



New South Wales

Apprenticeship and Traineeship Amendment Bill 2017

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Apprenticeship and Traineeship Act 2001* (**the Act**) as follows:

- (a) to abolish the Vocational Training Review Panel (the **Review Panel**),
- (b) to provide for a right to apply to the Civil and Administrative Tribunal (**NCAT**) for an administrative review of certain decisions of the Commissioner for Vocational Training (the **Commissioner**) under the Act (replacing the right to apply to the Review Panel for a review of those decisions and the right of external appeal to NCAT from decisions of the Review Panel),
- (c) to confer on the Commissioner the functions of the Review Panel relating to the hearing and determination of complaints under the Act,
- (d) to provide for a process of conciliation in the first instance for complaints made by a party to an apprenticeship or traineeship, and for review by the Commissioner where complaints cannot be settled,
- (e) to declare that certain provisions of the Act and regulations made under the Act are excluded from the application of section 9 of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth so that State laws will apply to certain organisations registered under the Commonwealth Act that provide training, assessment or instruction in relation to recognised trade vocations or recognised traineeship vocations,
- (f) to provide that trainee apprenticeships are not permitted to be established under the Act,

- (g) to provide for the making of applications for the establishment of apprenticeships or traineeships by an agent on behalf of an employer,
- (h) to further provide for the matters of which the Commissioner must be satisfied before approving an application for the establishment of an apprenticeship or traineeship,
- (i) to further provide for the making of training contracts and training plans,
- (j) to require apprentices and trainees to undergo assessments of competence before being issued with a certificate of proficiency in the relevant vocation,
- (k) to enable the Commissioner to require an applicant for the recognition of trade training to undergo an assessment of competence and seek expert advice in connection with the application,
- (l) to require the Commissioner to obtain the unanimous recommendation of nominated industrial representatives before determining that applicants for recognition of qualifications or experience are adequately trained to pursue certain vocations,
- (m) to further provide for the making of orders prohibiting employers from entering into apprenticeships or traineeships,
- (n) to remove requirements to issue craft certificates and certificates of completion,
- (o) to require applications under the Act to be made in the manner and form approved by the Commissioner,
- (p) to provide for the issue of penalty notices for certain offences against the Act or regulations made under the Act,
- (q) to increase the maximum amount of penalty that can be imposed for certain offences against the Act or regulations,
- (r) to make other minor and consequential amendments, including savings and transitional provisions consequent on the proposed amendments.

Outline of provisions

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

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

Schedule 1 Amendment of Apprenticeship and Traineeship Act 2001 No 80

Abolition of Review Panel

Schedule 1 [73] (proposed clause 30 of Schedule 4) abolishes the Review Panel. Proposed clause 29 of Schedule 4 provides that the functions of the Review Panel of dealing with pending proceedings will continue until one year after the day on which Division 2 of Part 6 of the Act is repealed by **Schedule 1 [64]** (or until an earlier or later date appointed by the regulations). **Schedule 1 [15], [16], [18], [21], [31], [32], [62], [63], [67], [68], [72], [74] and [77]** make consequential amendments.

Schedule 1 [60] provides for a right to apply to NCAT for an administrative review of certain decisions of the Commissioner under the Act. The amendment replaces the right to apply to the Review Panel for a review of a decision of the Commissioner, and the right of appeal to NCAT from decisions of the Review Panel.

Schedule 1 [41] confers on the Commissioner various functions that are currently conferred on the Review Panel relating to the recognition of trade training and qualifications and the hearing of complaints about a party's failure to discharge obligations under an apprenticeship or traineeship. **Schedule 1 [43], [46]–[49], [52], [54] and [57]** make consequential amendments.

Schedule 1 [44] provides that a complaint is to be referred to a conciliator authorised by the Commissioner in the first instance (rather than requiring the Commissioner to attempt to bring the parties to a settlement before referring the complaint to the Review Panel). **Schedule 1 [51]** makes a consequential amendment.

