

Apprenticeship and Traineeship Act 2001 No 80

[2001-80]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Vocational Education and Training Act 2005 No 100](#) (not commenced)

Authorisation

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Apprenticeship and Traineeship Act 2001 No 80



New South Wales

An Act to provide for the regulation of apprenticeships and traineeships; to repeal the *Industrial and Commercial Training Act 1989*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Apprenticeship and Traineeship Act 2001*.

2 Commencement

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

3 Definitions

- (1) Words and expressions that are defined in the Dictionary at the end of this Act have the meanings given to them by the Dictionary.
- (2) Notes included in this Act do not form part of this Act.

Part 2 Apprenticeships and traineeships

Division 1 Preliminary

4 Vocational training guidelines

- (1) The Director-General may from time to time issue guidelines (***vocational training guidelines***) in relation to the exercise of functions under this Act by persons involved in the administration of this Act.
- (2) It is the duty of any person involved in the administration of this Act to comply with the requirements of the vocational training guidelines.
- (3) Copies of each vocational training guideline must be made available for public inspection on the Internet and, during ordinary office hours, at the offices of the Department.

5 Recognised trade and traineeship vocations

- (1) The Commissioner, by order published in the Gazette:
 - (a) may designate any vocation to be a recognised trade vocation in connection with the establishment of apprenticeships under this Act, and
 - (b) may designate any vocation (including any vocation that forms part of a recognised trade vocation) to be a recognised traineeship vocation in connection with the establishment of traineeships under this Act.
- (2) In making such an order, the Commissioner must comply with the relevant vocational training guidelines.

6 Vocational training orders

- (1) The Commissioner may from time to time make orders (***vocational training orders***) specifying the following matters in relation to the required training for a particular recognised trade vocation or recognised traineeship vocation:
 - (a) the appropriate term or terms for apprenticeships or traineeships in that vocation,
 - (b) the appropriate probationary period or periods for apprenticeships or traineeships in that vocation, having regard to the term or terms specified for them under paragraph (a),
 - (c) the appropriate qualification or qualifications that may be awarded in relation to an apprenticeship or traineeship in that vocation,
 - (d) any other training to be provided in addition to the training required for an appropriate qualification,
 - (e) such other matters relating to the training of apprentices or trainees in that vocation as the Commissioner considers appropriate.
- (2) The appropriate term to be specified in a vocational training order in relation to an apprenticeship or traineeship may vary according to:
 - (a) specified training that has previously been completed by the proposed apprentice or trainee, and
 - (b) specified qualifications that have previously been awarded to the proposed apprentice or trainee, and
 - (c) specified conditions to be complied with by the proposed employer, or by the proposed apprentice or trainee, under an apprenticeship or traineeship.
- (3) In making a vocational training order, the Commissioner:
 - (a) must consult with the relevant industry groups, and

- (b) must comply with the vocational training guidelines.
- (4) Notice of the making of a vocational training order must be published in the Gazette.
- (5) Such a notice must identify the order, indicate when the order is to take effect, contain brief particulars of the substance of the order and state that a copy of the order may be obtained from the offices of the Department.
- (6) Copies of each vocational training order must be made available for public inspection on the Internet and, during ordinary office hours, at the offices of the Department.

Editorial note—

For orders under this section see the Department of Education and Training website at <http://apprenticeship.det.nsw.edu.au>.

Division 2 Establishment of apprenticeships and traineeships

7 Applications to establish apprenticeships and traineeships

- (1) An employer who employs, or proposes to employ, a person as an apprentice or trainee may apply to the Commissioner for the establishment of:
 - (a) an apprenticeship in a recognised trade vocation, or
 - (b) a traineeship in a recognised traineeship vocation (including a recognised traineeship vocation that is, or forms part of, a recognised trade vocation).
- (2) Within 28 days after the date on which an employer employs a person as an apprentice or trainee, the employer must, if he or she has not already done so, apply to the Commissioner for the establishment of the relevant apprenticeship or traineeship.

Maximum penalty: 20 penalty units.

- (3) The application:
 - (a) must be accompanied by such details as may be required by the relevant vocational training order in relation to:
 - (i) the proposed training contract, as executed by the prospective employer and prospective apprentice or trainee, and
 - (ii) the proposed training plan, as endorsed by the registered training organisation by which the training is to be provided, and
 - (b) must identify the industrial award or agreement that applies to the apprenticeship or traineeship concerned, and
 - (c) must indicate the date on which the prospective apprentice or trainee began to

work, or will begin to work, for the employer as an apprentice or trainee, and

- (d) in the case of an apprenticeship that the relevant industrial award or agreement provides may be undertaken as a trainee apprenticeship, must indicate whether or not the apprenticeship is to be undertaken as a trainee apprenticeship, and
 - (e) in the case of an application by an employer who proposes to place the apprentice or trainee with a host employer from the commencement of the apprenticeship or traineeship, must indicate the name and address of the host employer with whom the apprentice or trainee is initially to be placed, and
 - (f) in the case of an application for a traineeship, must indicate whether the prospective trainee is an existing worker trainee.
- (4) The training contract referred to in subsection (3) (a) (i) must be prepared in accordance with the relevant vocational training order and, in particular, must indicate the term of the proposed apprenticeship or traineeship.
- (5) The training plan referred to in subsection (3) (a) (ii) must be prepared in accordance with the relevant vocational training order and, in particular, must indicate:
- (a) the arrangements for the provision of training to the apprentice or trainee that have been agreed to by the employer and the registered training organisation by which the training is to be provided, and
 - (b) the appropriate qualification or qualifications to be awarded to the apprentice or trainee in relation to the proposed apprenticeship or traineeship.
- (6) An application under this section may not be made by a prohibited employer.
- (7) The regulations may make provision for or with respect to applications under this section.

8 Applications to be dealt with by Commissioner or Tribunal

- (1) The Commissioner must deal with an application for the establishment of an apprenticeship or traineeship:
- (a) by approving the application, or
 - (b) by dismissing the application, or
 - (c) by referring the application to the Tribunal.
- (2) The Tribunal must deal with a referred application:
- (a) by approving the application, or
 - (b) by dismissing the application.

- (3) The Commissioner may, but is not required to, deal with an application made more than 28 days after the date on which the prospective apprentice or trainee began working for the employer as an apprentice or trainee.
- (4) As soon as practicable after an application is determined, the Commissioner must notify the applicant of the determination.

9 Dismissal of certain applications

- (1) An application for establishment of an apprenticeship or traineeship must be dismissed unless the Commissioner or Tribunal, as the case may be, is satisfied:
 - (a) that the employer can provide the work-based component of the required training in the relevant vocation, and
 - (b) in the case of an application by an employer who proposes to place the apprentice or trainee with a host employer from the commencement of the apprenticeship or traineeship, that the host employer with whom the apprentice or trainee is initially to be placed is available to provide appropriate training to the apprentice or trainee.
- (2) An application for the establishment of a trainee apprenticeship may be dismissed if the Commissioner or Tribunal, as the case may be, is satisfied that a trainee apprenticeship is inappropriate in the circumstances of the case, despite the fact that the relevant industrial award or agreement recognises that the apprenticeship may be undertaken as a trainee apprenticeship.

10 Vocational training directions

- (1) When dealing with an application for the establishment of an apprenticeship or traineeship, the Commissioner or Tribunal, as the case may be, may issue a direction (a **vocational training direction**) in relation to the proposed apprenticeship or traineeship.
- (2) A vocational training direction may do any one or more of the following:
 - (a) it may reduce or extend the term of the apprenticeship or traineeship,
 - (b) it may approve alternative training to be undertaken by the apprentice or trainee.
- (3) In making a vocational training direction, the Commissioner or Tribunal:
 - (a) must have regard to any relevant training that the apprentice or trainee has received:
 - (i) whether as an apprentice or trainee or otherwise, and
 - (ii) whether in the particular vocation or in some other vocation, and

- (iii) whether in New South Wales or elsewhere, and
 - (b) may have regard to any other matter that the Commissioner or Tribunal considers relevant, and
 - (c) must comply with the vocational training guidelines.
- (4) If a vocational training direction is made that affects the provisions of the proposed training contract:
 - (a) a copy of the contract (appropriately amended) must be returned to the applicant for execution, and
 - (b) the application is not to be further dealt with until the contract (as amended) is duly executed and returned to the Commissioner.

11 Withdrawal from apprenticeship or traineeship during probationary period

- (1) At any time during the apprentice's or trainee's probationary period, and whether or not a training contract is in force, either the employer or the apprentice or trainee may, by notice in writing addressed to the other, withdraw from the apprenticeship or traineeship.
- (2) An application for the establishment of an apprenticeship or traineeship is taken to have been withdrawn, and need not be dealt with, if notice is given to the Commissioner, before the application is dealt with, that the employer or the apprentice or trainee has withdrawn from the apprenticeship or traineeship during the probationary period.

