

# Apprenticeship and Traineeship Act 2001 No 80

[2001-80]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2018 to 28 June 2018 (accessed 14 January 2025 at 4:55)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2018 No 25](#) (not commenced — to commence on 29.6.2018)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 15 June 2018

# Apprenticeship and Traineeship Act 2001 No 80



New South Wales

## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act .....	6
2 Commencement .....	6
3 Definitions .....	6
3A Application of National Vocational Education and Training Regulator Act 2011 (Cth) .....	6
<b>Part 2 Apprenticeships and traineeships</b> .....	7
<b>Division 1 Preliminary</b> .....	7
4 Vocational training guidelines .....	7
5 Recognised trade and traineeship vocations .....	7
6 Vocational training orders .....	8
<b>Division 2 Establishment of apprenticeships and traineeships</b> .....	9
Note .....	9
7 Applications to establish apprenticeships and traineeships .....	9
8 Determination of applications .....	10
9 Dismissal of certain applications .....	11
10 Vocational training directions .....	11
11 Withdrawal from apprenticeship or traineeship during probationary period .....	12
12 Training contracts .....	12
12A Training plans .....	13
13 Duties of employers under apprenticeships and traineeships .....	14

14 Duties of employers using host employment arrangements .....	14
15 Duties of employers to notify Commissioner of certain matters.....	15
16 Duties of apprentices and trainees under apprenticeships and traineeships .....	16
16A Duties of registered training organisations .....	16
17 Conditions of training and employment for persons employed as apprentices and trainees .....	17
18 Extension of probationary period .....	17
19 Attendance at relevant registered training organisation .....	17

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

.....	18
20 Transfer of apprenticeships and traineeships .....	18
21 Variation of training contracts and training plans on application by a party .....	19
21A Variation of training contracts and training plans by Commissioner .....	20
22 Suspension and cancellation of apprenticeships and traineeships .....	20
23 Completion of apprenticeships and traineeships .....	21
24 Effect of death of employer or change in partnership .....	22

### **Division 4 Additional provisions concerning recognised trade vocations**

.....	22
25 Juniors not to be employed in recognised trade vocations unless apprentices or qualified tradespersons .....	23
.....	23
26 Commissioner may direct apprenticeship to have effect.....	23
27 Remuneration of adult apprentices .....	24

### **Division 5 General**.....

28 Register of apprenticeships and traineeships .....	24
29 Advertising of group training organisations.....	25
30 Registration of group training organisations.....	25
31 Preservation of conditions of employment of existing worker trainees .....	26
32 Training contracts presumed to benefit minors .....	26
33 Apprentices and trainees not to be required to make payments or give bonds .....	27
34 Effect of change in vocational training order.....	27

### **Part 3 Recognition of other trade qualifications** .....

35 Recognition of Defence Force trade training .....	27
36 Recognition of other trade training—applications .....	28
37 Recognition of other trade training—determinations.....	29
38 Register of determinations .....	31
<b>Part 4 Proceedings with respect to disputes and disciplinary matters .....</b>	<b>31</b>
<b>Division 1 Complaints .....</b>	<b>31</b>
39 Complaints to be made to Commissioner.....	31
40 Conciliation.....	31
41 Suspension of apprenticeships and traineeships pending hearing .....	32
42 Commissioner to fix time and place for hearing complaints.....	32
<b>Division 2 Hearings .....</b>	<b>32</b>
43 Parties .....	32
44 Procedure generally.....	32
45 Legal representation.....	32
46 Attendance of witnesses and production of documents .....	33
47 Witnesses to answer questions .....	33
48 Misconduct .....	34
49 Costs .....	34
<b>Division 3 Determinations.....</b>	<b>34</b>
50 (Repealed) .....	34
51 Determinations.....	34
52 Orders for compensation .....	35
53 Orders prohibiting employer from entering into apprenticeships and traineeships.....	36
<b>Part 5 Reviews .....</b>	<b>37</b>
54 Administrative review of decisions by Civil and Administrative Tribunal .....	37
55 (Repealed) .....	37
<b>Part 6 Administration .....</b>	<b>37</b>
<b>Division 1 The Commissioner for Vocational Training .....</b>	<b>37</b>
56 Commissioner.....	37