Application of Commonwealth National Vocational Education and Training Regulator Act 2011 and regulation of registered training organisations

The *National Vocational Education and Training Regulator Act 2011* of the Commonwealth (the *Commonwealth Act*) provides that a training organisation registered by the National Vocational Education and Training Regulator (a *registered training organisation*) which operates in New South Wales is not subject to New South Wales law in relation to certain matters, including the regulation of registered training organisations and related investigative powers, sanctions and enforcement. However, the application of the Commonwealth Act is subject to any declaration made by New South Wales that a matter is an “excluded matter” to which the Commonwealth Act will not apply.

Schedule 1 [2] declares that certain provisions under the Act and regulations relating to registered training organisations providing training, assessment or instruction relating to any recognised trade vocation or recognised traineeship vocation and the exercise of related investigative powers, sanctions or enforcement (*State apprenticeship and traineeship regulation provisions*) constitute an “excluded matter” for the purposes of the provision of the Commonwealth Act that makes all registered training organisations immune to New South Wales law.

Pursuant to a power conferred by section 11 of the Commonwealth Act, the amendment also displaces the Commonwealth Act to the extent that it would render inoperative State apprenticeship and traineeship regulation provisions that are inconsistent with the Commonwealth Act.

Schedule 1 [29] sets out duties of registered training organisations in relation to the following matters:

- (a) the provision of information to the employer in relation to the progress of the apprentice or trainee in obtaining the relevant qualification,
- (b) the review of the training plan,
- (c) obtaining the confirmation of the employer before determining whether the apprentice or trainee has acquired the competencies of the relevant qualification,
- (d) notifying the Commissioner that the apprentice or trainee has become eligible to be awarded the relevant qualification by the registered training organisation,
- (e) notifying the Commissioner of any failure by the employer to allow the apprentice or trainee to commence or participate in the relevant training, to allow the organisation to conduct the relevant training or assessment or to provide any information requested by the organisation for the purpose of assessments of competence in relation to the relevant training.

Schedule 1 [25] provides for other duties of registered training organisations in relation to training plans (as explained below).

Training contracts and training plans

Schedule 1 [11] and [14] (proposed section 7 (4)) make it clear that an application for the establishment of an apprenticeship or traineeship must be accompanied by a proposed training contract and a training plan proposal, in the form approved by the Commissioner and prepared in accordance with the vocational training order, rather than details required by the order. The Commissioner may require the applicant to lodge with the application the final training plan instead of a training plan proposal.

Schedule 1 [25] requires the relevant registered training organisation in relation to an apprenticeship or traineeship to prepare a training plan in the form approved by the Commissioner within 12 weeks after being notified of the approval of the establishment of the apprenticeship or

traineeship. The organisation must keep a copy of the training plan and make the plan available for inspection on request by the Commissioner. The requirements do not apply if a training plan has already been lodged with the Commissioner (including as part of the application for establishment of the apprenticeship or traineeship).

Schedule 1 [17] requires the Commissioner to notify the relevant registered training organisation after determining an application for establishment of an apprenticeship or traineeship.

Suspension and cancellation

Schedule 1 [34] modifies the process for suspension or cancellation of an apprenticeship or traineeship. Currently, an apprenticeship or traineeship may only be suspended or cancelled on the application of one or both of the parties. The amendment enables the Commissioner to suspend or cancel an apprenticeship or traineeship on the Commissioner's own initiative after giving the parties notice of the proposed suspension or cancellation and the opportunity to make submissions. The Commissioner may not suspend or cancel an apprenticeship or traineeship unless satisfied that both parties consent or that it is reasonable in the circumstances to do so. The Commissioner must give notice of the suspension or cancellation specifying the grounds of suspension or cancellation, the date on which it takes effect and, in the case of suspension, the period of suspension.

Schedule 1 [45] provides that the Commissioner is not required to give prior notice to the employer and apprentice or trainee of the suspension of an apprenticeship or traineeship pending the hearing of a complaint.

Competency assessments

Schedule 1 [35] enables the Commissioner to require an apprentice or trainee to undergo a competency assessment by a registered training organisation nominated by the Commissioner before issuing the apprentice or trainee with a certificate of proficiency for the relevant vocation.