12 Training contracts are binding

- (1) A training contract has effect as if it were a deed duly executed by the employer and the apprentice or trainee.
- (2) Subject to section 11:
 - (a) the training contract for a full apprenticeship binds the employer and the apprentice:
 - (i) from the time the employer is notified that the establishment of the apprenticeship has been approved, or
 - (ii) from the end of the probationary period,whichever is the later, until the end of the term of the apprenticeship, and
 - (b) the training contract for a trainee apprenticeship binds the employer and the apprentice from the time the employer is notified that the establishment of the apprenticeship has been approved until the apprentice ceases to be in the employ

of the employer, and

(c) the training contract for a traineeship binds the employer and the trainee:

(i) from the time the employer is notified that the establishment of the traineeship has been approved, or

(ii) from the end of the probationary period,

whichever is the later, until the end of the term of the traineeship.

(3) Any time during which an employer has employed a person as an apprentice or trainee is taken to form part of the term of the person's apprenticeship or traineeship.

13 Duties of employers under apprenticeships and traineeships

(1) The employer of an apprentice or trainee must, in accordance with the relevant training plan, take all reasonable steps:

(a) to enable the apprentice or trainee to receive the work-based component of the required training, in particular by providing all necessary facilities and opportunities to acquire the competencies of the vocation concerned, and

(b) to enable the apprentice or trainee to obtain an appropriate qualification for that vocation, in particular:

(i) by releasing the apprentice or trainee as required for attendance at the relevant registered training organisation, and

(ii) by liaising with the relevant registered training organisation in relation to the apprentice's or trainee's attendance and participation in the training provided by the relevant registered training organisation.

(2) The employer of an apprentice or trainee must discharge his or her obligations under the apprenticeship or traineeship as an employer of the apprentice or trainee.

14 Duties of employers using host employment arrangements

(1) An employer that places an apprentice or trainee with a host employer under a host employment arrangement remains liable to fulfill the obligations imposed on the employer by this Act, but is taken to have fulfilled those obligations if they have been fulfilled by the host employer.

(2) Without limiting subsection (1), an employer that places an apprentice or trainee with a host employer under a host employment arrangement:

(a) must place the apprentice or trainee with host employers in a manner that ensures that the apprentice or trainee receives the work-based component of the required training in all aspects of the apprenticeship or traineeship, and

(b) must properly supervise any such host employer in its provision of the required training to the apprentice or trainee, in particular:

- (i) by ensuring that the host employer releases the apprentice or trainee as required for attendance at the relevant registered training organisation, and
- (ii) by liaising with the relevant registered training organisation in relation to the apprentice's or trainee's attendance and participation in the training provided by the relevant registered training organisation.

(3) An employer must not knowingly place an apprentice or trainee with a host employer who is a prohibited employer.

Maximum penalty: 20 penalty units.

(4) A prohibited employer must not accept an apprentice or trainee under a host employment arrangement.

Maximum penalty (subsection (4)): 20 penalty units.

15 Duties of employers to notify Commissioner of certain matters

(1) In relation to each apprentice or trainee that he or she employs, an employer must notify the Commissioner of the following matters within 14 days after the matter arises:

- (a) any injury to the apprentice or trainee that adversely affects the apprentice's or trainee's ability to continue or complete the apprenticeship or traineeship,
- (b) any failure by the apprentice or trainee to make satisfactory progress in learning the competencies of the relevant vocation,
- (c) any change in the registered training organisation attended by the apprentice or trainee,
- (d) any failure by the apprentice or trainee to participate in, or make satisfactory progress in, the training provided by the relevant registered training organisation,
- (e) in the case of an employer who places the apprentice or trainee with host employers, any matter that is likely to have an adverse effect on the completion of the apprenticeship or traineeship by the apprentice or trainee, including:
 - (i) any difficulties encountered by the employer in finding host employers, and
 - (ii) any difficulties encountered by the apprentice or trainee in relation to any host employer, whether in relation to training or employment or otherwise,
- (f) in the case of a trainee apprentice, any termination of employment of the apprentice by the employer.

- (2) An employer must also notify the Commissioner of the following matters within 14 days after the matter arises:
 - (a) any change in the name under which the employer carries on business or in the address from which the employer carries on business,
 - (b) any change in the nature of the employer's business that adversely affects the employer's ability to comply with his or her obligations under this Act.

16 Duties of apprentices and trainees under apprenticeships and traineeships

- (1) An apprentice or trainee must, in accordance with the relevant training plan, make all reasonable efforts:
 - (a) to acquire the competencies of the vocation concerned, and
 - (b) to obtain an appropriate qualification or qualifications for that vocation.
- (2) An apprentice or trainee must discharge his or her obligations under the apprenticeship or traineeship as an employee of the employer.

17 Conditions of training and employment for persons employed as apprentices and trainees

An employer that employs a person as an apprentice or trainee in a recognised trade vocation or recognised traineeship vocation:

- (a) must provide work-based training in accordance with the relevant vocational training order for that vocation, and
- (b) must employ the person under conditions no less favourable than those set by the provisions of the relevant industrial award or agreement,

whether or not an apprenticeship or traineeship has been established for the apprentice or trainee.

18 Extension of probationary period

- (1) On the application of the employer or the apprentice or trainee, the Commissioner may extend the apprentice's or trainee's probationary period for up to a maximum of 3 months beyond the initial period specified in the relevant vocational training order.
- (2) As soon as practicable after an application is determined, the Commissioner must notify both the employer and the apprentice or trainee concerned of the determination.

19 Attendance at registered training organisation

Time spent by an apprentice or trainee in attending the training provided by a relevant registered training organisation is taken to form part of the time required by the relevant

training contract to be spent in discharging the apprentice's or trainee's obligations under the contract.

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

20 Transfer of apprenticeships and traineeships

- (1) An application for approval to the transfer of an apprenticeship or traineeship may be made to the Commissioner by the prospective employer.
- (2) The Commissioner must deal with the application:
 - (a) by approving the application, or
 - (b) by dismissing the application, or
 - (c) by referring the application to the Tribunal.
- (3) The Tribunal must deal with a referred application:
 - (a) by approving the application, or
 - (b) by dismissing the application.
- (4) Approval to the transfer is not to be given unless the Commissioner or Tribunal, as the case may be, is satisfied:
 - (a) that the prospective employer has the ability to provide appropriate training in the relevant vocation, and
 - (b) that the apprentice or trainee, and the apprentice's or trainee's existing employer, consent to the transfer of the apprenticeship or traineeship.
- (5) The Commissioner must send a notice to the apprentice's or trainee's existing employer requesting the employer to notify the Commissioner whether or not the employer consents to the transfer.
- (6) If the Commissioner does not receive any reply to such a request within 21 days after the date on which the notice was sent, the consent of the existing employer is taken to have been given.
- (6A) As soon as practicable after an application is determined, the Commissioner must give notification of the determination to the following:
 - (a) the prospective employer,
 - (b) the apprentice or trainee concerned,
 - (c) the apprentice's or trainee's existing employer.

- (7) If the application for transfer is approved, all rights and obligations conferred or imposed on an employer by the relevant training contract cease to be the rights and obligations of the existing employer and become the rights and obligations of the prospective employer.
- (8) Subsection (7) does not affect any rights or obligations in relation to matters arising before the transfer was approved, and any such rights and obligations remain the rights and obligations of the existing employer.

21 Variation of training contracts and training plans

- (1) An application for the variation of a training contract or training plan may be made to the Commissioner by the employer and the apprentice or trainee, or by either of them alone.
- (2) In the case of an application for the variation of a training plan, the application must be endorsed with the consent of the relevant registered training organisation to the proposed variation.
- (3) The Commissioner must deal with an application:
 - (a) by approving the application, or
 - (b) by dismissing the application, or
 - (c) by referring the application to the Tribunal.
- (4) The Tribunal must deal with a referred application:
 - (a) by approving the application, or
 - (b) by dismissing the application.
- (5) In the case of an application made by only one of the parties, the Commissioner must send a notice to the other party requesting the party to notify the Commissioner whether or not the party consents to the variation.
- (6) If the Commissioner does not receive any reply to such a request within 21 days after the date on which the notice was sent:
 - (a) the consent of the party to whom the notice was sent is taken to have been given, and
 - (b) approval of the application for variation is taken to have been given on the expiry of the 21-day period.
- (6A) As soon as practicable after an application is determined, the Commissioner must give notification of the determination to the following:

- (a) the employer,
- (b) the apprentice or trainee concerned,
- (c) in the case of an application to vary a training plan—the relevant registered training organisation.