57 Functions of Commissioner.....	37
58 Delegation by Commissioner.....	38
<b>Divisions 2, 3 (Repealed).....</b>	<b>38</b>
<b>Division 4 Industry training officers.....</b>	<b>38</b>
65 Appointment of industry training officers.....	38
66 Functions of industry training officers.....	38
67 Powers of entry to premises.....	38
68 Search warrants.....	40
69 Obstruction of industry training officers.....	40
<b>Part 7 Miscellaneous.....</b>	<b>40</b>
70 False or misleading information.....	40
71 Disclosure of business information.....	41
72 Contraventions of Act that give rise to offences.....	41
73 Proceedings for offences.....	41
73A Penalty notices.....	42
74 Applications and notices.....	42
75 Fees.....	42
76 Evidentiary certificates.....	42
77 Liability.....	43
78 (Repealed).....	43
79 Act binds Crown.....	43
80 Relationship with Industrial Relations Act 1996.....	43
81 Regulations.....	44
82 Repeals.....	44
83 (Repealed).....	44
84 Savings, transitional and other provisions.....	44
85 Review of Act.....	45
<b>Schedules 1-3.....</b>	<b>45</b>
<b>Schedule 4 Savings, transitional and other provisions.....</b>	<b>45</b>
<b>Dictionary.....</b>	<b>54</b>

# 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.

### 3A Application of *National Vocational Education and Training Regulator Act 2011 (Cth)*

- (1) In this section:

**Commonwealth Act** means the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

**State apprenticeship and traineeship regulation provisions** means the provisions of this Act and the regulations:

- (a) regulating organisations providing training, assessment or instruction in relation to a recognised trade vocation or a recognised traineeship vocation, and
- (b) providing for the approval by or under this Act of training, assessment or instruction provided by organisations, and
- (c) providing for the standards to be complied with under this Act by organisations, and

- (d) providing for the exercise of investigative powers, sanctions and enforcement by or under this Act in relation to such matters.
- (2) The State apprenticeship and traineeship regulation provisions are declared to be an excluded matter for the purposes of section 10 of the Commonwealth Act in relation to section 9 (Immunity from State and Territory laws) of the Commonwealth Act to the extent that section 9 would prevent the application of the State apprenticeship and traineeship regulation provisions to an NVR registered training organisation (within the meaning of the Commonwealth Act) providing training, assessment or instruction in relation to a recognised trade vocation or a recognised traineeship vocation.
- (3) Without limiting subsection (2), each provision of this Act (and of any regulations made under this Act) is declared to be a VET legislation displacement provision for the purposes of section 11 of the Commonwealth Act generally.

## **Part 2 Apprenticeships and traineeships**

### **Division 1 Preliminary**

#### **4 Vocational training guidelines**

- (1) The Commissioner 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 training that an apprentice or trainee who is employed in a recognised trade vocation or recognised traineeship vocation is required to undertake in connection with that 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 qualification or qualifications that may be awarded in relation to an apprenticeship or traineeship in that vocation,
  - (c1) the units of competency forming part of the training for 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 Industry website at [https://www.training.nsw.gov.au/promotions/apprenticeships\\_traineeships.html](https://www.training.nsw.gov.au/promotions/apprenticeships_traineeships.html).

## **Division 2 Establishment of apprenticeships and traineeships**

**Note—**

Certain information relating to apprenticeships and traineeships established under this Division (including the names of the employer and apprentice or trainee) is required to be recorded in the register of apprenticeships and traineeships (see Division 5). Registration of a person as an employer or apprentice or trainee may render the person eligible for certain payments available under State or Commonwealth incentive schemes. Eligibility for those payments may be affected by changes in circumstances such as a variation of the training contract or training plan approved under this Division in relation to the apprenticeship or traineeship or the transfer, suspension or cancellation of the apprenticeship or traineeship.

### **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.
- (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: 100 penalty units.

