

## INDUSTRIAL AND COMMERCIAL TRAINING BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Industrial Arbitration (Industrial and Commercial Training) Amendment Bill 1989 and the Miscellaneous Acts (Industrial and Commercial Training) Amendment Bill 1989 are cognate with this Bill.

The objects of this Bill are—

- (a) to establish the Industrial and Commercial Training Council and the Vocational Training Board; and
- (b) to provide for the appointment of a Commissioner for Vocational Training and the appointment of training officers; and
- (c) to provide for the establishment, supervision and regulation of apprenticeships and traineeships; and
- (d) to provide for the resolution of disputes and the hearing of complaints concerning apprenticeships and traineeships; and
- (e) to provide for the recognition of trade qualifications obtained otherwise than under the proposed Act; and
- (f) to provide for the review of, and for appeals from, decisions made in respect of apprenticeships and traineeships; and
- (g) to repeal the Apprenticeship Act 1981 and the Commerce and Industry Training Council Act 1985 and to enact savings and transitional provisions consequent on those repeals; and
- (h) to make other provisions of a minor, consequential and ancillary nature.

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### PART 1—PRELIMINARY

This Part provides for certain preliminary matters, and includes provisions—

- (a) specifying the short title of the proposed Act (clause 1); and
- (b) providing for the commencement of the proposed Act on a day or days to be appointed by proclamation (clause 2); and

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- (c) specifying the object of the proposed Act (clause 3); and
- (d) defining certain expressions for the purposes of the proposed Act (clause 4); and
- (e) establishing the relationship between the proposed Act and the Industrial Arbitration Act 1940 (clause 5); and
- (f) providing that the proposed Act is to bind the Crown (clause 6).

**PART 2—ADMINISTRATION**

This Part, which contains 4 Divisions, provides for the administrative machinery that will be needed in connection with the proposed Act.

Division 1 deals with the proposed Industrial and Commercial Training Council, and contains provisions—

- (a) constituting the Council as a body corporate consisting of 13 members, of whom—
  - (i) 1 shall be the Secretary of the Department of Industrial Relations and Employment; and
  - (ii) 1 shall be the proposed Commissioner for Vocational Training; and
  - (iii) 8 shall be appointed by the Minister from persons having knowledge and experience relating to industrial or commercial training; and
  - (iv) 2 shall be appointed by the Minister, on the nomination of the Minister for Education and Youth Affairs, 1 of whom shall be appointed to represent the Department of Technical and Further Education; and
  - (v) 1 shall be appointed by the Minister on the nomination of the Commonwealth Minister for Employment, Education and Training, (clause 7); and
- (b) specifying that the objects of the Council will be—
  - (i) to investigate matters relating to industrial and commercial employment and to the need for industrial and commercial training; and
  - (ii) to advise the Minister on matters relating to existing and proposed courses of industrial and commercial training; and
  - (iii) to approve courses of industrial and commercial training to be undertaken by apprentices and trainees under the proposed Act; and
  - (iv) to supervise the provision of industrial and commercial training under the proposed Act; and
  - (v) to monitor the provision of industrial and commercial training conducted otherwise than under the proposed Act, (clause 8); and
- (c) providing for the appointment of staff for the Council and enabling the Council to make use of the staff and facilities of government departments, administrative offices and public and local authorities (clause 9); and
- (d) conferring certain advisory functions on the Council (clause 10); and
- (e) providing for the establishment of advisory committees to assist the Council in the exercise of its functions (clause 11); and
- (f) enabling the Council to delegate its functions (clause 12).

Division 2 deals with the Commissioner for Vocational Training, and includes provisions—

- (a) providing for the appointment of the Commissioner (clause 13); and

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- (b) providing that the Commissioner shall have such functions as may be conferred or imposed on the Commissioner by or under the proposed Act or any other Act (clause 14); and
- (c) enabling the Commissioner to delegate his or her functions (clause 15).

Division 3 deals with the Vocational Training Board, and includes provisions—

- (a) providing for the establishment of the Board (clause 16); and
- (b) providing that the Board shall have such functions as may be conferred or imposed on it by or under the proposed Act or any other Act (clause 17); and
- (c) specifying the manner in which the Board shall be constituted for the purpose of exercising its functions (clause 18).