- (7) If the application for variation of a training contract or training plan is approved, the training contract or training plan is taken to be varied in accordance with the approval.

22 Suspension and cancellation of apprenticeships and traineeships by consent

- (1) An application for suspension or cancellation of an apprenticeship or traineeship may be made to the Commissioner by the employer and the apprentice or trainee, or by either of them alone.
- (2) In the case of an application made by both parties, the apprenticeship or traineeship is suspended or cancelled in accordance with the application on the expiry of 7 days after the application is lodged with the Commissioner, unless the Commissioner directs otherwise.
- (3) Such a direction may be given only if the Commissioner is satisfied:
 - (a) that the consent of one of the parties to the application has been obtained as a result of undue influence, or
 - (b) one of the parties to the application has, before the expiry of the 7-day period, notified the Commissioner that he or she withdraws consent to the application.
- (4) In the case of an application made by one only of the parties, the Commissioner must send a notice to the other party requesting the party to notify the Commissioner whether or not the party consents to the suspension or cancellation.
- (5) If the Commissioner does not receive any reply to such a request within 21 days after the date on which the notice was sent:
 - (a) the consent of the party to whom the notice was sent is taken to have been given, and
 - (b) the apprenticeship or traineeship is suspended or cancelled in accordance with the application on the expiry of the 21-day period.

23 Completion of apprenticeships and traineeships

- (1) As soon as practicable after an apprentice:
 - (a) has completed his or her term of apprenticeship in a recognised trade vocation, and

(b) has been awarded an appropriate qualification by a registered training organisation,

the Commissioner must issue the apprentice with a certificate of proficiency for that vocation.

(2) An apprentice who has completed his or her term of apprenticeship in a recognised trade vocation but has yet to be awarded an appropriate qualification may instead be awarded a craft certificate for that vocation.

(3) As soon as practicable after a trainee:

(a) has completed his or her term of traineeship in a recognised traineeship vocation, and

(b) has been awarded an appropriate qualification by a registered training organisation,

the Commissioner must issue the trainee with a certificate of proficiency for that vocation.

(4) A trainee who has completed his or her term of traineeship in a recognised traineeship vocation but has yet to be awarded an appropriate qualification may instead be awarded a certificate of completion for that vocation.

24 Effect of death of employer or change in partnership

(1) If:

(a) the employer of an apprentice or trainee dies, and

(b) the business in which the apprentice or trainee was employed is carried on by the executors or administrators for the time being of the will or estate of the deceased employer,

the apprenticeship or traineeship is taken not to have been terminated by the death of the employer.

(2) If:

(a) the employers of an apprentice or trainee are partners in a partnership, and

(b) the business in which the apprentice or trainee is employed is carried on after a change in the composition of the partnership,

the apprenticeship or traineeship is taken not to have been terminated by that change.

(3) Unless cancellation of the apprenticeship or traineeship is approved by the

Commissioner on the application of those executors, administrators or partners:

- (a) the relevant training contract continues to bind them as if they were the employers of the apprentice or trainee, and
- (b) while it does so, they are taken to be the employers of the apprentice or trainee for the purposes of this Act.

Division 4 Additional provisions concerning recognised trade vocations

25 Juniors not to be employed in recognised trade vocations unless apprentices or qualified tradespersons

- (1) An employer must not employ a junior in a recognised trade vocation unless the junior is an apprentice or qualified tradesperson in that vocation.

Maximum penalty: 20 penalty units.

- (2) This section does not apply to:
 - (a) the employment of a person in a recognised traineeship vocation that is, or forms part of, a recognised trade vocation, or
 - (b) the employment of a person in a recognised trade vocation by a spouse or parent of the person, or
 - (c) the employment of a person in a recognised trade vocation, or in any part of a recognised trade vocation, that is exempted by the regulations from the operation of this section.

26 Commissioner may direct apprenticeship to have effect

- (1) If an employer fails to apply for the establishment of an apprenticeship within 28 days after the employer employs a junior as an apprentice, the Commissioner may, on the application of the junior, direct that an apprenticeship contract be taken to have come into effect between the employer and the junior.
- (2) As soon as practicable after giving such a direction, the Commissioner:
 - (a) must serve a document in the form of an apprenticeship contract (endorsed by the Commissioner to indicate that it has been prepared pursuant to a direction under this section) on the employer, and
 - (b) must send a copy of the document to the apprentice.
- (3) Subject to this Act, an apprenticeship contract under this section:
 - (a) takes effect when the document referred to in subsection (2) (a) is served on the

employer, and

(b) has effect as if it were a deed duly executed by the employer and the apprentice.

- (4) Any time during which the employer has employed the apprentice as an apprentice prior to the giving of the direction referred to in subsection (1) is taken to form part of the term of the apprenticeship.

27 Remuneration of adult apprentices

(1) If:

- (a) an apprenticeship is established in a recognised trade vocation for an adult, and
- (b) there is no adult award in force, but there is a junior award in force, in relation to that vocation,

then, until an adult award comes into force in relation to that vocation, the minimum rate of remuneration for the person is to be the maximum rate set by the junior award for apprentices who are at the same stage of apprenticeship in that vocation.

- (2) A rate of remuneration set by this section has effect as if it formed part of an industrial award or agreement that applied to the person for whom it is set, and any remuneration payable under this section may be recovered accordingly.
- (3) This section does not apply to an apprenticeship between an employer and an apprentice if the employer is a parent or guardian of the apprentice.
- (4) In this section:

adult award means an industrial award or agreement under which a rate of remuneration is set for apprentices who are adults (that is, persons who are not juniors).

junior award means an industrial award or agreement under which a rate of remuneration is set for apprentices who are juniors.

Division 5 General

28 Register of apprenticeships and traineeships

- (1) The Commissioner is to establish and maintain a register of apprenticeships and traineeships.
- (2) The register must contain such of the following information as is relevant to each apprenticeship or traineeship established under this Act:
- (a) the names and addresses of the employer and the apprentice or trainee,
 - (b) the date on which the apprenticeship or traineeship was approved,

- (c) the recognised trade vocation or recognised traineeship vocation for which the apprenticeship or traineeship is established,
 - (d) the appropriate qualification or qualifications that may be awarded to the apprentice or trainee in relation to the apprenticeship or traineeship,
 - (e) the term of the apprenticeship or traineeship,
 - (f) the industrial award or agreement identified in the application for the establishment of the apprenticeship or traineeship as the industrial award or agreement that applies to the apprenticeship or traineeship,
 - (g) the date of commencement of the apprenticeship or traineeship,
 - (h) the serial number of the training contract approved in relation to the apprenticeship or traineeship,
 - (i) the name of the registered training organisation associated with the apprenticeship or traineeship,
 - (j) each date on which the apprenticeship or traineeship has been transferred, suspended, cancelled or varied,
 - (k) the date on which the apprenticeship or traineeship was completed,
 - (l) whether the trainee under a traineeship is an existing worker trainee.
- (3) The regulations may make provision for or with respect to the manner and form in which the register is to be kept.
- (4) The Commissioner is to provide to the Chief Commissioner of State Revenue or an authorised officer within the meaning of the [Taxation Administration Act 1996](#) such information contained in the register as may be requested from time to time by the Chief Commissioner or authorised officer.

29 Advertising of group training organisations

A person must not advertise or otherwise represent that a person or body:

- (a) is a registered group training organisation, or
- (b) is registered, endorsed or otherwise approved by the Government (however expressed) to offer training or other services under host employment arrangements,

unless the person or body concerned is a registered group training organisation.

Maximum penalty: 10 penalty units.

30 Registration of group training organisations

- (1) Any person or body may apply to the Commissioner to be registered as a group training organisation.
- (2) The Commissioner may register the applicant as a group training organisation if satisfied, in accordance with any relevant vocational training guidelines, that the organisation meets minimum operational standards.
- (3) The Commissioner may suspend or cancel the registration of a person or body as a group training organisation if satisfied that the person or body no longer meets minimum operational standards.

Note—

Registration of a person or body as a group training organisation may render the person or body eligible for certain payments available under Commonwealth or State incentive schemes.

31 Preservation of conditions of employment of existing worker trainees

- (1) The conditions of employment of a person who becomes registered as an existing worker trainee (including conditions with respect to superannuation, accrual of leave and other entitlements) are unaffected by the establishment of the traineeship.
- (2) Such a person:
 - (a) is entitled to remain employed under those conditions (together with such variations of those conditions as are authorised by law) as if the traineeship had not been established, and
 - (b) has the same rights under any Act or law in relation to those conditions as those to which he or she would have been entitled had the traineeship not been established.
- (3) In particular:
 - (a) the fact that a person is registered as an existing worker trainee does not invoke the provisions of any industrial award or agreement to the extent to which those provisions would diminish the conditions (including conditions with respect to superannuation, accrual of leave and other entitlements) to which the person is entitled, and
 - (b) the fact that a person who is registered as an existing worker trainee completes a traineeship does not authorise the employer to terminate the person's employment with the employer.