- (3) The application:
  - (a) must be accompanied by the proposed training contract (as executed by the prospective employer and prospective apprentice or trainee), and
    - (a1) must be accompanied by the training plan proposal (as endorsed by the relevant registered training organisation), 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) (Repealed)
    - (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, business address, ACN (if any) and ABN 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) A **training plan proposal** is a document prepared by the prospective employer and prospective apprentice or trainee outlining the following matters in relation to the proposed apprenticeship or traineeship:
  - (a) the proposed arrangements for the provision of training to the prospective apprentice or trainee,
  - (b) the appropriate qualification or qualifications proposed to be awarded to the prospective apprentice or trainee.
- (5) The proposed training contract and training plan proposal:
  - (a) must be set out in the form approved by the Commissioner, and
  - (b) must be prepared in accordance with the relevant vocational training order.
- (5A) The Commissioner may require the applicant to lodge with the application a training plan for the proposed apprenticeship or traineeship instead of a training plan proposal.
- (5B) An application under this section may be made on behalf of the employer by an agent of the employer approved by the Commissioner if the agent certifies that the relevant training contract and any associated documentation have been duly executed by the parties to the contract.
- (5C) The Commissioner may refuse to accept applications lodged by a particular agent (and must notify the relevant applicants accordingly) if the agent fails to comply with this section or any requirement of the regulations in relation to any application lodged by the agent.
- (5D) The establishment of a trainee apprenticeship is not permitted under this Act, even if the relevant industrial award or agreement recognises that the apprenticeship may be undertaken as a trainee apprenticeship.
- (6) An application under this section may not be made by a prohibited employer contrary to a prohibition order.
- (7) The regulations may make provision for or with respect to applications under this section.

## **8 Determination of applications**

- (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) (Repealed)

(2) (Repealed)

(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 and the relevant registered training organisation of the determination.

## **9 Dismissal of certain applications**

(1) An application for establishment of an apprenticeship or traineeship must be dismissed unless the Commissioner is satisfied:

(a) that the employer can provide the work-based component of the required training in the relevant vocation, and

(a1) that the employer will employ the apprentice or trainee under conditions that do not contravene the relevant industrial award or agreement, and

(a2) that the apprentice or trainee is capable of undertaking the required training in the relevant vocation, and

(a3) that the proposed training contract has been prepared in accordance with the relevant vocational training order, and

(a4) that the employment provided, or to be provided, by the employer complies with the relevant vocational training order, 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) (Repealed)

## **10 Vocational training directions**

(1) When dealing with an application for the establishment of an apprenticeship or

traineeship, the Commissioner 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:
  - (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 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**

- (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 an 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) (Repealed)

(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.

(2A) A reference in this section to a training contract is a reference to the training contract most recently executed by the employer and apprentice or trainee, as varied in accordance with this Act.

(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.

## **12A Training plans**

(1) A training plan is to be prepared in respect of each apprenticeship or traineeship.

(2) A training plan for an apprenticeship or traineeship is a document prepared in accordance with the relevant vocational training order that indicates, in particular:

(a) the arrangements for the provision of training to the apprentice or trainee that have been agreed to by the employer and the relevant registered training organisation, and

(b) the appropriate qualification or qualifications to be awarded to the apprentice or trainee in relation to the apprenticeship or traineeship, and

(c) the units of competency forming part of the training for the relevant vocation.

(3) The training plan is to be prepared by the relevant registered training organisation in relation to the apprenticeship or traineeship in consultation with the employer and the apprentice or trainee.

- (4) The training plan is to be lodged with the application for the establishment of the apprenticeship or traineeship, if required by the Commissioner.
- (5) If a training plan was not required to be lodged with the application, the relevant registered training organisation must prepare the plan within 12 weeks after the organisation is notified that the establishment of the apprenticeship or traineeship has been approved.

Maximum penalty: 50 penalty units.

- (6) A training plan is to be in the form approved by the Commissioner.
- (7) The relevant registered training organisation in relation to the apprenticeship or traineeship to which a training plan relates must:
  - (a) keep a copy of the training plan, in a manner approved by the Commissioner, for the period specified by the Commissioner, and
  - (b) make the training plan available for inspection on request by the Commissioner.

Maximum penalty: 50 penalty units.

### **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 (the **principal employer**) must not place an apprentice or trainee with a host employer if the principal employer knows:
  - (a) that the host employer is a prohibited employer, and
  - (b) that the employment of the apprentice or trainee by the host employer would be contrary to the relevant prohibition order.

Maximum penalty: 200 penalty units.

- (4) (Repealed)

## **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 relevant 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) any notice given to the apprentice or trainee of the employer's intention to terminate the employment of the apprentice or trainee.
- (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.

#### **16A Duties of registered training organisations**

- (1) A relevant registered training organisation for an apprenticeship or traineeship:
- (a) must provide to the employer, on request, information in relation to the progress of the apprentice or trainee in obtaining the relevant qualification, and
  - (b) must review the training plan at least once every 6 months and, in addition, on any date determined in consultation with the employer and the apprentice or trainee, and
  - (c) must obtain the confirmation of the employer before determining whether the apprentice or trainee has acquired the competencies of the relevant qualification, and
  - (d) must, as soon as practicable after the apprentice or trainee becomes eligible to be awarded the relevant qualification by the registered training organisation, notify



the Commissioner of that fact.

