

[Act 2001 No 80]



New South Wales

Apprenticeship and Traineeship Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to regulate the establishment, operation, transfer, variation, suspension and cancellation of apprenticeships and traineeships, and
 - (b) to provide for the recognition of other trade qualifications, and
 - (c) to provide for the resolution of disputes and the conduct of disciplinary proceedings in relation to apprenticeships and traineeships, and
 - (d) to provide for rights of appeal against determinations under the proposed Act, and
 - (e) to establish administrative procedures in connection with the administration and enforcement of the proposed Act, and
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- (f) to repeal the *Industrial and Commercial Training Act 1989*, amend other Acts and enact savings and transitional provisions consequent on the enactment of the proposed Act.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Dictionary of words and expressions located at the end of the proposed Act.

Part 2 Apprenticeships and traineeships

Division 1 Preliminary

Clause 4 enables the Director-General of the Department of Education and Training (the *Director-General*) to issue guidelines in relation to the administration of the proposed Act. All persons involved in the administration of the proposed Act will be required to comply with these guidelines.

Clause 5 enables the Commissioner for Vocational Training (the *Commissioner*) to make orders designating vocations as “recognised trade vocations” (appropriate for apprenticeships under the proposed Act) and “recognised traineeship vocations” (appropriate for traineeships under the proposed Act).

Clause 6 enables the Commissioner to make vocational training orders with respect to recognised trade vocations and recognised traineeship vocations. Such an order will, in relation to any particular apprenticeship or traineeship, fix its term, identify the qualifications that may be awarded in relation to it, specify any other training to be provided in addition to the training required for such a qualification and make such other provision as the Commissioner considers appropriate. The making of a vocational training order will require industry consultation.

Division 2 Establishment of apprenticeships and traineeships

Clause 7 enables an employer to apply for an apprenticeship or traineeship for any of his or her employees, and requires an employer to do so within 28 days after the employer takes a person on as an apprentice or trainee.

Clause 8 requires an application for an apprenticeship or traineeship to be dealt with by the Commissioner or, if the Commissioner considers it appropriate, by the Vocational Training Tribunal (the *Tribunal*).

Clause 9 requires an application for an apprenticeship or traineeship to be dismissed unless the Commissioner or Tribunal, as the case requires, is satisfied that the employer can provide the work-based component of the required training and, if the employer proposes to “host out” the apprentice or trainee, that an initial host employer is available to provide appropriate training. The clause also allows an application for the establishment of a trainee apprenticeship to be dismissed if the Commissioner or Tribunal, as the case requires, considers that a trainee apprenticeship is inappropriate in the circumstances of the case.

Clause 10 enables the Commissioner or Tribunal, as the case may require, to make vocational training directions in relation to specific apprenticeships and traineeships so that the term of the apprenticeship or traineeship and the training to be provided takes into account any relevant training that the apprentice or trainee has already received.

Clause 11 allows an employer or an apprentice or trainee to withdraw from an apprenticeship or traineeship at any time during the probationary period for the apprenticeship or traineeship.

Clause 12 provides that the training contract for a full apprenticeship is binding for the whole of the term of an apprenticeship, that the training contract for a trainee apprenticeship is binding only for so long as the apprentice remains employed by the employer and that the training contract for a traineeship (like the training contract for a full apprenticeship) is binding for the whole of the term of the traineeship. The clause further provides that the time during which a person is employed as an apprentice or trainee counts towards the term of the apprenticeship or traineeship.

Clause 13 sets out the duties of an employer under an apprenticeship or traineeship.

Clause 14 sets out the duties of an employer who places an apprentice or trainee with a host employer under a host employment arrangement (that is, an arrangement under which some other employer provides part of the work-based training for the apprenticeship or traineeship).

Clause 15 requires an employer to notify the Commissioner of certain matters arising under an apprenticeship or traineeship.

Clause 16 sets out the duties of an apprentice or trainee under an apprenticeship or traineeship.

Clause 17 sets out the obligations that an employer has to an apprentice or trainee in relation to general conditions of employment.

Clause 18 provides for the extension of an apprentice's or trainee's probationary period for up to 3 months.

Clause 19 provides that time spent by an apprentice or trainee in attending training counts towards the time required to be spent by the apprentice or trainee in discharging his or her obligations under the relevant training contract.

Division 3 Transfer, variation, suspension, cancellation and completion of apprenticeships and traineeships

Clause 20 provides for the transfer of apprenticeships and traineeships.

Clause 21 provides for the variation of training contracts and training plans.

Clause 22 provides for the suspension and cancellation of apprenticeships and traineeships by consent.

Clause 23 provides for the certificates that may be issued to an apprentice or trainee on the completion of his or her apprenticeship or traineeship.

Clause 24 sets out what is to happen if a person who is an employer dies or if there is a change in the membership of a partnership. In this event, the apprenticeship or traineeship continues, with the executor or administrator or surviving partners having the obligations of the former employer.