Note—

Registration of an employee as an existing worker trainee may render the employer eligible for certain payments available under Commonwealth incentive schemes.

32 Training contracts presumed to benefit minors

In the application of the *Minors (Property and Contracts) Act 1970* to a training contract into which a minor has entered as an apprentice or trainee, the participation by the minor in the contract is, in the absence of evidence to the contrary, taken to be for the benefit of the minor.

33 Apprentices and trainees not to be required to make payments or give bonds

- (1) Except with the consent of the Commissioner, a person must not, whether directly or indirectly:
 - (a) require or permit a prospective apprentice or trainee to make any payment, or
 - (b) demand or receive any payment from a prospective apprentice or trainee, or
 - (c) require a prospective apprentice or trainee to enter into any bond or guarantee, for or with respect to the establishment of an apprenticeship or traineeship.

Maximum penalty: 20 penalty units.

- (2) This section does not apply to any fee charged by a registered training organisation for the training it provides in connection with an apprenticeship or traineeship.

34 Effect of change in vocational training order

- (1) The making of a vocational training order that amends or replaces an earlier vocational training order does not affect any apprenticeship or traineeship begun in accordance with the earlier order (an **existing apprenticeship or traineeship**), and an existing apprenticeship or traineeship may be continued and completed in accordance with the earlier order as if the later order had not been made.
- (2) Subsection (1) does not apply to the extent to which the later order expressly provides that it is to apply to an existing apprenticeship or traineeship, in which case the existing apprenticeship or traineeship is to be continued and completed:
 - (a) if the later order amends the earlier order, in accordance with the earlier order as amended by the later order, or
 - (b) if the later order replaces the earlier order, in accordance with the later order, but to the extent only to which the later order so provides.

Part 3 Recognition of other trade qualifications

35 Recognition of Defence Force trade training

- (1) In this section:

Defence Force means the Defence Force of the Commonwealth.

service adult trade training means training undertaken by a member of the Defence Force under a scheme (not involving apprenticeship) for the trade training of persons who are of or above the age of 17 years.

service apprenticeship means an apprenticeship served by a person as a member of the Defence Force.

- (2) The Tribunal may confer with representatives of the Defence Force, on any matter concerning service apprenticeships or service adult trade training, with a view to ensuring that a person who has completed a service apprenticeship or a period of service adult trade training in a recognised trade vocation will be accorded recognition in that vocation.
- (3) The Tribunal may determine that the course of training provided for a class of service apprenticeship or service adult trade training in a recognised trade vocation is such that a person:
 - (a) who satisfactorily completes the course, and
 - (b) who complies with such further conditions as to experience or otherwise as the Tribunal may determine,is adequately trained to pursue that vocation.
- (4) A determination under this section must be set out in an instrument signed by the Commissioner, and a copy of the instrument must be sent by the Commissioner to the relevant Defence Force authority.
- (5) The Commissioner must issue a certificate of proficiency or a craft certificate, whichever is appropriate, to a person who satisfies the Commissioner that the person:
 - (a) has satisfactorily completed the course of training to which such a determination relates, and
 - (b) has complied with any other conditions prescribed by the determination.

36 Recognition of other qualifications

- (1) The Tribunal may, on the application of any person or on its own motion, determine that a person:
 - (a) who has specified qualifications in a recognised trade vocation (being qualifications obtained elsewhere than in New South Wales), and
 - (b) who complies with such further conditions as to experience or otherwise as the Tribunal may determine,

is adequately trained to pursue that vocation.

- (2) A determination under this section must be set out in an instrument signed by the Commissioner.
- (3) The Commissioner must issue a certificate of proficiency or a craft certificate, whichever is appropriate, to a person who satisfies the Commissioner that the person:
 - (a) has the qualifications to which such a determination relates, and
 - (b) has complied with any other conditions prescribed by the determination.

37 Recognition of other trade training

- (1) A person may apply to the Tribunal for recognition of the person's qualifications or experience in a particular recognised trade vocation.
- (2) If the Tribunal is satisfied that the applicant has acquired the competencies of the recognised trade vocation, it may determine that the applicant is adequately trained to pursue that vocation.
- (3) In making such a determination, the Tribunal 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) such other matters (including the applicant's performance in any examination or test set by the Tribunal) as it considers relevant.
- (4) A determination under this section must be set out in an instrument signed by the Commissioner.
- (5) The Commissioner must issue a certificate of proficiency or a craft certificate, whichever is appropriate, to the person to whom the determination relates.

38 Register of determinations

- (1) The Commissioner is to establish and maintain a register of determinations under this Part.
- (2) The regulations may make provision for or with respect to the manner and form in which the register is to be kept.

Part 4 Proceedings with respect to disputes and disciplinary matters

Division 1 Complaints

39 Complaints to be made to Commissioner

- (1) A complaint that a party to an apprenticeship or traineeship has failed to discharge his or her obligations under the apprenticeship or traineeship may be made:
 - (a) by the other party to the apprenticeship or traineeship, or
 - (b) by an industry training officer who is a public servant.
- (2) A complaint that a party to an apprenticeship or traineeship has failed to comply with the requirements of this Act (whether or not that failure constitutes an offence) may be made by an industry training officer.
- (3) A complaint that a party to an apprenticeship or traineeship has refused to consent to the transfer, suspension, cancellation or variation of an apprenticeship or traineeship, may be made by the other party to the apprenticeship or traineeship.
- (4) A complaint must be lodged at, or sent by post to, the offices of the Commissioner.

40 Complaints that cannot be settled to be referred to Tribunal

- (1) In the case of a complaint made by one of the parties to an apprenticeship or traineeship, the Commissioner must attempt to bring the parties to a settlement acceptable to each of them.
- (2) If such a settlement is not achievable, the Commissioner must refer the complaint to the Tribunal.
- (3) A complaint made by an industry training officer is to be referred directly to the Tribunal.

41 Suspension of apprenticeships and traineeships pending hearing

- (1) If the Commissioner is satisfied that the gravity of a complaint justifies such action, the Commissioner may suspend the relevant apprenticeship or traineeship pending the hearing of the complaint.
- (2) The suspension of an apprenticeship or traineeship under this section has effect until the complaint is withdrawn or determined.

42 Tribunal to fix time and place for hearing complaints

The Tribunal must fix a time and place for the hearing of a complaint and must give notice of the time and place so fixed to the complainant and to each of the parties to the relevant apprenticeship or traineeship.

Division 2 Hearings

43 Parties

The parties to the hearing of a complaint are the complainant and each of the parties to the relevant apprenticeship or traineeship.

44 Procedure generally

- (1) The Tribunal 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 thinks fit.
- (2) A hearing must be conducted with as little formality and legal technicality as the circumstances of the case permit.
- (3) A hearing must be conducted in the absence of the public.
- (4) The Tribunal may from time to time adjourn a hearing to such time, date and place, and for such reasons, as it considers fit.

45 Legal representation

- (1) A party to a complaint is not entitled to be represented by an Australian legal practitioner except with the consent of the Tribunal and of each of the other parties to the hearing.
- (2) This section:
 - (a) does not prevent a party from being represented by an industrial organisation, and
 - (b) does not prevent the Crown, or a party that is a corporation or an industrial organisation, from appearing by an Australian legal practitioner.
- (3) At any hearing at which the Crown, or a party that is a corporation or an industrial organisation, appears by an Australian legal practitioner, each of the other parties to the hearing is entitled to be represented at the hearing by an Australian legal practitioner.
- (4) In this section **industrial organisation** has the same meaning as it has in the [Industrial Relations Act 1996](#).

46 Attendance of witnesses and production of documents

- (1) The presiding member of the Tribunal:
 - (a) may require a person:
 - (i) to attend a hearing for the purpose of giving evidence, or

- (ii) to produce to the Tribunal any document that is relevant to a hearing, at a time, date and place specified in a notice served on the person, and
- (b) may require a person who attends a hearing to be sworn for the purpose of giving evidence on oath, and
- (c) may administer an oath to a person who attends a hearing for the purpose of giving evidence.
- (2) The Tribunal may retain possession of a document produced to it under this section for such period as it considers necessary for the purpose of completing the hearing.
- (3) A person (other than a public servant) who is required to attend or to give evidence at a hearing is entitled to be paid such allowances and expenses as may be prescribed by the regulations.
- (4) A person must not fail to comply with a requirement to attend a hearing, or to produce a document, to the extent to which the person is lawfully able to comply with the requirement.

Maximum penalty (subsection (4)): 5 penalty units.