Maximum penalty: 200 penalty units.

- (2) The relevant registered training organisation must also notify the Commissioner of the following matters within 21 days after the matter arises:
- (a) any failure by the employer to allow the apprentice or trainee to commence or participate in the training specified in the training plan,
  - (b) any failure by the employer to allow the organisation to conduct the training or assessment components specified in the training plan,
  - (c) any failure by the employer to provide any information requested by the organisation for the purpose of assessments of competence in relation to the training specified in the training plan.

Maximum penalty: 200 penalty units.

### **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 relevant registered training organisation**

Time spent by an apprentice or trainee in attending the training provided by the 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) (Repealed)
- (3) (Repealed)
- (4) Approval to the transfer is not to be given unless the Commissioner 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 on application by a party**

- (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) (Repealed)
- (4) (Repealed)
- (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.

## **21A Variation of training contracts and training plans by Commissioner**

- (1) The Commissioner may, on receiving a recommendation from the relevant registered training organisation or any other relevant person or body or on the Commissioner's own initiative, make a variation to a training contract or training plan in accordance with this section.
- (2) A technical variation may be made at any time at the discretion of the Commissioner.
- (3) A technical variation is a variation that, in the Commissioner's opinion, is of a minor nature and will not result in any material change to the terms of the training contract or training plan.
- (4) If the variation is not a technical variation, the following provisions apply:
  - (a) the Commissioner must send a notice to each party (being the employer and the apprentice or trainee) requesting the party to notify the Commissioner whether or not the party consents to the variation,
  - (b) 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 party to whom the notice was sent is taken to have been given,
  - (c) if the parties consent to the variation, the Commissioner may make the variation.
- (5) As soon as practicable after a variation is made under this section, the Commissioner must give notification of the variation to the following:
  - (a) the employer,
  - (b) the apprentice or trainee concerned,
  - (c) in the case of the variation of a training plan—the relevant registered training organisation.
- (6) A variation made under this section is binding on the employer and the apprentice or trainee.

## **22 Suspension and cancellation of apprenticeships and traineeships**

- (1) The Commissioner may, on the application of the employer and the apprentice or trainee (or either of them alone) or on the Commissioner's own initiative, suspend or cancel an apprenticeship or traineeship.
- (2) The Commissioner may not suspend or cancel the apprenticeship or traineeship unless the Commissioner is satisfied:
  - (a) that both the employer and the apprentice or trainee consent to the suspension or cancellation, or

- (b) that it is reasonable in the circumstances to do so.
- (3) In addition, the Commissioner may not suspend or cancel an apprenticeship or traineeship on the application of the employer or the apprentice or trainee or on the Commissioner's own initiative unless the Commissioner:
  - (a) has given notice to the employer and the apprentice or trainee of the Commissioner's intention to suspend or cancel the apprenticeship or traineeship, and
  - (b) has given the employer and apprentice or trainee at least 21 days within which to make submissions to the Commissioner with respect to the proposed suspension or cancellation, and
  - (c) has taken any such submissions into consideration.
- (4) The Commissioner must give notice to the employer and apprentice or trainee of a suspension or cancellation under this section specifying:
  - (a) the grounds for the suspension or cancellation, and
  - (b) the date from which the suspension or cancellation takes effect, and
  - (c) in the case of suspension—the period of suspension.

### **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 the relevant registered training organisation, and
  - (c) has, if required by the Commissioner, been assessed by any other registered training organisation nominated by the Commissioner as having acquired the competencies of that vocation,the Commissioner must issue the apprentice with a certificate of proficiency for that vocation.
- (2) (Repealed)
- (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 the relevant registered training

organisation, and

- (c) has, if required by the Commissioner, been assessed by any other registered training organisation nominated by the Commissioner as having acquired the competencies of that vocation,

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

- (4) The Commissioner may provide to the Australian Skills Quality Authority a copy of the report of an assessment under subsection (1) (c) or (3) (c) (including any information contained in the report that is personal information under the [Privacy and Personal Information Protection Act 1998](#) or health information under the [Health Records and Information Privacy Act 2002](#)).

#### **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: 100 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, de facto partner 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.