Division 4 Additional provisions concerning recognised trade vocations

Clause 25 prohibits an employer from employing a junior (that is, a person who is less than 21) in a recognised trade vocation unless the junior is an apprentice or a qualified tradesperson.

Clause 26 enables the Commissioner to direct that an apprenticeship contract be taken to have come into force in relation to a person who has been employed as an apprentice for more than 28 days without an application having been made by the employer for the establishment of an apprenticeship.

Clause 27 sets out the remuneration to which an adult apprentice is entitled in an apprenticeship for which there is no adult award but there is a junior award.

Division 5 General

Clause 28 requires the Commissioner to establish and maintain a register of apprenticeships and traineeships, and sets out the information to be contained in the register.

Clause 29 prohibits a person from advertising that a person is a registered group training organisation, or is registered, endorsed or otherwise approved by the Government to offer training or other services under host employment arrangements, unless the person or body is a registered group training organisation.

Clause 30 enables a person or body to apply to the Commissioner to be registered as a group training organisation. Registration is conditional on the organisation meeting minimal operational standards.

Clause 31 preserves certain conditions of employment of existing worker trainees (that is, persons who, while employed, become trainees). In particular, such a person's remuneration is not to be reduced, and completion of a traineeship does not authorise termination of such a person's employment.

Clause 32 ensures that a training contract is binding on a minor (that is, a person who is under 18) by providing that the minor's participation in a training contract is taken to be for the minor's benefit.

Clause 33 prohibits a person from demanding or receiving payment from a prospective apprentice or trainee in connection with the establishment of an apprenticeship or traineeship, or from requiring a prospective apprentice or trainee to enter into any bond or guarantee in connection with the establishment of an apprenticeship or traineeship, except with the consent of the Commissioner.

Clause 34 provides that changes in a vocational training order do not affect existing apprenticeships and traineeships unless the vocational training order giving rise to the change expressly so provides.

Part 3 Recognition of other trade qualifications

Clause 35 enables Defence Force trade training to be recognised as being equivalent to the training provided by an apprenticeship.

Clause 36 enables other qualifications (obtained elsewhere than in New South Wales) to be recognised as being equivalent to the training provided by an apprenticeship.

Clause 37 enables a person who has qualifications (other than those recognised as referred to in clause 35 or 36) to apply for recognition of those qualifications, on a one-off basis, as being equivalent to the training provided by an apprenticeship.

Clause 38 requires the Commissioner to establish and maintain a register of determinations under the proposed Part.

Part 4 Proceedings with respect to disputes and disciplinary matters

Division 1 Complaints

Clause 39 sets out the grounds on which a complaint may be made and the procedure for making a complaint.

Clause 40 requires the Commissioner to attempt to settle a complaint before referring it to the Tribunal.

Clause 41 enables the Commissioner to suspend an apprenticeship or traineeship pending the hearing of a complaint if satisfied that the gravity of the complaint justifies such action.

Clause 42 requires the Tribunal to notify the parties to a complaint of the time and place fixed for hearing the complaint.

Division 2 Hearings

Clause 43 provides that the parties to a complaint are the complainant and each of the parties to the apprenticeship or traineeship to which the complaint relates.

Clause 44 allows proceedings on a complaint to be heard in private, without formality or legal technicality, and also allows adjournments.

Clause 45 prohibits the parties to a complaint from being legally represented. The prohibition does not apply to the Crown, to a corporation or to an industrial organisation and does not apply to a party involved in a hearing in which any other party is legally represented.

Clause 46 enables the presiding member of the Tribunal to compel witnesses to attend a hearing, to give evidence and to produce documents.

Clause 47 enables the presiding member of the Tribunal to compel witnesses to answer questions that are reasonably related to the hearing.

Clause 48 penalises persons who misconduct themselves at a hearing.

Clause 49 provides that the parties to a hearing are to bear their own costs.

Division 3 Determinations

Clause 50 requires the Tribunal to attempt to bring the parties to a complaint to an acceptable settlement before it makes a determination in relation to the complaint.

Clause 51 lists the determinations that the Tribunal may make in relation to a complaint. These include imposing a caution or reprimand, ordering redress (otherwise than by way of damages) and varying, suspending or cancelling the apprenticeship or traineeship concerned.

Clause 52 enables the Tribunal to order the payment of compensation to an apprentice or trainee against whom a complaint has been made if the apprenticeship or traineeship concerned has been suspended pending the hearing of the complaint and the complaint has been dismissed.

Clause 53 enables the Tribunal to declare that an employer against whom a complaint has been made to be a “prohibited employer”. The effect of such a declaration is to prevent the employer from taking on new apprentices or trainees. A further order under the proposed clause can transfer the employer’s existing apprentices and trainees to new employers.

Part 5 Appeals

Clause 54 provides for an appeal to the Vocational Training Appeal Panel from decisions of the Commissioner and the Tribunal.

Clause 55 provides for an appeal to the Industrial Relations Commission, but only by leave of the Commission, from decisions of the Appeal Panel.