Schedule 1 [37] enables the Commissioner to provide a copy of the report of the assessment to the Australian Skills Quality Authority.

Schedule 1 [43] (proposed section 36) enables the Commissioner to require an applicant for recognition of qualifications or experience in a particular trade vocation to undergo a competency assessment by a registered training organisation nominated by the Commissioner, and seek expert advice, before determining that the applicant is adequately trained to pursue the vocation.

Schedule 1 [75] makes a consequential amendment.

Schedule 1 [70] provides that the regulations may make provision for or with respect to competency assessments and related consultation processes.

Penalties

Schedule 1 [65] provides for the issue of penalty notices for offences against the Act or the regulations. Penalty notices may be issued by persons authorised in writing by the Commissioner.

Schedule 1 [10] increases, from 20 penalty units to 100 penalty units, the maximum penalty amount for the following offences:

- (a) failing to apply for the establishment of an apprenticeship or traineeship within 28 days after employing an apprentice or trainee,
- (b) employing a person under the age of 21 years in a recognised trade vocation who is not an apprentice or qualified tradesperson in the vocation.

Schedule 1 [26] increases, from 20 penalty units to 200 penalty units, the maximum penalty amount for the offence of an employer knowingly placing an apprentice or trainee with a host employer who is a prohibited employer.

Schedule 1 [40] increases, from 20 penalty units to 200 penalty units, the maximum penalty amount for the following offences:

- (a) requiring an apprentice or trainee to make payments or give bonds with respect to the establishment of an apprenticeship or traineeship,

- (b) failing to comply with certain requirements of, or obstructing, an industry training officer,
- (c) giving false or misleading information in relation to an application under the Act,
- (d) disclosing trade secrets and other business information obtained in connection with the administration or execution of the Act.

Schedule 1 [39] increases, from 10 penalty units to 100 penalty units, the maximum penalty amount for the offence of falsely advertising or representing that a person or body is registered under the Act as a group training organisation.

Schedule 1 [50] increases, from 5 penalty units to 50 penalty units, the maximum penalty amount for the following offences in connection with the hearing of a complaint:

- (a) failing to comply with a requirement to attend the hearing or produce a document,
- (b) failing to comply with a requirement to answer a question, or making a false or misleading statement, at the hearing,
- (c) misconduct at the hearing.

Schedule 1 [71] increases, from 10 penalty units to 100 penalty units, the maximum penalty amount that may be imposed for an offence under the regulations.

Miscellaneous amendments

Schedule 1 [1], [61], [74] (omission of definition of *public servant*) and **[76]** are law revision amendments consequent on the enactment of the *Government Sector Employment Act 2013* and the Commonwealth *Fair Work Act 2009*.

Schedule 1 [3] confers on the Commissioner the function of issuing vocational training guidelines currently conferred on the Secretary of the Department of Industry.

Schedule 1 [4], [5] and [9] make minor amendments to clarify references to the expressions *required training*, *appropriate qualification* and *recognised traineeship vocation*, respectively.

Schedule 1 [6] provides that a vocational training order in relation to a recognised trade vocation or recognised traineeship vocation may specify the units of competency forming part of the training for the vocation.

Schedule 1 [7] updates a reference to the website on which vocational training orders are published.

Schedule 1 [8] inserts a note explaining the effect of registration of an employer or apprentice or trainee (in the register of apprenticeships and traineeships established under the Act) in relation to eligibility for funding under State and Commonwealth incentive schemes.

Schedule 1 [13] requires an application for the establishment of an apprenticeship or traineeship by an employer who proposes to place the apprentice or trainee with a host employer to specify the business address (rather than any postal or other address), ACN (if any) and ABN of the host employer.

Schedule 1 [14] (proposed section 7 (5B)) enables an agent approved by the Commissioner to make an application for the establishment of an apprenticeship or traineeship on behalf of an employer if the agent certifies that certain relevant documentation has been duly executed by the parties. Proposed section 7 (5C) enables the Commissioner to refuse to accept applications lodged by the agent if the agent fails to provide the certification.