#### **Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

- (3) (Repealed)

### **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 relevant registered training organisation,
  - (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: 100 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: 200 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 Commissioner 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 Commissioner 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 Commissioner 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 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 trade training—applications**

- (1) A person may apply to the Commissioner for recognition of the person's qualifications or experience in a particular recognised trade vocation.
- (2) The Commissioner may require the applicant to undergo an assessment by a registered training organisation nominated by the Commissioner to determine whether the applicant has acquired the competencies of the recognised trade vocation (an **independent competency assessment**).
- (3) A registered training organisation may not be nominated to conduct an independent competency assessment if the organisation has previously provided training to the applicant in the recognised trade vocation.
- (4) The Commissioner may refuse to deal with the application if the applicant fails to comply with a requirement to undergo an independent competency assessment.

- (5) If the report of an independent competency assessment specifies that the applicant requires further training to acquire the competencies of the recognised trade vocation, the Commissioner may refuse to determine the application until the Commissioner is satisfied that the applicant has satisfactorily completed the training.
- (6) The Commissioner may seek expert advice in connection with the application from any person who, in the Commissioner's opinion, has special knowledge of, and experience in, the recognised trade vocation.
- (7) The regulations may provide that the Commissioner must, in specified circumstances, seek expert advice in connection with an application under this section from specified persons or classes of persons.
- (8) The Commissioner may provide to the Australian Skills Quality Authority a copy of the report of an independent competency assessment (including any information contained in the report that is personal information under the [Privacy and Personal Information Protection Act 1998](#) or health information under the [Health Records and Information Privacy Act 2002](#)).

### **37 Recognition of other trade training—determinations**

- (1) If the Commissioner is satisfied that an applicant for recognition of qualifications or experience in a particular recognised trade vocation (other than a certified vocation) has acquired the competencies of the vocation, the Commissioner may determine that the applicant is adequately trained to pursue that vocation.
- (2) A recognised trade vocation is a **certified vocation** if a person is required to have a certificate of proficiency in order to obtain a licence, permit or other authority under an Act to work in the vocation.
- (3) In making a determination under subsection (1), the Commissioner 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) any expert advice obtained in connection with the application, and
  - (e) the applicant's performance in any examination or test set by the Commissioner or any independent competency assessment, and
  - (f) such other matters as the Commissioner considers relevant.

- (4) The following provisions apply in relation to the determination of an application for recognition of qualifications or experience in a certified vocation:
- (a) the Commissioner is to nominate at least one employee representative and one employer representative (the **industrial representatives**) for the purpose of making a recommendation under this section as to whether the applicant is adequately trained to pursue the certified vocation,
  - (b) the Commissioner may determine that the applicant is adequately trained to pursue the recognised trade vocation, but only if the industrial representatives have unanimously recommended that the applicant is adequately trained to pursue that vocation,
  - (c) the industrial representatives must have regard to the matters specified in subsection (3) (a)–(e) (and such other matters as the representatives consider relevant) in making a recommendation under this section,
  - (d) the Commissioner must have regard to the matters specified in subsection (3) in making a determination under this section.
- (5) The Commissioner is to provide to the industrial representatives any information obtained by the Commissioner in connection with the application and required by the representatives for the purpose of making the recommendation. For that purpose, the Commissioner is authorised to disclose to the industrial representatives personal information (within the meaning of the [Privacy and Personal Information Protection Act 1998](#)) and health information (within the meaning of the [Health Records and Information Privacy Act 2002](#)).
- (6) A determination under this section must be set out in an instrument signed by the Commissioner.
- (7) The Commissioner must issue a certificate of proficiency to the person to whom the determination relates.
- (8) The regulations may make provision for or with respect to:
- (a) applications for the recognition of qualifications or experience in a recognised trade vocation, and
  - (b) the making of determinations and recommendations under this section.
- (9) In this section:
- employee representative**, in relation to an application under this section, means a representative of an organisation that represents employees in industrial matters relating to the recognised trade vocation to which the application relates.
- employer representative**, in relation to an application under this section, means a

representative of an organisation that represents employers in industrial matters relating to the recognised trade vocation to which the application 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 Service employee.
- (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 Conciliation**

- (1) The Commissioner is to refer a complaint made by a party to an apprenticeship or traineeship to a conciliator in the first instance.
- (2) The conciliator must attempt to bring the parties to a settlement acceptable to each of them.
- (3) If such a settlement is not achievable, the Commissioner is to deal with the complaint in accordance with this Part.
- (4) In this section:

**conciliator** means a person employed in the Department who is authorised in writing by the Commissioner as a conciliator for the purposes of this section.