47 Witnesses to answer questions

- (1) The presiding member of the Tribunal may require a person who attends a hearing to answer any question that is reasonably related to the hearing.
- (2) A person may refuse to answer a question on the ground that the answer might tend to incriminate the person.
- (3) A person:
 - (a) must not fail to comply with a requirement to answer a question, to the extent to which the person is lawfully able to comply with the requirement, and
 - (b) must not, in purported compliance with a requirement to answer a question, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (4) Subsection (3) (b) does not apply to statements made on oath.

48 Misconduct

A person must not misconduct himself or herself at a hearing.

Maximum penalty: 5 penalty units.

49 Costs

Each party to a hearing is to bear his or her own costs of the hearing.

Division 3 Determinations

50 Conciliation

The Tribunal must not make a determination in relation to a complaint made by a party to an apprenticeship or traineeship until it has attempted to bring each of the parties to the apprenticeship or traineeship to a settlement acceptable to all of them.

51 Determinations

- (1) The Tribunal must determine a complaint made under section 39 (1) or (2):
 - (a) by cautioning or reprimanding the person against whom the complaint has been made, or
 - (b) by ordering the person against whom the complaint has been made to make such redress (otherwise than by way of damages for breach of contract) as the Tribunal considers appropriate, or
 - (c) by varying, suspending or cancelling the apprenticeship or traineeship to which the complaint relates, or
 - (d) by dismissing the complaint.
- (2) A complaint must not be determined as referred to in subsection (1) (a), (b) or (c) unless the Tribunal is satisfied that the person against whom the complaint has been made:
 - (a) has failed to discharge his or her obligations under the apprenticeship or traineeship to which the complaint relates, or
 - (b) has failed to comply with the requirements of this Act.
- (3) The Tribunal must not suspend or cancel an apprenticeship or traineeship under subsection (1) unless it is satisfied that:
 - (a) one of the parties is unlikely to discharge his or her obligations under the apprenticeship or traineeship, and
 - (b) if that party is the employer:
 - (i) the other party is unwilling to allow another employer to assume those obligations, or
 - (ii) no other employer can be found who is willing to assume those obligations.

- (4) The Tribunal must determine a complaint made under section 39 (3):
 - (a) by directing that the requirement for consent referred to in that subsection be waived, or
 - (b) by dismissing the complaint.
- (5) The Commissioner must give notice of the Tribunal's determination to each of the parties to the hearing.
- (6) On the making of a determination that varies, suspends or cancels an apprenticeship or traineeship, the apprenticeship or traineeship is taken to be varied, suspended or cancelled, as the case may be, in accordance with the determination.

52 Orders for compensation

- (1) If:
 - (a) the Tribunal dismisses a complaint made by an employer, and
 - (b) an apprenticeship or traineeship has been suspended by the Commissioner pending the hearing of the complaint, and
 - (c) the employer has, under the terms of employment between the employer and the apprentice or trainee:
 - (i) failed to give to the apprentice or trainee the whole, or any part, of any right or benefit (whether by way of remuneration or otherwise) to which the apprentice or trainee would, but for the suspension, be entitled, or
 - (ii) failed to contribute to any superannuation scheme the whole, or any part, of any payment which the employer would, but for the suspension, be required to contribute in relation to the apprentice or trainee,

the Tribunal must direct the employer to pay to the apprentice or trainee, and to contribute to any such scheme, specified amounts equivalent to the value of any right or benefit that the employer has failed to give or the amount of any payment that the employer has failed to contribute.

- (2) On the filing in the office or registry of a court having jurisdiction to order payment of an amount so specified of:
 - (a) a copy of the direction, certified by the Commissioner to be a true copy, and
 - (b) an affidavit by the apprentice or trainee specifying the amount unpaid under the direction,the direction is taken to be a judgment of that court for that amount.

53 Orders prohibiting employer from entering into apprenticeships and traineeships

- (1) If, in determining a complaint against an employer under section 39 (1) or (2), the Tribunal is of the opinion that it is appropriate to do so in the public interest, the Tribunal:
 - (a) may make an order declaring the employer to be a prohibited employer, either indefinitely or for a specified period, and
 - (b) if it does so, may make a further order authorising the transfer to other employers of all or specified apprenticeships and traineeships to which the employer is party (including any apprentice or trainee involved in the proceedings on the complaint).
- (2) An order under this section may not be made unless the Tribunal:
 - (a) has given notice to the employer of its intention to make such an order, and
 - (b) has given the employer at least 21 days within which to make submissions to the Tribunal with respect to the proposed order, and
 - (c) has taken any such submissions into consideration.
- (3) For the purposes of section 20 (4) (b), consent to the transfer of an apprentice or trainee to a new employer is not required from an existing employer the subject of an order referred to in subsection (1) (b).

Part 5 Appeals

54 Appeals to Appeal Panel

- (1) An appeal to the Appeal Panel may be made, in accordance with the regulations, from any of the following:
 - (a) any decision by the Tribunal or by the Commissioner dismissing an application for establishment of an apprenticeship or traineeship,
 - (b) any vocational training direction made by the Tribunal or by the Commissioner,
 - (c) any decision by the Tribunal or by the Commissioner dismissing an application for approval to the transfer of an apprenticeship or traineeship,
 - (d) any decision by the Tribunal or by the Commissioner dismissing an application for variation of an apprenticeship or traineeship,
 - (e) any decision by the Tribunal or by the Commissioner under which an apprenticeship or traineeship has been varied,
 - (f) any decision by the Commissioner to refuse to register a person as an existing worker trainee,

- (g) any decision by the Commissioner 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) any refusal by the Commissioner to issue a certificate of proficiency, craft certificate or certificate of completion under Part 2 or 3,
 - (i) any determination by the Tribunal under section 36 that denies recognition of a person's qualifications or experience in a particular recognised trade vocation,
 - (j) any decision by the Commissioner refusing to refer a complaint under Part 4 for determination by the Tribunal,
 - (k) any determination by the Tribunal in respect of a complaint under Part 4, including any order of the kind referred to in section 53.
- (2) An appeal is to be dealt with by way of a new hearing, and fresh evidence or fresh information may be given on the appeal.
 - (3) The provisions of Division 2 of Part 4 apply to proceedings before the Appeal Panel in the same way as they apply to proceedings before the Tribunal.
 - (4) The provisions of Division 3 of Part 4 apply to a determination by the Appeal Panel in the same way as they apply to a determination by the Tribunal.
 - (5) The decision of the Appeal Panel is to be given effect to as if it were the decision of the person or body in respect of whose decision, determination, action or failure to act the appeal has been made.

55 Appeals to Industrial Relations Commission

- (1) An appeal from a decision of the Appeal Panel may be made to the Industrial Relations Commission in Court Session (the **Commission**), but only by leave of the Commission.
- (2) An application for leave to appeal under this section must be made within 6 months after the appellant is notified of the Appeal Panel's determination or within such further period as the Commission allows.
- (3) In dealing with the appeal, the Commission:
 - (a) may exercise any function that could have been exercised by the Appeal Panel in making the determination the subject of the appeal, and
 - (b) is not bound by the rules of evidence, but may inform itself in any manner it thinks fit.
- (4) The decision of the Commission is final and is to be given effect to as if it were the decision of the person or body in respect of whose decision, determination, action or

failure to act the appeal has been made.

Part 6 Administration

Division 1 The Commissioner for Vocational Training

56 Appointment of Commissioner

A Commissioner for Vocational Training is to be appointed under Part 2 of the *Public Sector Management Act 1988*.

57 Functions of Commissioner

The Commissioner has such functions as are conferred or imposed on the Commissioner by or under this or any other Act.

58 Delegation by Commissioner

The Commissioner may delegate to any person, or to any person belonging to a specified class of persons, any of the Commissioner's functions, other than this power of delegation and other than the Commissioner's functions as a member of the Tribunal.

Division 2 The Vocational Training Tribunal

59 Establishment of Tribunal

- (1) There is to be a Vocational Training Tribunal of New South Wales.
- (2) The Tribunal is to consist of at least 4 members appointed by the Director-General, of whom:
 - (a) one is to be the Commissioner, and
 - (b) at least one is to be a person appointed to represent registered training organisations, and
 - (c) at least one is to be a person appointed to represent employers, and
 - (d) at least one is to be a person appointed to represent employees.
- (3) The Commissioner is the Chairperson of the Tribunal.
- (4) Schedule 1 has effect with respect to the members and procedure of the Tribunal.