Division 4 deals with training officers, and includes provisions—

- (a) providing for the appointment of persons (whether public servants or not) as training officers for the purposes of the proposed Act (clause 19); and
- (b) conferring certain functions on training officers (clause 20).

**PART 3—INDUSTRIAL AND COMMERCIAL TRAINING**

This Part, which contains 4 Divisions, provides for the creation of training schemes for apprentices and trainees, for the establishment and supervision of apprenticeships and traineeships and for certain consequential matters.

Division 1 deals with the creation of training schemes, and contains provisions—

- (a) enabling the Minister, by order published in the Gazette, to designate any vocation to be a declared trade or a declared calling (clause 21); and
- (b) enabling the Council to make vocational training orders in relation to declared trades and declared callings, being orders that specify—
  - (i) the appropriate term of apprenticeship or traineeship in that trade or calling; and
  - (ii) the appropriate courses of studies to be undertaken by apprentices or trainees in that trade or calling; and
  - (iii) the appropriate courses of on-the-job training to be provided to apprentices or trainees by employers in that trade or calling; and
  - (iv) such other matters relating to the training of apprentices or trainees in that trade or calling as the Council considers appropriate,
 (clause 22); and
- (c) enabling the Council to issue vocational training guidelines, in relation to declared trades and declared callings, as to how the functions under proposed Part 3 are to be exercised by the Board or by the Commissioner (clause 23).

Division 2 deals with apprenticeships, and contains provisions—

- (a) prohibiting the employment of a person who is under the age of 21 in a declared trade unless the person is either an apprentice or a qualified tradesperson in that trade (clause 24); and
- (b) providing for the making of applications for the establishment of an apprenticeship (clause 25); and
- (c) requiring an employer who employs a person who is under the age of 21 as a probationary apprentice in a declared trade to apply for an apprenticeship for that person within 14 days of employing the person (clause 26); and

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- (d) providing for the determination, by the Commissioner or by the Board, of applications for the establishment of apprenticeships (clause 27); and
- (e) requiring notice of any such determination, together with indentures (where appropriate), to be sent to the applicant (clause 28); and
- (f) specifying at what time an apprenticeship shall be taken to have come into effect (clause 29); and
- (g) enabling the Commissioner to direct that an apprenticeship be taken to have come into effect notwithstanding that an appropriate application has not been made or that the relevant indentures have not been duly executed (clause 30); and
- (h) specifying that the conditions of an apprenticeship shall, unless modified by a vocational training direction, be the conditions set out in the relevant vocational training order (clause 31); and
- (i) enabling the making of vocational training directions, by the Commissioner or by the Board, that have the effect of modifying the conditions of a particular apprenticeship (clause 32); and
- (j) providing that time spent by an apprentice as a probationary apprentice in a declared trade shall be taken to form part of the apprentice's term of apprenticeship in that trade (clause 33); and
- (k) specifying the minimum rate of remuneration that is to apply to apprentices who are of or above the age of 21 and in respect of whom there is no industrial award or industrial agreement under which such a rate is set (clause 34); and
- (l) specifying the extent to which employers and apprentices are to be bound by an apprenticeship (clause 35); and
- (m) specifying the duties imposed on employers and apprentices under an apprenticeship (clause 36); and
- (n) making provision with respect to the courses of study to be undertaken by apprentices (clause 37); and
- (o) providing for the assignment of indentured apprenticeships (clause 38); and
- (p) providing for the cancellation and suspension, by consent of the employer and of the apprentice, of an apprenticeship (clause 39); and
- (q) providing for the variation, by the Commissioner or by the Board, of an apprenticeship (clause 40); and
- (r) specifying the consequences on an apprenticeship of the death of the apprentice's employer (clause 41); and
- (s) specifying the consequences on an apprenticeship of a change in the composition of a partnership by which the apprentice is employed (clause 42); and
- (t) providing for the issue of a craft certificate, or a certificate of proficiency, to an apprentice who completes an apprenticeship (clause 43).