#### **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, without prior notice to the employer and apprentice or trainee, 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 Commissioner to fix time and place for hearing complaints**

The Commissioner 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 Commissioner is not bound by the rules of evidence, and may be informed in any manner that the Commissioner 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 Commissioner may from time to time adjourn a hearing to such time, date and place, and for such reasons, as the Commissioner 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 Commissioner 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 Commissioner:
  - (a) may require a person:
    - (i) to attend a hearing for the purpose of giving evidence, or
    - (ii) to produce to the Commissioner 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 Commissioner may retain possession of a document produced to the Commissioner under this section for such period as the Commissioner considers necessary for the purpose of completing the hearing.
- (3) A person (other than a Public Service employee) 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)): 50 penalty units.

#### **47 Witnesses to answer questions**

- (1) The Commissioner 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: 50 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: 50 penalty units.

#### **49 Costs**

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

### **Division 3 Determinations**

#### **50 (Repealed)**

#### **51 Determinations**

- (1) The Commissioner 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 Commissioner 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 Commissioner 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 Commissioner must not suspend or cancel an apprenticeship or traineeship under subsection (1) unless the Commissioner 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 Commissioner 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 Commissioner'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 Commissioner 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 Commissioner 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 Commissioner is of the opinion that it is appropriate to do so in the public interest, the Commissioner:
- (a) may make an order declaring the employer to be a prohibited employer (a **prohibition order**), and
  - (b) if the Commissioner 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).
- (1A) A prohibition order may be unlimited or limited as to particular circumstances specified in the order.
- (2) A prohibition order may not be made unless the Commissioner:
- (a) has given notice to the employer of the Commissioner's intention to make such an order, and
  - (b) has given the employer at least 21 days within which to make submissions to the Commissioner with respect to the proposed order, and
  - (c) has taken any such submissions into consideration.
- (2A) The Commissioner may vary a prohibition order by notice in writing to the employer.
- (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).
- (4) A prohibited employer must not employ an apprentice or trainee (including under a host employment arrangement) contrary to a prohibition order.

Maximum penalty: 200 penalty units.

## **Part 5 Reviews**

### **54 Administrative review of decisions by Civil and Administrative Tribunal**

A person aggrieved by any of the following decisions of the Commissioner may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision:

- (a) a decision to dismiss an application for establishment of an apprenticeship or traineeship,
- (b) a decision to issue a vocational training direction,
- (c) a decision to dismiss an application for approval to the transfer of an apprenticeship or traineeship,
- (d) a decision to approve or dismiss an application for the variation of a training contract or training plan,
- (e) a decision to suspend or cancel an apprenticeship or traineeship,
- (f) a decision to refuse to register a person as an existing worker trainee,
- (g) a decision 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) a decision to refuse to issue a certificate of proficiency under Part 2 or 3,
- (i) a decision determining a complaint under Part 4,
- (j) a decision to give a direction under section 52,
- (k) a decision to make an order declaring an employer to be a prohibited employer or authorising the transfer to other employers of an apprenticeship or traineeship.

### **55 (Repealed)**

## **Part 6 Administration**

### **Division 1 The Commissioner for Vocational Training**

#### **56 Commissioner**

A Commissioner for Vocational Training is to be employed under the *Government Sector Employment Act 2013*.

#### **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).

## **Divisions 2, 3**

### **59-64 (Repealed)**

## **Division 4 Industry training officers**

### **65 Appointment of industry training officers**

- (1) The Commissioner may appoint such persons (whether Public Service employees or otherwise) as the Commissioner thinks fit to be industry training officers.
- (2) An industry training officer (other than a Public Service employee) 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: 200 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 Service employee 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 Service employee 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: 200 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: 200 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: 200 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 the Local Court.
- (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 the Local Court under this

section is exercisable by an Industrial Magistrate.

### **73A Penalty notices**

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **penalty notice officer** means a person authorised in writing by the Commissioner as a penalty notice officer for the purposes of this section.

### **74 Applications and notices**

- (1) An application under this Act must be made in the manner and form approved by 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), (c) (Repealed)
- (d) an industry training officer, or
- (e) any person acting under the direction of the Commissioner,

does not subject the Commissioner, 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 (Repealed)**

### **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
  - (d1) assessments for the purpose of determining whether a person has acquired the competencies of a recognised trade vocation (including consultation processes to be conducted in connection with the determination of assessment standards and procedures), 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 100 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.