60 Sittings of Tribunal

- (1) For the purpose of exercising its functions under Part 4, the Tribunal is to be constituted by at least 4 of its members, of whom:
 - (a) one is to be the Commissioner, and

- (b) at least one is to be a member appointed by the Commissioner from among the persons referred to in section 59 (2) (b), and
 - (c) at least one is to be a member appointed by the Commissioner from among the persons referred to in section 59 (2) (c), and
 - (d) at least one is to be a member appointed by the Commissioner from among the persons referred to in section 59 (2) (d).
- (2) Equal numbers of members are to be appointed from among the persons referred to in section 59 (2) (b), (c) and (d).
 - (3) For the purpose of exercising its functions otherwise than under Part 4, the Tribunal is to be constituted by at least 2 of its members, of whom one is to be the Commissioner.
 - (4) At any sitting of the Tribunal, the Commissioner is to preside.
 - (5) The Commissioner may delegate the exercise of the Commissioner's functions as a member of the Tribunal to any public servant employed within the Department, and for that purpose any such delegate is taken to be a member of the Tribunal and is to preside at any sitting of the Tribunal in place of the Commissioner.
 - (6) More than one sitting of the Tribunal may be held at any one time.

61 Functions of Tribunal

The Tribunal has such functions as are conferred or imposed on it by or under this or any other Act.

Division 3 The Vocational Training Appeal Panel

62 Constitution of Appeal Panel

- (1) There is to be a Vocational Training Appeal Panel.
- (2) The Appeal Panel is to consist of at least 4 persons appointed by the Director-General, of whom:
 - (a) at least one is to be a public servant employed within the Department,
 - (b) at least one is to be a person appointed to represent registered training organisations, and
 - (c) at least one is to be a person appointed to represent employers, and
 - (d) at least one is to be a person appointed to represent employees.
- (3) Nothing in this Act prevents a person from being both a member of the Tribunal and a

member of the Appeal Panel.

- (4) Schedule 2 has effect with respect to the members of the Appeal Panel.

63 Sittings of Appeal Panel

- (1) For the purpose of exercising its functions, the Appeal Panel is to be constituted by 4 of its members, one from each of the categories referred to in section 62 (2) (a), (b), (c) and (d).
- (2) One of the members appointed as referred to in section 62 (2) (a) is to be the presiding member of the Appeal Panel for the purposes of the appeal in respect of which the Appeal Panel is constituted.
- (3) When constituted for the purpose of hearing and determining an appeal from a decision or determination by the Tribunal, the Appeal Panel must not be constituted so as to include any of the persons by whom the Tribunal was constituted in relation to that decision or determination.
- (4) More than one sitting of the Appeal Panel may be held at any one time.

64 Functions of Appeal Panel

The Appeal Panel has such functions as are conferred or imposed on it by or under this or any other Act.

Division 4 Industry training officers

65 Appointment of industry training officers

- (1) The Commissioner may appoint such persons (whether public servants or otherwise) as the Commissioner thinks fit to be industry training officers.
- (2) An industry training officer (other than a public servant) is entitled to such remuneration as the Commissioner may, with the approval of the Minister, determine in respect of the officer.

66 Functions of industry training officers

The functions of an industry training officer are:

- (a) to monitor the required training provided to apprentices and trainees, including the training provided by host employers under host employment arrangements and the supervision of training by employers who make use of host employment arrangements, and
- (b) to report to the Commissioner on the adequacy of such training, either generally or in a particular case, and

- (c) to advise and assist employers in relation to the provision of training to apprentices and trainees, and
- (d) to advise and assist apprentices and trainees in relation to the training being provided to them, and
- (e) to exercise such other functions as are conferred or imposed on industry training officers by or under this Act.

67 Powers of entry to premises

- (1) An industry training officer may exercise any one or more of the following powers for the purpose of exercising the functions of such an officer under this Act:
 - (a) the officer may enter any premises or place in or on which a recognised trade vocation or recognised traineeship vocation is conducted,
 - (b) the officer may examine:
 - (i) any plant, equipment, material or substance used in relation to any such vocation, and
 - (ii) any document relating to any such vocation, found in or on the premises or place,
 - (c) the officer may take copies of, or extracts or notes from, any document relating to any such vocation found in or on the premises or place,
 - (d) the officer may require any person found in or on the premises or place to produce:
 - (i) any plant, equipment, material or substance used in relation to any such vocation, or
 - (ii) any document relating to any such vocation, that is in the possession or under the control of that person.
- (2) A person must not fail to comply with a requirement made by an industry training officer under subsection (1) (d).

Maximum penalty: 20 penalty units.
- (3) An industry training officer may exercise any power conferred by this section at any reasonable time during normal business hours.
- (4) This section does not authorise the exercise of any power conferred by this section in or on any residential premises or in relation to any person found in or on any residential premises.

- (5) In exercising in or on any premises or place any power conferred by this section, an industry training officer:
 - (a) must, if required to do so by a person apparently occupying the premises or place, produce to that person the officer's certificate of identification, and
 - (b) must, as far as practicable, avoid doing anything which is likely to impede the lawful conduct of any vocation being carried out in or on the premises or place.
- (6) For the purposes of this section, an industry training officer is to be issued with a certificate of identification that is in or to the effect of the form prescribed by the regulations.
- (7) An industry training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

68 Search warrants

- (1) An industry training officer may apply to an authorised officer for a search warrant if the officer has reasonable grounds for believing that a provision of this Act or the regulations is being or has been contravened in or on any premises or place.
- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an industry training officer named in the warrant:
 - (a) to enter the premises or place, and
 - (b) to search the premises or place for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#), a police officer:
 - (a) may accompany an industry training officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist an industry training officer in the exercise of the officer's functions under this section.
- (5) An industry training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.
- (6) In this section:

authorised officer has the same meaning as it has in the [Law Enforcement \(Powers](#)

and Responsibilities) Act 2002.

69 Obstruction of industry training officers

A person must not assault, delay, obstruct, hinder or impede an industry training officer in the exercise of the officer's functions under this Act.

Maximum penalty: 20 penalty units.

Part 7 Miscellaneous

70 False or misleading information

A person must not, in or in relation to any application under this Act, make any statement or furnish any information that the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

71 Disclosure of business information

- (1) A person must not disclose any business information obtained in connection with the administration or execution of this Act unless that disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

- (2) In this section ***business information*** means:

- (a) trade secrets, or
- (b) information (other than trade secrets) that is of commercial value, or
- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

72 Contraventions of Act that give rise to offences

A contravention of this Act does not give rise to an offence except to the extent to which this Act expressly states or necessarily implies.

73 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against this Act or the regulations are not to be instituted otherwise than by:
 - (a) the Minister or the Commissioner, or
 - (b) a person duly authorised by the Minister or the Commissioner in that behalf, either generally or in a particular case.

Note—

Section 382 of the [Industrial Relations Act 1996](#) provides that the jurisdiction of a Local Court under this section is exercisable by an Industrial Magistrate.

74 Applications and notices

- (1) An application under this Act or the regulations to the Commissioner, the Tribunal or the Appeal Panel:
 - (a) must be in such form as may be approved for the time being by the Commissioner, and
 - (b) must be lodged at, or sent by post to, the offices of the Commissioner.
- (2) A notice that the Commissioner is required or permitted to give to a person may be served personally or by means of a letter addressed to the person at the person's address last known to the Commissioner.

75 Fees

The matters for which fees are payable under this Act, the amount of any such fees and the circumstances in which any such fees may be waived, postponed or remitted are to be prescribed by the regulations.

76 Evidentiary certificates

A certificate that is signed by the Commissioner and that certifies that on a specified date or during a specified period:

- (a) a specified person was or was not an industry training officer, or
- (b) the provisions of a specified vocational training direction were or were not in specified terms, or
- (c) a specified person was or was not a party to an apprenticeship or traineeship, or
- (d) the provisions of a specified training contract were or were not in specified terms, or

- (e) a specified person was or was not registered as an existing worker trainee, or
 - (f) a specified person or body was or was not a registered group training organisation, or
 - (g) a specified person or body was or was not a prohibited employer,
- is admissible in any proceedings and is evidence of the fact or facts so certified.

77 Liability

A matter or thing done or omitted to be done by:

- (a) the Commissioner, or
- (b) the Tribunal or any member of the Tribunal, or
- (c) the Appeal Panel or any member of the Appeal Panel, or
- (d) an industry training officer, or
- (e) any person acting under the direction of the Commissioner, the Tribunal or the Appeal Panel,

does not subject the Commissioner, any member of the Tribunal or Appeal Panel, any industry training officer or any person so acting, personally, to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of executing this Act.

78 Delegation by Director-General

The Director-General may delegate to any public servant employed within the Department the exercise of any of the Director-General's functions under this Act, other than this power of delegation.

79 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

80 Relationship with [Industrial Relations Act 1996](#)

In the event of an inconsistency between:

- (a) the provisions of this Act, or of any regulation, vocational training order or vocational training direction made under this Act, and
- (b) the provisions of the [Industrial Relations Act 1996](#) or of any regulation, order, award or agreement under that Act (other than a provision with respect to existing worker trainees),

the provisions referred to in paragraph (a) prevail to the extent of the inconsistency.