Schedule 1 [14] (proposed section 7 (5D)) provides that the establishment of an apprenticeship under which the employer does not undertake to employ the apprentice for the whole of the term of the apprenticeship (a *trainee apprenticeship*) is not permitted under the Act. **Schedule 1 [12], [20], [22], [23] and [28]** make consequential amendments.

Schedule 1 [19] specifies additional matters (relating to conditions of employment and the requirements of vocational training orders) of which the Commissioner must be satisfied before approving an application for the establishment of an apprenticeship or traineeship.

Schedule 1 [24] makes it clear that a training contract that binds the employer and apprentice or trainee is the contract most recently executed between the parties, as varied under the Act.

Schedule 1 [36] removes provisions enabling the Commissioner to issue craft certificates or certificates of completion (instead of certificates of proficiency) to apprentices or trainees who have completed an apprenticeship or traineeship but not yet been awarded an appropriate qualification. **Schedule 1 [42], [43], [74] and [79]** make consequential amendments.

Schedule 1 [43] (proposed section 37) makes special provision in relation to the recognition of qualifications or experience of a person in a recognised trade vocation for which the person requires a certificate of proficiency in order to work in the vocation. For the purpose of determining an application for recognition of the qualifications or experience, the Commissioner is to nominate representatives of industrial organisations that represent employees and employers (at least one of each). The Commissioner may determine that the person is adequately trained to pursue the vocation only if the industrial representatives make a unanimous recommendation to that effect. The Commissioner is to provide to the industrial representatives any information obtained by the Commissioner in connection with the application. The regulations may make further provision for or with respect to applications and determinations. **Schedule 1 [43]** also repeals a provision containing matters that are dealt with by proposed sections 36 and 37.

Schedule 1 [55] enables the Commissioner to specify limitations on orders prohibiting employers from entering into apprenticeships or traineeships. **Schedule 1 [53]** defines orders of this kind as *prohibition orders* and makes a consequential amendment. **Schedule 1 [14]** (proposed section 7 (6)), **[26] and [56]** also make consequential amendments.

Schedule 1 [58] enables the Commissioner to vary a prohibition order.

Schedule 1 [59] makes it an offence for an employer who is subject to a prohibition order to employ an apprentice or trainee contrary to the order. **Schedule 1 [26]** makes a consequential amendment to remove a more limited offence applying to employment under host employment arrangements.

Schedule 1 [66] provides that applications under the Act must be made in the manner and form approved by the Commissioner.

Schedule 1 [73] contains provisions of a savings or transitional nature relating to the following matters:

- (a) the abolition of the Vocational Training Review Panel, including the manner in which proceedings pending in the Vocational Training Review Panel, NCAT or a court are to be dealt with,
- (b) the preparation of training plans,
- (c) the making and settlement of complaints,
- (d) the suspension and cancellation of apprenticeships and traineeships,
- (e) trade recognition and assessment,
- (f) trainee apprenticeships,
- (g) vocational training guidelines issued by the Secretary of the Department of Industry.

Schedule 1 [69] omits a provision authorising the Secretary to delegate the Secretary's functions under the Act. The provision is made redundant by the conferral of those functions on the Commissioner by the proposed Act.

Schedule 1 [74] inserts definitions of *prohibition order*, *relevant registered training organisation* and *training plan*. **Schedule 1 [27], [30], [33], [38] and [78]** make consequential amendments.

Schedule 2 Amendment of other Acts and instruments

Schedule 2 makes consequential amendments to other Acts and instruments as follows:

- (a) the *Apprenticeship and Traineeship Regulation 2017* is amended to remove provisions and references that are made redundant by the proposed Act,
- (b) the *Civil and Administrative Tribunal Regulation 2013* is amended to provide that fees are not payable for the lodgment of an administrative review application under the Act,

- (c) the *Hairdressers Act 2003* and the *Government Information (Public Access) Regulation 2009* are amended to remove matter relating to the Vocational Training Review Panel.