## **Schedules 1-3**

## **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
  - any Act that amends 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 Vocational Training Appeal Panel**

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

#### **19 Determination of appeals**

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

### **Part 4 Provisions consequent on enactment of [Civil and Administrative Legislation \(Repeal and Amendment\) Act 2013](#)**

#### **27 Vocational Training Review Panel**

- (1) The Vocational Training Review Panel established by this Act is a continuation of the Vocational Training Tribunal established by this Act before the establishment day.
- (2) Each person who was a member of the Vocational Training Tribunal immediately before the establishment day continues in office on and from that day as a member of

the Vocational Training Review Panel for the balance of his or her term of office as a member of the Tribunal.

- (3) The Vocational Training Review Panel may continue and complete anything begun by the Vocational Training Tribunal before the establishment day.
- (4) Any right to make or refer an application or complaint to the Vocational Training Tribunal becomes, on and from the establishment day, a right to make or refer the application or complaint to the Vocational Training Review Panel.
- (5) Subject to Part 2 of Schedule 1 to the *Civil and Administrative Tribunal Act 2013*, any matter determined by the Vocational Training Tribunal (including under section 36 or 37) is taken, on and from the establishment day, to have been determined by the Vocational Training Review Panel.

**Note—**

Part 2 of Schedule 1 to the *Civil and Administrative Tribunal Act 2013* abolished the Vocational Training Appeal Panel on the establishment day and contains savings and transitional provisions with respect to the Appeal Panel and appeals to the Panel.

- (6) In this clause:

**establishment day** has the same meaning as in the *Civil and Administrative Tribunal Act 2013*.

## **Part 5 Provisions consequent on enactment of *Apprenticeship and Traineeship Amendment Act 2017***

### **28 Definitions**

- (1) In this Part:

**abolition day**—see clause 30.

**amending Act** means the *Apprenticeship and Traineeship Amendment Act 2017*.

**appeal body** means NCAT or a court.

**NCAT** means the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

**pending proceedings** are proceedings (including appeals) that:

- (a) were instituted or commenced before the repeal day, and
- (b) have not been finally determined before that day by the appeal body in which the proceedings were instituted or commenced.

**repeal day**—see clause 29.

**Review Panel** means the Vocational Training Review Panel as constituted under section 59 immediately before the repeal day.

**transition period**—see clause 29.

**unexercised right** means a right that:

- (a) was available to be exercised immediately before the repeal day, and
- (b) had not yet been exercised before that day.

(2) For the purposes of this Part, proceedings are not finally determined if:

- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
- (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

### **29 Functions of Review Panel cease on repeal day**

- (1) The functions of the Review Panel cease on and from the repeal day, except as provided by this Part.
- (2) The **repeal day** is the day on which Division 2 of Part 6 of this Act is repealed by the amending Act.
- (3) During the transition period, the Review Panel continues to be constituted for the purposes only of exercising the functions conferred by this Part.
- (4) The **transition period** is the period commencing on the repeal day and ending on the abolition day.
- (5) The Commissioner may continue and complete anything begun by the Review Panel before the repeal day, except anything that would involve the exercise of a function conferred on the Review Panel by this Part.

### **30 Abolition of Vocational Training Review Panel**

- (1) The Review Panel is to be abolished on the abolition day.
- (2) The **abolition day** is:
  - (a) the day that is one year after the repeal day, or
  - (b) an earlier or later day appointed by the regulations.
- (3) On the abolition day, each member of the Review Panel ceases to hold office as a member and is not entitled to any remuneration or compensation because of the loss

of that office.

- (4) Subclause (3) has effect despite anything to the contrary in any other legislation concerning the circumstances or processes for the removal of (or the vacation of office by) a member of the Review Panel.

### **31 Pending proceedings and unexercised rights: reviews by Review Panel**

- (1) During the transition period, the Review Panel may continue to deal with pending proceedings in the Review Panel.
- (2) For that purpose:
  - (a) the Review Panel continues to have and may exercise all the functions that the Panel had in relation to the proceedings immediately before the repeal day, and
  - (b) the provisions of any Act, statutory rule or other law that would have applied to or in respect of the Review Panel or the pending proceedings had the amending Act not been enacted continue to apply.
- (3) On and from the repeal day, a person who has an unexercised right to apply to the Review Panel for a review of a decision of the Commissioner under this Act may apply to NCAT for an administrative review of the decision under the [Administrative Decisions Review Act 1997](#).