81 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
 - (a) the lodgment, variation and withdrawal of applications, and
 - (b) the proportion of apprentices to skilled tradespersons who may be employed by employers in specified trades or vocations, and
 - (c) the training to be provided for and undertaken by apprentices and trainees, and
 - (d) the supervision of apprentices and trainees by their employers, and
 - (e) the facilities to be provided for apprentices and trainees for the purpose of their being trained by their employers, and
 - (f) the keeping of progress cards and records, and
 - (g) the forms to be used for the purposes of this Act, and
 - (h) the use of electronic communication, electronic data storage and electronic signatures for the purpose of making applications, sending notices and keeping records for the purposes of this Act, and
 - (i) any other matter relating to the training of apprentices and trainees by their employers.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

82 Repeals

The *Industrial and Commercial Training Act 1989* is repealed.

83 (Repealed)

84 Savings, transitional and other provisions

Schedule 4 has effect.

85 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 The Vocational Training Tribunal

(Section 59)

Part 1 Constitution of Tribunal

1 Definition

In this Schedule:

appointed member means a member of the Tribunal referred to in section 59 (2) (b), (c) or (d).

2 Nomination of appointed members

An appointed member:

- (a) in the case of a member appointed to represent registered training organisations:
 - (i) is to be nominated for appointment in the manner prescribed by the regulations by such registered training organisations, or by such associations of registered training organisations, as may be so prescribed, or
 - (ii) if no such nomination is made within a reasonable time after the Director-General requests such a nomination to be made, is to be appointed by the Director-General without the necessity for nomination, and
- (b) in the case of a member appointed to represent employers:
 - (i) is to be nominated for appointment in the manner prescribed by the regulations by such employers, or by such industrial organisations of employers, as may be so prescribed, or
 - (ii) if no such nomination is made within a reasonable time after the Director-General requests such a nomination to be made, is to be appointed by the Director-General without the necessity for nomination, and
- (c) in the case of a member appointed to represent employees:
 - (i) is to be nominated in the manner prescribed by the regulations by such industrial organisations of employees as may be so prescribed, or
 - (ii) if no such nomination is made within a reasonable time after the Director-General requests such a nomination to be made, is to be appointed by the Director-General

without the necessity for nomination.

3 Term of office

Subject to this Schedule, an appointed member holds office for such period, not exceeding 5 years, as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of appointed member

(1) An appointed member ceases to hold office if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Director-General, or
- (d) is removed from office by the Director-General, or
- (e) becomes a mentally incapacitated person, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) An appointed member also ceases to hold office if the person or body by whom the member was nominated for appointment withdraws the nomination in the manner prescribed by the regulations.

(3) The Director-General may remove an appointed member from office at any time.

6 Filling of vacancies

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Part 2 Procedure of the Tribunal

7 Convening meetings

A meeting of the Tribunal is to be convened by the Commissioner:

- (a) whenever he or she thinks fit, or
- (b) within 5 days of receipt of a written request signed by any 2 other members of the Tribunal.

8 Rules for conduct of business

The procedure for the conduct of business at a meeting of the Tribunal is, subject to this Act and the regulations, to be as determined by the Tribunal.

9 Procedure and decisions of Tribunal

- (1) The Chairperson of the Tribunal is to preside at a meeting of the Tribunal.
- (2) The Chairperson of the Tribunal has a deliberative vote at any meeting of the Tribunal and, in the event of an equality of votes, has a second or casting vote.

10 Chairperson may act as Tribunal when other members are absent

- (1) If, with respect to a matter arising at a meeting of the Tribunal, there are no votes of the other members of the Tribunal, the Chairperson of the Tribunal may decide the matter, in which case the matter is taken to have been decided by the Tribunal at the meeting.
- (2) If:
 - (a) the Chairperson of the Tribunal is present at a duly convened meeting of the Tribunal or at a time and place to which any such meeting has been adjourned, and
 - (b) all of the other members of the Tribunal are absent from the meeting or from the place at that time,any matter that the Tribunal is competent to deal with may be dealt with by the Chairperson, in which case the matter is taken to have been dealt with by the Tribunal at a meeting.

11 Clauses 7-10 not to apply to proceedings under Part 4

Clauses 7-10 do not apply to the procedure of the Tribunal in the exercise of its functions under Part 4.

Schedule 2 The Vocational Training Appeal Panel

(Section 62)

1 Definition

In this Schedule:

appointed member means a member of the Appeal Panel referred to in section 62 (2) (b), (c) or (d).

2 Nomination of appointed members

An appointed member:

- (a) in the case of a member appointed to represent registered training organisations:
 - (i) is to be nominated for appointment in the manner prescribed by the regulations by such registered training organisations, or by such associations of registered training organisations, as may be so prescribed, or
 - (ii) if no such nomination is made within a reasonable time after the Director-General requests such a nomination to be made, is to be appointed by the Director-General without the necessity for nomination, and
- (b) in the case of a member appointed to represent employers:
 - (i) is to be nominated for appointment in the manner prescribed by the regulations by such employers, or by such industrial organisations of employers, as may be so prescribed, or
 - (ii) if no such nomination is made within a reasonable time after the Director-General requests such a nomination to be made, is to be appointed by the Director-General without the necessity for nomination, and
- (c) in the case of a member appointed to represent employees:
 - (i) is to be nominated in the manner prescribed by the regulations by such industrial organisations of employees as may be so prescribed, or
 - (ii) if no such nomination is made within a reasonable time after the Director-General requests such a nomination to be made, is to be appointed by the Director-General without the necessity for nomination.

3 Term of office

Subject to this Schedule, an appointed member holds office for such period, not exceeding 5 years, as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Director-General, or
 - (d) is removed from office by the Director-General, or
 - (e) becomes a mentally incapacitated person, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) An appointed member also ceases to hold office if the person or body by whom the member was nominated for appointment withdraws the nomination in the manner prescribed by the regulations.
- (3) The Director-General may remove an appointed member from office at any time.

6 Filling of vacancy in office of member

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Schedule 3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 84)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent

on the enactment of the following Acts:

this Act

- (2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

Part 2 Provisions consequent on enactment of [Apprenticeship and Traineeship Act 2001](#)

2 Definition

In this Part:

the 1989 Act means the [Industrial and Commercial Training Act 1989](#).

3 Delegations

A function that, immediately before the commencement of this clause, was delegated by the Commissioner under section 15 of the 1989 Act is taken to have been delegated under section 58 of this Act.

4 Vocational Training Board

- (1) The Vocational Training Tribunal established under this Act is a continuation of the Vocational Training Board established under the 1989 Act.
- (2) Each person who, immediately before the commencement of this clause, was a member of the Vocational Training Board under the 1989 Act is taken to have been appointed as a member of the Vocational Training Tribunal under this Act for the balance of his or her term of office as a member of the Vocational Training Board under the 1989 Act.

5 Training officers

A person who, immediately before the commencement of this clause, was a training officer under the 1989 Act is taken to have been appointed as an industry training officer under this Act.

6 Declared trades and callings

- (1) A vocation that, immediately before the commencement of this clause, was a declared trade under the 1989 Act is taken to be a recognised trade vocation under this Act.
- (2) A vocation that, immediately before the commencement of this clause, was a declared calling under the 1989 Act is taken to be a recognised traineeship vocation under this Act.

7 Vocational training orders

A vocational training order that, immediately before the commencement of this clause, was in force under the 1989 Act is taken to have been made under this Act.

8 Vocational training guidelines

A vocational training guideline that, immediately before the commencement of this clause, was in force under the 1989 Act is taken to have been issued under this Act.

9 Applications for establishment of apprenticeships and traineeships

An application for the establishment of an apprenticeship or traineeship that had not been finally determined under the 1989 Act before the commencement of this clause is to be dealt with under the 1989 Act as if this Act had not been enacted and, for that purpose, the Vocational Training Tribunal may exercise the functions of the Vocational Training Board under the 1989 Act.

10 Vocational training directions

A vocational training direction under the 1989 Act is taken to be a vocational training direction under this Act.

11 Application of sections 12 and 19

- (1) Section 12 (3) of this Act extends to any time during which an employer has employed a person as an apprentice or trainee before the commencement of that subsection.
- (2) Section 19 of this Act extends to any time during which an apprentice or trainee has attended a relevant registered training organisation, in relation to his or her apprenticeship or traineeship, before the commencement of that section.

12 Apprenticeships and traineeships

- (1) A trainee apprenticeship under the 1989 Act (including a trainee apprenticeship arising under clause 9) is taken to be a trainee apprenticeship under this Act.
- (2) An indentured apprenticeship under the 1989 Act (including an indentured apprenticeship arising under clause 9) is taken to be a full apprenticeship under this

Act.