Division 3 deals with traineeships, and contains provisions—

- (a) providing for the making of applications for approval of an employer as a recognised trainee employer in a declared calling (clause 44); and
- (b) providing for the establishment of traineeships between recognised trainee employers and their employees (clause 45); and
- (c) providing for the making of applications for the establishment of a traineeship by the Commissioner or by the Board (clause 46); and
- (d) requiring notice of the determination of any such application, together with indentures (where appropriate), to be sent to the applicant (clause 47); and

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- (e) specifying at what time a traineeship shall be taken to have come into effect (clause 48); and
- (f) specifying that the conditions of a traineeship shall, unless modified by a vocational training direction, be the conditions set out in the relevant vocational training order (clause 49); and
- (g) enabling the making of vocational training directions, by the Commissioner or by the Board, that have the effect of modifying the conditions of a particular traineeship (clause 50); and
- (h) providing that time spent by a trainee in a declared calling in working as a trainee before a traineeship is established shall be taken to form part of the trainee's term of traineeship in that calling (clause 51); and
- (i) specifying the minimum rate of remuneration that is to apply to trainees who are of or above the age of 21 and in respect of whom there is no industrial award or industrial agreement under which such a rate is set (clause 52); and
- (j) specifying the extent to which employers and trainees are to be bound by a traineeship (clause 53); and
- (k) specifying the duties imposed on employers and trainees under a traineeship (clause 54); and
- (l) making provision with respect to the courses of study to be undertaken by trainees (clause 55); and
- (m) providing for the assignment of traineeships (clause 56); and
- (n) providing for the cancellation, by consent of the employer and the trainee, of a traineeship (clause 57); and
- (o) providing for the variation, by the Commissioner or by the Board, of a traineeship (clause 58); and
- (p) specifying the consequences on a traineeship of the death of the trainee's employer (clause 59); and
- (q) specifying the consequences on a traineeship of a change in the composition of a partnership by which the trainee is employed (clause 60); and
- (r) providing for the issue of a certificate of completion, or a certificate of proficiency, to a trainee who completes a traineeship (clause 61).

Division 4 deals with general matters relating to apprentices and trainees, and includes provisions—

- (a) specifying that the participation by a person who is under the age of 18 in an apprenticeship or traineeship shall, for the purposes of the Minors (Property and Contracts) Act 1970, be taken to be, in the absence of evidence to the contrary, for the benefit of the person (clause 62); and
- (b) prohibiting certain actions calculated to induce a person to enter into an apprenticeship or traineeship (clause 63); and
- (c) prohibiting the employment of probationary apprentices otherwise than in accordance with the relevant vocational training order (clause 64).

**PART 4—PROCEEDINGS BEFORE THE VOCATIONAL TRAINING BOARD  
WITH RESPECT TO DISPUTES AND DISCIPLINARY MATTERS**

This Part, which contains 3 Divisions, deals with the way in which complaints concerning apprentices and trainees, and their employers, may be made and with the way in which such complaints should be heard and determined.

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Division 1 deals with the making of complaints, and contains provisions—

- (a) providing for the making of complaints and specifying the grounds on which complaints may be made (clause 65); and
- (b) requiring the Commissioner to refer a complaint to the Board if he or she is satisfied that there is substance to the complaint (clause 66); and
- (c) enabling the Commissioner to suspend an apprenticeship or traineeship if he or she is satisfied that the gravity of the complaint warrants such action being taken (clause 67); and
- (d) requiring the Board to fix a time and place for the hearing of a complaint and to notify the parties to the relevant apprenticeship or traineeship of the time and place so fixed (clause 68); and
- (e) specifying which persons are to be parties to the hearing of a complaint (clause 69).

Division 2 deals with the hearing of complaints, and includes provisions—

- (a) providing that hearings are to be conducted in an informal manner and are to be heard in private (clause 70); and
- (b) restricting the right of the parties to a hearing to be legally represented (clause 71); and
- (c) enabling the Board to require the attendance of witnesses and the production of documents (clause 72); and
- (d) enabling the Board to require a witness to answer questions, subject to the proviso that a witness will not be required to answer a question where the answer could incriminate the witness (clause 73); and
- (e) penalising witnesses who refuse to attend or to produce documents in accordance with such a requirement (clause 74); and
- (f) entitling a witness to payment of allowances and expenses in accordance with a scale to be fixed by the regulations under the proposed Act (clause 75); and
- (g) enabling the Board to adjourn a hearing (clause 76); and
- (h) penalising persons who misconduct themselves at hearings (clause 77); and
- (i) providing that each party to a hearing must bear his or her own costs in relation to the hearing (clause 78).

