related evidence supplied to the registered training organisation by the applicant, including any written verification (issued by a current or recent employer of the applicant) of work undertaken by the applicant in the recognised trade vocation,
  - (c) the procedures followed by the registered training organisation to verify the applicant's practical skills that satisfy the requirements of an appropriate qualification,
  - (d) a copy of the report of the results of the assessment.
- (4) The Commissioner may refuse to deal with an application for recognition of a person's qualifications or experience in a particular recognised trade vocation to which an independent competency assessment relates if the registered training organisation fails to comply with a requirement of this clause in relation to the assessment.
- (5) In this clause:  
***student identifier*** has the same meaning as in the *Student Identifiers Act 2014* of the Commonwealth.

**[3] Clause 11 Certificates of identification**

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

Insert instead:

- (1) The Commissioner must issue each person who is authorised as a conciliator under section 40 of the Act, or as a penalty notice officer under section 73A of the Act, with a certificate of identification in the form set out in this clause.
- (2) For the purposes of section 67 (6) of the Act, the form set out in this clause is prescribed as the form of certificate of identification as an industry training officer.

**[4] Clause 11, form**

Omit “, [*insert name of holder*] whose photograph and signature appear below, is an industry training officer for the purposes of”.

Insert instead “[*insert name of holder*] is [*\*a conciliator/an industry training officer/a penalty notice officer*] under”.

**[5] Clause 11, form**

Insert at the end of the form:

\* Omit a conciliator, an industry training officer or a penalty notice officer (or any combination of them) as required.

**[6] Clause 12 Fees**

Omit “or 37” from clause 12 (1) (a).

**[7] Schedule 1**

Insert at the end of the regulation:

## **Schedule 1 Penalty notice offences**

For the purposes of section 73A of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 7 (2)	\$1,100 (for an individual) \$2,750 (for a corporation)
Section 12A (5)	\$1,650
Section 12A (7)	\$550 (for an individual) \$1,100 (for a corporation)
Section 16A (1)	\$5,500
Section 16A (2)	\$5,500

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
Section 25 (1)	\$1,650 (for an individual) \$2,750 (for a corporation)
Section 29	\$5,500
Section 33 (1)	\$5,500
Section 46 (4)	\$550 (for an individual) \$2,200 (for a corporation)
Section 53 (4)	\$5,500
Section 67 (2)	\$2,200
<b>Offences under this Regulation</b>	
Clause 5 (2)	\$2,750

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