Part 6 Administration

Division 1 The Commissioner for Vocational Training

Clause 56 provides for the appointment of a Commissioner for Vocational Training under Part 2 of the *Public Sector Management Act 1988*.

Clause 57 sets out the functions of the Commissioner.

Clause 58 provides for the delegation of the Commissioner's functions.

Division 2 The Vocational Training Tribunal

Clause 59 provides for the establishment of a Vocational Training Tribunal, consisting of the Commissioner and representatives of registered training organisations, employers and employees.

Clause 60 provides that the Tribunal is to be constituted by at least 4 of its members for the purpose of exercising its disciplinary functions, and by at least 2 of its members for the purpose of exercising its other functions. The Commissioner (or the Commissioner's delegate) is to preside at any such sitting. Two or more sittings of the Tribunal may be held simultaneously.

Clause 61 sets out the functions of the Tribunal.

Division 3 The Vocational Training Appeal Panel

Clause 62 provides for the establishment of an Appeal Panel, consisting of Departmental officers and representatives of registered training organisations, employers and employees. Members of the Tribunal may also be members of the Appeal Panel.

Clause 63 provides that the Appeal Panel is to be constituted by 4 of its members for the purpose of exercising its functions (but may not include a person who was sitting as a member of the Tribunal hearing a matter from which the appeal has arisen). A Departmental officer is to preside at any such sitting. Two or more sittings of the Appeal Panel may be held simultaneously.

Clause 64 sets out the functions of the Appeal Panel.

Division 4 Industry training officers

Clause 65 provides for the appointment of public servants and other persons as industry training officers.

Clause 66 sets out the functions of an industry training officer.

Clause 67 confers on an industry training officer certain powers of entry, but only if the officer is a public servant.

Clause 68 enables an industry training officer to obtain a search warrant, but only if the officer is a public servant.

Clause 69 penalises a person who assaults, delays, obstructs, hinders or impedes an industry training officer in the exercise of his or her functions.

Part 7 Miscellaneous

Clause 70 penalises a person who furnishes false information in or in connection with any application under the proposed Act.

Clause 71 penalises a person who unlawfully discloses information obtained in connection with the administration or execution of the proposed Act.

Clause 72 provides that a contravention of the proposed Act does not give rise to an offence except to the extent to which the proposed Act expressly states or necessarily implies.

Clause 73 provides that proceedings for an offence against the proposed Act or regulations are to be dealt with by a Local Court constituted by a Magistrate, but provides that such proceedings may not be taken except with the consent of the Minister or the Commissioner or with the consent of a person duly authorised by one or other of them.

Clause 74 provides that applications under the proposed Act are to be in a form approved by, and are to be lodged with, the Commissioner, and further provides that notices served by the Commissioner can be sent by letter addressed to a person at the person's address last known to the Commissioner.

Clause 75 enables the regulations under the proposed Act to make provision with respect to fees.

Clause 76 enables the Commissioner to issue certificates in evidence of specified matters, and provides that such a certificate is admissible in any proceedings and is evidence of the matters so certified.

Clause 77 excludes specified persons from personal liability from matters arising as a result of things done or omitted to be done in good faith for the purpose of executing the proposed Act.

Clause 78 enables the Director-General to delegate his or her functions under the proposed Act.

Clause 79 provides that the proposed Act is to bind the Crown.

Clause 80 provides that the proposed Act is to over-ride the provisions of the *Industrial Relations Act 1996*, and the provisions of any instrument under that Act (other than a provision with respect to existing worker trainees), in the event of any inconsistency between the proposed Act and those provisions.

Clause 81 enables the Governor to make regulations in connection with the proposed Act.

Clause 82 repeals the *Industrial and Commercial Training Act 1989*.

Clause 83 is a formal provision giving effect to the amendments set out in Schedule 3.

Clause 84 is a formal provision giving effect to the savings and transitional provisions set out in Schedule 4.

Clause 85 requires the proposed Act to be reviewed 5 years after it is assented to, and for a report on the review to be tabled in Parliament.

Schedules

Schedule 1 contains provisions with respect to the constitution and procedure of the Vocational Training Tribunal.

Schedule 2 contains provisions with respect to the constitution of the Vocational Training Appeal Panel.

Schedule 3 makes consequential amendments to the following Acts:

Casino Control Act 1992 No 15

Dentists Act 1989 No 139

Industrial Relations Act 1996 No 17

Liquor Act 1982 No 147

Pay-roll Tax Act 1971 No 22

Registered Clubs Act 1976 No 31

Search Warrants Act 1985 No 37

Shops and Industries Act 1962 No 43

Vocational Education and Training Accreditation Act 1990 No 120

Workers Compensation Act 1987 No 70

Workplace Injury Management and Workers Compensation Act 1998 No 86

Schedule 4 enacts savings and transitional provisions consequent on the enactment of the proposed Act, and empowers the regulations under the proposed Act to make further provision of a savings and transitional nature.

The Dictionary defines certain words and expressions for the purposes of the proposed Act.