Division 3 deals with the determination of complaints, and includes provisions—

- (a) requiring the Board, before determining a complaint that has been made by one of the parties to an apprenticeship or traineeship, to encourage the parties to the apprenticeship or traineeship to come to a settlement on the matters in dispute (clause 79); and
- (b) specifying the determinations that the Board may make in respect of complaints heard by it (clause 80).

#### **PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS**

This Part deals with the recognition of trade qualifications obtained otherwise than under the proposed Act, and includes provisions—

- (a) enabling the Board to recognise certain service training and apprenticeships conducted by the Defence Force (clause 81); and
- (b) enabling the Board to recognise other trade qualifications obtained elsewhere than in New South Wales (clause 82); and

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- (c) enabling the Board to recognise, on an individual basis, the qualifications or experience obtained by a person in a particular trade (clause 83).

**PART 6—REVIEW AND APPEALS**

This Part, which contains 2 Divisions, deals with the review of decisions made under or for the purposes of the proposed Act and with the making of appeals against certain decisions.

Division 1 contains a provision enabling the Council to hear and determine any matter arising under proposed Part 3 or 5 that has been referred to it for determination, whether at the instance of the Council or of the Board (clause 84).

Division 2 deals with the making of appeals, and contains provisions—

- (a) constituting an Appeal Panel consisting of at least 3 persons, of whom—
- (i) at least 1 shall be an officer of the Department of Industrial Relations and Employment appointed by the Secretary of that Department; and
  - (ii) at least 1 shall be a person appointed by the Minister to represent employers; and
  - (iii) at least 1 shall be a person appointed by the Minister to represent employees, (clause 85); and
- (b) enabling appeals to be made to the Appeal Panel in respect of certain specified matters (clause 86); and
- (c) specifying the manner in which the Appeal Panel shall be constituted for the purpose of hearing and determining an appeal made to it (clause 87); and
- (d) providing for the manner in which appeals shall be heard by the Appeal Panel and specifying the effect that shall be given to its determinations (clause 88).

**PART 7—MISCELLANEOUS**

This Part deals with miscellaneous matters, and contains provisions—

- (a) conferring powers of entry, search and seizure on training officers in respect of any premises or place in or on which a declared trade or declared calling is being conducted (clause 89); and
- (b) providing for the issue of search warrants in respect of premises and places generally for the purpose of investigating alleged contraventions of the proposed Act (clause 90); and
- (c) penalising persons who obstruct training officers in the exercise of their functions under the proposed Act (clause 91); and
- (d) prohibiting persons from giving false or misleading information in any application under the proposed Act (clause 92); and
- (e) prohibiting the disclosure of certain business information obtained in connection with the administration of the proposed Act (clause 93); and
- (f) providing that proceedings for offences against the proposed Act or the regulations under it shall be dealt with summarily before an industrial magistrate or before a Local Court constituted by a Magistrate, but that such proceedings are not to be commenced otherwise than by or on behalf of the Minister or the Commissioner (clause 94); and
- (g) providing for the manner and form in which applications to the Commissioner or to the Board shall be made and in which service of notices by the Commissioner shall be effected (clause 95); and

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- (h) providing for the issue of evidentiary certificates by the Commissioner in respect of certain matters (clause 96); and
- (i) enabling certain matters that are required by the proposed Act to be published in the Gazette to be published instead in the Industrial Gazette (clause 97); and
- (j) excluding certain persons from personal liability for matters or things done in good faith for the purpose of executing the proposed Act (clause 98); and
- (k) requiring the preparation, and tabling in Parliament, of annual reports concerning the administration of the proposed Act (clause 99); and
- (l) enabling the Governor to make regulations for the purposes of the proposed Act, including regulations imposing penalties not exceeding 10 penalty units for a contravention of the regulations (clause 100); and
- (m) repealing the Apprenticeship Act 1981 and the Commerce and Industry Training Council Act 1985 (clause 101); and
- (n) providing for the enactment of savings, transitional and other provisions (clause 102).

**Schedule 1** contains provisions with respect to the members of the Council.

**Schedule 2** contains provisions with respect to the procedure of the Council.

**Schedule 3** contains provisions with respect to the members of the Board.

**Schedule 4** contains provisions with respect to the procedure of the Board.

**Schedule 5** contains provisions with respect to the members of the Appeal Panel.

**Schedule 6** contains savings, transitional and other provisions, including a provision that enables the regulations under the proposed Act to make further provisions of a savings or transitional nature as a consequence of the enactment of the proposed Act.

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