### **32 Pending proceedings and unexercised rights: appeals to NCAT or court**

- (1) This clause applies to:
  - (a) pending proceedings before NCAT on an appeal against a decision of the Review Panel, or before a court on an appeal against (or for the judicial review of) a decision of NCAT determining an appeal under this Act, and
  - (b) an unexercised right to appeal to NCAT against a decision of the Review Panel, or to appeal to a court against a decision of NCAT determining an appeal under this Act.
- (2) On and from the repeal day:
  - (a) the appeal body in which proceedings are pending may continue to deal with the proceedings until they are concluded, and
  - (b) a person who has an unexercised appeal right may appeal against the decision to which that right relates to the appeal body to which the decision was originally appealable.
- (3) For those purposes:
  - (a) the appeal body continues to have and may exercise all the functions that the

appeal body had in relation to the pending proceedings or appeal immediately before the repeal day, and

- (b) the provisions of any Act, statutory rule or other law (including provisions concerning the time within which to appeal) that would have applied to or in respect of the pending proceedings or appeal had the amending Act not been enacted continue to apply.

### 33 Training plans

- (1) Section 12A, as inserted by the amending Act, applies in respect of an existing apprenticeship or traineeship as if a reference to the compliance period were a reference to the period of 12 weeks commencing on the day on which that section commences.
- (2) Section 7 (5A), as inserted by the amending Act, extends to an application for an apprenticeship or traineeship made but not determined before the commencement of that subsection.
- (3) In this clause:

**compliance period** means the period of 12 weeks after notification of approval of the establishment of an apprenticeship or traineeship.

**existing apprenticeship or traineeship** means an apprenticeship or traineeship in force immediately before commencement of section 12A.

### 34 Complaints

- (1) This clause applies to a complaint made under section 39 but not finally determined before the repeal day.
- (2) The following provisions apply to a complaint made by a party to an apprenticeship or traineeship that was not settled or referred to the Review Panel under section 40 before the repeal day:
  - (a) section 40 (1), as in force immediately before its substitution by the amending Act, continues to apply to the complaint,
  - (b) if a settlement is not achievable, the Commissioner is to deal with the complaint in accordance with Part 4 of the Act, as amended by the amending Act.

### 35 Suspension and cancellation of apprenticeships and traineeships

- (1) Except as provided by this clause, section 22, as substituted by the amending Act, applies to any apprenticeship or traineeship in force immediately before the substitution.
- (2) Section 22, as in force immediately before its substitution by the amending Act,

continues to apply to any application for suspension or cancellation of an apprenticeship or traineeship made but not finally determined before the substitution.

### 36 Trade recognition and assessment

- (1) An amendment made by the amending Act to section 23 applies to any apprentice or trainee who completes his or her term of apprenticeship or traineeship after the commencement of the amendment.
- (2) Sections 36 and 37, as in force immediately before their substitution by the amending Act, continue to apply to any application made under those sections but not determined before the substitution. However, on and from the repeal day, any reference in those sections to the Review Panel is to be read as a reference to the Commissioner.

### 37 Trainee apprenticeships

Section 7 (5D), as inserted by the amending Act, does not affect:

- (a) any existing trainee apprenticeship not completed before the commencement of that subsection, or
- (b) any application for a trainee apprenticeship made but not determined before that commencement.

### 38 Vocational training guidelines

Any vocational training guideline issued by the Secretary under section 4 and in force immediately before the amendment of that section by the amending Act is taken to have been issued by the Commissioner.

## Dictionary

(Section 3)

#### Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

**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 proficiency** means a certificate of proficiency issued under section 23, 35 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.

**Department** means the Department of Industry.

**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.

**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 [Fair Work Act 2009](#) of the Commonwealth or 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 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 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 a prohibition order is in force 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.

**prohibition order**—see section 53.

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

- (a) a person who has a certificate of proficiency for that vocation, or
- (b) a person who has qualifications and experience that, pursuant to a determination under section 35 or 37, entitle the person to a 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** means a NVR registered training organisation within the meaning of the [National Vocational Education and Training Regulator Act 2011](#) of the Commonwealth.

**relevant registered training organisation**, in relation to an apprenticeship or traineeship, means the registered training organisation by which the training is, or is to be, provided.

**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.



**Secretary** means the Secretary of the Department.

**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.

**training plan**—see section 12A.

**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.