- (3) A traineeship under the 1989 Act (including a traineeship arising under clause 9) is taken to be a traineeship under this Act.

13 Transfers and variations

Any application for the assignment or variation of an apprenticeship or traineeship that had not been finally determined under the 1989 Act before the commencement of this clause is to be dealt with under the 1989 Act as if this Act had not been enacted and, for that purpose, the Vocational Training Tribunal may exercise the functions of the Vocational Training Board under the 1989 Act.

14 Certificates

Any craft certificate, certificate of completion or certificate of proficiency granted under the 1989 Act is taken to be the corresponding craft certificate, certificate of completion or certificate of proficiency under this Act.

15 Complaints

Any complaint that had not been finally determined under the 1989 Act before the commencement of this clause is to be dealt with under the 1989 Act as if this Act had not been enacted and, for that purpose, the Vocational Training Tribunal under this Act may exercise the functions of the Vocational Training Board under the 1989 Act.

16 Determination of complaints

Any determination of the Vocational Training Board under Part 4 or 5 of the 1989 Act is taken to be a determination by the Vocational Training Tribunal under Part 4 or 3, respectively, of this Act.

17 Appeal Panel

- (1) The Appeal Panel established under this Act is a continuation of the Appeal Panel established under the 1989 Act.
- (2) Each person who, immediately before the commencement of this clause, was a member of the Appeal Panel under the 1989 Act is taken to have been appointed as a member of the Appeal Panel under this Act for the balance of his or her term of office as a member of the Appeal Panel under the 1989 Act.

18 Appeals

Any appeal that had not been finally determined under the 1989 Act before the commencement of this clause is to be dealt with under the 1989 Act as if this Act had not been enacted and, for that purpose, the Appeal Panel under this Act may exercise the functions of the Appeal Panel under the 1989 Act.

19 Determination of appeals

Any determination of the Appeal Panel under Part 6 of the 1989 Act is taken to be a determination by the Appeal Panel under Part 5 of this Act.

20 Certificates of identification

Any certificate of identification under section 89 of the 1989 Act is taken to be a certificate of identification under section 67 of this Act.

21 Search warrants

Any search warrant under section 90 of the 1989 Act is taken to be a search warrant under section 68 of this Act.

22 Evidentiary certificates

Any evidentiary certificate under section 96 of the 1989 Act is taken to be an evidentiary certificate under section 76 of this Act.

23 Regulation

Any regulation in force under the 1989 Act immediately before the commencement of this clause is taken to have been made under this Act, and may be amended or repealed accordingly.

24 Construction of references

Subject to the regulations, in any Act or instrument:

- (a) a reference to the 1989 Act extends to this Act, and
- (b) a reference to a provision of the 1989 Act for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and
- (c) a reference to any act, matter or thing referred to in a provision of the 1989 Act for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.

25 General saving

Subject to the regulations:

- (a) anything begun before the commencement of this clause under a provision of the 1989 Act for which there is a corresponding provision in this Act may be continued and completed under the 1989 Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the 1989 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this

Act.

Part 3 Provision consequent on enactment of **Statute Law (Miscellaneous Provisions) Act 2003**

26 Notification of determinations

Sections 18 (2), 20 (6A) and 21 (6A), as inserted by the *Statute Law (Miscellaneous Provisions) Act 2003*, extend to an application made, but not finally determined, under the section concerned before its amendment by that Act.

Dictionary

(Section 3)

Appeal Panel means the Vocational Training Appeal Panel constituted by section 62.

apprentice means an employee who is party to an apprenticeship contract, and includes a person who is employed as an apprentice but in respect of whom an apprenticeship contract is not yet in force.

apprenticeship means an apprenticeship established under Division 2 of Part 2.

apprenticeship contract means a training contract under which an apprenticeship is established.

appropriate qualification, in relation to an apprenticeship or traineeship, means a qualification that pursuant to a vocational training order may be awarded by a registered training organisation for successful completion of the required training for that apprenticeship or traineeship.

certificate of identification means a certificate of identification issued under section 67.

certificate of completion means a certificate of completion issued under section 23 in relation to a recognised traineeship vocation.

certificate of proficiency means a certificate of proficiency issued under section 23, 35, 36 or 37 in relation to a recognised trade vocation or recognised traineeship vocation.

Commissioner means the Commissioner for Vocational Training referred to in section 56.

craft certificate means a craft certificate issued under section 23, 35, 36 or 37 in relation to a recognised trade vocation.

Department means the Department of Education and Training.

Director-General means the Director-General of the Department.

employer, in relation to an apprentice or trainee, means:

- (a) in the case of an apprentice or trainee who is party to an apprenticeship or traineeship contract, the person who is, under that contract, the employer of the apprentice or trainee, or
- (b) in the case of an apprentice or trainee in respect of whom no such contract is in force, the person

by whom the apprentice or trainee is for the time being actually employed.

exercise a function includes perform a duty.

existing worker trainee means a trainee who is identified as an existing worker trainee in the register of apprenticeships and traineeships.

full apprenticeship means an apprenticeship under which the employer undertakes to employ the apprentice for the whole of the term of the apprenticeship.

function includes power, authority and duty.

host employer means a person or body with whom an apprentice or trainee is placed for training under a host employment arrangement.

host employment arrangement means an arrangement under which the employer of an apprentice or trainee places the apprentice or trainee with a host employer for training, supervises the host employer in its provision of training and monitors the progress of the apprentice or trainee during training.

industrial award or agreement means:

- (a) an industrial instrument within the meaning of the [Industrial Relations Act 1996](#), or
- (b) an award or agreement made or entered into in accordance with the provisions of the [Workplace Relations Act 1996](#) of the Commonwealth.

industry training officer means an industry training officer appointed under section 65.

junior means a person who is under the age of 21 years.

probationary period, in relation to a person who is employed in a recognised trade vocation or recognised traineeship vocation, means:

- (a) the period specified in the vocational training order for that vocation or, if that period is extended under section 18, that period as so extended, or
- (b) if an application for the establishment of an apprenticeship or traineeship in that vocation:
 - (i) is made before the end of that period, or that period as so extended, and
 - (ii) the Commissioner's or Tribunal's determination of the application is not made until after the end of that period, or that period as so extended,

the period ending on the date on which the person's employer is notified of the Commissioner's or Tribunal's determination of the application,

being in either case the period beginning on the date on which the person begins working for the employer as an apprentice or trainee in that vocation.

prohibited employer means an employer with respect to whom an order is in force under section 53 and:

- (a) in the case of an employer that is a corporation, includes a reference to any person who, when the corporation became subject to the order, was a director of the corporation or was concerned in the management of the corporation's business, and
- (b) in the case of an employer that is a partnership, includes a reference to any person who, when the partnership became subject to the order, was a partner in the partnership or was concerned in the management of the partnership's business.

public servant means an officer or temporary employee within the meaning of the [Public Sector Management Act 1988](#).

qualified tradesperson, in relation to a recognised trade vocation, means:

- (a) a person who has a craft certificate or certificate of proficiency for that vocation, or
- (b) a person who has qualifications and experience that, pursuant to a determination under section 35, 36 or 37, entitle the person to a craft certificate or certificate of proficiency for that vocation.

recognised trade vocation means a vocation that is designated as a recognised trade vocation by an order in force under section 5.

recognised traineeship vocation means a vocation that is designated as a recognised traineeship vocation by an order in force under section 5.

register of apprenticeships and traineeships means the register referred to in section 28.

registered group training organisation means a person or body that is registered as a group training organisation as referred to in section 30.

registered training organisation has the same meaning as **registered provider** in the [Vocational Education and Training Accreditation Act 1990](#).

required training, in relation to an apprentice or trainee who is employed in a recognised trade vocation or recognised traineeship vocation, means:

- (a) the training that an apprentice or trainee is required by a vocational training order to undertake in connection with that vocation, or
- (b) if a vocational training direction allows the apprentice or trainee to undertake alternative training, that alternative training.

trainee means an employee who is party to a traineeship contract, and includes a person who is employed as a trainee but in respect of whom a traineeship contract is not yet in force.

trainee apprenticeship means an apprenticeship under which the employer does not undertake to employ the apprentice for the whole of the term of the apprenticeship.

traineeship means a traineeship established under Division 2 of Part 2.

traineeship contract means a training contract under which a traineeship is established.

training contract means a contract entered into for the purpose of establishing an apprenticeship or traineeship.

Tribunal means the Vocational Training Tribunal of New South Wales constituted by section 59.

vocational training direction means a direction in force under section 10.

vocational training guideline means a guideline in force under section 4.

vocational training order means an order in force under section 6.